The Kawbawgam Cases: Native Claims and the Discovery of Iron in the Upper Peninsula of Michigan

by
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The southern shore of Lake Superior is a beautiful but rugged and isolated region that inhibited early Anglo-American settlement and still poses significant challenges for its inhabitants. In 1840, seasonally nomadic groups of Algonkian-speaking Natives and the mixed-race peoples of the fur trade occupied the area, but after the discovery of valuable mineral resources the situation changed rapidly. Although the Native peoples had mined copper for several thousand years, they did not use iron, probably because intense heat is needed to extract and work the ore.[1] When the first Anglo-American surveying and prospecting parties came to the area, local Natives guided them to the fabulously rich deposits of the Marquette Iron Range but the prospectors shared little of the subsequent wealth. Charlotte Kawbawgam's story reveals, however, that Anglo-Americans did not always appropriate Native resources without gratitude or payment. Kawbawgam's efforts to obtain compensation from the Jackson Iron Company for services rendered by her father Matji-gijig ("Bad Day") in locating the Marquette Iron Range culminated in three Michigan Supreme Court cases in the 1880s and a landmark decision.[2]

In the "New Indian History" paradigm, scholars minimalize preconceptions about Native victimization, degradation, and "vanishing" to

[1] Susan R. Martin, "The State of Our Knowledge about Ancient Copper Mining in Michigan," *The Michigan Archaeologist* 41, no. 2-3 (1995): 119-138; Charles E. Cleland, *Rites of Conquest: The History and Culture of Michigan's Native Americans* (Ann Arbor: University of Michigan Press, 1992), 18-19.

[2] "Marji Ge[e]sick" is the name given to Matji-gijig in court records and is retained in that context. (Similarly, "Kawbawgam" is *Kobogum* when referencing the final legal case). There are many variants on Matji-gijig's name in American sources, and I thank Kenn Pitawanakwat of the NMU Center for Native American Studies for suggesting this version.

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emphasize adaptability, hybridity, and performativity. All human beings must have decisions (i.e., "agency"), but they do so within larger institutional and cultural systems (i.e., "structures") which constrain their choices. As James Spady wrote in a recent book review essay, "Ultimately . . . a historiographic return to Native Americans will restore the full and complex agency of Indians in the history of North America and will require understanding the varied and contested power dynamics of imperialism and colonization."[3] Many studies have demonstrated efforts by Native peoples to redress grievances through the legal structures of dominant societies. Native peoples in Latin America quickly learned to use colonial administrative and legal structures to protect their rights. In the United States, much Native policy has resulted from legal actions and decisions, including the *Cherokee Nation* cases in the 1830s, in resistance to removal. Although Andrew Jackson circumvented those decisions, they established foundational relations and principles of US-Native law and helped Charlotte Kawbawgam win her case.[4] In the Kawbawgam cases, the plaintiffs ultimately received little in material compensation, but was that their primary goal? Charlotte Kawbawgam and her allies asserted historical agency, tested the legal system to see if and how "the master's tools" (i.e., the same legal structures that were so often oppressive) could be used to defend their rights, and they prevailed.[5]

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[3] James O'Neil Spady, "Reconsidering Empire: Current Interpretations of Native American Agency during Colonization," *Journal of Colonialism and Colonial History* 10, no. 2 (2009).

[4] For Latin America see, for example, Matthew Restall, Lisa Sousa, and Kevin Terraciano, *Mesoamerican Voices: Native-Language Writings from Colonial Mexico, Oaxaca, Yucatan, and Guatemala* (Cambridge: Cambridge University Press, 2005), 62-93. For the Cherokee Nation cases see fn 56. For Native resistance to removal in the Upper Great Lakes region, see Susan E. Gray, "Limits and Possibilities: White-Indian Relations in Western Michigan in the Era of Removal," *Michigan Historical Review* 20, no. 1 (1994): 71-91; James McClurken, "Ottawa Adaptive Strategies to Indian Removal," *Michigan Historical Review* 12, no. 1 (1986): 29-56; Elizabeth Neumeyer, "Michigan Indians Battle Against Removal," *Michigan History* 55 (1971): 276-277; Ronald M. Satz, "The 1842 Copper Treaty," in "Chippewa Treaty Rights: The Reserved Rights of Wisconsin's Chippewa Indians in Historical Perspective," *Transactions of the Wisconsin Academy of Sciences, Arts, and Letters* 79, no. 1 (1991): 33-49; and Edmund J. Danziger Jr., "They Would Not Be Moved: The Chippewa Treaty of 1854," *Minnesota History* 43, no. 5 (April 1, 1973): 175–185.

[5] This phrase was originated by the late Caribbean-American feminist, womanist, civil rights activist, and writer Audre Lorde; See Lorde, "The Master's Tools Will Never Dismantle the Master's House," in *Sister Outsider: Essays and Speeches* (Berkeley, CA: Crossing Press, 2007), 110-114.

The judgments rendered in this series of cases established two important precedents. Ultimately the Michigan Supreme Court held that Charlotte was her father's heir even if he had been a "polygamist" because treaties preserved Native rights to self-government, which extended to traditional family practices. The Court also ruled that the trust responsibilities of corporations to their stockholders are not extinguished simply by the passage of time or changes in corporate ownership. Previous analyses have focused on these legal points, although John Voelker, a prominent local attorney who served on the Michigan Supreme Court, fictionalized the episode in his 1965 novel *Laughing Whitefish*.[6] Descriptions of the Kawbawgams still include a hint of "imperialist nostalgia," celebrating Indians as relics of the past while largely ignoring the concerns of those living in the present. The community of Marquette has always acknowledged the historical contributions of the Kawbawgams, but they remained poor and dependent upon several influential early Euro-American pioneers for material support.[7]

Re-examination of the Kawbawgam claims and cases from larger historical and community perspectives can contextualize and correct the legalism or fictional license of earlier accounts. These Michigan Natives understood their rights, defended them in the American court system, and technically succeeded despite the meager financial benefit. Their actions illustrate some of the ways that Natives coexisted with Euro-Americans even amidst the profound disruptions that accompanied Anglo-American settlement. This story does not deny the painful experiences of conflict, removal, and the historical erasure of Natives in the eastern United States (or their contemporary problems) but instead emphasizes their continued existence and activism in the region.

Archaeological evidence has established that Natives lived in the central Upper Peninsula region 11,000 years ago.[8] The oral traditions of today's Anishinaabeg peoples tell of a long migration approximately 500 years ago from the northern regions of the East Coast. In their new

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[6] Robert Traver, *Laughing Whitefish* (East Lansing, MI: Michigan State University Press, 2011). Traver is Voelker's literary alias. See also W.B. Hinsdale, "Property Rights and Indian Marriage: Two Cases in the Michigan Supreme Court," *Michigan Alumnus Quarterly Review* 40, no. 25 (July 1934): 154–160.

[7] Renato Rosaldo, "Imperialist Nostalgia," *Representations* 26 (April 1, 1989): 107–122.

[8] James Paquette, *The Find of a Thousand Lifetimes: The Story of the Gorto Site Discovery* (Bloomingtom, IN: AuthorHouse, 2005).

homelands, the groups were small and mobile, moving seasonally to take advantage of local resources since the harsh climate made agriculture unreliable. This peripatetic lifestyle gave early Euro-Americans the false impression that there were few Indians living in the Central Upper Peninsula at the time of settlement. The first Anglo-Americans who came to present-day Marquette noted several small villages at the mouths of the Carp and Chocolay Rivers, with some habitation near Teal Lake, where the huge iron deposits of the Marquette Range were later discovered (near the town of Negaunee).[9]

Charlotte Kawbawgam's father, Matji-gijig, came from an important local family, the Madosh. Given the unfortunately common tendency to label Native men as "chief" it is not clear whether he was a major leader, but several of his relatives were recognized as local headmen by US government treaty officials. Charles Kawbawgam (Nawaquay-geezhik, "Noon Day") and his father (Muk-kud-day-wuk-kwud, "Black Cloud") also appear in early treaties as secondary chiefs. Charles Kawbawgam's stepfather was Shawano Kewainze (or Ka-ga-qua-dung), the last head chief at Sault Ste. Marie ("the Soo"). Kawbawgam met and married Charlotte (Min-wash, "Sailing with the Wind") at the Soo, and they then settled permanently in the Marquette area in the late 1840s.[10] At the time, there were no Euro-Americans in the area other than fur traders, often themselves of mixed Native-European (métis) heritage, and a few missionaries.[11]

