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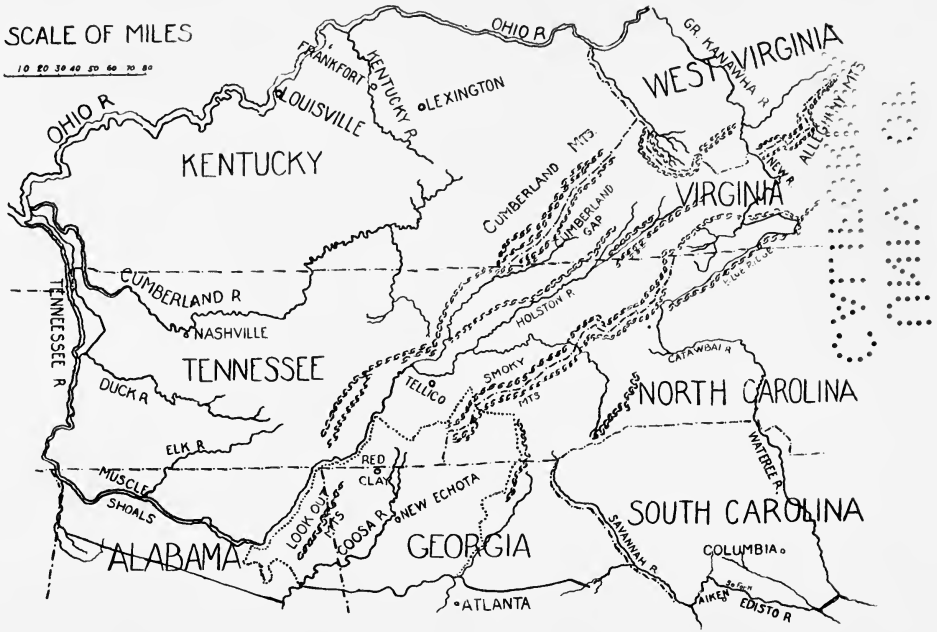

MAP OF THE ORIGINAL CHEROKEE TERRITORY

The dotted line shows the section left to the Cherokees at the time the Treaty of New Echota was signed.

THE CHEROKEE INDIANS

WITH SPECIAL REFERENCE TO THEIR RELATIONS WITH THE UNITED STATES GOVERNMENT

BY

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FOREWORD

THE object of this study is to exhibit the principles and policies of the Federal Government in its treatment of the Cherokee tribe of Indians. The Cherokees, known as one of the "five civilized tribes," are probably the most intelligent Indian nation and the one farthest advanced in civilization. For years the Cherokees have been at least nominally Christians. For these reasons the Government's treatment of them is peculiarly instructive as it is unobscured by many of the difficulties which tend to befog the main issue. We have here a tribe with a government similar to that of the United States; with its newspapers, with its schools, churches, asylums; with its leaders comparable in ability with many of the leading men of the United States. Where a tribe is grossly ignorant and degraded, it is very difficult to discover the Government's principles, or interpret its policy in its dealings with them. If then we would be enlightened in regard to the white man's treatment of the red man we could scarcely find a more illuminating illustration than the story of the Cherokees.

The United States has endeavored to do something for the education and civilization of the Indian. This should be taken into account in forming judgments about the Government in its relations with the Indians. But the purpose of this paper is to consider the political

aspect rather than the educational, and whatever attention has been given to the latter has been purely incidental.

In his selection and presentation of facts, the author has used his privilege of giving here a mere result, there a detailed account, and whatever the errors of judgment may have been, the controlling purpose has been to elaborate where principles were involved, or where such elaboration would seem to elucidate a general principle.

CONTENTS

CHAPTER I

PAGE

The American Indian—the Colonists and the Indian . . 1

CHAPTER II

The Cherokees—Their origin—Their country—Their relations to Colonial Governments 5

CHAPTER III

Treaty of Hopewell—Treaty of Holston—Other early treaties—Upper and Lower Cherokees—Project of removing west—Agreement of Federal Government with Georgia—Impatience of Georgia—Efforts of Federal Government to remove Cherokees—Georgia legislation—Protests—Appeals to the courts—Status of the Indians—The Worcester case—The Supreme Court decision—Georgia's defiance of the Supreme Court 8

CHAPTER IV

Jackson's dilemma—The decision—Treaty with Andrew Ross—Treaty and Anti-Treaty parties—Negotiations with these parties—The Ridge Treaty—Rejected at Red Clay—The reconciliation of the two parties—A treaty concluded—Consternation of the Ross party—The truth about the treaty—The opposition of the Indians—Treaty ratified by Senate—The provisions of the Treaty of New Echota—Troops in Georgia—Commission appointed—Oppressions of Georgia—The extent and value of Cherokee territory—The mission of Ross west—Attitude of VanBuren—The debate in Congress—Protests from the country—Protests of Cherokees—The removal west 29

CHAPTER V

PAGE

Parties among the Cherokees—Act of union—Claim of old settlers—Murder of the Ridges and Boudinot—The council in July—Federal interference—Accusations against Ross—Poinsett orders a new constitution—Council in 1840—Ross's version of the troubles—Attitude of Tyler—Political violence—Board of inquiry—Polk's recommendations—Meigs's house—Murders—Murder of Starrs—Flight of Treaty party—More murders—Armed men assemble on the mountain—They disperse—Conduct of Arbuckle—Questions arising from Treaty of New Echota—Civilization among the Cherokees 50

CHAPTER VI

A treaty and its alternative—Treaty of 1846—Its provisions—Peace restored—The charge for subsistence—Payments of sums due the Indians—Conflict of jurisdiction . . 71

CHAPTER VII

Outbreak of Civil War—Alliance with Confederacy—Loyal Cherokees—Their sufferings—Confederate treaty abrogated—Desertion of regiment to the Union—An estimate of John Ross—Treaty of 1866—Its provisions—The Cherokee outlet—The Cherokee strip—Railroads in Indian Territory—Dispute with Kansas cattlemen—The Cherokee Tobacco case—Jurisdiction of Courts—Cherokee freedmen—North Carolina Cherokees—Settlement of dispute with Old Settlers 79

CHAPTER VIII

Decided change of policy toward Indians—The Curtis Act and other acts—Negotiations and Agreements with Dawes Commission—The agreement of 1902—Intruders—The present and future of the Cherokees 99

CHPATER IX

Concluding remarks 108

THE CHEROKEE INDIANS

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CHAPTER I

THE AMERICAN INDIAN

THERE is fascination in a study of the American Indian. Legend, romance and mystery cluster about him. But there is more than this fascination which, however interesting, is of no great value, for when we consider the Indian in his relations with the white man we have before us a subject of practical importance. To-day especially is the history of the relations between the red man and the Federal Government a matter worthy of serious study for its bearing upon present problems. Wisely or unwisely, for good or for ill, the United States Government has entered into the closest relation with alien and, so far as progress in civilization is concerned, inferior peoples. Few can expect—even if they desire it—a complete reversal of recent policies and an absolute severing of the bonds binding us to these races. The question, now, is not as to whether we shall undertake these responsibilities, but as to how we shall conduct ourselves in regard to them. It is not, "Shall we act?" That has been settled. But, "How shall we act?" In view of this, how important become the considerations as to our past treatment of the Indians, the only alien people within our borders! What has been our spirit? What our blunders? Have there been

crimes? Have we been kind, just, unselfish or have we been harsh, arbitrary, selfish? Has there been such a readiness to correct abuses, to reform methods, to adjust difficulties, that now at the end of a century and a quarter we are warranted in believing that there has been real progress made, and that a spirit has been engendered, whether by the encouragement of success or the criticism of failure, that would forbid us in our dealings with weaker peoples to seek the promotion of our own interests first instead of the interests of those dependent upon our magnanimity for advancement?

Generalizations are seldom safe. Men have endeavored to characterize the Indian, and their characterizations have differed widely. There is the Indian of romance—half savage, but noble and admirable. There is the Indian as seen by the pioneer who has told us that the only good Indian is a dead Indian. There is the Indian of the reservation—indolent and dependent. The truth is that the American Indian cannot be summed up in such a way. The red man of 1500 is not the red man of 1900. And the reservation Indian, for example, is different from the graduate of the Carlisle School. The Indian whom the early explorers found on the western continent had the virtues and vices of a savage. He was curious and often inclined toward friendship with the white men, whom he held in awe. He combined the simplicity of a child with the fury of a savage. He was often swept by gusts of passion too terrible to be witnessed, yet imperturbable beyond all other men under the ordinary excitements and accidents of life; garrulous,

yet impenetrable; curious, yet himself reserved; superior to death, but a coward in battle according to the standards of civilized nations; capable of magnanimous actions, but cunning, false and cruel.[1] But once acquainted with the greed, falseness and vices of Europeans, once having tasted the fire-water which the whites readily gave or exchanged, a great portion of the Indian peoples rapidly degenerated, losing their savage virtues and combining the vices of civilized man with the worst traits of the savage. But again, the circumstances and environments of the different tribes have been so varied that the statement just made is not applicable to all. At present the Indians may be divided into three classes: those who have made such progress in civilization that they may fairly be called "civilized"; those, who, though in no real sense civilized, have made sufficient progress in civilization to indicate that with care and under the proper conditions they are capable of considerable advancement; and those who are demoralized and seem to have little capability of improvement.

The sort of people that the early explorers and settlers found inhabiting America has been described. The attitude of the English colonists toward them varied. In New England the Puritans were, on the whole, just in their treatment of the Indians. At the beginning of King Philip's War it could be truly said that the colonists had not taken a foot of ground without paying for it, except in the one case of the Pequot War. Efforts had been put forth to convert the Indians to Christianity and civilization. Of course

1 "The Indian Question," Walker, p. 15.

in all communities there are individuals who are not restrained by the sentiment of the community and will commit deeds of fraud or violence. In Pennsylvania exceptional conditions, and the kindness of Penn and his fellow Quakers, secured the colony long immunity from the horrors of savage warfare. Of the Virginia colonists so good an account cannot be given. Bancroft says,[2] "The rights of the Indian were little respected nor did the English disdain to appropriate by conquest the soil, the cabins and the granaries of the Appomattocks." In all of the colonies, through the acts of unauthorized individuals and many inevitable misunderstandings arising from the difference in race, causes for quarrels were frequent. As the whites increased in number and the colonies sought to enlarge their borders, the Indian question became more complex and more difficult. So from decade to decade the problem has changed so that to-day the Indian question which we must consider and, at last are settling, is a totally different one from that which perplexed the colonists or the first generation after the War of Independence.

[2] "History of U. S.," vol. 1, p. 126.

CHAPTER II

THE CHEROKEES AND THE COLONISTS

OF all the Indian tribes found in America in the early days probably none surpassed the Cherokees in intelligence or in prowess. They lived in the Appalachian region of the south, and the extent and value of their country made them the envy of the white man, while its beauty casts a spell of romance over their whole history.

The word "Cherokee" means "upland fields" and possibly refers to their country, which is thus described by Bancroft:[1] "The mountaineers of aboriginal America were the Cherokees who occupied the valley of the Tennessee River as far west as the Muscle Shoals and the highlands of Carolina, Georgia and Alabama, the most picturesque and salubrious region east of the Mississippi. Their homes are encircled by blue hills rising beyond hills, of which the lofty peaks would kindle with the early light and the overshadowing night envelop the valleys like a mass of clouds. There the rocky cliffs rising in naked grandeur defy the lightning and mock the loudest peals of the thunderstorm; there the gentle slopes are covered with magnolias and flowering forest trees, decorated with roving climbers, and ring with the perpetual note of the whip-poor-will; there the wholesome water

[1] Bancroft's History of U. S., vol. 2, p. 95.

gushes profusely from the earth in transparent springs; snow-white cascades glitter on the hillsides; and the rivers, shallow, but pleasant to the eye, rush through the narrow vales which the abundant strawberry crimsons and the coppices of rhododendron and flaming azalea adorn. . . . The fertile soil teems with luxuriant herbage on which the roebuck fattens; the vivifying breeze is laden with fragrance; and daybreak is ever welcomed by the shrill cries of the social night-hawk and the liquid carols of the mocking-bird." Such was the ancestral inheritance of the Cherokee, and can we wonder that as in later years he saw his beautiful land in its noonday glory or bathed in the living fire of the sunset, he determined to resist to his utmost the efforts of the white men to deprive him of it?

Some students of ethnology have thought that the Cherokees were descendants of the mound-builders. Of course this is doubtful. Our knowledge of them is confined to the historic period. But in the dawn of American history we find them, for it is almost certain that the first contact of the Cherokees with the white man took place when DeSoto and his fellow-explorers traversed the American wilderness.

Tradition says that an exploring party from the Virginia Colony, in the course of their journey, met the Cherokees and that this was the first meeting between the Cherokees and the English colonists. However that may be, treaty relations began in 1721 when Governor Nicholson of South Carolina, prompted by jealousy of French encroachments, entered into an agreement with the Cherokees. This agreement de-

fined the boundaries and undertook to begin some systematic superintendence of Indian affairs by the colonists. In 1730 North Carolina concluded a treaty with the Cherokees in which the sovereignty of the King of England was acknowledged and the Indians agreed to trade only with the English. There was a treaty and purchase negotiated by South Carolina in 1755; a treaty of alliance with North Carolina followed one year later. A subsequent alliance with the French brought defeat at the hands of the English and a consequent treaty of peace in 1760 followed by a more decisive one the next year. The Indians were not principally to blame for the hostilities of this period, as they were treacherously dealt with by Governor Lyttleton. In 1768 there was another purchase-treaty with South Carolina. In 1770 there was a treaty with South Carolina settling the boundary; in 1772 there was a treaty of purchase with Virginia, and in 1773 a similar one was concluded with a British official. In 1777, after hostilities, a treaty of purchase was concluded with South Carolina. Some time after this Cherokee territory was practically confiscated by North Carolina. In 1783 the dispute in regard to this was adjusted by a treaty which was, however, so favorable to the whites that the Indians were far from satisfied.

Thus may be summarized the relations of the various Colonial Governments with the Cherokee Indians, and we are brought down to the War of Independence and the formation of the Federal Government.

CHAPTER III

THE CONFLICT WITH A STATE

IN the War of Independence the Cherokees were allied with the British. Peace was not concluded between the tribes and the United States Government until 1785, when the Treaty of Hopewell [1] ended the war. Prisoners were exchanged, peace and friendship were pledged. Article nine of the treaty allowed Congress to pass laws regulating trade with them and to manage all their affairs for the protection and comfort of the Indians. They were to be allowed to send a deputy to Congress. No whites were to be permitted to settle on their lands. But peace was not really secured by the Treaty of Hopewell. There was mutual dissatisfaction with its provisions, and Georgia and North Carolina had protested it. The whites objected because they thought the Cherokees had been allowed too much territory, and the Indians protested because of the encroachments of the whites. In September, 1788, Congress issued a proclamation forbidding unwarranted intrusion upon the Indians' territory, but scant respect was paid to it by the offenders whose actions called it forth. In 1789 Secretary of War Knox characterized these encroachments as a "disgraceful violation" of the Treaty of Hopewell by the whites.[2] Angered by the failure of the whites

[1] Cong. Doc. 531, No. 28, p. 147; U. S. Stat. at Large, vol. 7, p. 18.

[2] Amer. State Papers, Indian Affairs, vol. 1, p. 53.

as individuals to respect Cherokee rights, and by the failure of the Government to protect them in their rights, the Indians kept the neighboring settlements in a state of uncertainty and terror by sudden, hostile incursions. In 1791 a second attempt was made to secure a permanent peace and the result was the Treaty of Holston.[3] Between the signing of this treaty and that of Hopewell the Constitution had been adopted. The treaty of Holston was in many respects, however, similar to its predecessor—that of Hopewell. It provided for an exchange of prisoners and for permanent boundary lines. The United States was to pay an annuity of $1000 for the extinguishing of a claim to territory lying beyond a certain described line. In 1794 there was a treaty dealing with the stealing of horses, but which also reaffirmed the Treaty of Holston.[4]

All this time the greed of land was increasing and the attempts to induce the Cherokees to part with their lands became more insistent. A series of treaties was concluded, all with the same end in view—the acquiring of Indian lands. In 1797 the legislature of Tennessee sent a remonstrance to Congress alleging that the treaties of the United States with the Cherokees were subversive of State and individual vested rights. Agitation followed and the result was that more land was wrung from the reluctant Indians in a treaty signed at Tellico in 1798.[5]. This treaty only brought more trouble. Cumberland Mountain was to be the determining point in running a part of the boundary

[3] Cong. Doc. 531, No. 28, p. 148.
[4] U. S. Stat. at Large, vol. 7, p. 39.
[5] U. S. Stat. at Large, vol. 7, p. 62.

according to the treaty of 1798. But the surveyors mistook a mountain to the east for Cumberland Mountain. The consequence was that about twenty-five hundred acres were included in Indian territory which did not belong there and on this land there was an old settlement of white people, who suddenly found themselves in the Indian country and proceeded at once to make known their objections and their claims to the authorities in Washington. However, the Indians refused to relinquish the land. Then, too, the surveying to mark out boundaries that was required by an early Cherokee treaty and a Creek treaty of 1790 was not done until 1798. Prior to this a Colonel Wafford and others settled upon a tract in Georgia, not knowing that it was Cherokee country. After the survey of 1798 they became aware of their error; but there they were. And they had gone to trouble and expense in making improvements. The Indians complained of their unlawful occupancy, and the Government, though inclined to be lenient with these people who had intruded unwittingly, was compelled to give orders to evict them. The agents, however, interceded for them with the Indians and pleaded that they might be allowed to remain until they had harvested their crops. The Indians consented. According to the Cherokee story, which there seems no reason to doubt, this delay brought another, and that another, until finally the Indians, who in the first place had been unwilling to part with their land, were harassed into selling it.[6] A treaty was agreed to in 1804. The object of the Government in seeking the treaty was to

[6] Cong. Doc. 114, No. 19, p. 19.

obtain a cession of land in Tennessee, Georgia and Kentucky; but in this they failed, as the Indians would part only with Wafford's settlement, for which five thousand dollars was to be paid down and an annuity of one thousand dollars was to be given in addition.[7] This treaty, which, like its predecessor, was signed at Tellico, was mislaid and was not ratified by the Senate until 1824, but the Government had possession of Wafford's settlement during the twenty years.[8] With a desire to get what they had been unable to obtain in 1804, the authorities at Washington again began negotiations looking toward a treaty. The outcome was a treaty on October 25, 1805, and two others on October 27, 1805. All ceded land. The first gave a considerable tract in Kentucky and Tennessee west of Tennessee River and Cumberland Mountain.[9] In it there was a secret article concluded with Doublehead, a chief, by which an attempt was made to bribe him to use his influence for the furtherance of the efforts of the white man for a cession. More land was ceded in 1806—a large section in Tennessee and Alabama [10] and in the same year there was another treaty granting a small cession. In this treaty, too, there was a secret article providing for the bribery of two chiefs with money and rifles.[11] Land was sold by the Cherokees to South Carolina in 1816, and in the same year

[7] U. S. Stat. at Large, vol. 7, p. 228.

