12-11-1871

Elias C. Boudinot. (To accompany bill H. R. 603.) Memorial of Elias C. Boudinot, a Cherokee Indian, for relief against certain proceedings under the internal revenue laws.

42D CONGRESS, 2d Session. } HOUSE OF REPRESENTATIVES. { MIS. DOC. No. 9.

ELIAS C. BOUDINOT.

[To accompany bill H. R. 603.]

MEMORIAL

OF

ELIAS C. BOUDINOT,

A CHEROKEE INDIAN,

FOR

Relief against certain proceedings under the internal revenue laws.

DECEMBER 11, 1871.—Referred to the Committee on the Judiciary and ordered to be printed.

To the Senate and House of Representatives of the United States of America:

Your memorialist, Elias C. Boudinot, a Cherokee Indian, citizen of and resident in the Cherokee Nation, west of Arkansas, not a naturalized citizen of the United States, respectfully represents:

That on the 19th day of July, 1866, a treaty was concluded between the United States and the said Cherokee Nation, the tenth article of which is in these words:

> Every Cherokee and freed person resident in the Cherokee Nation shall have the right to sell any products of his farm, including his or her live stock, or any merchandise or manufactured products, and to ship and drive the same to market without any restraint, paying any tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian Territory.

That soon after the making of said treaty your memorialist established in the Cherokee Nation a factory for the manufacture of tobacco, expecting to reap large pecuniary benefit therefrom, and to encourage the cultivation of the same by his people.

Your memorialist expressly avers that he has paid the tax imposed by the internal revenue laws on every ounce of tobacco manufactured by him and sold outside of said Indian Territory; and that in the course of a judicial investigation as to the rights of your memorialist in this behalf, extending for the period of about eighteen months, there was no evidence that your memorialist, or any agent of his, had ever sold, or authorized to be sold, any tobacco outside of the Indian Territory without the payment of the revenue tax required by law.

That on the 20th of July, 1868, Congress enacted a law regulating the collection of taxes on liquors, tobacco, &c., the one hundred and seventh section of which is in these words:

> That the internal revenue laws imposing taxes on distilled spirits, fermented liquors, tobacco, snuff, and cigars shall be held and construed to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same shall be within a collection district or not.

That after the said act of July 20th, 1868, became a law, your memorialist, not presuming to trust his own feeble judgment as to the effect of the one hundred and seventh section thereof, referred the question of his liabilities and rights in the premises to Hon. E. A. Rollins, at that time Commissioner of Internal Revenue, and on the 23d of February, 1869, your memorialist was officially informed by Commissioner Rollins that—

Notwithstanding the language of said section, the tax could not be collected upon tobacco manufactured in the Indian country so long as it remained in said country, but upon its being brought within any collection district of the United States it would be liable to seizure and forfeiture unless it should be properly stamped, thus indicating that the tax imposed by law had been paid.

That after the succession of the Hon. Columbus Delano to the office of Internal Revenue your memorialist, being informed that the decisions of that Bureau were not always irrevocable, presented to Commissioner Delano a frank statement of his business as a manufacturer of tobacco in the Cherokee Nation, referring to the said tenth article of the Cherokee treaty of 1866, as well as to the one hundred and seventh section of the act of July 20th, 1868, before mentioned, and requested an official opinion, as he had previously done of Mr. Rollins, respecting his rights and liabilities.

In reply to such request Commissioner Delano made the following answer:

TREASURY DEPARTMENT,
OFFICE OF INTERNAL REVENUE,
Washington, October 21, 1869.

Messrs. PIKE & JOHNSON, *Counsellors-at-Law:*

GENTLEMEN: This office does not propose to apply *within* the territories of the Cherokee Nation the revenue laws relating to tobacco and spirits produced there; but holds that section one hundred and seven of the act of 20th July, 1868, applies to the articles themselves, and will be enforced when those articles are carried into the States or Territories of the United States for sale. The grounds of this determination, and the instructions given to the revenue officers, are more fully explained by the accompanying memorandum of opinion by Judge James, to whom the question was originally referred.