In 1837, Michigan achieved statehood, which stimulated the acquisition of Native land through treaties. Despite questionable negotiation tactics and many subsequent failures to honor them, treaties were always binding legal agreements that explicitly acknowledged Native

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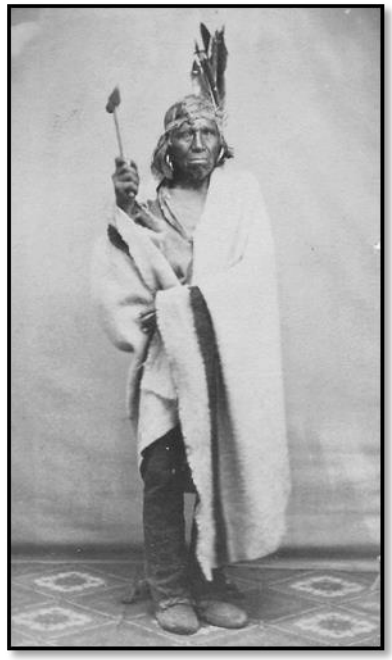
[9] William W. Warren, *History of the Ojibway People* (St. Paul: Minnesota Historical Society Press, 1984); Cleland, *Rites of Conquest,* 1-73; Edmund Jefferson Danziger Jr., *The Chippewas of Lake Superior* (Norman, OK: University of Oklahoma Press, 1979), 6-25; Harold Hickerson, *The Chippewa and Their Neighbors: A Study in Ethnohistory* (Prospect Heights, Illinois: Waveland Press, 1970); Helen Hornbeck Tanner, *Atlas of Great Lakes Indian History* (Norman: University of Oklahoma Press, 1987); and Lorraine Norrgard, "Ojibwe. Waasaa Inaabidaa: 'We Look in All Directions,'" *Ojibwemowin "Ojibwe Oral Tradition"* (Duluth, Minnesota: WDSE-TV, 2008).

[10] Homer H. Kidder and Arthur P. Bourgeois, eds., *Ojibwa Narratives: Of Charles and Charlotte Kawbawgam and Jacques LePique, 1893-1895* (Wayne State University Press, 1994).

[11] Richard White, *The Middle Ground: Indians, Empires, and Republics in the Great Lakes Region, 1650–1815* (Cambridge: Cambridge University Press, 2010); Amanda Ida Johnson, *The Michigan Fur Trade* (Lansing: Michigan Historical Commission, 1919); Susan Sleeper-Smith, *Indian Women and French Men: Rethinking Cultural Encounter in the Western Great Lakes* (Amherst: University of Massachusetts Press, 2001).



This photograph of Matji-gijig, with its stereotyped pose, was produced by Marquette photographer A.G. Emery. The date, 1860, would have been not long before Mati-gijig's death.

Source: Marquette Regional History Center

rights, and today they still serve as the basis for many contemporary Native claims. Many Lower Michigan Natives were forced into treaties and removed to the Indian Territory in the 1830s, but increasing criticism de-escalated the process in the 1840s. In the 1836 Treaty of Washington, much of Lower Michigan was ceded to the United States, along with the eastern half of the Upper Peninsula up to the Chocolay River. Growing interest in the development of timber and mineral resources in the western half of the Upper Peninsula led to the Treaty of LaPointe in 1842. As remote as they were, Native peoples of the Upper Peninsula knew about these events and their fears about removal were not resolved until the second Treaty of LaPointe in 1854.[12]

[12] Satz, "The 1842 Copper Treaty," 33-49; Danziger, "They Would Not Be Moved," 175–185; Charles J. Kappler, *Indians Affairs: Laws and Treaties, Vol. 2*

The potential mineral resources of the region quickly attracted American attention. When Henry Schoolcraft, a US government Indian agent, and Lewis Cass, Michigan's territorial governor, explored the upper Mississippi Valley in 1820 they found Native miners (mostly women) extracting lead as they had done for at least 4,000 years.[13] A young doctor and amateur geologist, Douglass Houghton, accompanied Schoolcraft on subsequent expeditions in 1831-1832, noting the copper deposits of the Keweenaw Peninsula. After returning to Detroit, Houghton became the first professor of geology and chemistry at the new University of Michigan and argued for systematic surveys of the state. When the legislature authorized the formation of the State Geological Survey in 1837, Houghton was the obvious choice for the new position of State Geologist. He traveled to the Upper Peninsula in May 1840 and concentrated on the Keweenaw Peninsula; in 1841, the publication of his report triggered one of the country's first big mineral rushes.[14] At the time, few Euro-Americans saw anything but the gleam of copper in these reports, but accounts of Houghton's journey also provide a rare glimpse of the area just before extensive mineral resource development changed it forever. As the expedition moved west, the explorers found that the Natives were not pleased to see them. One particular confrontation became quite tense and Houghton averted violence only by paying a tribute, which he considered "a levy of blackmail, and act of piracy."[15]

Once the land was acquired, government officials struggled to map, survey, subdivide, and register such a vast amount of isolated territory. In 1844, Deputy Surveyor William Burt and his crew were working in

(Washington, DC: Government Printing Office, 1904), 461-462 (1836), 542-545 (1842), 648-652 (1854), and 685-690 (1855).

[13] Lucy Eldersveld Murphy, *A Gathering of Rivers: Indians, Métis, and Mining in the Western Great Lakes, 1737-1832* (Lincoln: University of Nebraska Press, 2000); Henry Rowe Schoolcraft, *Schoolcraft's Narrative Journal of Travels: Through the Northwestern Regions of the United States, Extending from Detroit through the Great Chain of American Lakes to the Sources of the Mississippi River, in the Year 1820* (East Lansing, MI: Michigan State University Press, 1992).

[14] Helen Wallin, *Douglass Houghton, Michigan's First State Geologist, 1837-1845* (Lansing, MI: Michigan Geological and Land Management Division, 2004); Richard C. Allen, "Dr. Douglass Houghton," in *Some Upper Peninsula Pioneers: From the Michigan Pioneer and Historical Collections* (Iron Mountain, MI: Mid-Peninsula Library Federation, 1974), 1-8.

[15] Bela Hubbard, "Horizon North," in Walter Havighurst, *The Great Lakes Reader* (New York: The Macmillan Company, 1966), 62–76; George N. Fuller, ed., *Geological Reports of Douglas Houghton* (Lansing, MI: The Michigan Historical Commission, 1928).

the area around Teal Lake when the magnetic compass began to malfunction. Burt sent his team to look for the cause and they returned with specimens of iron ore. Additional surveys indicated the presence of various minerals in the central Upper Peninsula. Some of these deposits were previously known to local traders who nevertheless did not capitalize on the information, probably because they realized the enormous logistical challenge and expense required. Iron mining in the area did not become profitable until the Civil War and subsequent industrial growth stimulated sufficient demand.[16]

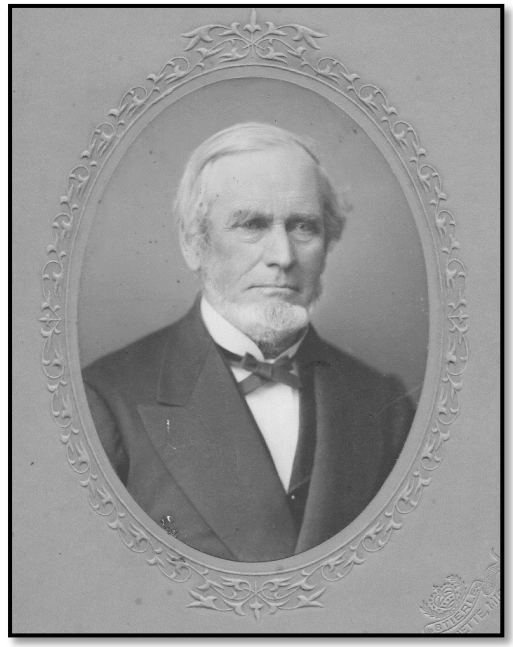
Downstate in Jackson, a local merchant, Philo Everett, heard the reports and rumors of these potentially lucrative discoveries.[17] Everett succeeded in recruiting twelve additional investors, mostly small local businessmen, and in July 1845 they formed the Jackson Mining Company. The company initially issued 3,100 shares: the original 13 members each received 200, leaving 500 unassessable shares "to remain in the treasury as company property."[18] The partners organized their company and subsequently negotiated the complicated process of acquiring title to their claim well enough that during the Kawbawgam litigation the courts rejected defense efforts to challenge the legality of these actions.