[8] Cong. Doc. 114, No. 19, p. 9.

[9] U. S. Stat. at Large, vol. 7, pp. 93 and 95.

[10] U. S. Stat. at Large, vol. 7, p. 101.

[11] The secret article in the treaty of 1805 was not submitted to the Senate, but was recorded in the War Office at Washington. The secret article in the Treaty of 1807 was sent to the Senate. U. S. Stat. at Large, vol. 7, p. 103.

two treaties of the same date were concluded with the United States, as usual ceding land. The story of one of this set of treaties is the story of all. Whether through ignorance, carelessness or greed, there was constant intrusion on Indian land. The tide of migration was coming from the north and east and was sweeping toward the southwest. Hence the endeavor to procure treaties of settlement and cession.

As early as the time of the Treaty of Hopewell a few Indians who were dissatisfied with the provisions of that treaty, left the Cherokee country and went west. But in 1803 President Jefferson suggested a removal west on a large scale.

An appropriation bill to enable the President to endeavor to persuade eastern tribes to migrate was passed by the Senate, but defeated in the House. The discussion of this project was revived by the complaints of a part of the Cherokees that the annuity was unfairly divided. There was, as a matter of fact, a division of the nation into Upper and Lower Cherokees. The former had abandoned the hunt and were engaging in the pursuits of civilized man, while the Lower Cherokees still preferred their old life. These latter complained because of a scarcity of game in their country and were quite willing to undertake the project of re-establishing themselves in the west. A delegation from their number was sent out into the Arkansas region upon a tour of inspection, the Government at Washington bearing the expense of the expedition. Their report, upon returning, was favorable to the scheme of removal. In 1817 General Jackson was sent to confer with the Cherokees in regard

TAH CHEE

His English name was "Dutch." His parents were among the earliest emigrants to the West, going there about 1795. Reproduced from a lithograph in colors published about 1840.

to a plan by which the title to their land might be extinguished. He failed completely in negotiating such an arrangement, as did Governor McMinn, who attempted it after Jackson's failure. So the Government was forced to content itself with treating with the Lower Cherokees, and on July 8, 1817, a treaty was made with them,[12] by the terms of which they were to exchange their lands in the east for lands west of the Mississippi. By article eight, six hundred and forty acres were granted to each head of an Indian family who should choose to remain east of the Mississippi on land ceded with a reversion in fee simple to his children. And by the same article it was provided further that such holders of land might become citizens of the United States. This treaty excited bitter opposition and protest in the nation at large. Taking the Cherokee nation as a whole, the great majority were against it. In 1819 a definite settlement of the question arising from the treaty of 1817 was attempted and a treaty concluded. The treaty, February 27, 1819, said: "The greater part of the Cherokee nation have expressed a desire to remain on this (east) side of the Mississippi, and . . . being desirous . . . that the treaty of 1817 be finally adjusted, have offered to cede to the United States a tract of country." [13] Article one read: "This treaty is a final adjustment of that of 1817." Article five promised that intruders and future intruders should be removed by the United States. Land was ceded east in proportion to the number of those who went to the Arkansas River—the new Cherokee country in the west. President Adams

[12] U. S. Stat. at Large, vol. 7, p. 156.
[13] Stat. at Large, vol. 7, p. 195.

in the preliminary negotiations had urged that not too much territory be retained, as the Indians would in that case wish to sell at a later date and perhaps the Washington Government would not be willing to buy. Besides the larger cession, a piece of land twelve miles square was sold to the Federal Government to be disposed of, the income to be applied for the benefit of the Indians as the President might think proper.

If the Cherokees who went west, went expecting to leave their troubles behind them and to find an Eden beyond the Mississippi, they soon learned their error. Whites intruded on their new territory as they had intruded on the old, and complaint was made at Washington that the annuities were irregularly distributed, and the promise of an outlet west, which had been made, had not been fulfilled. Then, once more there were grievances to be settled. Again negotiations were opened with the Government, but before the latter would consider the justice of their complaint it demanded that those Cherokees who had so recently left their homes and native soil should again exchange their lands for others farther west. Forced to accede to this request or have their grievances uninvestigated, they entered into a treaty by which they agreed to move from Arkansas into Indian Territory. The treaty—which procured the delegates who signed it an unenviable reception when they returned to their people—granted them a perpetual outlet west, and fifty thousand dollars to reimburse them for the cost of removal and also because of the lower valuation of the new lands. Article eight made provision for such

of the nation east as might wish to join their western brethren in the future, and offered inducements to Eastern Cherokees to go west.[14] In 1833 a treaty that was really a supplement to this was concluded, settling the conflicting claims of the Cherokees and Creeks.

A vivid understanding of the fortunes of the Cherokee nation thus far may be had by considering the change which a century had produced in their ancestral possessions. In 1721, before the first treaty was made with Governor Nicholson the Cherokee territory comprised great sections in North Carolina, in Georgia, in Tennessee, in Kentucky, and in South Carolina, and smaller sections in Virginia, West Virginia and Alabama. These sections were contiguous and together formed a country the extent, beauty and value of which could scarcely be surpassed. At the beginning of the Federal period the tribe had suffered the loss of all their possessions in Virginia and West Virginia, almost all in Kentucky and South Carolina, about half of their teritory in North Carolina, and small sections in Georgia and Tennessee. Finally after the conclusion of the Treaty of 1819, there was left to the Cherokees of their original country a tract in the northwest corner of Georgia about one hundred miles square, or a little more than half the size of the original tract in that State, a tract not half as large in Alabama and smaller sections in Tennessee and North Carolina. Slice by slice, according to the increasingly voracious appetite of the whites, the land went until the helpless Indian saw the mere remnant that has been described.

[14] Stat. at Large, vol. 7, p. 311.

But was he to be allowed the remnant? Was he to find, though with diminished territories, the freedom from molestation which he desired? No; the end was not yet.

In 1802 Georgia had ceded to the United States the territory that now forms Alabama and Mississippi—or more accurately the greater part of them—and the Federal Government in turn paid Georgia one million two hundred and fifty thousand dollars, assumed the burden of what were known as the Yazoo claims, and incurred the obligation to extinguish the Indian title to land in Georgia as soon as it could be done peaceably and on reasonable terms.[15] After the treaty of 1817, which left a large number of Indians in Georgia, agitation in that State began and increased in volume and determination. In view of the cession of 1802 Georgia looked with indignation at the Indians within her borders and considered that the Central Government was not keeping faith. It was charged that practically no attempt had been made by the Federal Government to carry out the agreement. Certainly the charge was not substantiated. The removal of 1817 which took a part of the nation west might have been accomplished in a manner more satisfactory to Georgia, but it must be remembered that every scheme looking toward a surrender of their lands for lands in the west was opposed by the Cherokee people. In 1818 an effort was put forth to gain a cession of all Cherokee lands east, but in vain. The treaty of the following year was undoubtedly the best that could be obtained. In 1823 a commission appointed for the purpose tried to induce the Cherokees to part with their

[15] Amer. State Papers, vol. 16, p. 125.

Georgia possessions,[16] but the Indians in reply recited the hardships which had been endured by those who had migrated, emphasized their own progress in civilization, dwelt upon their love for the soil of their fathers, and ended by saying decisively that they would never cede one foot of land.[17] The commission was persistent in its attempts to bring about a cession. It was not only urgent, but threatening. In contrast was the courtesy of the Indians. To one of the letters answer was given that "with deliberation, candor and good nature they rejected the proposal to go west."[18]

Early in 1824 the Governor of Georgia wrote to the Secretary of War pressing Georgia's claims upon his attention, and about the same time the Georgia delegation in Congress brought the matter before their colleagues. One of the consequences was a protest from the Cherokees. It read in part: "With unfeigned regret and pain we discover sentiments expressed by the Governor of Georgia. We cannot but view the design as an attempt bordering on a hostile disposition toward the Cherokee nation to wrest from them by arbitrary means their just rights and liberties, the security of which is solemnly guaranteed them by these United States." They said there was not a spot west of the Mississippi outside of the States and Territories and within the limits of the United States that they would ever consent to inhabit. There was nothing to do in the west except hunt and fight other Indians and they had given up the chase and

[16] Amer. State Papers, Indian Affairs, vol. 1, p. 467.
[17] Amer. State Papers, Indian Affairs, vol. 1, p. 469.
[18] Amer. State Papers, Indian Affairs, vol. 1, p. 487.

had turned to the pursuits of civilized man. The protest concluded with an appeal to the magnanimity of the American Congress for justice.[19]

President Adams's attitude was shown in a communication to Congress in which he said he would like to please Georgia, but negotiations with the Indians were hopeless and he would not use force. But Georgia persisted and became pugnacious. On December 19, 1827, the Senate of that State adopted resolutions which were forwarded to Congress and which argued that the Indians in no proper sense had title to the land. They were occupants and must be evicted by force or peaceably. If the former way were adopted there would be no need of any pecuniary stipulation; if the latter, a pecuniary stipulation should be paid, not as a matter of right, but for reasons of policy and humanity. If the United States did not rid Georgia of the Indians, the State claimed full liberty to resort to force, if necessary.[20] There was also a protest—as there was, too, in a letter written by Governor Forsyth of Georgia to President Adams (January 26, 1828)—against a constitution which the Cherokees had adopted.

In May, 1828, there was an appropriation made by Congress for the execution of the agreement with Georgia. This appropriation stimulated the Government to new energy of effort. Orders were given to Colonel Montgomery, an Indian agent, to provide transportation for such Cherokees as would go west. Rifles and blankets were provided for those that would go. A Captain Rogers was sent to work among the

[19] Cong. Doc. 102, No. 133.
[20] Cong. Doc. 165, No. 80.

people privately to induce them to go. The Georgia resolutions advocating the use of force, if necessary, were to be exhibited to the Indians—not as a threat, but to urge them to emigrate! Then Colonel Montgomery was ordered to leave his office in charge of a sub-agent and go among the Indians personally, persuading them to enroll as emigrants. Colonel Montgomery reported great and bitter opposition among the Cherokees both toward the agents and the Indians who were enrolling.[21] At this stage Georgia began to take matters into her own hands and passed a series of laws directed against the Indians. One annexed Cherokee territory within Georgia to the State, and declared that all laws and usages made and enforced there by the Indians should be null and void after June 1, 1830. Another said that "no Indian or descendant of an Indian should be a competent witness or party to a suit to which a white man was a party." This brought vigorous protests from the Cherokee country. One signed by John Ross and others, February, 1829, contrasted those laws with Georgia's profession of belief in liberty and the rights of man; recalled the guarantees of the United States to the Cherokee nation; pleaded that the Cherokees were an innocent party not responsible for the agreement with Georgia, but made to suffer because of it; protested that the happiness to be gained by removal west was purely visionary; and pointed to the advancement of the people due largely to their proximity to civilization and civilizing influences.[22] Another memorial was sent to Congress the same year, signed by three thousand and eighty-five Cherokees.

[21] Cong. Doc. 186, No. 95.
[22] Cong. Doc. 187, No. 145.

The Cherokees did not see when they surrendered their rights, which were acknowledged by Great Britain, whose allies they had been. They had been treated as independent in the Revolution, having continued the war until 1785. And if they were subjects and not a nation, why did Washington make a treaty with them? [23]

There was reason enough for the alarm of the Cherokees, for Georgia had only just begun her coercive measures. A law was enacted by the Georgia legislature which made null and void all contracts between whites and Cherokees, and prohibited suits based on them. Another law prohibited the holding of a council or legislative assembly. Violations of this law were punishable by imprisonment in the penitentiary. Still another law sold improvements of the Cherokees who had gone west, to the whites. It was alleged that the missionaries among the natives were being persecuted.[24] One was removed from office and a liquor dealer was put in his place. The Cherokees complained, too, that intruders with no pretext were boldly trespassing on the rights of the Indians, violently forcing natives from their houses and taking possession of the property themselves. When the United States troops removed some of the intruders who had gone into the very heart of the country, an armed band, in retaliation, murdered one Cherokee, wounded another and had a third thrown into jail; he was released, after a delay, upon a writ of habeas corpus. Trespassers removed by the troops returned with impunity. In one of the many protests of the time [25] Jefferson was

[23] Cong. Doc. 201, No. 311.
[24] Cong. Doc. 217, No. 45.
[25] Cong. Doc. 208, No. 57.

aptly quoted. He had said that the United States would buy only when the Indians were willing to sell. By act of the legislature Georgia seized the gold mines of the Cherokees and prohibited the Indians from working the mines. A case was taken to court and a Georgia court declared against the law, but the executive ignored the ruling of the court of his own State.

Meanwhile the country at large was being aroused by the callousness of Georgia. Protests were sent to Congress. One from citizens of Adams County, Pennsylvania, presented the Indians' side of the case so well that it can well be quoted in part. It prayed for the protection of the Indian from intruders whether allowed by the State law or not. "We believe that the Cherokee nation hold the absolute right to the lands which they now possess by a title indefeasible by the acts of this or any other nation without their consent. . . . Their possessions are reduced to so narrow a compass as not in our opinion to justify further unauthorized encroachments on the ground of national necessity or policy. The Cherokees are an independent nation and entitled to all rights of such except so far as surrendered by treaty. In defiance of treaties Georgia passed laws annihilating the national existence of the Cherokees. We view with alarm the scheme to justify the abandonment of the Indians by doctrines promulgated by high officers and embodied by the President in his message that the act of Congress [26] (1802) passed in pursuance of prior treaties is unconstitutional and not obligatory on Georgia and the Federal Government." A reference to prior acts of Georgia, the protesters said, would show she could not

[26] An Intercourse Act.

sustain this position. The treaties of Hopewell and Holston and the act of Congress referred to, all took place before the adoption of the articles of agreement and cession by the United States and the State of Georgia by which Georgia ceded part of her territory to the United States. In those articles Georgia explicitly acknowledged the existence of the Indians as a nation with whom the United States were to hold treaties and extinguish the title to their territories as soon as the same could be peaceably and reasonably done. By such acknowledgment she certainly admitted the validity of former treaties and laws which guaranteed their protection and distinct existence. The Treaty of Hopewell was older than the Constitution itself; hence the adoption of the Constitution which declares treaties to be the supreme law of the land was a direct recognition of the right to treat with Indians according to the provisions of the compact.[27] Another similar petition from Freeport, Maine, brought forth a counter-protest from the same place alleging that the agitation on behalf of the Indians was false philanthropy and was for the purpose of making President Jackson unpopular.[28] The charge that protests were impelled by political motives can hardly be sustained in view of the closeness of some of the votes on the Cherokee question in Congress and in view of the widespread character of the indignation against Georgia. Georgia's defense was vigorous, if not virtuous. In reply to an able and merciless flaying of Georgia in the Senate by Mr. Frelinghuysen of New Jersey, Senator Forsyth championed her policy.[29] The land was

[27] Cong. Doc. 208, No. 90. [28] Cong. Doc. 208, No. 89.
[29] Debates in Congress, 1829-30, p. 325 *et seq.*

Georgia's. The Indians were nothing more than occupants. The State was no more coercive toward the red man than were other States; she was no less moved by humanitarian sentiment. Treaties were quoted to prop up the argument. The Federal Government, he argued, had ceded certain rights over the Indians by the cession of 1802 which said, "The United States cede whatever claim, right or title they may have to the jurisdiction or soil of any lands" in Georgia. This argument proved too much, however, for the rights of the United States were subject to other treaty stipulations, which logically, according to Forsyth's argument, were also assumed, and which included a promise of the soil to the Indians as their perpetual possession, and the right of self-government. There was no doubt some truth in the assertion that some other States had passed laws which on paper were not unlike some of the acts of Georgia. But that ought to have deceived nobody. The conditions in Georgia were very different. There the Indians, having had taken from them the power of governing themselves, received no protection from Georgia. A white man could trespass, steal and murder, but the Indians were disqualified as witnesses by law. What and where was their redress? They sought it from Congress, but with little result. On May 26, 1830, to a bill looking toward the removal of the Indians from their lands, Mr. Frelinghuysen offered an amendment guaranteeing protection to the tribes until they should choose to remove. But it was lost—seventeen to twenty-six.[30] There was still one channel for possible justice open to the Cherokees—the courts. And to them they turned their attention.

[30] Debates in Congress, 1829-30, p. 456.

In Congress and out of Congress there had been a great deal of discussion concerning the status of the Indians, and the most diverse views prevailed. In fact, their position was an anomalous one, and the methods of treating the natives which had been in vogue could be made to support contradictory views. The only explanation which is adequate seems to be that there were two inconsistent views maintained together, however illogically, from the beginning. The Indians were declared to have rights; in some sense to be owners of the soil; to be nations with whom treaties could be made. But sub-consciously there was also the feeling that the Indians were not absolutely sovereign; that the European claims to the New World were, in the last analysis, paramount. As years rolled by this feeling became a definitely formulated claim. Only by keeping this in mind can we understand the history of the Indians in their relations to the white man's government up to this point. In 1763 the King of England issued a proclamation enunciating the principle of Indian rights to the soil unless the ground were purchased or ceded. But the same proclamation regarded the Indians as having acknowledged the dominion of Great Britain, and gave grants to the whites and reservations to the Indians. Reference has already been made [31] to the fact that many of the colonies as a rule—and all of them at times—purchased ground from the natives. The Federal Government treated with the Cherokees for peace in 1785—separately from Great Britain, whose allies they had been. Among the provisions of the Treaty of Hopewell was one which allowed the Cherokees to punish according to their own

[31] See Chapter I.

laws, a white intruder who remained unauthorized in their country for six months. Surely that was a strange proceeding with people who had absolutely no rights! The terminology of the Treaty of Holston was such as to imply the recognition of the Indian right of sovereignty: the making of a treaty. The land was spoken of as owned by the Indians. Each party seemed free to act. The Cherokees were spoken of as "a nation." The United States solemnly guaranteed to the Cherokee nation all *their* lands not hereby ceded forever.[32] Subsequent treaties confirmed that of Holston. Jefferson had said that all beyond the boundary line "we consider absolutely belonging to our red brethren." In a letter to the Secretary of War (January 18, 1821), Jackson mentioned the absurdity of an independent sovereign nation holding treaties with people living within its borders, acknowledging its sovereignty and laws, and who, although not citizens, cannot be viewed as aliens, but as real subjects of the United States. The Secretary of War, November 24, 1824, urged Congress by legislative enactment to define more clearly the relations in which we stood to the Indians. Two theories existed: the first advocated the primitive and imprescriptible rights of the Indians; the second considered them mere tenants at will. Both, he said, were extreme. He suggested that the government take a paternal attitude.[33] In the Senate Mr. Frelinghuysen applied to the relations with the Indians the principle laid down by Vattel "one community may be bound to another by a very unequal alliance and still be a sovereign state." He claimed the Indians were dependent upon us for protection,

[32] Art. 7. [33] Cong. Doc. 184, No. 2.

but retained their sovereignty.[34] In 1827 the Cherokees had adopted a constitution. The government thus instituted had the three departments: executive, legislative and judicial, and in general was modeled after the American Government. This proceeding was one to which Georgia took exception, and the President had directed that the Cherokees be informed that it could be regarded only as of a municipal nature.[35] But something definite and authoritative was to be said in regard to the relations of the Indians to the Federal Government. In their contest—if it can be called such—with Georgia the Cherokees had brought suit in the United States courts. The question raised in the suit was not answered, but the opinion written by Chief Justice Marshall was epoch-making. For it spoke definitely and with authority, describing the Cherokees as a "domestic dependent nation" and the United States as guardian. The tribe could not maintain an action in the courts.[36]

The Cherokees during this period had other minor causes of complaint against the Federal Government. Georgia had made a claim to a certain portion of Cherokee territory under a treaty with the Creeks which, it was alleged, was rendered void by a subsequent treaty with the same tribe in 1826. The President declared a line of boundary which was neither the one contended for by Georgia nor the one demanded by the Indians. This line was determined, furthermore, by the Treaty of 1817 that had been abrogated by that of 1819, which declared itself to be a final adjustment of the Treaty of 1817. The result was that the discon-

[34] Debates in Cong., 1829-30, p. 309 *et seq.*
[35] Cong. Doc. 173, No. 211.
[36] 5 Peters, p. 1.

tent of neither party was allayed. And the Government showed a strange perversity in the manner of paying the annuities. The annuity was about forty-two cents per capita, and the Government, reversing its former policy, insisted upon paying it to the people as individuals. This caused inconvenience and was objected to by the people, who wished it paid to the authorities of the Cherokee nation. Though the elections were held under the auspices of United States agents and the Cherokees voted almost unanimously for the payment of the annuities into the national treasury, the Government was slow in being convinced as to the wishes of the nation, and persisted for a long time in disregarding the expressed desire of the Cherokees.

The set-back resulting from Chief Justice Marshall's decision in "The Cherokees vs. Georgia" that the Cherokee nation could not bring a case to court was only temporary. Other attempts were made to get the Georgia legislation before the courts. A Cherokee murdered another Cherokee, was arrested by Georgia officials, tried in the courts of the State and convicted. Thereupon application was made to a Federal court for a writ of error which was duly granted. But Georgia, ignoring the writ of error, executed the man according to the sentence that had been pronounced upon him. But this was not all. One of the acts passed by the legislature of Georgia sought to compel all white people residing in Cherokee country to take an oath of allegiance to the State. A missionary named Worcester was indicted for residing there without a permit and without having taken the oath of allegience to the State. Worcester claimed to

be a citizen of the State of Vermont, and appealed to the United States courts. The Supreme Court in its decision declared unconstitutional those laws by which Georgia had extended her jurisdiction over Indian territory, and declared the law under which Worcester had been indicted null and void. This case, "Worcester vs. Georgia"[37] ranks in importance with the famous Cherokee case which has been discussed. At length there seemed a prospect of the Cherokees' obtaining justice. The President was inflexible in his opposition to them; in Congress party lines were being drawn in regard to the subject; but the courts had spoken and the decision was a victory for the Indians' contention, and, it must be added, for justice.

[37] 6 Peters, p. 515.

CHAPTER IV

THE TREATY OF NEW ECHOTA

JACKSON was in a dilemma. The Supreme Court had pronounced its verdict, but Georgia was prepared to fight rather than submit. What would the President do? He was not long in coming to a decision. He refused to enforce the decision of the Supreme Court! The reiterated promise common to the treaties, from Hopewell down, admitting the Cherokees' right to their land, and guaranteeing them protection in the enjoyment of that right; the assurances of Washington and Jefferson; the specific provisions of the individual treaties—all these were not worth the paper they had been written on. Sentiments for fair dealing; the services of the Cherokees to the Government in the war with the Creeks; their aid in the War of 1812—they had fought under Jackson himself—these were to have no weight. The Cherokees were to be left to the impartiality of Georgia laws, the moderation of Georgia executives and the mercies of the Georgia rabble! It was optional with Georgia whether she should or should not obey the decrees of the Federal courts; she could defy the Federal Government at her pleasure.[1] The executive who was ready to put down

[1] The fact is that in defiance of the Supreme Court Worcester was sent to prison, where he remained until it became evident that the Indian question would be settled in a manner satisfactory to Georgia, when he was pardoned by the Governor.

with force the assertion of State sovereignty in South Carolina was willing to acquiesce in the assertion of it in Georgia. Nor was it that Jackson felt himself powerless. The truth is that all his correspondence, conversation and actions indicated that he substantially agreed with Georgia.[2]

Having taken the position that the Cherokees would not be aided by the Federal Government in maintaining their rights, President Jackson sought escape from his anomalous situation by bending every energy toward obtaining a treaty of removal. The Cherokees, as a whole, however, demanded protection as a condition precedent to negotiations for a treaty. The pushing of Georgia and the pulling of the Federal Government at length elicited two propositions from the Indians. If they would cede part of their territory to the United States for Georgia would the Government then protect them in the rest? Secretary of War Cass replied that it was beyond the power of the President to control their treatment by a State. Two weeks later (March 28, 1834) came the second proposition. If they ceded a part of their territory would they be protected in the rest for a definite period, the Cherokees ultimately to become American citizens? Cass replied that they must go west.[3]

[2] It has been alleged and has been claimed to be susceptible of proof that President Jackson advised officials of Georgia to pursue the policy they did. See letter of P. M. Butler, March 4, 1842, to Indian Commissioner Crawford. G. N. Briggs, Congressman from Massachusetts, is authority for the statement that upon hearing of the decision of the Supreme Court, Jackson said: "John Marshall has made his decision, now let him enforce it." —Greeley, "American Conflict," I, p. 106.

[3] Cong. Doc. 268, No. 71.

About this time Andrew Ross, a chief favorable to removal, offered to take to Washington a few like-minded chiefs with whom a treaty might be made. The President accepted the offer with alacrity. The proceeding brought out a protest from the anti-treaty Indians, who affirmed that the committee with whom the Government was negotiating were self-appointed and unauthorized by the Cherokee nation. The committee told Secretary Cass that the protest was signed by women, children, whites and Arkansas Cherokees; whereupon accepting this sheer assertion by the opposite party at its face value, Cass wrote to John Ross, Principal Chief of the Cherokees, saying that the petition was unworthy of consideration. The announcement that a treaty had been concluded with Andrew Ross and others brought a mighty protest from the Cherokee people. But the Senate did not ratify the treaty and the problem was no different except that the situation was more acute. In the correspondence of this time between John Ross and Cass the latter invariably evaded the issue raised by Ross and in answer to all arguments merely reiterated the necessity of going west.

Driven to the last ditch, there arose a feeling among some of the Indians who had before been opposed to removal that it would be best to capitulate, making the best terms possible. These Indians were known as the Treaty Party and at the head of them was John Ridge. Between this party and the Anti-treaty party led by John Ross, Principal Chief, there was the bitterest feeling. By the spring of 1834 even the Ross party was obliged to abandon its extreme position, for

white men had seized Indian property, together with the improvements thereon, and naturally the new possessors would so change the property to suit their purposes that the improvements wrought by Indians would be indistinguishable from those made by whites. In the resulting confusion there was danger that the real owners would lose all. To guard against this a commission was appointed by the Cherokees to register the improvements made by Indians. This was regarded as the first step looking toward a treaty. The arrest by the Georgia guard of two of the commissioners indicated the plan of the State to interfere with their work, and made a treaty more unavoidable than ever.[4]

In November, 1834, a memorial was sent to Congress from certain Cherokees who were desirous of going west. They would not go west, they said, if they could be secured in their eastern possessions, but under existing circumstances they were ready to move, but prayed for more liberal terms than had been suggested.[5] In the following winter John Ridge was in Washington, as was John Ross. The latter, being anxious to secure the very best possible terms for his people, was unwilling to consider the various propositions that emanated from the office of the War Department; and the Executive, on the other hand, considered Ross's demands unreasonable. Ridge, being a treaty man and jealous of Ross, was quite ready to negotiate a treaty on terms which the Government was willing to grant. Hence negotiations were entered into with him. This impelled Ross to offer to sell the

[4] Cong. Doc. 292, No. 286, p. 7.
[5] Cong. Doc. 273, No. 91.

Cherokee country for twenty million dollars. The sum was regarded as exorbitant. Ross finally offered to allow the Senate to decide the sum tentatively, the matter ultimately to be submitted to the Cherokee nation. A treaty, however, was concluded with Ridge, and not with Ross. It was to be voted upon by the people at the council which was to meet in Red Clay in October, 1835. Just prior to the assembling of the council the Treaty and Anti-treaty parties made up their differences and a compromise was effected between them. When this general council of the Cherokee nation met it not only rejected the treaty which had been concluded with Ridge, but passed a resolution declining to treat on the basis of five million dollars, which was the amount determined upon by the Senate as a fair price for the Indian lands. In accordance with the reconciliation which had taken place between the two factions a committee of twenty was appointed, headed by John Ross, but having also members of the other party (and among them John Ridge), with power to enter into a treaty with the United States.[6] Upon consulting Mr. Schermerhorn, the Federal commissioner, the committee learned that he had no authority to enter into a treaty with them upon any basis other than the one rejected at Red Clay. Thereupon acting upon instructions it was decided that it would be necessary to go to Washington. Ridge and his lieutenant, Boudinot, who was also on the committee of twenty, agreed to this decision.[7] John Ross was at this time suddenly arrested and thrown into jail. No charge was made against him, but his papers were

[6] Cong. Doc. 292, No. 286.
[7] Cong. Doc. 292, No. 286, p. 10.

seized. In a few days he was released, but without apology or explanation.[8]

Arrived in Washington the harmony so recently established was short-lived. Ridge, animated by a feeling of jealousy of Ross, returned to his former opposition. The Secretary of War made it plain to the delegation that the President was firm upon three points: (1) no more than five million dollars should be paid to the Cherokees; (2) there should be no reservation to individuals; (3) the money paid to the Indians must be paid to the individuals of the tribe and not to the nation.[9] In the Indian country Schermerhorn was not relaxing his efforts to bring about the desired result. At Red Clay Council he had posted notices calling for another council to meet at New Echota, Georgia, in December, and he made use of the interim in endeavoring to induce the recalcitrant natives to attend. Upon the arrival at New Echota of such of the Cherokees as could be persuaded to appear, Schermerhorn explained the necessity of a treaty, expatiated upon its advantages, and requested the appointment of a committee to confer with him in regard to one. A committee was appointed; a conference held and a treaty agreed upon. Then the committee reported to the council, which authorized them to conclude the treaty on behalf of the Indians. Immediately the exultant Schermerhorn wrote to Washington that he had the honor to report that a treaty had been concluded.[10] It was this news, reaching John Ross in the midst of his unceasing efforts to force the Government to treat upon terms more acceptable to

[8] Cong. Doc. 292, No. 286, p. 26.
[9] Cong. Doc. 292, No. 286. [10] Cong. Doc. 292, No. 286.

the Cherokees, that brought consternation into the camp of the delegation at the capital. But if there was consternation there was also indignation. The Ross delegation had been authorized to negotiate a treaty, and while it was engaged in seeking a satisfactory settlement, with no notice to it a treaty had been signed by another committee. Soon the facts came to light. A few Indians favorably disposed to a treaty had responded to Schermerhorn's call for a council and had met at New Echota. With them the treaty had been concluded. The council itself was not one regularly called by the authorities of the Cherokee nation, but by the United States commissioners. The treaty was no treaty. The evidence is conclusive. First there are the letters of Major Davis. Major Davis was appointed by the President to go into the Cherokee country and secure the consent of the Indians to removal west. His work, his orders, his appointment—held by the grace of the President—would all naturally cause him to say or do nothing which would be detrimental to the plans which the Executive had determined upon. His work was carried on without his incurring the hostility of the Indians, by whom he was given the name "Straight Talk." But Major Davis, prompted by humanitarian sentiments and a desire for fair play, upon his own initiative wrote to Secretary Cass, informing him of the facts connected with the making of the Treaty of New Echota. The alleged treaty was made without the vote pro or con of the great body of the nation. He accused Schermerhorn of deception and said that there were not five hundred present as Schermerhorn

had claimed, and that even if there had been five hundred could not make a treaty for sixteen thousand.[11] Secondly there is the testimony of McCoy, who acted as interpreter at New Echota and who certified that the vote on the treaty consisted of seventy-nine yeas and seven nays.[12] Thirdly, there is the indisputable evidence of subsequent events in the Cherokee country. When he learned of the proceedings at New Echota, Ross did not remain idle. A general council was called and convened in February, 1836. From that council there went a protest against the treaty to Washington signed by twelve thousand Cherokees.[13] This was but the first of a series of protests. The council held at Red Clay, September, 1836, declared the treaty null and void, sent a protest signed by two thousand and eighty-five and appointed a delegation to go to Washington to make known in no uncertain tone the facts of the case and the sentiments of the Indians.[14] It was one thing to appoint such a delegation, but quite another for that delegation to obtain access to the President. In October, 1836, acting Secretary of War Harris said that no delegation of the Cherokees wishing a new treaty to displace that of New Echota would be received or recognized. So like the Emperor Henry IV they could wait outside the barred door until the Power within should relent.[15]

The United States officials persisted in asserting that the majority of the Cherokees were favorable to

[11] Cong. Doc. 292, No. 286, p. 148 *et seq.*
[12] Cong. Doc. 292, No. 286. (Appended Document No. 81).
[13] Cong. Doc. 292, No. 286.
[14] Cong. Doc. 325, No. 99, p. 17.
[15] Cong. Doc. 315, No. 120, p. 186.

the treaty and that all the trouble was because of the efforts of John Ross to rouse them to violence. The truth was Ross had written May 26, 1836, urging the Cherokees to ignore the treaty but to remain still and quiet.[16] Upon the strength of rumors that an insurrection was brewing in the Cherokee country troops had been sent there. General Wool, commanding in that district, wrote to Harris saying that when he first arrived he had been informed that most of the Cherokees were ready to submit to the treaty, but now he knew that only a few were ready to do so and they were whites or half-breeds.[17] And J. Mason, a United States official, wrote to the Secretary of War saying: "Ross and his party are in fact the Cherokee nation," and that officer said that Ross with all his power could not change the course of the people if he would. Were he to advise acceptance of the treaty he would forfeit their—the people's—confidence and probably his life. His influence, however, was for peace.[18]

Quite different from the attitude of the Indians was that of the Senate. Of that body it must be related that meanwhile it had ratified the agreement of New Echota. But let it also be recorded that there was but one more vote than required for ratification.[19] Accordingly on May 23, 1836, the Treaty of New Echota had been proclaimed.

It is well, right here, to take the opportunity of learning the provisions of this treaty which had called

[16] Cong. Doc. 315, No. 120, p. 680.

[17] Cong. Doc. 315, No. 120, p. 647.

[18] Cong. Doc. 315, No. 120, p. 985.

[19] Letter of P. M. Butler to T. H. Crawford, Ind. Com., March 4, 1842, on file in Ind. Office.

forth such urgent protests from the Indians, which was beginning to agitate the country at large, and was awakening one of the bitterest debates ever heard in the halls of Congress. The first article ceded the Cherokee lands for five million dollars. By the terms of the second the United States guaranteed the Cherokees a perpetual outlet west, and the free use of the country west of the seven million acres given by the Treaty of May 6, 1828, and supplements, and by Treaty of February 14, 1833. Other Indians, however, were to be permitted to obtain salt from the salt plain. For five hundred thousand dollars the United States was to grant by patent in fee simple an additional tract between the west line of the State of Missouri and the Osage country. By the terms of the fourth article the United States agreed to extinguish the title to reservations within this country made to half-breeds in the Osage Treaty of 1825. The fifth article said that the land ceded to the Cherokees in the west "shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory." The United States was to protect them in the laws the Cherokees made, providing such laws were not inconsistent with the United States Constitution. The sixth article promised peace and friendship between the United States and the Cherokees. The latter were to be protected by the Federal Government from domestic strife, foreign enemies and internecine war between the several tribes. The Cherokees were not to make war upon their neighbors and were to be protected against interruption and intrusion from citizens of the United States. Article seven said that the Chero-

kees should be entitled to a delegate in the House of Representatives, whenever Congress should make provision for the same. By the terms of the eighth article the United States was to remove the Indians west and provide them with subsistence for a year. Article nine said that they were to be paid for improvements made by them in their eastern country. It was stipulated by article ten that in addition to the annuities already received by the nation, they should be given two hundred thousand dollars, the interest of which was to be for the benefit of the nation, provision being made for the orphan fund and a permanent school fund. In article twelve it was provided that those Indians who did not migrate but desired to become citizens should receive their proportion for claims and improvements. Such Cherokees wishing to reside in Tennessee, Alabama, or North Carolina should be entitled to pre-emption rights to one hundred and sixty acres of land, or one quarter section, at the minimum Congress price. Article thirteen said that all who had rights to reservations should be confirmed therein, and all who were forced by the State to abandon reservations should have just claim against the United States. Warriors who fought for the United States were to be pensioned.[20] The fifteenth article said it is "understood that after deducting the amount actually expended for improvements, ferries, claims, spoliations, removals, subsistence, and debts and claims upon the Cherokee nation, and for the additional quantity of lands and goods for the poorer classes of Cherokees, and the several funds to be invested for the general national funds provided for in the several articles of this treaty, the balance, whatever the same,

[20] Article 14.

shall be equally divided between all the people belonging to the Cherokee nation east, and such Cherokees as have removed west since 1833 who are entitled by the terms of their enrollment and removal to the benefits resulting from the final treaty between the United States and the Cherokees east, they shall also be paid for their improvements . . ." By the sixteenth article it was agreed that the Cherokees were to remove west within two years. "Those dispossessed of improvements and houses, for which no grant has actually issued previous to the enactment of the law of the State of Georgia of December, 1835 . . . shall again be put in possession and placed in the same situation and condition in reference to the laws of the State of Georgia as the Indians that have not been dispossessed, . . . if not done . . ." the United States to pay the several Cherokees for loss and damage sustained.[21]

This was the treaty in its salient features. There was also a supplement adopted (December 29, 1835). The supplement had three provisions: (1) All pre-emption rights and reservations of articles twelve and thirteen were to be null and void; (2) if the Senate did not intend the five million dollars to include moving expenses, it was to vote more; (3) six hundred thousand dollars was to be given for this last purpose, and to be in lieu of reservations and pre-emptions, and of the sum of one hundred thousand dollars for spoliations which had been provided for in article one. But this article was to be referred to the Senate.[22] This was the treaty forced upon an unwilling people.