Once the company was organized, Everett and four companions set off for the Keweenaw Peninsula. While in Sault Ste. Marie arranging for a boat and an experienced crew, Everett encountered Louis Nolin, a local métis trader, who told him about two shiny mountains near the headwaters of the Carp River he had seen over three decades earlier as a boy accompanying a party of Natives. Nolin joined the party and guided them to what he called Shingbiss-ah-go-mud Lake (now Teal Lake), but when

[16] Harlan Henthorne Hatcher, *A Century of Iron and Men* (Bobbs-Merrill Company, 1950), 24-25; Arthur P. Swineford, *History and Review of the Copper, Iron, Silver, Slate and Other Material Interests of the South Shore of Lake Superior* (Marquette, MI: The Mining Journal, 1876), 91-94; Burton H. Boyum, *The Saga of Iron Mining in Michigan's Upper Peninsula* (Marquette, MI: Marquette County Historical Society, 1977).

[17] Philo Everett, "Finding the Iron Mountains," in Havinghurst, ed., *The Great Lakes Reader*, 95–99; Philo Everett, "The Jackson Company," n.d. and R.A. Brotherton, "Story of Philo Everett's Trip from Jackson Michigan to Marquette in 1845," 1945, in "Local People Files," Peter White Public Library, Marquette, MI; Swineford, *History and Review,* 95-102.

[18] Philo M. Everett testimony, September 23, 1882, Abram V. Berry testimony, October 11, 1882, Box 70, Voelker Collection, Northern Michigan University Archives, Marquette, Michigan (hereafter "Voelker Collection").



Philo T. Everett, founder of the Jackson Mining Company and, with Matji-gijig's help, original locator of the company's claim

Source: Marquette Regional History Center

he could not relocate the site Nolin suggested that they go to Matji-gijig, who agreed to lead them to the iron deposits. Although reluctant to approach the spot himself, Matji-gijig pointed in the right direction, and they soon discovered the iron mountain "sparkling in the rays of the rising sun." Everett described the iron as "solid ore, 150 feet high. The ore looks as bright as a bar of iron just broken."[19] After orienting their claim around the lake, Everett hurried to the land office in the Keweenaw to record the claim using a permit originally issued to James Ganson, one of the Jackson Company partners. It was impossible to identify a precise one-mile square area given the inaccuracy of available maps, and neither the land office official nor Everett wanted to record erroneous information. Finally they penciled in the Teal Lake

[19] Philo M. Everett to G. D. Johnson, November 10, 1845, as cited in Swineford, *History and Review*, 96.

location (later surveys revealed that they were off by about twelve miles).[20] The prospecting party returned home, reported their discovery, and had their ore samples tested.

The following spring the company was anxious to locate the claim more accurately and occupy the site as required by law. Abram Berry, the company's president, and Frederick Kirtland, the company secretary and a surveyor, volunteered for this task and were accompanied by two other partners. The two officers later testified that they received written power of attorney from the board of directors "to make arrangements with Marji-geesick [sic] to give him certain interests in the location in consideration of services that he had rendered the company in showing them the location." Berry and Kirkland gave Matji-gijig a handwritten stock certificate amounting to 12/3,100 unassessable shares in the company:

> River du Mort
> Lake Superior
> May 30, 1846
>
> This may certify that in consideration of the services rendered by Marji Gesick, Chippewa Indian, in hunting ores of location No. 503 of the Jackson Mining Company, that he is entitled to twelve undivided thirty-one one-hundredths part of the interests of said mining company in said location No. 503.
>
> [Signed] A.V. Berry, Pres. J.W. Kirtland, Secy.

Berry later insisted that he carefully explained, and Matji-gijig understood, that "when the company was to pay up for the land he was to have his interest without payment."[21] Additional verbal agreements may have included some clothing, the promise of future company employment or housing, and education for his two sons. Some company accounts indicated that another three shares were promised to each of the sons but evidently they were no longer living at the time of the legal action. Berry and Kirkland later maintained that when they returned and

[20] Swineford, *History and Review*, 96; Everett deposition, September 23, 1882, Box 70, Voelker Collection.

[21] Abram V. Berry letter, 1870, as cited in Everett, "The Jackson Company," 4-5; Abram V. Berry deposition, October 11, 1882, Box 70, Voelker Collection.

reported the agreement, the other partners unanimously affirmed their actions with little discussion—if anything, some felt the compensation was inadequate. Nevertheless, the agreement was ratified unanimously and recorded in the company records.[22]

Early mining operations in this remote and inhospitable area faced enormous obstacles. The ore was easily mined from the surface but there was no road to the harbor in Marquette until one was constructed at considerable cost. In 1849, the first dock built was destroyed overnight by a storm, and transshipment through the treacherous waters of Lake Superior is still risky to this day. The decision to build forges to process the ore onsite, thereby eliminating the waste material before shipping smelted bars, proved to be a costly miscalculation for the Jackson Company and other operators. Over the next few years, the partners were assessed repeatedly for improvements. They tried leasing the forge to several other companies but it kept losing money.[23]

Additionally, in an effort to keep up with the mining boom the Michigan legislature passed a special act requiring the company to reorganize and incorporate. In April 1848, all stock, debts, and assets were transferred to the new corporation and its shareholders; in April 1849, an amendment changed the name to the Jackson Iron Company. During this process the partners discovered that all of the original unassessable 500 shares were gone, so technically there was nothing left to cover their obligation to Matji-gijig. This blunder evoked considerable internal criticism, but since they could not create more stock they decided to form an investigative committee, pass the problem on to themselves as the new corporation, and resolve it later. The matter was never subsequently reviewed, however, partly because the new corporation had to fulfill rapidly changing federal requirements to confirm ownership.[24]

The original partners could not make the Jackson Mining Company turn a profit. By the mid-1850s, the company had passed into the hands

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[22] Abram V. Berry and Frederick Kirtland depositions, October 11, 1882, Philo Everett deposition, September 23, 1882, and testimony, June 11, 1888, Box 70, Voelker Collection.

[23] Swineford, *History and Review*, 102-107. Peter White frequently told the story about the dock, which he had spent three days helping to build. Former company employees Joshua Hodgkins, Samuel Peck, Dan H. Merritt, Amos Harlow (Clark's prominent father-in-law), and another important local figure, Dr. Morgan Hewett, all testified about the early problems of mining the Marquette Range.

[24] Berry and Kirtland depositions, October 11, 1882, Everett deposition, September 23, 1882, and testimony, June 11, 1888, Box 70, Voelker Collection.

of absentee owners and managers who knew nothing of the original agreement with Matji-gijig, and the corporation would be reorganized yet again in 1877 after its original 30-year charter expired.[25] By 1854, when the forge finally shut down, most of the original partners had sold out because they could not afford the constant financial assessments, although they were well aware of the mine's potential wealth. Gardiner Lloyd, the Jackson Iron Company's secretary and treasurer, later testified that no dividends were paid until 1861 but profits subsequently soared: for seven out of ten years in the 1870s dividends were 100 percent or more of stock value.[26] Perhaps feeling a bit cheated themselves, several surviving original partners later testified in support of Charlotte Kawbawgam's claims, all acknowledging their debt to Matji-gijig in discovering the iron and attributing their failure to fulfill this obligation to the early financial difficulties of their company.

During the 1850s, Matji-gijig apparently made some efforts to claim his reward, but the struggling company could do little for him. It was impossible to establish the exact date of his death—sometime between 1860 and 1862—but afterward Charlotte found the original agreement carefully preserved among her father's possessions and began her own efforts to pursue the claim. She and her husband, Charles, consulted Philo Everett in May 1864 with the goal of "obtaining their rights under it." As their friend and a former company partner, it was logical to ask Everett for help.[27] Later, when defense attorneys tried to establish that Matji-gijig had received other compensation for his services, Everett insisted this was untrue. Reminded of an episode when Matji-gijig justified stealing some corn on the grounds that the company owed him, Everett agreed that "he was entitled to it."

In August, Everett wrote to David Stewart, president of the Jackson Iron Company, and subsequently met with him in the company's New York office in January 1865. (Everett remembered the date because he had recently visited President Lincoln in Washington.) In their testimonies both men agreed that Everett showed Stewart the agreement and asked him "to settle it." Stewart initially denied any knowledge of the matter, but when they looked at the old company's records they

[25] Berry and Kirtland depositions, October 11, 1882, Kirtland testimony, June 11, 1888, Everett deposition, September 23, 1882, and testimony, June 11, 1888, Frances Carr deposition, September 22, 1882, Box 70, Voelker Collection.