It has already been stated that troops had been sent

[21] Statutes at Large, vol. 7, p. 478.
[22] Statutes at Large, vol. 7, p. 488.

to the Cherokee country. It was indeed infested with troops. The spirit of the Government is illustrated by General Wool's terse communication to the Cherokees, with whom he had two meetings shortly after his arrival in their country. He found the people unfavorable to the treaty, and, therefore, told them to choose peace or war.[23] When a meeting of the chiefs broke up, no decisive action having been taken, Wool overtook some of the chiefs, held them prisoners over night, and released them only upon their promise that they would obey the treaty and that the young men should bring their arms to him.[24] To make matters worse, Georgia troops had also been called out, and as if this did not make the situation extreme and critical enough, the Georgia guard were acting independently of the United States and the Federal troops. They refused to take orders from General Wool, and thus there was a conflict of authority.

On June 7, 1836, a commission had been appointed by the United States to execute the treaty, and, amid all the bitterness and strife in the Cherokee country, the work of appraising went steadily on. Georgia, at the same time, was carrying out her own laws and policies, surveying and disposing by lotteries of the Indian lands. At first the Indians were secured (theoretically) in the lands touched by their improvements, and all others were thrown open; then they were limited to the occupancy of the lots on which they actually resided and their actual improvements adjoining. If there was any disposition upon the part of the courts to administer justice, they were thwarted in their efforts by

[23] Cong. Doc. 315, No. 120, p. 629.
[24] Cong. Doc. 315, No. 120, p. 635.

the legislature, which took equity jurisdiction from them in Cherokee cases. The actual effects produced by the methods employed among the Indians may be seen in the case of John Ross. While he was on a mission to Washington he was dispossessed. Upon his return home he found a stranger in his house and his wife and children driven away—where, he could only guess. As he stood meditating upon this newest calamity, recalling the happy days of the past, his vision wandered over his own loved home, his no more, until his eye rested upon a little mound of earth beneath the spreading branches of a protecting tree. That little mound marked the grave of his child. But away from his home and possessions, breaking the tenderest ties of association and sentiment, he must trudge, because, forsooth, the white man coveted his birthright.[25]

And what was the character of the lands which Georgia was unceremoniously seizing, and for which the United States was offering five million dollars bonus?[26] The Cherokee territory within North Carolina, Tennessee, Alabama, and Georgia was estimated to contain about ten million acres. Within the territory there were quarries of limestone and marble; mines of iron, lead, silver and gold, and forests both large and valuable. Some lots of forty acres embracing gold mines were sold for thirty thousand dollars. This was the nature of the land which the Cherokees were forced to sell at what was, even then, a paltry sum, considering the extent and value of the territory.

[25] Cong. Doc. 292, No. 286, p. 10.

[26] It will be noticed the five million was not free and clear, but liable to certain charges. See Treaty of New Echota's provisions.

In the midst of this narrative of injustice, hardship, and persecution, it is refreshing to read of even a trivial victory gained by the Cherokees, especially if it be won not by sheer force, but by cleverness. It was the wish of John Ross and the Cherokees that the aid of their brethren who had already emigrated west should be enlisted upon their side, and that the nation, east and west, should present a united front of opposition to the Treaty of New Echota. But it was the equally strong determination of the authorities at Washington to prevent the consummation of any such plan. Therefore, strict orders were sent from Washington to Arkansas that if John Ross appeared on the scene inciting the Indians to opposition to the treaty he should be arrested at once. Ross, however, went west and with admirable shrewdness quietly stirred up the Indians into a promise of opposition to the treaty, and of a delegation which should go to Washington and protest against it. The whole matter being settled to his satisfaction Ross departed. Then, of course, everything came to light. The Government realized that it had been outwitted, that Ross had accomplished his designs, eluded its meshes and escaped, and its impotent rage knew no bounds.[27]

Upon the election of Van Buren to the presidency a new attempt was made by the Cherokee delegation in Washington to obtain a hearing. President Van Buren did receive the delegation, and with marked kindness of manner, but he nevertheless informed them that their efforts were vain, for nothing could be done for them.[28] Ross was seeking a compromise and had made a three-

[27] Cong. Doc. 315, No. 120, p. 774.
[28] Cong. Doc. 315, No. 120, p. 843.

fold request: (1) that he be dealt with; (2) that there be a full and impartial investigation to ascertain whether or not the treaty had been really authorized by the Cherokees; (3) submission of the same to the Cherokee nation.[29] In reply Secretary of War Poinsett wrote, March 24, 1837, saying that the Treaty of New Echota had been ratified according to constitutional forms. The second and third requests of Ross were impossible, but that "any measure suggested by you will receive candid examination" if not inconsistent with the treaty.[30] Another proposition made by the Cherokees, and rejected by the United States, was for a cession of all lands in Georgia, except what should be agreed upon as furnishing convenient and sufficient connection with the residue of the territories.[31] Before Van Buren had been in office very long, he became more reluctant to hold intercourse with Ross. His course brought more protests from the Cherokees. The Indians had also been holding councils and appointing or reappointing delegations to go to Washington.

But it was by no means the Cherokees only who made known the objections to the Treaty of New Echota. As has already been indicated, there had been opposition in Congress to the policy pursued by the Federal Government. In 1831 Henry Clay had said that in the negotiations with Great Britain culminating in the Treaty of Ghent, that power had desired information concerning America's treatment of the Indians, and therefore the principles of it had been explained. The Indians had their own government, lived under their

[29] Cong. Doc. 315, No. 120, p. 797, *et seq.*
[30] Cong. Doc. 325, No. 99.
[31] Cong. Doc. 325, No. 99, p. 40.

own laws, exempt from the operations of the laws of the United States, quietly possessed their own lands under no other limitations than that, when these were sold, they must be sold to the United States. This explanation was of the nature of an assurance to England that such a policy was to continue, and, hence, Clay regarded the treatment accorded the Cherokees as not only inherently unjust, but also a moral violation of the assurances given to the British Government.[32] But after the conclusion of the Treaty of New Echota the opposition in Congress to the Administration's Indian policy developed greater intensity, until party lines were drawn and the Whigs were prepared to appeal to the country largely on that issue. The debates in the Senate and House on the Cherokee question showed a bitterness which was not surpassed even by the acrimonious discussion upon slavery. Webster as well as Clay championed the cause of the Indians, as did Crockett of Tennessee, whose attitude is notable because he represented a district which bordered on the Indian country, and his constituents were antagonistic to the Cherokees. In spite of this, and at the risk of losing popularity and committing political suicide, he espoused the cause of the persecuted Indians. Wise, in a sensational speech, compared John Ross with Georgia's leading statesman, Forsyth, in intellect and moral honesty, not at all to the disparagement of the former.[33] So heated and personal did the debate become.

And the country at large was thoroughly aroused. Protests from various sections were sent to Congress. One of the last appeals sent by the Cherokees deserves

[32] Cong. Doc. 315, No. 120, p. 678.

[33] Cong. Globe, 2d Sess., 25th Congress, Jan. 2, 1838.

to be quoted in part. It was sent to Congress in February, 1838. The immediate occasion of it was a communication sent to the Cherokees by United States Commissioners Kennedy and Wilson, telling them that the treaty was to be enforced and that they were being misled by John Ross and his friends.[34] The protest said that no crime was alleged for their persecution. The Government had spoken of deluded, dangerous error; "'duped and deluded by those we have placed implicit confidence in.' What the delusion? Delusion to be sensible of the wrongs we suffer? Dangerous error to believe that the great nation, whose representatives we now approach, will never knowingly sanction a transaction originated in treachery and to be executed only by violence and oppression? Is it a crime to confide in our chiefs? . . . And now, in the presence of your august assemblies, and in the presence of the Supreme Judge of the Universe, most solemnly and most humbly do we ask: are we for these causes to be subjected to the indescribable evils which are designed to be inflicted upon us? Is our country to be made the scene of the horror which your commissioners will not paint?

"For adhering to the principles on which your great empire is founded, and which have advanced it to its present elevation and glory, are we to be despoiled of all we hold dear on earth? Are we to be hunted through the mountains like wild beasts, and our women, our children, our aged, our sick to be dragged from their homes like culprits, and to be packed on board of loathsome boats for transportation to a sickly clime?

"Already we are thronged with armed men; forts, camps, and military posts of every grade occupy our

[34] Cong. Doc. 329, No. 316.

whole country. With us it is a season of alarm and apprehension. We acknowledge the power of the United States. We acknowledge our own feebleness. Our only fortress is the justice of our cause. Our only appeal on earth is to your tribunal. To you, then, we look. Before your honorable bodies, in view of the appalling circumstances with which we are surrounded, relying on the righteousness of our cause and the justice and magnanimity of the tribunal to which we appeal, we do solemnly and earnestly protest against that spurious instrument (*i. e.*, Treaty of New Echota).

"It is true we are a feeble people, and, as regards physical power, we are in the hands of the United States; but we have not forfeited our rights, and if we fail to transmit to our sons the freedom we have derived from our fathers, it must not be by an act of suicide, it must not be with our own consent.

"With trembling solicitude and anxiety we most humbly and respectfully ask, will you hear us? Will you extend to us your powerful protection? Will you shield us from the horrors of the threatened storm? Will you sustain the hopes we have rested on the public faith, the honor, the justice of your mighty empire? We commit our cause to your favor and protection. And your memorialists, as in duty bound, will ever pray." The protest is signed by fifteen thousand six hundred and sixty-five Cherokees.[35]

As the time for removal drew near, so vehement became the protests, and to such a degree were the nation's sympathies aroused and her indignation excited, that the Administration began to feel that public sentiment could not be trifled with. Early in May Van Buren

[35] Cong. Doc. 329, No. 316.

seemed willing to extend the time for removal two years.[36] News of this contemplated concession brought a vigorous letter from Governor Gilmer of Georgia to Poinsett, saying that if the President ordered that the Indians be maintained where they were for two years longer, a collision would take place between the Georgia guards and the United States troops.[37] This letter elicited a hasty and frightened response from Poinsett, who said that the President never had any intention of maintaining the Cherokees in Georgia contrary to the wishes of the authorities of the State. It would remove them as speedily as possible. There was no reason for a collision between Georgia's militia and the regular troops.[38]

As has already been stated, for some time previous to the adoption of the Treaty of New Echota, Cherokees were being urged to go west. As many as would consent were removed thither. Of these, up to the time of the treaty, there were over two thousand.[39] After the treaty had been adopted the pressure brought to bear upon the Indians to induce them to remove was greatly increased. As a result, two thousand emigrated between the adoption of the treaty and January, 1838, leaving about fourteen thousand in the East.[40] The time prescribed for removal by the treaty was the spring of 1838. And promptly General Scott, who was then in command of the troops, began the work of removing the unwilling Indians. Much distress resulted from the herding of the Indians in tents, separation of families, sickness, and the many hardships and dangers

[36] Cong. Doc. 330, No. 376. [37] Cong. Doc. 330, No. 421.
[38] Cong. Doc. 330, No. 421. [39] Cong. Doc. 283, No. 403.
[40] Cong. Doc. 325, No. 82, p. 1.

inevitable in such an undertaking. So severe was the suffering that General Scott, from motives of humanity, decided to suspend further work of removal until Autumn. In the interim a partial agreement was arrived at by the Indians and the Administration. The Indians were to be permitted to remove themselves under the charge of a committee of their own appointing. This, it was hoped, would mitigate some of the trials of the difficult journey.[41] On August 1, the Cherokees passed resolutions saying that submission to the United States and the acceptance of money from the Government were not to be construed as an admission of the validity of the Treaty of New Echota, nor as a hindrance to the collection of an indemnity for the seizure of their land. With the coming of fall, the process of removal was continued, and on December 4, 1838, the last party of Cherokees left their Eastern rendezvous for the West, under John Ross, and the removal was completed.[42] It took several months to complete the removal; the distance was about seven hundred miles, and about four thousand died on the way. With the additional statement that many of the North Carolina Indians most averse to migrating steadily refused to be bought, cajoled, or driven into going West, and when the crisis came, took refuge in the mountains and there remained until the danger was past, this chapter of oppressions, impotent protests, and enforced wrongs may be brought to a close.

41 Cong. Doc. 369, No. 129, p. 35.
42 Cong. Doc. 348, No. 224.

CHAPTER V

DOMESTIC STRIFE

THE chapter of oppressions from without has its sequel in a chapter of intestine strife. In the Cherokee nation immediately subsequent to the great removal, there were three parties. There was the Ross party, headed by John Ross, which comprised about two-thirds of the entire nation; then there was the Treaty party, consisting of those who had been favorable to a treaty and had negotiated the treaty of New Echota. Their numbers were inconsiderable, but they were hated by the Ross party as the authors of all their misfortunes. Finally there was the party of the Old Settlers or Western Cherokees—those who had migrated prior to the negotiation of the Treaty of New Echota. These last saw with jealous eyes the settlement in their country of a people who outnumbered them, kindred though they were. The initial undertaking must necessarily be to seek to reach an agreement that would reunite the people actually as well as formally. A council was held in June, 1839, but nothing was accomplished, as the chiefs of the Old Settlers desired the newcomers to acknowledge the existing government and to settle under it, for the time at least having no share in it. Being in the majority, the Cherokees from the East very naturally declined to accede to any such arrangement.

The Ross party took the lead in calling another council to meet in July of the same year. The council was attended by the Ross people and some Old Settlers, but many of the latter stood aloof, believing that the object of Ross was not to bring about union, but to ascertain the will of the majority and force that upon the Western Cherokees. An act of union was passed on July 12,[1] by the council, but it was repudiated by the chiefs of the Old Settlers. As a consequence, two rival governments existed, each claiming to be the one lawful government of the Cherokee nation. The Old Settlers set up a claim not only to the government, but to the sole ownership of the soil. They contended that the treaties made with them, and the terms of the treaties, were such as to sustain them in their claim. The Treaty of 1819 considered the Western Cherokees as entitled to one-third of the annuities. The Treaty of 1828 was made with the Western Cherokees. By it an exchange of their lands for others more suitable was effected, with the guarantee that they should be and remain theirs forever—a home. In all future time they should never be embarrassed by having extended around them the lines, or having placed over them the jurisdiction, of a Territory or State. Boundaries were described and provisions made for such Eastern Cherokees as might wish to join them. These things, it was urged, were proof that the Western Cherokees had been recognized as a nation separate from the Cherokees in the East.[2] The Western Cherokees illustrated their point of view by remarking that a Frenchman might emigrate

[1] Cong. Doc. 359, No. 347, p. 18.
[2] Cong. Doc. 359, No. 347, pp. 55 and 56.

to England, if he so desired, but could the whole French nation decamp, go to England, and displace the British Government by their own? Those of the delegation from the West who had signed the Treaty of New Echota had done so only by varying from their instructions, and, as a matter of fact, the Old Settlers had met on the first of August, 1838—prior to the emigration of the Ross contingent—and had resolved that their sovereignty was in full force and should remain so in perpetuity.[3] The Indian Department held a different view. Their understanding was that the Western Cherokees formed only contingently a separate community from the Eastern Cherokees. The treaties made in 1817 and in 1819 were made with the whole tribe. The Treaty of 1828, it was asserted, put an end to all possible controversy on the subject. The preamble recited the desire of the Government to secure the Cherokee Indians a permanent home—a home for those in the West and for those desiring to join them by emigration. Seven million acres were appropriated for this permanent home—a territory preposterously large if intended for the Western Cherokees only.[4] But the latter, on the principles they enunciated, declared the act of union null and void, and, in October, 1839, held a council and elected chiefs. They proposed as a settlement of the difficulties a division of the land and the annuities between the Old Settlers and the new arrivals.

But these disputes about government and ownership were not the only reasons for apprehension concerning Cherokee affairs. In the interim between the two councils, meeting in June and July, 1839, respectively, there occurred an event which could not but prove to be a

[3] Cong. Doc. 443, No. 235. [4] Cong. Doc. 359, No. 347, p. 58.

MAJOR RIDGE

Born about 1771, at Highwassie. His Indian name was Kañ-nung-da-tla-geh, meaning "man who walks on the mountain's top." From a lithograph in colors, published about 1840.

serious detriment to a speedy or peaceable termination of the turmoil by which the Cherokee country was possessed. This event was the murder of John and Major Ridge and Elias Boudinot, the leading spirits of the Treaty party. Party feeling had run high before the conclusion of the Treaty of New Echota. In 1829 the Cherokees had enacted a law which inflicted the death-penalty upon any unauthorized persons who should sell land.[5] If one accused of so doing should fail to deliver himself up for trial he should be considered an outlaw and could be shot on sight. After the New Echota council, as information about the nefarious transaction spread among the Indians hostile to removal, they became incensed against those who had been instrumental in the accomplishment of the treaty and regarded them as traitors. Vengeance was delayed, but came at last. When the news of the murder was learned, many of the adherents of Ridge and many of the Old Settlers fled in terror to Fort Gibson. Naturally great excitement prevailed. At the council in July which met shortly after the murders had been committed a decree was passed making members of the Treaty party ineligible to office for five years. An act of amnesty toward those exposed by their acts to the penalty of outlawry, *i. e.*, members of the Treaty party, was passed, but in order to avail themselves of its pardon, they were to retract or disavow all threats made against any person or party, and to give satisfactory assurances that they would keep the peace. Those who failed to present themselves were subsequently outlawed. The council of July also passed a decree of oblivion, the terms of which enabled those

[5] Niles' Register, No. 37, p. 235.

who had committed crimes in the past, including the perpetrators of the murder, to escape punishment.[6]

After the murder of the Ridges and Boudinot the Treaty party appealed to the Washington Government for redress. The President felt himself called upon to espouse the cause of those who had done the bidding of the Federal Government in making a treaty, and had done it despite the overwhelming public sentiment in the Cherokee nation against such a proceeding. Thus, at the time when a judicial and tactful attitude was absolutely essential, the Government was precluded from taking it, because of the obligation to the Ridge party. The President decided to interfere and demand that the murderers be turned over to the Federal Government for punishment. Ross resented the interference,[7] claiming that the Cherokees had a government capable of dealing with all internal affairs. The United States authorities themselves attempted to find the murderers. General Arbuckle, in command of the Federal troops in the Cherokee neighborhood, had asserted in justification the obligation of the Government to protect the Cherokees from domestic strife. Replying to this, Ross asked if the peace and friendship between the United States and the Cherokees, promised by the Treaty of New Echota, was to be confined to one one-hundredth part of the nation,[8] *i. e.*, the Treaty party. Secretary of War Poinsett refused to receive a Cherokee delegation with John Ross, when such a delegation went to Washington to seek an adjustment of difficulties. Poinsett grew violent in his denunciation of John Ross, saying that it was believed that Ross was the in-

[6] Cong. Doc. 448, No. 234, pp. 26-27.
[7] Cong. Doc. 865, No. 129, p. 107. [8] Cong. Doc. 359, No. 347.

stigator of the murders, and that he was admittedly the protector of the murderers. The delegation declined an audience without Ross; and demanded evidence for the accusations made against their leader. Poinsett, in reply, told them that evidence would be furnished in the course of the investigation.[9] But in April, 1840, John Ross told a Congressional committee that Poinsett, when pinned down to it, admitted that there was no investigation to ascertain the truth of the charges against Ross, and, furthermore, that none was necessary as long as Ross did not give up the murderers.[10] Ross and Coody offered a measure of excuse for the murderers on the ground that the Ridges and Boudinot were regarded as traitors by the Indians, and that an old law[11] held in peculiar reverence by the people prompted them to the murder.[12] Poinsett was more angry than ever at what he termed an attempt to justify the murders, and on March 7, 1840, he ordered General Arbuckle to bring about a new constitution, securing rights to all Indians, the "abolition of all such cruel and savage edicts" as that under which Ridge and Boudinot were murdered, conformity to the United States Constitution and the exclusion from office of John Ross and William S. Coody.[13] Immediately there was a protest from the Cherokees,[14] and Coody said that he did not justify the murders, he merely explained them.[15] It should also be noted that

[9] Cong. Doc. 359, No. 347, p. 21 *et seq.*
[10] Cong. Doc. 368, No. *222.*
[11] See Page *52.*
[12] Cong. Doc. 366, No. 188.
[13] Cong. Doc. 359, No. 347, p. 2.
[14] Cong Doc. 368, No. *222.*
[15] Cong. Doc. 368, No. *222*, p. 19.

Mr. Stokes, United States agent for the Cherokees, had written to Secretary Poinsett January 22, 1840—six weeks previous to Poinsett's orders to Arbuckle—that there was nothing in the new Cherokee constitution to encourage murder, and as a result of conversations with five or six Old Settlers—not Ross party men—he judged that the murders were not sanctioned or authorized by the chiefs and principal men.[16] The decrees of outlawry, to which also Poinsett took exception, John Ross stoutly defended on the ground that they were not measures of persecution as alleged, but of protection to the Treaty men. The Indians were so incensed at them, Ross said, that such a measure was the only way to save them from vengeance. And he likewise upheld the acts of Amnesty and Oblivion by which the murderers had gained immunity from prosecution as being made necessary by the turbulent state of the country which rendered it essential that steps should be taken to obliterate old scores and to promote immediate peace. To demonstrate the soundness of his position he referred to the fact that the committee that considered these measures was presided over by Guess, whose own son had been murdered, but who favored the legislation from motives of patriotism.[17] One other event which preceded the issuance of the orders to General Arbuckle is of sufficient importance to be recorded. In January, 1840, another council assembled at Tahlequah and reaffirmed the act of union and the constitution adopted the previous summer.[18] At this council the decree of ineligibility of Treaty men to office was

[16] Cong. Doc. 359, No. 347, p. 51.
[17] Cong. Doc. 368, No. 222, p. 5.
[18] Cong. Doc. 359, No. 347, p. 44.

withdrawn.[19] An invitation to attend this council was extended to all, and the promise was made that none who attended should be molested. The Old Settlers, however, viewed the invitation askance, and no great number attended.

In April, 1840, in his communication to the Congressional committee to which reference has already been made,[20] John Ross gave his version of the lack of harmony between the Old Settlers and his own party. In describing the Western Cherokees' form of government prior to the emigration of the Eastern Cherokees, he said there were three chiefs elected for four years by the National Council, which was itself elected every two years. This Council ought to have been elected in August, 1839. One chief had died; one had resigned. There was, thus, one legal chief in power; and he was John Looney. After the arrival of the Cherokees from the East he called an informal meeting of the National Council of the Western Cherokees. Eight met and elected two other chiefs. In August no election was held. But that month the Old Settlers—a certain number of them—deposed the two chiefs they elected, and then effected a union with the Eastern Cherokees. These chiefs, whom Ross regarded as unauthorized agitators, called, in October, a public meeting which was formed into a council and elected three chiefs, and declared the act of union null and void. This council Ross declared would have amounted to nothing except for the recognition and prominence given to it by General Arbuckle.[21] In a word, then, Ross claimed that the Western Cherokees were, for the most part, favorable to

[19] Cong. Doc. 365, No. 129, p. 21.

[20] See page 55.

[21] Cong. Doc. 368, No. 222.

him; that the government established at the October council was not only illegal, but the government of a minority of the Western Cherokees and existed only because of the partisan support of Arbuckle. The Old Settlers claimed that the majority of the Western Cherokees were with them, and that their government alone had the right to exist. Both factions had sent delegations to Washington, and instructions had been forwarded to Arbuckle to overthrow both governments and establish a third.

This was the state of affairs when President Harrison was inaugurated and when, shortly afterward, he died and was succeeded by Tyler. The Cherokee question had for years been before the public, and as party lines had more than once been drawn in regard to it, Tyler had the opportunity of making political capital out of it. And he was certainly justified in assuming a less uncompromising attitude than that of his predecessor toward those Cherokees who had been driven all but at the point of United States bayonets from their ancestral domains to the West. In September, 1841, Tyler wrote the Ross delegation, promising that a treaty would be negotiated to settle the various disputes and claims, and expressing his regret for past injustice and his assurance that there should be no more if he could prevent it.[22]

In the spring of 1842 Stand Watie, a member of the Treaty party, murdered James Foreman, one of the most prominent men of the Ross party, in revenge for the murder of the Ridges and Boudinot, and the excitement which had, in a measure, been allayed was once more at fever heat. This was but the beginning.

[22] Cong. Doc. 411, No. 1098, p. 71.

For a year there was comparative quiet in the Cherokee country, but in the summer of 1843 Jacob and John West were suddenly arrested and brought to trial on the charge of conspiracy to overthrow the Ross government. It was alleged that the election papers of one district had been destroyed, one man had been murdered and another had been injured. A certain James Starr, a member of the Treaty party, was thought to be the instigator of the conspiracy, and the Wests were arrested as accessories. In the midst of their trial an attempt was made to rescue them, but it failed. This was but the prelude to a season of crime and lawlessness. Horse-stealing, robbery, burning, and murder followed one another in quick succession until once more the country was thoroughly alarmed.[23]

At about this time light was shed upon the troubles of the Cherokees from an authoritative source. A board of inquiry was appointed by President Tyler to investigate the disturbances in the Cherokee nation and to consider the grievances of the various factions. The board consisted of Brigadier General R. Jones, Lieutenant Colonel R. Mason, and P. M. Butler, Esq., Cherokee agent.[24] The thoroughness of their investigation, the lucidity of their report, and the personnel of the board—all men of high standing—preclude the idea of a partial investigation or a report determined by partisan bias. To show that there was ample opportunity for the Old Settlers and Treaty party to present their grievances, as well as for the Ross party, the committee reported that on December 4, 5, 6, 1844,

[23] Cong. Doc. 474, No. 298, p. 162.
[24] Cong. Doc. 476, No. 331, p. 20.

a council of the Cherokees met the commission near Fort Gibson. There was an attendance of 485, of whom 286 were Old Settlers, and 195 of the Treaty party. The council reconvened at a later date, and there were 908 present; 546 Old Settlers and 362 Treaty men.

In their findings the commission said that the act of union of 1839 was voted by a minority of the Western Cherokees. But, under instructions from the War Department, General Arbuckle called a meeting the following year, and on June 26, 1840, a second act of union was passed. A committee of the Western Cherokees attended and deliberated, and were regarded at the time as authorized agents, both by the Eastern Cherokees and by General Arbuckle. John Rogers, chief of the Western Cherokees, although not personally inclined toward union, nominated for one of the head men under the terms of the compact, but before it was signed, Andrew Vann of his own party, and also gave a toast, "What has been done this day, may it never be undone." The stipulations made in regard to office were at once carried out, and many of those who were now denying the validity of the compact had taken office under it, and, of course, had taken also the required oath. Rogers and others had received money from the new government for claims under the old government. The proceedings had never been referred back to the Old Cherokees, nor did there seem to have been any intention of such reference. The parties who were complaining before the commission had acquiesced quietly in the new government which went into, and long continued in, operation. The committee

of twelve who had signed the act of union now, with one exception, denied their authority for so doing, and seven of the twelve had been chosen with others by the same party on December 6, to present their complaints before the commission. It would seem a strange thing to appoint a second time such agents who had shown themselves faithless and had acted without authority. These deputies of the Western Cherokees claimed that they had signed the compact on the basis of promises never realized. The commission reported that the promises in regard to office had been kept, for at the succeeding election party lines seemed obliterated and the Western Cherokees received the majority of offices, and that the promises in regard to money must necessarily have been hypothetical, depending largely upon the decision of the United States. The commission drew the attention of the Federal Government to the fifteenth article of the Treaty of New Echota, and remarked that upon the subject of per capita division of money due, all parties of the Indians stood alike. The board further reported that the complaints of oppression by the Ross party were unfounded. There was great danger to life from bandit half-breeds who were not of the dominant party. These made stealthy incursions, stealing and burning. There was no discontent among the mass of the people with the new government.[25]

After this investigation one would think that sufficient time had been given to discussion, and that the time for action had arrived. If the United States authorities had at once fully recognized and acknowledged the Ross government as the only legitimate

[25] Cong. Doc. 457, No. 140.

one, and had discountenanced factional attempts to overthrow it, a disgraceful page of Cherokee history probably never would have been written. But no such course was pursued. Instead Commissioner Medill sent to President Polk, who had succeeded Tyler, a communication which, after the clear and illuminating report of the commission, is more than disappointing. In it Medill showed a factional spirit, in all things championing the cause of the Old Settlers, and saying that the act of union was of no binding force. In accordance with Medill's suggestion Polk recommended in his message to Congress a separation of the two parties in the nation, both in territory and government, and the extension of the United States laws for murder over the Indians.[26] This project of separation was not put into effect, but served to keep alive the feud among the Cherokees and to resuscitate the hope among the Old Settlers that the United States would interfere in their behalf.

In November, 1845, an attempt was made by a party of Cherokees in disguise to murder Meigs, a connection of John Ross. Failing in this, Meigs's house was fired. Shortly afterwards the bodies of two obscure Cherokees were found bearing unmistakable evidences of their having been murdered. It was conjectured that they had met the assailants of Meigs and had been killed by them, either that the latter's designs upon him might not be frustrated, or for fear of a betrayal of their identity. The Starrs were at once suspected of the outrage, as it was believed that they had long been instigators of revolt and crime. Two of the Starrs, young men, had been outlawed by the Ross government, and a price

[26] Cong. Doc. 474, No. 298.

had been set upon their heads, as they were known to be desperate characters.[27] Furious at the outrages committed, an armed band of mounted men swooped down upon James Starr and shot him dead and wounded his son, a mere child. Before they finished their work they also wounded Washington Starr, and killed Suel Rider, who was also suspected of being involved in the plots of one of which the attack on Meigs was the result.[28]

Lieutenant Nelson reported that the most intelligent Treaty man he met believed that the vengeance which had summarily called Starr and Rider to account was aimed only at the Starrs and their confederates.[29] In real or feigned terror, however, a number of the Treaty party fled from the Indian country for refuge into Arkansas where they would be under exclusively Federal jurisdiction. Then General Arbuckle became involved in an altercation with the Ross government, accusing Ross of having sanctioned the murder of Starr and of having a design to exterminate his political foes. Arbuckle reported to Washington that the Light Horse had murdered Starr. In reply it was said by the adherents of Ross that the attack on Meigs was made by the banditti referred to by the board of inquiry, and that Starr was believed to have aided them. Acting Chief Lowry stated that the terms of the Light Horse had expired and there was none at the time of the killing of Starr.[30] The Light Horse were the official police and had been organized originally in 1808 to pre-

[27] Cong. Doc. 483, No. 92.
[28] Cong. Doc. 483, No. 92, p. 37.
[29] Cong. Doc. 483, No. 92, p. 35.
[30] Cong. Doc. 474, No. 298, p. 170.

vent horse-stealing.[31] It was vigorously denied that the officials had planned or sanctioned lawlessness or murder. The *Cherokee Advocate* had not justified the murders, but the Ross organ had taken the ground that extreme provocation produced extreme measures of retaliation, and that the country was well rid of Starr.[32] Meantime the fugitives of the Treaty party and Old Settlers had been followed by a determined band of armed men. Major M'Kissick, Cherokee agent, tried in vain to persuade the latter to disperse. At his request Lowry undertook to gain their consent to disband, and succeeded, and they returned in peace to their homes. Shortly after this episode some forty or fifty Treaty Cherokees took refuge in old Fort Wayne, claiming they met only defensively. But immediately fifty or sixty of those who had previously assembled menacing the Treaty men who had fled, reassembled on the mountain near Evansville, excusing their conduct on the ground that their enemies had met in Fort Wayne and were meditating an attack upon them. The party on the mountain did not hesitate to appropriate the cattle and hogs of the fugitives for the purpose of subsistence during their period of camp life. But nothing serious occurred and they soon dispersed again.[33] General Arbuckle had opposed the Ross party and had received orders from Washington to protect the weaker party.[34] But Captain Boone, who had been stationed at the line, said, December 10, 1845, "There is much to be feared from

[31] State Papers, Ind. Aff., vol. 2, p. 283.
[32] Cong. Doc. 483, No. 92, pp. 37 and 65.
[33] Cong. Doc. 483, No. 92.
[34] Cong. Doc. 474, No. 298, p. 187.

the Old Settlers and Treaty party." He had heard that Stand Watie was organizing the Fort Wayne refugees for an attack.[35]

These events were the beginning of a veritable "reign of terror" among the Cherokees. Early in the following spring Stand, a Ross adherent, was murdered by Faugh. Faugh was tried and convicted, but it was believed that the Starrs were the actual principals in the crime.[36] It was thought that the motive was revenge for the killing of James Starr. This murder was followed by that of Cornskill, a Ross man. Six days later Turner, a Treaty man, was killed. In November Ellis Dick and Billy Starr were wounded. Arbuckle took the Starrs and refused to surrender them until the murderers of James Starr should be punished. Next Jimmy and Tom Starr murdered two Ross men and so it went on. Agent M'Kissick reported thirty-four murders within a year, but added that twelve of them were not political.[37]

The picture of the troubles of the Cherokees would be incomplete were the background of the attitude of General Arbuckle entirely wanting. General Arbuckle throughout the period acted, not as a judge, but as an advocate. From beginning to end he consistently opposed John Ross and his party in every matter of any importance. The partisanship of Arbuckle was the cause of much bitter complaint on the part of Ross. Several times they gave each other the lie direct. In reply to one attack of Arbuckle upon Ross's veracity, the latter in turn practically accused

[35] Cong. Doc. 483, No. 92, p. 60.
[36] Cong. Doc. 474, No. 301.
[37] Cong. Doc. 493, No. 1, p. 273.

Arbuckle of erasing or omitting a date on a document in order to impugn his veracity. Again, Ross had said at the time of the murder of Boudinot that immediately after the murder Mrs. Boudinot had sent word to him to escape, as his life was in danger. Arbuckle answered that Mrs. Boudinot denied having sent such a message and characterized Ross's story as a lie. Ross, in turn, replied that whether the message was sent by Mrs. Boudinot or not, such a message was delivered to him, and furthermore that in the distraction of such a time there would be no wonder if Mrs. Boudinot did not remember what she did or did not say, and that Arbuckle himself admitted that he heard that some, when they learned of the murder, were incensed and would have killed Ross if they could have done so.[38] At another time Ross asserted that he had written to Arbuckle in reference to a proposed meeting with the chiefs of the opposing party, saying that a committee would go " armed with prudence and discretion." The committee upon reaching Arbuckle found him literally armed to receive them. Whereupon, as Ross added, the committee needed all the prudence and discretion in which their arms consisted to extricate themselves from their difficult position.[39] These are illustrations which might be multiplied of the manner in which General Arbuckle held himself in readiness to make accusations against Ross and his followers, with no basis save wild and intangible rumors which he seldom, apparently, took pains to verify.

But governmental interference in their internal affairs was not the only complaint that the Cherokees

[38] Cong. Doc. 368, No. 222, p. 3.
[39] Cong. Doc. 365, No. 129, p. 7.

laid at the door of the Washington authorities. The Treaty of New Echota made necessary certain adjudications and the payment of certain claims. A board of commissioners was appointed to do this work. But it necessarily proceeded with a slowness that was exasperating, and the career of the board ended long before all claims had been settled. In fact it was necessary to appoint several successive boards for this important business. But the slowness of the procedure was not the only cause of complaint. The money appropriated by the Treaty of New Echota was being eaten up in payment of these claims, and those who stood near the foot of the list were in danger of finding no funds for the satisfaction of their claims. It was alleged, too, by the Indians that there was executive interference with the work of the commission, and that as a result cases were not dealt with impartially nor settled solely on their merits.[40]

At the time of removal it became apparent that the cost of removing the Cherokees west would greatly exceed all expectations and therefore an additional appropriation of over one million dollars had been made by Congress,[41] in 1838, with the purpose in part of meeting this extra expense. The members of the Treaty party had removed themselves and were allowed twenty dollars per capita for so doing. It cost more than that for those removed under John Ross, and because of this difference in allowance the Treaty party claimed a share in the additional appropriation.[42] And the portion of this additional appropriation available

[40] Cong. Doc. 420, No. 93.
[41] Cong. Doc. 434, No. 229, p. 11.
[42] Cong. Doc. 443, No. 234.

for the increased expenses of moving beyond those estimated, was insufficient, and the five million dollars of article one, Treaty of New Echota, was drawn upon, but there was great doubt as to the propriety of this proceeding.