[26] Everett deposition, September 23, 1882, Kirtland deposition, October 11, 1882, and Gardiner P. Lloyd deposition, December 7, 1882, Box 70, Voelker Collection.

[27] Everett testimony, June 11, 1888, Box 70, Voelker Collection.

found that "the company acknowledged the claim, sanctioned it and appointed a committee of ways and means to ascertain how it should be settled." Stewart disclaimed responsibility for the actions of the predecessor company but offered the "poor Indians" a charitable contribution of $100. Everett realized that if he accepted this offer it could be construed as a settlement, so he refused; Stewart later admitted that "I expected that he would give me the paper if I gave him the $100."[28]

By 1871, Charlotte Kawbawgam had found a local attorney, Egbert J. Mapes, who wrote to Fayette Brown, the company's general agent and business manager, then met with Brown in Marquette. Mapes later testified that Brown "did not offer to buy the paper exactly, but he said he would give—I think it was $300 at that time to get rid of the thing and not have any bother."[29] Stewart and Lloyd subsequently revealed that Brown had contacted his superiors, and although Lloyd initially claimed that he could not remember whether he or Stewart had replied to Brown, he later recalled: "I think Mr. Stewart renewed some offer which he had made previously, as a matter of charity he would be willing to give a small [unspecified] amount."[30] The defense insisted that neither a regional business agent like Brown nor a national officer like Lloyd or Stewart would have had sole authority to make any settlement, a position the courts accepted. Nevertheless, these early efforts demonstrated that Charlotte Kawbawgam had tried to assert her rights several times before initiating litigation.

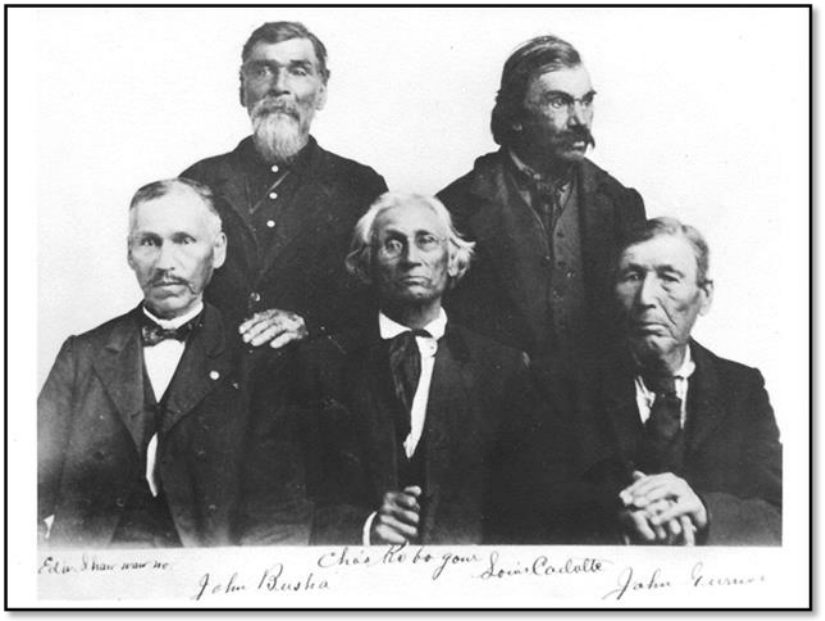
By 1879, Charlotte Kawbawgam had a new attorney, Frederick Owen Clark, a promising young man married to Ellen Harlow, the daughter of a prominent community businessman (perhaps his connections made him less dependent on the mining interests than most local attorneys).[31] Charlotte was quite poor, so in January 1879 she assigned her rights to a prominent local métis resident and family friend, Jeremy Campau ("Compo" in the first cases), who agreed to pay the legal

[28] David Stewart deposition, December 6, 1882 and Everett deposition, September 23, 1882, Box 70, Voelker Collection.

[29] Egbert J. Mapes deposition, September 22, 1882, and testimony, June 11, 1888, Box 70, Voelker Collection.

[30] Lloyd deposition, December 7, 1882 and Stewart deposition, December 6, 1882, Box 70, Voelker Collection.

[31] "Frederick Owen Clark," in *Men of Progress: Embracing Biographical Sketches of Representative Michigan Men* (Detroit: Evening News Association, 1900), 352.



(L to R): Edward Shawano, John Busha, Charles Kawbawgam, Louis Cadotte, and John Gurnoe. These men have been described as witnesses in the Compo case but Kawbawgam was the only one who testified.

Source: Marquette Regional History Center

expenses in exchange for 25 percent of any future settlement. Others in the local Native communities were also interested. A surviving photograph depicts a group of Native men identified as witnesses in the case: Edward Shawwawna [Shawano], John Busha, Charles Kawbawgam, Louis Cadotte, and John Gurnoe. Although Kawbawgam was the only one who actually testified, the others were his friends or relatives from Sault Ste. Marie, and their presence indicates widespread support for Charlotte among the local Native population.[32]

A crucial issue in the cases involved the amount of time that had elapsed between the agreement with Matji-gijig and its first disputation

[32] "Indian and Half-breed Witnesses in the Jackson Iron Company Cases," in Kate McCann, "Charlotte Kawbawgam vs. the Jackson Iron Company," *Marquette Monthly* (May 1993), 22. See also Mrs. Thomas D. Gilbert, "Memories of the 'Soo,'" in *Some Upper Peninsula Pioneers: From the Michigan Pioneer and Historical Collections* (Iron Mountain, MI: Mid-Peninsula Library Federation, 1974), 73-83.

in court. The company's strongest defense was the concept of laches, a legal principle that can prevent the adjudication of even legitimate claims if the complainant has failed to pursue the matter within a reasonable period of time. It is particularly relevant when circumstances have changed so that a settlement would be unfair or harmful to the defendant (e.g., if the value of a contested property has increased dramatically in the interim, which was the case with the Jackson Mine). Recent research has indicated that a variant definition of laches ("new laches") has been applied to Native claims cases, but this concept only affects sovereign tribes and does not preclude actions under the more traditional definition.[33] Jackson Iron Company lawyers insisted that the claim had gone "stale" under the concept of laches, requiring the complainants to prove otherwise and generating considerable debate about whether traditional Native people should be held to the same standards of judicial promptness as Euro-Americans. There were some half-hearted efforts to depict the Natives as poor, "ignorant," and thus unaware of their rights, but the evidence revealed that these particular Natives had been very astute in recognizing that the original agreement was valuable, preserving it, and trying to pursue the claim on at least two separate occasions before going to court.

The first case, *Jeremy Compo v. The Jackson Iron Company,* began in the local circuit court in Marquette in March 1881. The complainants outlined the history of the agreement and Charlotte Kawbawgam's rights and efforts as Matji-gijig's heir. It asserted the legal responsibility of the current company through several reorganizations, and noted its contradictory refusal to acknowledge Kawbawgam's rights while simultaneously offering "a small sum to obtain a surrender . . . of said contract."[34] Judge William Williams issued a writ of subpoena on the company's local manager and the company's attorney, Matthew Maynard, filed a demurrer, an action usually taken by defendants to block litigation by asserting that the claim is legally insufficient, late, or nonsensical. Maynard's response rejected responsibility for the actions of the original mining company, its agents, or its agreements, insisted that the subsequent corporation was not liable for the debts of its predecessor, and cited the laches principle to argue that the facts were

[33] Kathryn E. Fort, "The New Laches: Creating Title Where None Existed," *George Mason Law Review* 16 (2009): 357.