In regard to these and kindred subjects the board of inquiry already discussed, that had investigated the questions of government and turbulence among the Cherokees, also made recommendations. They reported that in their opinion the Western Cherokees were entitled to indemnity because the Eastern Cherokees had been thrust upon them, but that the Eastern Cherokees were also entitled to share it because the former had a share in the money from the sale of lands east. It was not just, in the commissioners' opinion, that the additional and unexpected expense in removal should be allowed to exhaust the five million dollars, nor just that the Treaty party should be disappointed in the expectation of compensation for homes surrendered because all the money was taken for the removal of the other portion of the tribe. The board thought that the supplementary article of the Treaty of New Echota showed that the five million dollars ought not to be drawn upon for the expenses of removal. The commission recommended that the authorities of the Cherokees be heard in respect to their claims and that a new treaty be drawn up with the nation.[43] It will be remembered that certain of the Cherokees, especially those in North Carolina, had escaped the snare into which their brethren fell, and had remained east. These now put forth a claim to money, as their property had been sold by government agents,

[43] Cong. Doc. 457, No. 140, p. 12 *et seq.*

and North Carolina had extended her laws and protection to them and they wished to become citizens of that State. They, also, wished to be reimbursed for their property.[44]

So much space has been given necessarily to the feuds of the Cherokees, and the turbulence and lawlessness of which their country was the scene, have been so dwelt upon that it would not be surprising if a complete misapprehension of the real condition of these Indians existed in the mind of the reader, who might be easily pardoned for believing that these Cherokees were wild Indians indeed. As a matter of fact the Cherokees were to a very great degree civilized. The government that had been inaugurated by the Cherokees, like the one which they had established for themselves in the east, was modeled after that of the United States. There were the three departments: executive, legislative and judicial. Such rights, as we consider them, as freedom of worship and trial by jury were guaranteed.[45] In December, 1841, Lieutenant Colonel Hitchcock rendered a report upon the affairs of the tribe, in which he told with some detail of their manner of life. Many of the houses, though built of logs, were comfortable, and had many improvements. They were of two stories, and had porches and glass windows. As among any people, there were many poor. The wealthy, however, Hitchcock wrote, shared their means with the poor "with a kindness and liberality that have not been learned from the whites." No conjurers were to be found in the nation. Shoes were almost universally worn. Coats and trousers of cloth

[44] Cong. Doc. 451, No. 90.
[45] Cong. Doc. 411, No. 1098, p. 74.

were extensively worn. The Cherokee tongue had become a written language through the genius of George Guess, a man of exceptional ability. Newspapers had had a long history among the Cherokees. There were many schools in the country, as there were also churches, and numbers of the Indians had professed Christianity. Among the people there was considerable white blood from early times. They were not at all disposed to go to war with the United States unless driven to it by the most extreme injustice.[46]

[46] Cong. Doc. 425, No. 219, p. 5 *et seq.*

SEQUOYAH, OR GEORGE GIST, OR GUESS

Reproduction of a portrait made in Washington, D. C., in 1828. The medal, which he wears, was presented him in 1825 and bears the following inscription, on one side in Cherokee and the other in English: "Presented to George Gist by the General Council of the Cherokee Nation for his Ingenuity in the Invention of the Cherokee Alphabet."

CHAPTER VI

CHANGING TIMES

THE uncertainty, the tension in Cherokee affairs, the strained relations between the Cherokee factions, the misunderstandings between the majority of the nation and the Federal Government must not, even if they could, continue indefinitely. That was certain. A great many of those irreconcilable to the dominance of the Ross party were urging the United States to grant them land elsewhere, and this scheme had been favorably regarded and recommended by the President more than once. Preliminary steps with this end in view had been taken. The Ross party strenuously opposed the plan. They vigorously objected to Federal interference with their internal affairs.[1] Especially did they remonstrate against the accompanying recommendation that the United States laws be extended over them. This they regarded as in direct violation of the Treaty of New Echota, which had promised the Indians protection in their own government and in the laws they should make, with the one proviso that these should not be inconsistent with those of the United States.[2] As the case stood, the alternative to a division of the nation was a treaty which should reunite the parties and bring harmony out of discord.

The matters which such a treaty must settle were not only the factional strife, but the interpretation

[1] Cong. Doc. 476, No. 331. [2] Article 5.

of certain articles of the Treaty of New Echota involving the amounts of money due the Indians and the various claims which had been put forth. The task was no simple one. For some time efforts had been made by different parties to obtain the consent of all concerned to the proposition that a treaty be made. At length negotiations were begun and in 1846 a treaty was concluded.

This treaty [3] began by affirming that the Indian lands were for the whole Cherokee people. It was agreed that there should be peace and that party distinctions should cease. Amnesty was to be declared. There should be no armed police. The rights of petition and trial by jury were guaranteed. In article three it said that certain claims had been allowed by the board of commissioners appointed under the Treaty of 1835 "for rent under the name of spoliations and improvements, and for property of which the Indians were dispossessed provided for under article sixteen" of the Treaty of New Echota, and that a further amount has been allowed for reservations under the Treaty of 1835 by said commissioners, and it is assumed that the amounts then allowed, together with the expenses of making the Treaty of New Echota, were wrongfully paid out of the five million dollar fund. Therefore the United States agree to reimburse the said fund the amounts there charged to the said fund. The treaty defined the claim of the Western Cherokees [4] by asserting that by the Treaty of 1828 the territory was the property of the whole Cherokee nation, and provided that a sum equal to one-third of the residuum of the six million dollars was to be divided per capita among the Western

[3] U. S. Stat. at Large, vol. 9, p. 871. [4] Article Four.

Cherokees. The Treaty party was to be indemnified to the amount of one hundred and fifteen thousand dollars. The Federal Government promised two thousand dollars for a printing press. The United States would give a per capita division of the balance of the six million dollars. The treaty appointed the Senate umpire to decide whether or not the amount for subsistence was properly chargeable to the fund, and also whether or not the Indians should be allowed interest on whatever sum might be found due them, and, if this question should be decided affirmatively, from what time the interest should date and at what rate per annum. Provision was also made out of the indemnity for the heirs of the Ridges and Boudinot, and a clause was inserted saying that the treaty should not take away the rights of the Cherokees still residing east.

On February 19, 1847, Mr. Jarnagin reported in the Senate that peace was restored in the Cherokee nation. After more than a decade of trouble, strife and confusion, a treaty and peace! But the cessation of strife did not signify the dawn of an era of prosperity. Years of delay, bickering and misunderstanding must ensue before the United States could settle according to the provisions of the Treaty of 1846. It may have been observed already that in making treaties with the Cherokees the Senate possessed to a high degree the qualities for which the oracles of old were noted. The various treaties seem to have one feature in common, ambiguity. Nobody even knew what the intentions of the Senate were, and when appeal was made to the Senate to interpret its own creation that august body threw up its hands with an air of

injured innocence and inquired how in the world it was to perform such a task.

It will be recalled that the first article of the Treaty of New Echota granted the Indians five million dollars. But was this sum to include expenses of removal and subsistence? That was the question asked immediately. The answer was given in the third supplementary article which allowed six hundred thousand dollars additional for this purpose and in lieu of pre-emptions and reservations, and the one hundred thousand dollars allowed by article one for spoliations. Then, at a later date something over a million dollars more was granted for removal. Then a second question arose. Did the United States intend that these various grants should be regarded as a lump sum from which the various deductions called for by treaty should be made, or were these sums to be kept separate, each to be drawn upon only for certain specified charges? The ambiguity of the Treaty of New Echota may be seen by a comparison of the fifteenth article with the second supplementary article. The former mentioned the cost of removal and subsistence among the enumerated sums to be deducted from the five million dollars, but the latter granted the six hundred thousand for this purpose and for several other particularized expenses. Was this supplementary article meant to relieve the five million dollars entirely of those particularized items or was it meant simply to increase the original allowance? To how great an extent was it meant to be of the nature of a substitute as well as of a supplement?

It was, of course, just this ambiguity and the questions to which it gave birth that the new treaty (that

of 1846) sought to elucidate or to provide a means for elucidating. But on May 10, 1848, Commissioner Medill gave it as his opinion that the five million dollar fund was liable to all objects enumerated in the fifteenth article of the Treaty of New Echota except spoliations, and that the contention that by making the additional grant of one million dollars the United States assumed the whole expense of removal and subsistence and relieved the five million of this charge, was not justified. He quoted Secretary Cass as saying to John Ross that the five million dollars was "in full for the entire cession, and nothing more will be paid for removal or any other purpose or object whatever." He regarded the extra million as a voluntary grant given for the purpose of hastening the removal of the Indians.[5] The Cherokees protested against this interpretation,[6] and argument, perplexity and disagreement postponed a settlement and the matter dragged on for several years.

At length in August, 1850, the Senate committee which had been considering the Cherokee claims came to a decision. It was decided that the charge for subsistence ought to be borne by the United States. This conclusion was not grounded so much upon the treaty itself, which the committee admitted to be ambiguous, as upon subsequent negotiations in which Poinsett gave assurances to Ross that the United States should bear the expense of subsistence. The amount to be added to the residue of the fund as due for subsistence was $189,422.76. It was agreed that the Cherokees were right in contending that the amount expended by the

[5] Cong. Doc. 521, No. 65, p. 6.
[6] Cong. Doc. 511, No. 146.

United States for agents was not in the meaning of article nine of the Treaty of 1846 and there was added $96,999.42 to the Indian fund because of this charge. Interest was due them from April, 1838, at five per cent. In February, 1851, the final appropriation of $724,603.27 was made in full of all demands.[7] But let it not be imagined that this was the end of the matter absolutely. The Old Settlers received what was paid to them under protest lest the fact of their accepting it should be so construed as to prevent their urging claims not admitted by the treaty but which they considered to be just. And these claims were pressed. Over forty years more were to elapse before the final word should be said on the subject. An appropriation had been made also for the North Carolina Cherokees,[8] but they claimed the right to participate in all the benefits conferred by treaty upon their brethren in the West.

With money owed but its payment delayed, and with money borrowed to tide them over until the desired better day should dawn, the Cherokee nation suffered considerable distress during this period. By the terms of the Treaty of New Echota a tract of eight hundred thousand acres in the southeastern corner of Kansas was purchased by the Cherokees from the United States for five hundred thousand dollars. This tract was

[7] $627,063.95—balance of fund,
189,422.76—allowed for subsistence over the $104,767.00,
96,999.42—paid to agents.

$913,486.13

Cong. Doc. 565, No.176. Cong. Doc. 743, No. 123, p. 2. U. S. Stat. at Large, vol. 9, p. 572.

[8] Cong. Doc. 743, No. 123, p. 2 *et seq.* U. S. Stat. at Large, vol. 9, p. 264.

known as the neutral lands. In order to extricate themselves from their financial difficulties the Indians desired to sell these to the Government, but the latter did not consider it expedient to buy.[9]

In 1853 sensational rumors of several murders issued from the Cherokee country and it was feared that history would repeat itself and a new "reign of terror" would supersede the tranquillity so recently established. Murders had been committed in a family named Adair, but the authorities of the Cherokee nation quickly gained control of the situation and it appeared that the reports had been exaggerated. The excitement soon subsided. There was no evidence that the outbreak was of a political nature.[10]

An intercourse act had been passed by Congress in 1834 regulating the relations between the Indians and the United States. This proved inadequate in some respects. It provided for the expulsion of white intruders from Indian country, but attached no penalty for repeated violations of this section. Consequently intruders could be removed by Federal troops, but there was nothing to prevent their return. So the Cherokees were not free from that perpetual pest of the Indian—the intruding white. This act also extended Federal laws over Indian country, provided they should not include the punishment for crimes committed by one Indian against the person and property of another Indian. Was this entirely consistent with the Treaty of New Echota, which gave the Cherokees power to make laws for their own people and those connecting themselves with them? The Supreme Court

[9] Cong. Doc. 673, No. 1, p. 400.
[10] Cong. Doc. 690, No. 1, p. 253.

answered the question in the "United States versus Rogers," [11] a case which also illustrates the imperfect adjustment of the relations between the Indian and the Federal Government and the contention periodically arising therefrom. Rogers, a white man, but a Cherokee citizen by adoption, murdered Nicholson, another white man, but a citizen of the Cherokee nation. It was claimed that the United States courts had no jurisdiction. The Supreme Court ruled that the United States had adopted the principle that the Indian tribes within the United States were subject to its authority. The court furthermore held that a white man becoming an Indian at mature age did not by so doing become an Indian within the meaning of the law. The Treaty of New Echota did not supersede the act, but was controlled and explained by it.

In 1856 there was another case of conflict of jurisdiction between the United States and Cherokee courts. A man was arrested for a crime by the authorities of the Cherokee nation. While he was awaiting trial United States officers arrested him for an alleged crime committed subsequently to that for which he was being held, and took him from the Cherokees.[12] This was regarded by the Indians as a high-handed act and aroused their indignation.

It is evident that the Treaty of 1846 had not given a perfect solution to all of the problems concerning the Cherokees and their relation to the Federal Government.

[11] 4 Howard, p. 567. [12] Cong. Doc. 859, No. 113, p. 2.

CHAPTER VII

THE CIVIL WAR

THE ominous rumblings that preceded the storm of civil war which broke in 1861 were heard in the Cherokee country. In such crises men ordinarily indifferent to questions of policy are forced into espousing one cause or another, and as the excitement increases party lines become more stringent. The Cherokees proved no exception. They took sides. As many of them owned slaves it is not surprising that there was a party favorable to the South. It was less to be expected that there would be any strong sentiment of loyalty to the Union. But such there was. In those days immediately preceding the war there was a division of the Cherokees into two active parties. One party favored secession; the other, made up mostly of the adherents of John Ross and known as the "Pin Indians" from a badge they wore, were pro-Union.[1] When war broke out the Confederacy immediately tried to win over the Cherokees. For a time John Ross successfully resisted the overtures of the South and endeavored to maintain a position of neutrality. Like most mediate positions this was difficult to sustain, and at a convention called by Ross an alliance with the Confederates was favored and eventually a treaty was entered into with them and received the

[1] Report of Comm. of Ind. Aff., 1863, p. 174.

support of Ross.[2] During the first year of the war the Confederate armies overran the Cherokee territory. According to the requirements of the treaty with the South troops were raised which joined the Confederate army. Nevertheless, despite all this a majority of the Indians remained loyal to the Union and a regiment of loyal Cherokees was raised and joined the Federal forces and fought throughout the war.

In the winter of 1862 a Union army entered and for a short time occupied the Cherokee country. Then it retreated and the Confederates once more advanced. Once again the Federal troops advanced, but only as far as Fort Gibson.[3] After this practical desertion of the Cherokees by the North, Indian refugees unprotected by the United States from the raids and devastation of the Southern troops sought the protection and shelter of the army posts near their borders. The Indian agent reported that there were as many as two thousand of these loyal but destitute Cherokee refugees in that memorable winter of 1862.[4] From that time until the close of the war the lot of the Indians was most deplorable and their condition pitiable in the extreme. Their losses, destitution and sufferings can scarcely be exaggerated—scarcely depicted. The North afforded them adequate protection at no time. There were raids by the rebel-Cherokee Stand Watie[5] as well as by other bodies of Confederate soldiers. Under the very noses of the garrison at Fort Gibson,

[2] Report of Comm. of Ind. Aff., 1862, p. 1. Cong. Doc. 1433, No. 150, p. 20.

[3] Report of Comm. of Ind. Aff., 1862, pp. 28 and 137. Report of Comm. of Ind. Aff., 1865, p. 285.

[4] Report of Comm. of Ind. Aff., 1862, p. 137.

[5] Report of Comm. of Ind. Aff., 1863, p. 179.

which apparently made no attempt to prevent it, the Confederates drove off twelve hundred or fifteen hundred mules and horses belonging to the Cherokees and the United States.[6] There seemed no help for these loyal Indians. What little they had planted was of no value to them. The officers of the Northern troops appropriated what they desired of their crops, the teamsters and hangers-on followed their example and the remnant the Confederates made away with.[7] Under such conditions what incentive was there for them to plant, even though they were destitute? In the course of the war it was estimated that damage to the extent of two million dollars was sustained by the Cherokees.[8]

After the incipient attempt, however, made by the Union army to relieve the Cherokees, the latter through their National Council declared the Confederate treaty abrogated, abolished slavery and removed from office all disloyal Cherokees.[9] It was in this same year (1863) that a Cherokee regiment serving with the Confederates deserted to the Union.[10] Ross himself by this time had renewed his professions of loyalty to the Union, claiming he always had been loyal at heart. Ross's vacillating course naturally did not bring him into increased favor with the Federal authorities. In 1865, however, his fellow-Cherokees petitioned that he be re-established in his home and that the laws of the nation might be once more put in operation.[11]

[6] Report of Comm. of Ind. Aff., 1865, p. 285.

[7] Report of Comm. of Ind. Aff., 1864, p. 209.

[8] Report of Comm. of Ind. Aff., 1864, p. 286.

[9] Report of Comm. of Ind. Aff., 1863, p. 23. Cong. Doc. 1232, No. 56.

[10] Report of Comm. of Ind. Aff., 1863, p. 174.

[11] Cong. Doc. 1232, No. 52.

But in 1866 when a new treaty to adjust the conditions caused by the war was being arranged between the Cherokees and the United States, Ross, who for so many years had been the pre-eminent leader in negotiating or opposing treaties, was too ill to attend. In that same year he died.

It would scarcely seem a digression to consider briefly this remarkable man with whose personality so much of the Cherokee history is indissolubly bound. He was born in 1790 of Scotch-Indian parentage. From young manhood until the day of his death he retained the leadership of the Cherokee nation, although assaults were made upon his character as well as upon his leadership. He is variously described as a great robber, liar and general hypocrite, and as a man of exemplary life and unblemished Christian character. To pass a judgment upon him which shall be fair is perhaps an almost impossible task. Allowing for the fact that those who charged him with crookedness were his enemies, and remembering that he championed the full-bloods and was usually on the side of order, and that his temper as shown by his correspondence was finer, invariably, than that of his opponents, whom he usually defeated by weight of evidence, the judgment on the whole should be favorable. It is most difficult to explain his course in the war. Before the war he was pro-Union; indisputably he long resisted the Confederate overtures. Perhaps the best explanation is that he was first a Cherokee and acted for the welfare of his nation as he saw it. He was accused of using his position for personal profit, but he died a poor man. That he was a man of great ability none

JOHN ROSS

Reproduced from a lithograph in colors published about 1840.

would question. Mr. P. M. Butler, Cherokee agent said of him, "I think him, privately, a retiring, modest, good man; as a public man he has dignity and intelligence. He is ambitious and stubborn, often tenacious of his own views to an extent that prejudices both himself and his cause; wanting in wisdom and policy in selecting at all times his own friends and partisans for public employment. He looks rather to what he thinks the rights of his people than to what is expedient or to what is to be obtained for them." [12]

Though the Cherokees were re-established in their country with Tahlequah as their capital, reconstruction was required among them as well as in the Southern States. Readjustment was sought by the treaty concluded in 1866.[13] This treaty declared the Confederate treaty void. The United States declared an amnesty and all laws of confiscation were repealed. Provision was made for negroes and for Cherokee freedmen. There was to be a district in which they might reside. They were to have local self-government and representation in the Cherokee National Council. Laws were to be uniform throughout the nation. "Should any such law . . . operate unjustly or injuriously in the said district" in the opinion of the President, he was authorized and empowered to correct such evil and to adopt means necessary to secure the impartial administration of justice as well as a fair and equitable application and expenditure of national funds as between the people of this and every other district in said nation. A United States court was to be created in

[12] Letter of P. M. Butler to T. Hartley Crawford, Comm. of Ind. Aff., March 4, 1842.

[13] U. S. Stat. at Large, vol. 14, p. 799.

Indian Territory and until then the United States District Court was to have jurisdiction in all cases civil and criminal in the district before described when one party was in the district and the other outside of the district in the Cherokee nation.

Article eight said that no license to trade was to be granted by the United States unless approved by the Cherokee Council. Freedmen were to have all the rights of native Cherokees. The Cherokees were given the right to sell produce, live-stock, merchandise, manufacturing articles without restraint paying any tax thereon which " is now or may be levied " on the quantity sold outside Indian Territory. The eleventh article granted right of way to railroads approved by Congress. By the terms of article twelve the Cherokees agreed that a General Council consisting of delegates elected by each nation or tribe within Indian Territory might be annually convened in said territory. The object of this was to regulate inter-tribal relations such as extradition. The Secretary of the Interior was given the power of appointing the presiding officer. The President of the United States was given power to suspend the laws enacted by the Council.

The United States was to be allowed to establish courts, provided that the Cherokee courts be allowed exclusive jurisdiction in cases where Cherokees were the sole parties. The United States might also settle friendly Indians on unoccupied lands east of 96 degrees longitude on such terms as might be agreed upon by them and the Cherokees with the approval of the President. Such tribes were to be incorporated with

the Cherokee nation or to have a district set apart for them and to pay for it into the national fund. Friendly Indians might also be settled west of 96 degrees with Cherokee consent.

The neutral lands were ceded to the United States [14] in trust and also the strip ceded by article four of the Treaty of New Echota, which is included in the State of Kansas, and consent was given that such lands should be included in the State. The lands were to be appraised at not less than a dollar an acre by appraisers, one to be appointed by the United States, one to be selected by the Cherokees and if a third were needed he should be selected by the other two.

The Secretary of the Interior was to sell tracts of one hundred and sixty acres to the highest bidder, with the proviso that nothing in the act should prevent him from selling the whole of said lands not occupied by actual settlers, at the date of the ratification of the treaty, entitled to pre-emption rights under the laws of the United States, in a body to any responsible person for cash but not less than at one dollar an acre.

Whenever the Cherokee National Council requested it the Secretary of the Interior was to have their country surveyed and allotted. A Cherokee agent was to be allowed to examine the account of the nation with the Government of the United States. Sums due were to be invested by the Federal Government and the interest to be paid semi-annually to the order of the Cherokee nation for education and charity. The United States guaranteed to the people of the Cherokee nation the quiet and peaceable possession of their country and protection against domestic feuds and in-

[14] Article 17.

surrections and against hostilities of other tribes and against intruding citizens of the United States. The United States might establish a military post in the Cherokee nation. All previous treaties in force not inconsistent with this one were reaffirmed.

According to the provision of the Treaty of 1866, the Federal Government endeavored to settle friendly Indians on the land west of 96 degrees, but with no great success. In 1872 [15] arrangements were made for appraising the lands, and four years later an appropriation being made for the purpose [16] they were appraised. On the ground that they were less valuable because for the use of Indians, they were appraised at about half their actual value.[17] This amount was later raised by executive order to forty-seven and a fraction cents per acre. Up to 1881, the Cherokees were anxious to dispose of all this land at that price. But in that year a change took place in the policy of the Cherokees. They began at that time to rent the land to cattle-men for grazing purposes and this was found to be very profitable. Forthwith the Cherokees demanded a dollar and a quarter an acre. In 1886 the Cherokee delegation in Washington filed notice to the Secretary of the Interior that " all contracts made by any authority representing the Cherokee nation for the sale of any lands in the Outlet are repealed and void." [18] But if there had been a change in the Cherokee point of view the General Government had also assumed a new attitude and now advocated a new policy. The

[15] U. S. Stat. at Large, vol. 17, p. 190.
[16] U. S. Stat. at Large, vol. 19, p. 120.
[17] Cong. Doc. 210, No. 54.
[18] Cong. Doc. 2888, No. 3768, p. 25.

second article of the Treaty of New Echota, it will be recalled, promised the Indians a perpetual outlet west to the territorial limits of the United States. What was the nature of this grant? When the Indians evinced a different disposition in regard to these lands, the Federal Government undertook to convince itself that the Cherokees had no real claim, but that the grant of the Outlet, as it was called, was merely of the nature of an easement or passage-right. How much Congress was influenced by the increasing desire to throw open these lands to homestead settlers does not appear. It can be said, however, that as usual the wording of the treaty was not such that "he who runs may read." The Treaty of 1828 with the Western Cherokees contained the first provision concerning an outlet. It granted a "perpetual outlet west, and a free and unmolested use of all country lying west of the western boundary." In 1821 Mr. Calhoun, Secretary of War, said in reference to this outlet [19] that there was "no right to soil . . . merely an outlet." Judge Brewer was quoted by Secretary Noble [20] as having said in the Circuit Court that the Indians had only the right of passage. But it is difficult to understand how this opinion could prevail. In the "United States versus Rogers" [21] Judge Parker said that the title to the Outlet was substantially the same as that by which the Cherokees held other lands. But this opinion was cursory, as the case was dismissed for lack of jurisdiction. But Secretary Cass had said [22] the "entire property

[19] Cong. Doc. 2900, No. 63.
[20] Cong. Doc. 2900, No. 63, p. 5 *et seq.*
[21] 23 Federal Reports, p. 657.
[22] Sen. Exec. Doc. 120, 25th Cong., 2d Sess., p. 98.

of this tract, six million acres, [i. e. the Outlet] for their unconditional use." President Jackson had spoken of their country as consisting of 13,800,000 acres. (March 16, 1835.) Only with the Outlet could there be such an area. If the right to the Outlet were only an easement the provision of the Treaty of New Echota allowing other Indians to obtain salt from the salt plain, would be inexplicable, as would also be the permission which the United States deemed it necessary to obtain to settle friendly Indians on the lands with the added clause that the Cherokees should retain possession and jurisdiction over the unsold lands. The Cherokee "strip" was "*ceded*" by the Treaty of 1866. In "the Cherokee nation vs. the South Kansas Railroad"[23] the Court said "title to all lands of the Cherokee nation was obtained by grant from the United States. This title is a base, qualified and determinable fee without right of reversion, but only possibility of reversion in the United States." Congress cannot grant right of way over Cherokee lands on the ground that it holds the fee, but it must do so by the right of eminent domain, the court said. In 1890 Oklahoma was created as a territory. The Cherokees protested against this as a violation of treaties. The sponsor of the bill creating Oklahoma admitted this but said it was impossible to avoid it.[24] But Oklahoma's existence no doubt increased the insistence of the demand for opening the Outlet to settlers. As negotiations with the Cherokees for it were fruitless, the House Committee on Indian Affairs recommended this course, professing a belief that the Indians had no claim ex-

[23] 135 U. S. Reports, p. 641.
[24] Cong. Doc. 1409, No. 131, p. 3.

cept that of easement.[25] This was in the early part of 1891. But the settlement of the question was to be delayed a little longer. Let it suffice for the present to note the years during which it remained in dispute.

As was proposed, the Cherokee "strip" ceded to the United States in trust by the Treaty of 1866 was included in Kansas upon the admission of that State.[26] The "strip" was a narrow strip stretching from the Neosho River to the western limit of Cherokee territory. The neutral lands were sold to an emigrant company; supplementary articles attached to the Treaty of 1866 provided for this.

Two other minor matters involving Cherokee right to land and the imposition of the white man upon the Indian belong to this period. Railroads were being constructed and there was a disposition to confiscate much land for their use. The Indians were decidedly unfriendly to such schemes. The decision of the Supreme Court, already noted,[27] declared Congress had no right to grant privileges to railroads as holding the fee, but only upon right of eminent domain. The other dispute was with the cattlemen of Kansas, who had formed the profitable habit of using Cherokee land as a way of transit for their cattle and, as they proceeded slowly, the cattle subsisting on the country, they practically had use of the rich pasturage without payment therefor. The Indians, awakening to the swindle, imposed a tax upon cattle thus passing through their territories. At this the Kansans protested,[28] but the

[25] Cong. Doc. 288, No. 3584.
[26] 17 U. S. Stat. at Large, p. 98
[27] See page 88.
[28] Cong. Doc. 1409, No. 225.

Indians were supported in Washington. At another time (in 1886) the cattlemen attempted to bribe the Cherokee National Council for a lease of their lands for a fraction of their value.[29]

Another occurrence illustrates the unfortunate position of the Indians. Congress imposed a tax on certain manufactured articles, but it was held by the Indian Commissioner that this did not apply to articles manufactured and sold exclusively within Indian Territory. With no notice of a change of opinion the Commissioner ordered the arrest of Boudinot, a Cherokee manufacturer of tobacco, and ordered the seizure of his factory. As the Secretary of the Interior refused to refer to the Attorney-general for his opinion, Congress was inclined to champion the side of the Indian.[30] Eventually the case reached the Supreme Court, however, and their decision was against Boudinot on the ground that an act of Congress might supersede a prior treaty.[31] In this connection there should be mentioned a most important legislative enactment which was revolutionary in the method of dealing with the Indians. By an act passed March 3, 1871, it was enacted that no Indian nation or tribe should be acknowledged as an independent nation with whom the United States might contract by treaty. The proviso was added that this should not be construed to invalidate former treaties.[32] But in the light of the decision of the Supreme Court just cited the proviso itself seemed invalidated. Again, in the "United States versus Kagama," May 10, 1886[33] the

[29] Cong. Doc. 2613, No. 136. [30] Cong. Doc. 1433, No. 79.
[31] 11 Wallace, p. 616. [32] U. S. Stat. at Large, 16, p. 566.
[33] 118 U. S. Reports, p. 375.

Court declared the United States "has the right and authority instead of controlling them [the Indians] by treaties to govern them by acts of Congress." Another instance of unwarranted Federal interference occurred in 1872. A Cherokee murdered a Cherokee woman, the wife of a white man, who was, nevertheless, a Cherokee citizen by adoption in virtue of his marriage to a Cherokee. The murderer was arrested and was being tried in the Indian courts when friends of the widower applied to a United States Marshal for a writ. He issued a writ, but the Cherokee sheriff refused to recognize it. Thereupon a band of whites attempted to take the prisoner by force and, not succeeding, shot him and his counsel, killing the latter. Finally they were driven off by the Cherokee sheriff and his assistants, who killed several of the band.[34]

For some time after the Civil War there was considerable doubt as to the status of the Indians in the light of the fourteenth amendment to the Constitution, This was settled by the Supreme Court, which decided that the Indians were not made citizens by it.[35] But not so easy of settlement was the practical problem which the Cherokees had in common with the States of the South. Before the war the Cherokees were slaveholders. When the slaves were freed the question still remained toward the attitude which the Indians would assume as to their former slaves. No doubt the problem in the Cherokee country was in no way the momentous question that it was and is in the South. But there was a likeness in the attitude assumed by the white men

[34] Cong. Doc. 1520, No. 287.

[35] 112 U. S. Reports, p. 100, "Elk vs. Wilkins."

and that assumed by the red men toward the blacks. Despite the provisions of the Treaty of 1866 the Indians did not act toward their freedmen as the Federal Government intended. When an appropriation of three hundred thousand dollars was made by Congress in 1883 [36] for the Indians in payment for lands sold, the Cherokee authorities excluded Cherokee citizens not of Cherokee blood from their share of it.[37] This angered both President Cleveland and Congress. An appropriation was then made especially for those previously excluded, and agents were appointed to learn who were entitled to this last sum. But the Cherokees in turn resented this proceeding, protested and threw all possible obstacles in the way of the agents, who found no difficulty in learning of the Shawnees and Delawares who had become adopted Cherokees, but had a hard time in finding out to what freedmen amounts were due.[38]

In 1891 an agreement was reached between the Cherokees and the Federal Government which disposed of some of the greater questions at issue. It has already been noted [39] that negotiations had been proceeding for some time in regard to the Cherokee Outlet, but that they seemed hopeless and Congress was on the verge of acting without the consent of the Cherokees. It was just at this time that an agreement was reached, and was eventually ratified, which settled this foremost question and incidentally several others. The important parts of this agreement were (1) the cession of the

[36] 22 U. S. Stat. at Large, p. 624.
[37] Cong. Doc. 2600, No. 844.
[38] Cong. Doc. 2339, No. 82; 2600, No. 844.
[39] See page 88.

Outlet[40] for eight hundred thousand dollars, (2) intruders were to be removed upon demand of the Principal Chief, and all not citizens or employed by the Cherokee nation or citizens or by the United States, and all United States citizens not residents under treaties or acts of Congress were to be deemed intruders; (3) allowances for Cherokees who had made improvements on ceded lands; (4) the United States was to render an account of all moneys paid to the Cherokees, and the latter could sue in the Court of Claims if they considered that their treatment was unjust.[41]

The Treaty of 1846 had foreseen the possibility that some of the Cherokees of North Carolina might desired to reunite with the nation west. From time to time detachments from these removed west. Provision had been made[42] for just such a contingency, but this money was diverted from that purpose to the general objects of education and improvement. In the spring of 1881 sixty-two Cherokees, urged by Federal agents, left North Carolina, to rejoin their comrades in Indian Territory. They soon, however, became destitute and suffered greatly on the way, as the Government gave them no aid.[43] At various other times small parties of North Carolina Cherokees removed. An appropriation was made for the benefit of these and others in that year.[44] And in 1893 provision

[40] The Outlet was bounded on the west by the 100th meridian; north by Kansas; east by 96th meridian; south by Creek Nation, Oklahoma, Cheyenne and Arapahoe reservations, in all over 800,000 acres.

[41] Cong. Doc. 2900, No. 56, 27 U. S. Stat. at Large, p. 640.

[42] 9 U. S. Stat. at Large, p. 264.

[43] Cong. Doc. 2028, No. 96.

[44] Cong. Doc. 2303, No. 208.

was made for such as had removed or might wish to remove.[45] There was subsequent appropriation for the same purpose.[46]

The affairs of these Cherokees in the East became somewhat involved. They were unfortunate in being victimized by certain of their agents, and complicated law-suits involving the right to land resulted.[47] They also laid claim to a share in all Cherokee lands west and all funds and annuities. The Supreme Court ruled that if the Indians of North Carolina desired to enjoy the common property of the Cherokee nation they must comply with the constitution and laws of the Cherokee nation and be admitted as citizens thereof; and that they were not entitled to a share of the annuity fund or the fund created by the sale of lands.[48] There was also a claim against the United States because of a mistake in computation at the time of the great removal in 1835.[49]

It will be remembered that the Old Settlers accepted the Treaty of 1846 with a protest. Their first claim against the Government was the old one which they had never dropped, that they were sole owners of the country. Attention has already been called to the fact that a mistake was made in computing the number removing west, and, therefore, a corresponding mistake in the appropriations. But this was a minor consideration. The treaty fund, by subsequent legislation, had

[45] 27 U. S. Stat. at Large, p. 630.

[46] 30 U. S. Stat. at Large, p. 1247.

[47] Cong. Doc. 1648, No. 169.

[48] 117 U. S. Reports, p. 288.

[49] A full discussion of the claims, etc., of the Cherokees of North Carolina is not possible because they have not yet been settled, but are still pending before the courts.

been relieved of the charges for one year's subsistence, at least so far as the Eastern Cherokees were concerned. Now the question arose: Was the treaty fund thereby also relieved of like charges in regard to the Old Settlers, or were the costs of removal and subsistence proper charges against their funds as stipulated in article four of the Treaty of 1846?[50] The Old Settlers claimed that the relief given to the Cherokees under the legislation mentioned inured to them as well, and that therefore the accounting officers of the Government were in error in charging it against them, according to the rule of article four of the Treaty of 1846.[51] This question, naturally, was referred to Congressional committees, with the result of discussions which ended about where they began, concerning the meaning of the eighth and fifteenth articles of that marvelously-wrought document—the Treaty of New Echota.[52] Eventually the matter was referred to the Court of Claims, and that Court assumed that judicially admirable, but occasionally inscrutable and slightly exasperating attitude so frequently assumed by courts, and declined to answer any further than was demanded by the exigencies of the case as presented. Its oracular decision was practically embodied in two tables. The first table showed the amount due the Old Settlers if the costs of removal and subsistence were not properly chargeable to them. The second table showed the amount due the Old Settlers if the costs of removal and subsistence were properly chargeable to them. But as to the absorbing question whether or not these amounts were rightly chargeable to the Old Settlers the Court

[50] See page 72.

[51] Cong. Doc. 2329, No. 2651.

[52] See pages 38 *et seq.*

looked wise as the Sphinx but declined to commit itself.[53]

The final settlement was made by the Supreme Court upon appeal from the Court of Claims, in 1892.[54] The petition of the Old Settlers, as stated by the Supreme Court, was (1) that they be not held by the Treaty of 1846, as it was made under duress and that they be awarded the value of their lands which they claimed as sole owners. (2) If this be denied, they prayed for:

$330,756.94	under Article four, Treaty of 1846,
9,179.16¼	under provisions of Treaty of 1828,
30,000.00	for property destroyed, etc.
$369,936.10¼	

The Supreme Court decided in regard to (1) that the Treaty of 1846 put to rest the contention as to ownership of land. In regard to (2) the Court entered into a thorough discussion of the claims of the Indians and a complete review of the various awards of the Court of Claims.

The petitioners claimed that no deduction should have been made for subsistence, and that the sum allowed for removal should be limited to 2,200 Indians at $20 per head; they insisted on the $30,000 for property destroyed, while they abandoned their claim for $9,179.16¼ as the value of the Arkansas agency, land, and improvements, and conceded that the sum of $4,179.26, therefor, as found by the court below, might be accepted as correct. The Court of Claims disallowed the item of $30,000 and charged for the removal of 16,957 Cherokees at $20 each, and an item

[53] Cong. Doc. 2456, No. 1680. [54] 148 U. S. Reports, p. 427.

for the expenses of the Cherokee committee of $2,212.76.