[34] Compo complaint, March 11, 1881, Box 70, Voelker Collection.

irrelevant because of the "excessive amount of time that had lapsed before the suit was filed."[35]

Judge Williams granted the demurrer but gave Campau and his attorney, Frederick O. Clark, additional time to amend the complaint. In January 1882, the new circuit court judge, Claudius B. Grant, dismissed the amended complaint but gave the plaintiffs yet another chance to amend their petition.[36] They declined and appealed directly to the Michigan Supreme Court in February, a process that required the posting of a $500 appeal bond, which Campau would lose if the appeal failed. Perhaps the complainants thought a panel of higher-level judges removed from the area and farther from the influence of the mining companies would be more sympathetic, but there were also more practical reasons. After learning that the Michigan Supreme Court would hear the appeal, Judge Grant wrote Justice Cooley (his former law professor) and explained that, although he did not like it, the lawyers for both sides had agreed to sidestep the local court to "save considerable expense."[37]

In June the Michigan Supreme Court overruled the demurrer and sent the case back to the circuit court for a full hearing, a decision which must have unpleasantly surprised company officials. They were powerful, the complainants were poor and marginalized members of society, and the laches argument was strong, so why did the Court not dismiss the case? Nationally, post-Civil War courts wielded great power and generally used it conservatively to limit restrictions on business but this was an exceptional body of jurists. Three of the judges were members of a group known as the "Big Four," which collectively "raised the fame of the Supreme Court of Michigan throughout the Union."[38]

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[35] Jackson Iron Company reply to Compo complaint, Box 70, Voelker Collection. On the defense attorneys, see "Matthew H. Maynard," in *Freemasonry in Michigan: A Comprehensive History of Michigan Masonry from Its Earliest Introduction in 1764* (Conover Engraving and Printing Company, 1896), 78-81; on Healy, see "Wirebound Interests," *Packages* 15 (January 1912): 31; On Walker, see "Charles I. Walker," www.law.umich.edu/historyandtraditions/faculty/Faculty_Lists/Alpha_Faculty/Pages/CharlesIWalker.aspx.

[36] Michigan Supreme Court Historical Society, "Claudius B. Grant," www.micourthistory.org /justices /claudius-grant/.

[37] Claudius Grant to Thomas Cooley, June 30, 1882, Box 6, Thomas Cooley Collection, Bentley Historical Library, Ann Arbor, MI.

[38] Stephen Skowronek, *Building a New American State: The Expansion of National Administrative Capacities, 1877-1920* (Cambridge: Cambridge University Press, 1982); Michael Les Benedict, "Laissez-Faire and Liberty: A Reevaluation of the Meaning and

The reputation of Michigan's "great court" from 1865-1885 is considered a bit exaggerated today, but these judges are still respected for their long service, judicial integrity, prodigious hard work, and lucid, graceful writing. [39] The authors of the major decisions in the Kawbawgam cases, Thomas Cooley and James V. Campbell, were both University of Michigan law professors who published histories of Michigan and other writings that provide additional insight into their ideas. Cooley was the most influential nationally because his work identified many ways courts could deem legislation unconstitutional. Although his concerns about the concentration of power focused on private corporations, not government, partisan criticisms cost him his state Supreme Court seat in 1885. Cooley subsequently became involved in railroad arbitration and became the first chairman of the new Interstate Commerce Commission in 1887.[40] Another member of the court, Justice Benjamin Graves, was known for his "solid accomplishments and . . . diligence." [41] In the Kawbawgam cases he voted with the majority without comment. Justice Isaac Marston was a newcomer appointed to succeed the last of the "Big Four" (Isaac Christiancy), but he resigned in 1883 to practice law in Detroit. Marston is significant because he made no comment while on the court but by 1889 he had joined Clark as counsel for the Kawbawgams. [42] Marston's successor, Thomas Sherwood, also concurred with Campbell in the last Kawbawgam case without comment.[43]

Justice James Valentine Campbell was the only judge to hear and support all three of the Kawbawgam Michigan Supreme Court appeals. In the second case, he wrote a minority opinion but in the third and last

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Origins of the Laissez-Farie Constitutionalism," *Law and History Review* 3, no. 2 (Fall 1985): 293-331.

[39] Edward M. Wise, "'The Ablest State Court': The Michigan Supreme Court before 1885," *The Wayne Law Review* 33, no. 5 (1987): 1509-1561.

[40] Jerome C. Knowlton, "Thomas McIntyre Cooley," *Michigan Law Review* 5 (March 1907): 309-325; Alan Jones, "Thomas M. Cooley and the Michigan Supreme Court: 1865-1885," *American Journal of Legal History* 10 (1966): 97-121; George Edwards, "Why Justice Cooley Left the Bench: A Missing Page of Legal History," *The Wayne Law Review* 10 (1964): 490-498.

[41] On Graves, see Wise, "'The Ablest State Court,'" 1546-1548; Michigan Supreme Court Historical Society, "Benjamin Graves," www.micourthistory.org/justices/benjamin-graves.

[42] "Isaac Marston," www.law.umich.edu/historyandtraditions/students/Pages/ProfilePage.aspx?SID=49&Year=1861; Wise, "'The Ablest State Court,'" 1550-1552.

[43] Wise, "'The Ablest State Court,'" 1553-1556.

Frederick Owen Clark, the Marquette attorney who represented Charlotte Kawbawgam in the court proceedings

Source: *Men of Progress: Embracing Biographical Sketches of Representative Michigan Men* (Detroit: Evening News Assoc., 1900) – courtesy of Clarke Historical Library, Central Michigan University.

case his arguments prevailed. Campbell studied law with Charles I. Walker, an influential Detroit attorney who was part of the Jackson Iron Company's legal team; Campbell, Walker, and Cooley were the three original members of the law faculty at the University of Michigan, established in 1859. Campbell, who served on the state Supreme Court for 32 years, also pursued historical and literary interests, publishing a number of books including *Outlines of the Political History of Michigan* (1876), which extensively reviewed French, British, and American occupation of the area, bluntly criticized earlier removal policies, and supported the right of Natives to free agency and self-determination. Thus, Campbell was well versed in the historical context of the Kawbawgam case when it came before him as a judge.[44] In the first case

[44] James Valentine Campbell, *Outlines of the Political History of Michigan* (Detroit: Schober, 1876), 517-519, 545; Marie Caroline Watson Hamlin and James V. Campbell, *Legends of Le Détroit* (Detroit: T. Nourse, 1884); Wise, "'The Ablest State Court,'" 1548-

(*Compo*), he accepted the basic facts as presented by the claimants, noted Charlotte Kawbawgam's efforts to pursue her claim, and concluded that "the bill does not indicate any considerable delay since the company gave up negotiating, and denied her rights." According to Campbell, there was thus enough reason "to call upon defendant to put in a defense and leave the merits to be tried on the facts," so the case went back to the district court for a full hearing.[45] The Jackson Iron Company's legal strategy consistently emphasized the laches argument and denied the responsibility of the current company for any of its predecessor's obligations. Although the basic chronology of events was quickly established, company attorneys constantly challenged the actions and authority of the original partners to make any agreement with Matji-gijig, the precise location of the claim, the process of purchasing the land and acquiring clear title, the company's recordkeeping, and corporate reorganization. The Jackson Iron Company also insisted that it bore no responsibility for any agreement made by the original company since none of the original stockholders or officers remained. The company further argued that the mine, and thus its stock, was of little value originally and became profitable only after much labor and money had been subsequently invested by others, observing correctly that the laches principle was supposed to protect more recent investors who were unaware of old claims. The courts were unpersuaded by these arguments.

Company attorneys also denied that Charlotte Kawbawgam was the sole heir of Matji-gijig, an assertion with several important implications. First, without an heir there would be no case. Second, there were other living descendants of Matji-gijig, a grandson and a great-granddaughter. In 1887, these individuals provided the legal justification for a third appeal to the Michigan Supreme Court and were included as complainants in that case, but initially their existence complicated Kawbawgam's claim to be sole heir. Finally, the defense argued that since Charlotte was Matji-gijig's daughter by his second wife while a previous partner was still living, she was the illegitimate offspring of a polygamous father. This allegation resulted in major discussions of Native family, marriage, and gender habits that continued throughout all subsequent litigation. The complainants had to convince the court on

1550; C.A. Kent, "James V. Campbell," *Michigan Law Review* 5, no. 3 (Jan. 1907): 161-175.

[45] Justice James V. Campbell opinion, *Compo v. Jackson Iron Company*, 49 Mich. 39, 12 N.W. 901.

three major points. First, they had to establish that the Jackson Mining Company, through its officers and agents, had the authority to make the original agreement and that the subsequent Jackson Iron Company was liable for the trust obligations of its predecessor. Second, they had to demonstrate that Charlotte Kawbawgam was Matji-gijig's rightful heir. Finally, they had to prove that the claim had not gone "stale" under laches but had been promptly and reasonably presented for resolution.

To determine whether Charlotte Kawbawgam was Matji-gijig's legitimate heir, the court had to address Native patterns of family, gender, and marriage relations that differed significantly from Anglo-American practices and values. Matji-gijig had at least three wives and several children with whom he lived at different times. Frederick Clark, Kawbawgam's attorney, tried to construct a serial monogamy model but it soon became clear that sometimes Matji-gijig had lived polygamously with these families, so the defense consistently depicted his domestic arrangements as "loose" both structurally and sexually. According to Anglo-American legal standards, Charlotte was illegitimate as his child and heir; among Native peoples, extended families of affinal, biological, and fictive kin who cared for one another, especially any and all children, were the norm. If a marriage failed, individuals could and did separate. Moralizing Anglo-Americans usually failed or refused to comprehend how Native people understood their family relationships and how deeply "family" (variably and flexibly defined) formed one of the key foundational bases of their cultures.

The Kawbawgam cases offer fascinating evidence about these practices at a crucial transitional time through the testimonies of several Native and métis witnesses. Charlotte's mother, Susan, explained that she married Matji-gijig when she lived near the mouth of the Carp River with her family and his family (which included eight siblings with their own families as well as an elder). Susan recalled that during "the fall and winter season we would all scatter around hunting. . . . We all came out in the spring of the year from the hunting ground on the lake shore and we would make one camp." She described Matji-gijig as a recognized chief who was quite a bit older, but since she had known him for many years they married. Asked to describe how the marriage was confirmed, Susan said "Marji Geesick came to me and inquired if I would marry with him—stay with him. I accepted the offer and during that day or evening he came in and we became as man and wife and stayed together after that. . . . That was the general custom." They stayed together for about six years and had two children, Charlotte (b. about 1831) and a son (Kennedy?), but his death at an early age spoiled the marriage for

Susan, so Charlotte's parents lived together only intermittently afterwards. Susan acknowledged that she knew Matji-gijig had another wife (and children) when she married him and that when he received "the paper" (the Jackson Mining Company agreement) he was living with yet another woman. After Matji-gijig, Susan had another daughter (by one of his brothers) who later married Matji-gijig's good friend, Francis Nolin (better known as Jacques LePique, or Jack LaPete), a métis of Cree and French heritage.[46]

The issue of legitimacy focused on the behavior of tribal people following traditional lifeways more than four decades earlier, prior to statehood. Given the profound changes that subsequently occurred, it was difficult to define what criteria would be used to determine if and how Native marriages and their offspring were considered legitimate under Anglo-American law. Acceptance of serial monogamy was common for many Native people, leading to large, mixed, and interconnected families of flexible membership but it contravened Euro-American law and custom, which defined multiple marriages as polygamous and the resultant offspring as bastards. The defense asked Susan questions clearly intended to evoke negative moral connotations while making its legal points. When asked, "Was it the fashion among the Indians for the man to have more than one wife at that time?" Susan responded yes, "and some women had more than one husband." To the question, "When you say husband and wife do you mean anything more than just sleeping together?" Susan indignantly replied: "it is not by sleeping together one night, but if they live together several years they recognize that as man and wife. . . . Going to sleep one night—I don't call that man and wife."[47] If Native sexual relations were as free as the defense implied then marriage had no legal (i.e. contractual) value and rightful heirs would be nonexistent. Yet Native deponents in the Kawbawgam cases maintained their composure and defended traditional practices even when they acknowledged that social and sexual standards were very different under the new Anglo-American order.

Other family members and friends were asked to testify about Native marriage practices in general and Matji-gijig's in particular. Francis Nolin, the son of fur trader Louis Nolin, had been a good friend of the family since Charlotte was a "papoose" and he was not much older. Nolin explained that the Natives usually made an agreement and

[46] Kidder and Bourgeois, *Ojibwa Narratives*, 152.

[47] Susan Marji Geesik deposition, September 22, 1882, Box 70, Voelker Collection.

offered presents to the girl's family, which "was regarded as a lawful bargain amongst the tribe." "There was no form of ceremony?" the defense asked. "No sir," Nolin replied, "they had no ceremony; they had no preacher or anything of that sort." Nolin later elaborated: "sometimes . . . they used to make a little feast and say a few words . . . or they would have what they called orators who say a few words for the life of these two . . . but there was no ceremony by a preacher; . . . of course they were all Indians; of course you couldn't expect them to make any ceremony." The defense suggested that Native marriages were transient as well as superficial: "It was a very common practice, wasn't it for an Indian to marry one wife and then put her away and then marry another?" Nolin retorted: "When they didn't like one another, they didn't tie them up like you do; they had a better way of marrying in them days." [48] Defense attorneys continued to emphasize the ease of dissolution of marriage, which was particularly scandalous for women according to Anglo-American norms.

In his testimony, Charley Kawbawgam confirmed Nolin's observations, stating:

> Always, up to that time, and I don't know but it is so now, the young man and young woman agreed to marry and live together. If they made a bargain they was to live together; If they did not get along very good they parted, but so long as they kept their bargain and was using one another all right, they lived together all their life time, otherwise, they parted. That was marriage.[49]

Charlotte carefully explained, however, that she "was not married in that way; at the time I was married many white people had come up in that country and living at the 'Soo' and I was married by a priest." When the Kawbawgams relocated to the area from Sault Ste. Marie, Matji-gijig and his family were living "down there by the Mackinaw depot on that flat there, in what was called Indian town." Philo Everett acknowledged that he knew Susan as one wife and identified the first, "Old Margaret" (Odonobequa), as living in the area. Regarding Matji-gijig's third wife, Everett recalled that he "was up at L'Anse in February 1849, I think it was, and they said the old major had just got married up there,"

[48] Francis Nolin deposition, September 22, 1882 and Nolin testimony, June 11, 1888, Box 70, Voelker Collection.

[49] Susan Marji Geesik deposition, September 22, 1882, Box 70, Voelker Collection.

although he did not remember the bride's name. On his return, Everett stopped at Odonobequa's cabin to rest and she was eager to hear the details.[50]

Confusing as these relationships might be to Anglo-Americans, they constituted an extended family providing mutual support during difficult times. Odonobequa's daughter, Amanda, married Peter Cadotte but when they both died in 1859 the Kawbawgams raised their son, Fred, who still lived with them in 1880. When Charlotte described Fred as "a son of my sister" both attorneys pressed for clarification: Clark asked whether she did not mean half-sister, "[the daughter of] of one of these other women, not your mother," while Maynard asked "Wasn't that woman Marji Geesick's wife, too?" The attorneys shared Anglo-American moral values that found these arrangements distasteful even as they developed opposing legal arguments. Defense attorney Maynard emphasized "one of his wives," while Clark asserted "She [Margaret, Amanda's mother] was the first wife of Marji Gesick." Neither man realized that Charlotte did not care about their picky distinctions.[51]

By the time legal proceedings began in 1882, the original agreement was almost forty years old and company circumstances had changed drastically, leading the defense to argue that the laches principle should be invoked to void the claim. Thus the claimants had to prove that they had pursued the claim promptly. Matji-gijig had died of illness in Nolin's boat but Frances could not remember the year (probably 1861 or 1862). The Native and métis deponents were queried as to their knowledge of Matji-gijig's agreement with the Jackson Mining Company, its significance, and their subsequent actions regarding the claim. Susan indicated that she had known of "the paper": "I did not see it at the time it was given, but . . . I knew about the giving of it." Charlotte testified that she had seen Matji-gijig remove "the paper" from a trunk "and present it to the company, or some one that was acting for the company," and that "they had some argument about [it]." After her father's death, Charlotte remembered the paper, located it, and gave it to her husband "to take to Mr. Everett or any other person to present to the Jackson Iron Company." Charley Kawbawgam and Frances Nolin discussed the matter and Nolin was present when Charley "gave the

[50] Everett deposition, September 23, 1882, Box 70, Voelker Collection.

[51] Susan Marji Geesik deposition, September 22, 1882 and Charlotte Kawbawgam deposition, September 22, 1882, Box 70, Voelker Collection.

paper . . . to Mr. Everett to take down to New York."[52] The testimonies of Everett, Mapes, Stewart, and Lloyd all confirmed subsequent unsuccessful efforts to resolve the claim.

In February 1883, Judge Grant issued his decision, which was a victory for the Kawbawgam team on all essential points. Grant rejected the idea that Charlotte was not "the legitimate heir of said Marji Gesick" because her parent's marriage was polygamous: "it is well settled in this state, as well as in most others, that no form of ceremony is necessary in order to constitute a valid [common law] marriage." He observed "the fact . . . that polygamous marriages were tolerated or recognized in the Chippewa tribe at the time of the marriage between Marji Gesick and his wife would not render their marriage invalid and their children illegitimate provided that at the time of the marriage they were competent to contract, nor would the fact that he lived with another woman afterwards." Thus, "Charlotte Kawbawgam was born in lawful wedlock and is the legitimate heir of Marji Gesick."