The Supreme Court concurred in the rejection of the $30,000 (a claim which had its origin in the alleged compulsion of certain Western Cherokees to leave their homes and seek refuge in the States).

Article eight of the Treaty of 1846 placed the amount at $20 each for removal and $33.33 for subsistence. The Court of Claims rightly decided the number to be 2,200—the number obtained with all possible accuracy—plus 14,737 East Cherokees at $20 each. The Senate decided that the United States ought to bear the charge of subsistence, and voted $189,422.76, being the difference between the amount allowed June 12, 1838, and that actually expended, and this excess was improperly charged to the treaty fund. Therefore the Court of Claims correctly deducted $339,140 for the removal of the whole number of Cherokees at $20 each, and declined to deduct any charge for subsistence.

The Court of Claims properly rejected the $18,062.06 (national debt), and the $61,073.49 (claims of United States citizens), but held the $22,212.76 (for committee to carry treaty into effect) to be properly chargeable under article twelve, Treaty of 1835. But the Supreme Court was persuaded that this was not correct. Article ten of the Treaty of 1835 said that the United States was to pay the just debts of the Cherokee nation held by citizens of the same, and also just claims of United States citizens for services rendered, and fixed $60,000 as the amount for those purposes. The debts and claims of article fifteen of the Treaty

of 1835 to be deducted under article four, Treaty of 1846, should be confined, the Supreme Court believed, to the $60,000, and that was justly chargeable against the fund, but the Court was not satisfied that the $22,212.76 should be charged in addition.

The total amount due the Old Settlers, according to this decision, was $212,376.94 with interest from June 12, 1838.

STATEMENT:

Treaty fund		$5,600,000.00
Less—		
For 800 A. of land	$ 500,000.00	
" General fund	500,000.00	
" Improvements	1,540,572.27	
" Ferries	159,572.12	
" Spoliations	264,894.09	
" Debts, etc.	60,000.00	
" Removal 16,957 Cherokees at $20 each	339,140.00	3,364,178.48
Residum to be divided		$2,235,821.52
One-third due Western Cherokees		$ 745,273.84
Less payment of Sept. 22, 1851		532,896.90
Balance		$ 212,376.94

And recovery should also include $4,179.26 for Arkansas agency, but no interest should be allowed on this.

In 1894 an appropriation was made for the Old Settlers in accordance with the judgment rendered,[55] and this matter was settled at last.[56]

[55] 28 U. S. Stat. at Large, p. 451.

[56] This case illustrates the complicated condition of Indian affairs arising from treaties of the Federal Government's own making.

CHAPTER VIII

THE END OF THE CHAPTER

WITH the growth of the country and the distribution of population by which the West lost its character as a sparsely settled wilderness, the relation of the Indian tribes to the United States necessarily changed. White men were everywhere and, as ever, looking with hungry eyes at the Indians' possessions. The change of the Congressional attitude is shown by the various legislative enactments and debates of the period subsequent to the Civil War. As the years went by, it became increasingly evident that some definite Indian policy must be decided upon and consistently pursued. The trend of the Governmental mind had long been toward greater Federal control of Indian affairs. In 1887 a law had been passed extending the jurisdiction of United States courts over the Indians, but the Cherokees, among others, had been expressly excepted from its provisions.[1] But it was clear that they could not escape. In 1892 a committee in the Senate reported: "The anomalous condition of five separate, independent Indian governments within the government of the United States must soon, in the nature of things, cease," and announced, "the purpose of the Government now is to make them (i. e., the Indians) citizens." [2]

[1] 24 U. S. Stat. at Large, p. 391.

[2] Cong. Doc. 2915, No. 1079, p. 7.

In his annual message,[3] December 7, 1896, President Cleveland said it is "almost indispensable that there should be an entire change in the relations of these Indians (i. e., the Five Civilized Tribes) to the General Government." Several years previous (March, 1893), a commission had been appointed to negotiate with these Indians and obtain the extinguishing of their title to tribal lands, the allotment of lands in severalty and the abolition of their courts.[4] This formed the nucleus of the commission known so widely as the Dawes Commission, which undertook to settle finally the relations which the Indian nations were to bear toward the Federal Government.

The following years were years prolific of important measures relating to the Indians. One of the laws passed was an act giving United States courts in Indian Territory exclusive civil and criminal jurisdiction, and also enacting that all acts of any of the councils of the Five Civilized Tribes must be submitted to the President of the United States, and they were to be of no effect if disapproved by him, or, if not disapproved, they were to be ineffective until the expiration of thirty days. These provisions were to be enforced on and after January 1, 1898.[5] The year of 1898 was the year of the famous Curtis Act.[6] By it the jurisdiction of United States courts was to be enlarged and extended so as to include all causes of action, irrespective of the parties

[3] "Messages and Papers of the Presidents," Richardson, vol. 9, p. 735.

[4] 27 U. S. Stat. at Large, p. 645.

[5] 30 U. S. Stat. at Large, p. 83.

[6] 30 U. S. Stat. at Large, p. 475.

involved, and so as to give those courts jurisdiction to try certain suits by or against the several tribes. It made the enrollment of the Dawes Commission as to citizenship in the nations final. It provided for the allotment of lands in severalty by the Dawes Commission so far as the use and occupancy of land were concerned, reserving to the tribes all minerals and the leasing by the Secretary of the Interior of mineral lands under regulations to be prescribed by him. It provided for the surveying and laying out of town sites; for the payment of rents and royalties due the tribes into the United States treasury to the credit of the tribes, but prohibiting the collection of the same by any individual of the tribe, permitting, however, the leasing by individuals of their allotments excepting as to minerals. Prohibiting the payment of any moneys to the tribal governments, it provided that the United States disbursing agents were to pay all sums to the members of the tribes. It provided for the termination of leases of lands for grazing purposes by January 1, 1900. One hundred and fifty-seven thousand acres in the Cherokee nation were to be set apart for the Delawares, subject to adjudication by the Court of Claims and the Supreme Court of the rights of the Delawares. The enforcement of the laws of the various tribes by the United States courts in Indian Territory was prohibited, and all tribal courts in the territory were to be abolished.

The Indian Appropriation Act of March 3, 1901,[7] provided, "no act of the Creek or Cherokee tribes shall be of any validity until approved by the President of the United States."

[7] 31 U. S. Stat. at Large, p. 1077.

From the first the Cherokees had looked with great suspicion on the Dawes Commission and had been exceedingly reluctant to surrender any of their privileges. The surrounding Indian nations showed little disinclination to enter upon negotiations and the Cherokees saw that they were standing alone. Furthermore, such acts as the Curtis Act were coercive,[8] and the Cherokees realized that they could choose between making an agreement and having distasteful laws placed over them without so much as consultation with them. In the winter of 1897 they had, to be sure, written to Washington to correct the impression that they were unwilling to negotiate with the Dawes Commission,[9] but in the following April they protested against the bill abolishing Cherokee courts, denying the allegation [10] that they were corrupt, and asserting that the bill was in direct conflict with the Treaty of 1866. They said the people were greatly concerned and were debating whether or not to make further agreements with a government that had failed to keep past ones.[11]

Circumstances practically compelled them to enter into negotiations. Agreements were made in 1899 and in 1900, but were not ratified by Congress, and so were superseded by an agreement more satisfactory to Congress in 1902.[12] This agreement which originated with Congress was ratified by the Cherokee people, August 7, 1902.

[8] The purpose of the Curtis Act was to do by law what could not be done by agreement.

[9] Cong. Doc. 3470, No. 112.

[10] The Indian Peace Commission considered territorial or state government very desirable for them.

[11] Cong. Doc. 3559, No. 24.

[12] Dept. of Interior Reports for 1902, Part 2, p. 31.

Lands were to be appraised at their true value by the Dawes Commission. Allotments were to be made of one hundred and ten acres to every Cherokee citizen, forty of the one hundred and ten as a homestead inalienable during the life of the allottee, not exceeding twenty-one years, and non-taxable. All other allotted lands were to be alienable in five years. Lands were to be reserved for town-sites, railroads, cemeteries, schools, asylums, and certain public buildings.

No white intermarried with a Cherokee since December, 1895, should be entitled to enrollment, or should participate in the distribution of tribal funds.

The Cherokee school fund was to be used under the direction of the Secretary of the Interior for the education of Cherokee children. All moneys for the carrying on of schools should be appropriated by the Cherokee National Council, but if it failed to make an appropriation, the Secretary of the Interior could direct the use of funds necessary. The orphan fund should be used under the direction of the Secretary of the Interior.

Town sites were provided for. Any Cherokee possessing a lot with improvements, at the time of its segregation as part of a town site, should have the right to buy it according to the provisions of the Curtis Act, or, if he elected, the lot should be sold, but he should be compensated for his improvements. The owner of town-site lots with occupancy gained under the town-site acts of the Cherokees, could buy, if he had improvements, at one-fourth the appraised value; if no improvements, at one-half the appraised value; if a rightful possessor, but not under Cherokee town-site

law, he could purchase for one-third, but full value must be paid if the town should be under two hundred in population, or one that was to be laid out. Other lots should be sold at auction, the United States to pay all expenses incidental to platting, surveying, and disposition of town lots. The United States might purchase lots for jails, court houses, or for other public purposes.

The tribal government of the Cherokee nation was not to continue after March 4, 1906.

The collection of all revenue belonging to the tribe was to be done by an officer appointed by the Secretary of the Interior. All funds of the tribe were to be paid out under the direction of the Secretary of the Interior. Per capita payments were to be made by a United States officer directly. This also was to be under the Secretary of the Interior's direction.

Jurisdiction was given to the Court of Claims, with right of appeal to the Supreme Court, in any claim of the Cherokee tribe or band thereof against the United States arising under treaty stipulations upon which suit should be instituted within two years, and also in any claim of the United States against the Cherokees.

Cherokee citizens might rent allotments for a term not exceeding one year for grazing purposes, and for a term not exceeding five years for agriculture. Leases for longer periods and leases for mineral purposes might be made with the approval of the Secretary of the Interior.

The Curtis Act was not to apply, except sections 14

and 27,[13] to lands or other property of the Cherokees, and no other act or treaty provision inconsistent with the agreement was to apply.

In the appraisments made according to this agreement consideration was not to be given to the location of a lot nor "to any timber thereon or to any mineral deposits contained therein." The allotments were to be of average land, i. e., land equal in value to one hundred and ten acres of average allottable land. The Dawes Commission was also engaged in enrolling Cherokee citizens—a difficult task rendered more difficult before the agreement by the opposition of the Cherokee full-bloods.

In 1902 an appropriation was made for the removal of intruders on Indian land with the proviso that lawful possessors of town-sites should not be removed.[14] This appropriation act was passed only after a chapter of wrongs had been enacted. The agreement of 1891 provided for the removal of intruders upon demand of the Principal Chief. In 1886 the Cherokee agent warned intruders of their risk in settling upon Indian land. Some had made improvements; some had been received or desired to be received into Cherokee citizenship.[15] It was finally decided that the Cherokee nation should determine the status of these intruders. In 1888, September, the intruders were given six months to remove, but the Cherokees would not buy their improvements,

[13] Section 14 provided that towns of over two hundred might be incorporated.

Section 27 authorized the Secretary of the Interior to appoint one Indian inspector.

[14] 32 U. S. Stat. at Large, Part 1, p. 259.

[15] Cong. Doc. 2915, No. 1079, and Report of Ind. Comm. for 1896, p. 176.

as they hoped to get them for nothing at the expiration of the six months. Therefore, for the intruders' sakes the time for removal was extended indefinitely. In 1896 the agent reported that in the eight years in which he had been in office he had not been informed of one intruder who had sold his improvements or removed from the nation.

Upon the announcement of the agreement made with the Dawes Commission, it was said by the Indian Commissioner that there was no need of any further agreements with any of the five nations.[16]

So, at last the great question is settled. Soon the Cherokee nation will be no more.[17] The years of struggle and strife are over, and the Cherokee must seek his destiny as a member of the great nation that has virtually swallowed the red man. He will start with an advantage. He will be the owner of his lot of land and will be guarded in the possession of it for some years to come. But a little lot of ground! That is the apportionment of the Cherokee who when our father reached American shores was, in common with his red brethren, in possession of that magnificent eastern land equal in extent to several States and unsurpassed in beauty and in value.

The chapter is almost concluded. Congress has passed a bill looking toward the creation of the State of Oklahoma, which is to consist of the territory of that name joined to Indian Territory. A constitution has been adopted by the quasi-State and if it meets with the

[16] Sec. of Interior Report, 1902, Ind. Aff., Part I, p. 122.

[17] The time for the dissolution of the tribal government has been postopend indefinitely. 34 U. S. Stat. at Large, p. 137.

approval of the Government we shall soon add another star to the flag. When the Cherokees become citizens of the State of Oklahoma the conclusion will have been reached. A new chapter—a new book will begin in Cherokee history. May it be that the white man shall then speak "Peace!" to the Cherokee.

CHAPTER IX

CONCLUDING OBSERVATIONS

WITHOUT attempting to deduce principles from the preceding chapters, a few remarks may be made in concluding.

It is evident that the wrongs done the Indians have been quite as much the result of knowing injustice as of blunders. In his controversy with Schermerhorn [1] Major Davis said that if the correspondence with Schermerhorn ever reaches light, " any American citizen who reads it will blush for his country." Surely any American citizen who reads a chapter in the story of Indian wrongs should blush for his country. The truth is that whether it is the case of Georgia's oppression or the case of intruders unremoved because of politics, the white man has coveted the Indians' possessions and has taken them. The history of the Government's relations with the Indians has been one of treaties violated, of promises broken, and of partisan prejudice where there should have been judicial fairness. One of the black pages in American history is the one that relates the connivance of the President of the United States with a State Government to disregard the decision of the Supreme Court and perpetrate a gross injustice upon the Indians.

The sponsor of an Indian bill a few years ago [2] ad-

[1] See page 35.

[2] A bill for the formation of the territory of Oklahoma. Cong. Doc. 1409, No. 131, p. 3.

mitted that it was "found impossible to make a bill according in every respect with all treaties." This was no doubt true, but it reminds us of two facts: (1) The Government made treaties inconsistent with each other, with various Indian tribes; (2) the Government's Indian policy was too often based upon expediency, not principle. "Anything and everything to accomplish the immediate end" seemed the motto. Hence promises were readily given which anyone with ordinary foresight could see it would probably be impossible to keep.

Since the Civil War politics has not been as potent a factor in determining Indian appointments, but during the past year the papers and magazines have told of the defrauding of Indians in the Far West of their lands.

The logic of events and the progress of civilization have doubtless demanded that this country, which at first treated the Indians as independent nations with whom treaties might be made, should now treat them as wards and expect soon to render them citizens. But what crimes have been committed in the name of civilization! When it is realized that the dominance of the highly civilized nations means primarily responsibility, and that the ends of true civilization are never promoted, but are retarded by lying and stealing, even though these crimes may be the means of a speedy increase of power in the hands of the superior race—when it is realized that truth and justice are the marrow of civilization, and, therefore, cannot be sacrificed even temporarily, then the superior peoples and the inferior races and civilization itself will be the gainers.

APPENDIX

IT will be recalled that there was embodied in the agreement according to the terms of which the Cherokee Outlet was sold to the United States, a clause which provided that an account of the financial dealings of the Federal Government with the Cherokees was to be rendered to the latter. Upon the rendering of such an account—if in their opinion they had been treated unjustly—the Cherokees were given the right of appeal to the Court of Claims, providing action were begun before the expiration of a year. In accordance with this clause Messrs. Slade and Bender, expert accountants, were appointed to examine all accounts. After a thorough examination they rendered a report of their conclusions. This report allowed several claims of trifling amounts and disallowed several; but found a balance of $1,111,284.70 due for the cost of removal in the migration just subsequent to the Treaty of New Echota, and allowed interest on this sum from June 12, 1838. This account was sent by the Secretary of the Interior to the Cherokee nation and accepted by it and a copy was also sent by him to Congress, together with information of its acceptance by the Cherokees, but no appropriation was made. This was in 1895. It was not, however, until 1902 that Congress passed a statute giving the Court of Claims authority to pass upon the report of the accountants, and on March 20, 1905, a decision was reached by the Court.

Owing to the fact that the report of the accountants had taken the form of an award, it was considered by many to have such validity. The Court found, however, that it was an account simply and had none of the elements of an award or an account stated. Nevertheless, the scope of the accounting was as broad as that part of the agreement allowing suit to be brought by the Indians for any alleged "amount of money promised but withheld by the United States from the Cherokee Nation under any of said treaties or laws," improperly adjusted in the accounting. Therefore all their claims were to be reopened *de novo*, and this meant that the court or the accountants were to go behind treaty and statutory laws, receipts in full and settlements; for otherwise the case had already been decided against the Indians. It had been adjudged[1] according to the letter of the law that the cost of removal must be borne by the Cherokees. The Cherokees always claimed that this should not have been charged to them. And as part of the price for the Outlet they demanded that all such matters (including this) should be reopened. Thus the court decided that the action before it was one to recover purchase money on a contract of sale. The accounting was the means to an immediate payment to which the Indians were entitled. Inasmuch as the Secretary of the Interior, acting officially, sent the account to the Cherokees, and, inasmuch as upon their acceptance of it, no other was rendered and Congress did not act and the twelve months in which suit might be brought elapsed, the Court considered the accounting as final.

The Court also found that, since the ownership of

[1] 27 Court of Claims, 1, p. 44.

land was communal, the $1,111,284.70 should be distributed per capita to all Cherokees, whether east or west of the Mississippi, believing all to be on the same footing in regard to such a fund.

STATEMENT:

Value of these tracts of land, 1700 A. at $1.25 per A.	$ 2,125.00
Amt. paid for removal of Eastern Cherokees	1,111,284.70
Amt. received by receiver of public moneys at Independence, Kans.	432.28
Interest on $15,000 of Choctaw funds, applied in 1863 to relief of indigent Cherokees	20,406.25

The first item with interest from Feb. 27, 1819, the Court ordered to be credited to the school fund; the second with interest from July 12, 1838, divided per capita; the third with interest from Jan. 1, 1874, to be paid to the treasurer of the Cherokee nation; the fourth with interest from July 1, 1893, to be placed in the Cherokee national fund.[2]

[2] This decision with a slight modification for the sake of clearness has since been affirmed by the Supreme Court.

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