After reviewing the company's history, Judge Grant decided that the original settlement had been duly ratified by the company, reviewed, and reaffirmed prior to incorporation. Because "the corporation assumed all the debts and liabilities of the joint stock company, and succeeded to all its property . . . this contract is therefore valid unless lost by laches." Equity law requires that a claim be reasonable and pursued promptly, but judges are allowed some flexibility and Grant was willing to "take into account the circumstances, condition, situation and intelligence of the parties." He characterized Matji-gijig and Charlotte Kawbawgam as "poor, ignorant, and unused to the ways and methods of civilized life" but noted how carefully Matji-gijig preserved the document and informed his daughter, who made several efforts to pursue the claim after his death. In short, "neither Marji Geesik nor his daughter ever abandoned this claim." Grant twice referred to the original company partners as "men of business and intelligence," with some sarcasm given their stock miscalculations, but was it fair to hold Matji-gijig's heir responsible for their bungling? No, wrote Grant, "I think not, and must hold that the trust is not barred by laches."[53] Grant gave the court registrar the task of determining an equitable settlement and ordered both sides to provide potentially vast amounts of data on mining

[52] Charles Kawbawgam deposition, September 22, 1882, Box 70, Voelker Collection.

[53] Claudius B. Grant, minority opinion in *Compo v. Jackson Iron Company*, February 12, 1883, Box 70, Voelker Collection; *Marquette Mining Journal,* February 17, 1883.

operations for many years. Within a week, the Jackson Iron Company had filed an appeal with the Michigan Supreme Court accompanied by a $15,000 bond.

In June, the state Supreme Court overturned Judge Grant's decision and ruled in favor of the company. Justice Cooley's majority opinion centered on two major issues: legitimacy/inheritance and laches. Justice Graves concurred without comment but Justice Campbell submitted a powerful dissent. Comparing Campbell's and Cooley's arguments reveals that both acknowledged how issues of legitimacy and inheritance connected Native families and communities to federal Indian law and policy and were not for state courts to decide. Cooley personally disliked "all these polygamous and temporary marriages" and the idea that Natives should be "tested by Indian customs, and those of everybody else by the customs of Christian nations," but he conceded that "when marriage and heirship have been found recognized by the Indians themselves, the government has recognized them." [54] He opposed recognizing Charlotte Kawbawgam as Matji-gijig's sole heir, however, because of evidence indicating "the likely existence of other heirs who had been left out of the suit" (non-joinder). Cooley ruled primarily on laches and supported the defense on this crucial point. He rejected the "ignorant Indian" concept: "if personal ignorance can be set up as an excuse for not pressing one's legal rights, I do not know why the privilege should belong specially to Indians." He was not persuaded that Charlotte Kawbawgam "was [as] a married woman and an Indian, presumably not well informed. But the marriage of a woman is no disability in this state, and she seems to have been sufficiently informed to put her claims into the hands of a lawyer." Given Cooley's record as a conservative constitutionalist, his emphasis on technical aspects was unsurprising, but he could not contain his moral indignation. He dismissed the case as "a speculative claim, brought up and sued" long after the possibility of understanding "the domestic relations of individual Indians who seem to have lived together almost as promiscuously as the beasts." It was "bad enough to be compelled to make such a determination contemporaneously with the facts; but to be required to enter upon it 30 years or so afterwards can only be justified by a necessity for the protection of legal rights or plain equities; and the

[54] Thomas Cooley, majority decision in *Compo v. Jackson Iron Company,* 50 Mich. 578, 16 N.W. 295.

party claiming such rights or equities ought to have some better excuse than any which is suggested here."[55]

In contrast, Campbell's powerful dissent was remarkable for its sympathy for the Native claimants and reflected his interest in early Michigan legal history and Native-European relations. A practical response to the laches issue was necessary to address Cooley's ruling, so Campbell stressed the efforts Charlotte Kawbawgam had made to pursue her claim. He presented a detailed legal and historical analysis which reviewed the foundational principles of Indian law as established by the US Supreme Court in the Cherokee Nation cases in the 1830s (*Cherokee Nation v. Georgia* and *Worcester v. Georgia*). According to these decisions, as "domestic dependent nations" Native tribes had a certain degree of sovereignty and rights of self-determination, but they still lived within the borders and under the protection of the United States. Thus, the federal government was responsible for relations with Indian tribes and states had no business interfering in Indian affairs.[56]

Cooley and Campbell both recognized this fact. Cooley sidestepped it with a ruling based on the laches principle, while Campbell extended it to argue that Anglo-American marriage and kinship state laws did not apply to Natives who retained traditional rights through treaties with the US government: "In the absence of any determination by the United States by treaty or otherwise on the subject, they had as complete power to determine their own domestic relations as any other organized community would have."[57] Campbell observed that the US government had "expressly recognized Indians as having heirs" when commissioners made provisions for the full-blooded and mixed-race children of Indian marriages in treaty negotiations. He cited both US and English case law that "recognized not only different local customs, but different customs among different races and classes." Thus, people "who were recognized by Indian usage as married persons, must be so regarded by us, and the children of such marriages cannot be deemed illegitimate without violating every principle of justice." Campbell further observed that "everyone at all familiar with local history knows that many of our honored and respected citizens have sprung from Indian marriages, the

[55] Cooley, majority decision in *Compo v. Jackson Iron Company,* 50 Mich. 578, 16 N.W. 295.

[56] Justice John Marshall, decisions in *Cherokee Nation v. State of Ga.*, 30 U.S. 1, 1831 W.L. 3974 and *Worcester v. State of Ga.*, 31 U.S. 515, 1832 WL 3389.

[57] James V. Campbell, dissenting opinion in *Compo v. Jackson Iron Company,* 50 Mich. 578, 16 N.W. 295.

full validity of which no one has ever questioned." He illuminated a part of Michigan's history often obscured: the continuing presence of people of mixed heritage who were the result of several centuries of interactions between Natives and Euro-Americans involved in the fur trade. By the 1880s, Anglo-American values were dominant in Michigan and racialized thinking was ubiquitous, so the issue was largely avoided. In distinct contrast, Campbell drew attention to the contemporaneous contributions of people of mixed heritage to many Michigan communities.

Finally, Campbell assessed the legality of the agreement with Matji-gijig and the transfer of corporate resources, concluding "the defendant is liable as a trustee" and that Matji-gijig's heirs deserved either new stock or compensation of equivalent value. He did not perceive "any intentional bad faith" and thought that damages should not be excessive, offering a formula for the calculation of a possible settlement.[58] These arguments reappeared later in Campbell's majority opinion in the third case, but in the meantime he was in the minority and the complainants had lost the case on appeal.

Between the negative decision in June 1883 and the new case filed in March 1887 there must have been considerable discussion among the complainants, their attorneys, and their allies about the wisdom of continued litigation. On the one hand, with the appeal Campau had lost all monies he had posted to cover court costs and he withdrew from the case, reassigning his rights to Charlotte Kawbawgam. On the other hand, there were some encouraging aspects. Justice Campbell was clearly supportive, and at some point former Supreme Court Justice Isaac Marston joined the legal team. The inclusion of new heirs of Matji-gijig, Fred Cadotte (now in his early thirties) and Mary Tebeau (a child of eight or nine who was represented by her father) meant that legally the laches issue could be reexamined. Charlotte Kawbawgam probably decided to continue in order to provide for her younger relatives, since she and her husband were both growing old and blind. So they tried again and ultimately her persistence prevailed.

The road to the Michigan Supreme Court's final 1889 reversal of its earlier decision began when the parties returned to circuit court in June 1887 (*Kobogum v. Jackson Iron Company*). Even though the Michigan Supreme Court had ruled that Native marriage and kinship relations were not within the jurisdiction of state courts, the defense continued to

[58] Ibid.

examine Matji-gijig's family relations closely. Further questioning did reveal polygamy as part of a network of extended relationships. Charlotte insisted that Matji-gijig's first wife, Odonobequa (Margaret), be treated respectfully and reiterated that Matji-gijig always treated his daughter, Amanda (her step-sister) well. The defense tried to depict Matji-gijig as a philanderer, living with one woman or another or altogether as it suited him, but Charlotte recalled a family trying to adjust to tragedy. According to Fred, his sister Angelica married Frank Tebeau and had two children before she died, although only ten-year-old Mary survived. The Kawbawgams had lost all of their children, and since Native elders often cared for young children when their parents were unable to do so it was logical for them to adopt the children of their deceased relatives, including Frank, Mary, and others.

In the final circuit court case, the defense stressed the laches issue and reasserted that the agreement was illegitimate and/or that Matji-gijig had already received payment for his services. Everett, Berry, and Kirkland insisted that other than food and water ("Pure spring water." No liquor? "Not a bit.") and the written agreement, Matji-gijig had received no other payment.[59] George Billing, the Jackson Iron Company's secretary-treasurer, insisted that "new stockholders purchased shares on good faith and cannot be affected by what old stockholders might have known or done." They had bought into the company "in full reliance" on the 1883 Michigan Supreme Court decision," paying "a much higher price for their stock" because they believed the claim "was fully settled."[60] Samuel Mitchell, the current company's president and manager, testified that he had been aware of much discussion of the case in the newspapers and the streets but believed that "it had been ended in favor of the Corporation," an impression shared by Captain Merry, the local manager of the mine, when consulted by Mitchell. Indeed, the Marquette newspaper had reported in 1883 that the case, which "was invested with peculiar interest on account of its historical character no less than because of the legal questions involved," was dead, adding that the reversal of Grant's decision was a surprise to the local "legal fraternity."[61]

[59] Kirtland testimony and Everett testimony, June 11, 1888, Box 70, Voelker Collection.

[60] Defense reply to *Kobogum* complaint, June 22, 1887, George Billing testimony, June 11, 1888, Box 70, Voelker Collection.

[61] Samuel Mitchell testimony and Henry Merry testimony, June 11, 1888, Box 70, Voelker Collection; *Marquette Mining Journal,* February 17 and June 23, 1883.

Regarding laches, the complainants insisted that if Matji-gijig had failed to enforce his rights it was for good reasons. He had "trusted the promises made to him by the defendant company, that it would finally pay him for his interest a fair price, as he was too poor to have litigation, and as an unlettered and ignorant Indian, knew nothing about it." Also, "the entire Upper Peninsula of Michigan was very little settled and the means of enforcing the claim in the courts of said Marquette County, if he had desired to do so, or had known how to do so, were limited, as there were but two lawyers in the county at that time and both of them were in the employ of said defendant company." Even if Charlotte's claim had been dismissed due to laches, there were now other heirs to be considered and both had been too young to have any knowledge of the claim. Judge Grant again found for the complainants. Neither the facts of the case nor his opinion had changed significantly. Once again, the Court clerk was ordered to review the record and take new testimony if necessary before submitting a proposed settlement to the court. In October, the mining company filed another appeal with the state Supreme Court, accompanied by a bond of $10,000, but this time the company lost the appeal.

In October 1889, Justice Campbell issued his third and final opinion but now wrote for the majority. His arguments were essentially recycled from his earlier dissent and the two rookie justices concurred without comment. Like Grant, Campbell observed that the case was substantially the same except for the addition of the two new complainants. This time the state Supreme Court determined that Charlotte Kawbawgam had acted promptly to defend her claim. Campbell's opinion established two important legal principles. First, "the rights of a holder of a certificate entitling him to a paid up interest in a corporation, which has been recognized on its records, which is non-assessable, and which has never been surrendered, cannot be barred by laches until they are repudiated by the corporation, as the latter is the trustee for the certificate holder." Second, "marriages between Indian tribes in tribal relations, valid by the Indian laws, and contracted at a time when there was no law of the United States on Indian marriages, must be recognized by the state courts, as Indians in tribal relations are not subject to state laws."[62]

[62] James V. Campbell, majority decision in *Kobogum v. Jackson Iron Co.*, October 25, 1889, 76 Mich. 498, 43 N.W. 602.

Both of these points established important precedents that were subsequently cited in other cases. The first required that corporations honor their obligations to stockholders. The second reasserted Native rights at a time when they were routinely unrecognized or abused, but it was only applicable to Native people. The Michigan Supreme Court under Campbell's leadership strongly supported Native sovereignty and treaty rights in the area of marriage and family relations, but the federal Dawes Act of 1887 was simultaneously undermining these relationships.[63] Although the *Kobogum* precedent helped other Native plaintiffs win inheritance cases, it did not allow anyone to circumvent widespread anti-miscegenation laws because whites still fell under state jurisdiction even if they lived on tribal lands and married tribal Indians. To try to evade such a law by going outside one's jurisdiction to marry constituted "fraud upon the domicile," as Campbell noted explicitly in his final ruling.[64] Recently, the *Kobogum* decision has appeared in contemporary discussions of same-sex marriage because states that do not allow these marriages refuse to recognize them when legally contracted elsewhere, but the relevance of historical rulings about polygamous marriage is limited. Generally the recognition of marriages contracted in other jurisdictions depends upon the principle of comity, a form of legal reciprocity that respects the validity of laws passed in other jurisdictions, but this principle has limits, particularly if the laws and norms of the primary jurisdiction violate those of the second. Ultimately, supporters of same-sex marriage recognition who argue that these situations violate the "equal protection" guarantees of the United States Constitution will probably prevail, but for now the issue remains unresolved.[65]

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[63] For recent work on the Dawes Act's impact on Native families, see Rose Stremlau, "'To Domesticate and Civilize Wild Indians': Allotment and the Campaign to Reform Indian Families, 1875-1887," *Journal of Family History* 30 (2005): 265-286; Eric N. Olund, "Public Domesticity during the Indian Reform Era; or, Mrs. Jackson is induced to go to Washington," *Gender, Place, and Culture* 9 (2002): 153-166.

[64] See *Wilbur's Estate v. Bingham,* 8 Wash. 35, 35 P. 407 (1894) and *In re Paquet's Estate*, 200 P. 911, 914 (1921). For a fuller discussion, see Peggy Pascoe, *What Comes Naturally: Miscegenation Law and the Making of Race in America* (New York: Oxford University Press, 2009); Mark Strasser, "Tribal Marriages, Same-Sex Unions, and an Interstate Recognition Conundrum," *Boston College Third World Law Journal* 30, no. 2 (2010): 225-227.

[65] Sheryl Gay Stolberg, "After Rulings, Same-Sex Couples Grapple with Diverging State Laws," *New York Times*, June 28, 2013; Deirdre M. Bowen, "The Windsor & Perry Opinions Offer a Glass About Twenty-Five Percent Full," *ACSblog*, June 27, 2013,

Charlotte and Charles Kawbawgum at their home on Presque Isle, c. 1900. The children are most likely Elizabeth and Frank Perreau (listed as Parrow), who were identified in the 1900 Census as living with the Kawbawgams.

Source: Marquette Regional History Center

As for the Kawbawgams, the decision did not rescue them from poverty nor did it relieve the problems of advancing age, but they continued to live as respected citizens of Marquette for over a decade. Their attorney, Frederick Clark, evidently accepted the $10,000 appeal bond posted by the Jackson Iron Company instead of pursuing a separate settlement (although he estimated that the actual sum should have been closer to $30,000), probably to avoid further litigation.[66] Charlotte Kawbawgam returned to court in 1890, asking that Clark be appointed the legal guardian of Mary Tebeau, who was living with the

www.acslaw.org/acsblog/the-windsor-perry-opinions-offer-a-glass-about-twenty-five-percent-full.

[66] C. Fred Rydholm, *Superior Heartland: A Backwoods History, Vol. 1* (Privately published: Marquette, MI, 1989), 134-139.

Kawbawgams by then. Whether or not Charlotte was aware of how widely ward-guardianship laws could be and often were abused to the detriment of Natives, she was careful to stipulate that this was a limited "special guardianship" giving Clark control only over Mary's settlement monies, which were to be used for her benefit. By 1900, Mary was no longer living with the Kawbawgams and eventually she married.[67]

When Charles Kawbawgam died in 1903 a long obituary in the local paper described him as "one of the best known figures . . . a full blooded Chippewa and a chief by blood." He was "a good Indian, and he lived a good life, according to his lights." The city had appointed Charley a park warden to allow the Kawbawgams to continue to live at Presque Isle, "and during that time hundreds of curious eyes have beheld him in his last home."[68] Their good friend Peter White, one of the community's most prominent citizens, paid for a big funeral in St. Peter's Cathedral and a cortege procession carried Charley to the burial site at Presque Isle Park. Charlotte was interred next to him when she died in 1904. Today a boulder and commemorative plaque provided by the city mark their graves, which are frequently covered with feathers and offerings of tobacco.

[67] "In the Matter of the Estate of Mary Tebeau Minor," February 1890, No. 4287, Circuit Court Records, County of Marquette, Northern Michigan University Archives.

[68] *Marquette Mining Journal*, December 29, 1902; Daniel P. Maynard, "Marquette's Kawbawgams," *Michigan History* 74, no. 2 (March-April 1970): 36-39.