Very respectfully,

C. DELANO, *Commissioner.*

The opinion of Judge James referred to in the letter of Commissioner Delano is as follows:

In the matter of taxes on tobacco produced in the Territory of the Cherokee Nation.

Hon. COLUMBUS DELANO,
Commissioner of Internal Revenue:

SIR: I have examined the argument of Colonel Elias C. Boudinot, a citizen of the Cherokee Nation, against the collection within its territory of taxes upon tobacco manufactured there, and have the honor to make the following reply:

The question, whether section one hundred and seven of the act of 20th July, 1868, intended that the revenue laws relating to tobacco and spirits produced in "the Indian country" should be extended *into* that country and there enforced, was submitted to me by yourself about the twelfth day of August last. I had the honor to advise you that, without any reference to existing treaties, it was apparent on the face of the statute itself that Congress did not intend to apply the revenue laws to the Indian country itself, but to *the articles* produced there, and that the application could be made only to such part of these manufactures as might be carried thence into the States or Territories of the United States. The action of your office was afterwards taken in accordance with this advice, and instructions to that effect were sent, as I was informed, to the revenue officers of Kansas, Missouri, and Texas.

Very respectfully,

CHARLES P. JAMES,
Counsellor-at-Law.

Your memorialist received the official letter of Commissioner Delano,

with the accompanying opinion of Judge James, about the 1st of November, 1869.

Your memorialist further represents that within two months after receiving the foregoing letter of Commissioner Delano and opinion of Judge James, and before he had received any notice of a change in the opinion of Commissioner Delano, his said factory was seized by officers of the Internal Revenue, and himself arrested for violating the revenue laws, by manufacturing tobacco in the Cherokee Nation and selling the same in the Indian Territory without paying tax, as required by said revenue laws.

That your memorialist was held to bail in the sum of $2,500 by the United States commissioner for the western judicial district of Arkansas, to answer an indictment which might be found against him by the grand jury of said district for a violation of the internal revenue laws, which grand jury afterward indicted him. That at the regular session of the United States court for the western district of Arkansas which convened on the second Monday in May, 1870, Hon. Henry C. Caldwell, judge of said court, decided that while the evidence in the case of your memorialist showed that he had acted in good faith, and with no intention to defraud the Government, and with an honest conviction of his right to manufacture tobacco in the Cherokee Nation and sell the same in the Indian country without the payment of tax, and also that the said tenth article of the Cherokee treaty of 1866 with the United States expressly gave him such right, still the one hundred and seventh section of the act of July 20, 1868, being subsequent and repugnant to the stipulations of said article of the treaty of 1866, said treaty was, *pro tanto*, abrogated; the revenue laws relating to the taxes on liquors and tobacco, by virtue of said section one hundred and seven, extended over the Indian Territory, and the property of your memorialist consequently subject to confiscation for a violation of the internal revenue laws.

That upon the trial of the libel of information your memorialist made the following statement in writing, admitting all that was expected to be proved or was proved, by the Government:

VAN BUREN, *Arkansas, January* 1, 1870.

I am a Cherokee, residing in Cherokee Nation I admit that I have bought many thousands of pounds of leaf tobacco, most of which came from Missouri and Arkansas, at my factory in the Cherokee Nation, all of which, with the exception of the quantity seized by United States marshals in the Cherokee Nation, I have manufactured, and have sold thousands of pounds of such manufactured tobacco in the Cherokee Nation and the Indian country without the payment of any tax, except to the Cherokee Nation. I acknowledge that, with the exception of two hundred pounds of manufactured tobacco sent to James E. Trott, of Fayetteville, Arkansas, I have never affixed any revenue stamps to tobacco at my factory; and with that exception I have not sold any tobacco outside of the Indian country. I am the sole owner of the tobacco factory at Boudinot, Cherokee Nation, and I have not complied with the provisions of any of the sections of the revenue laws of July 20, 1868, in manufacturing tobacco in the Cherokee Nation.

E. C. BOUDINOT.

That upon this testimony, under the decision of Judge Caldwell, a decree of forfeiture was rendered, and all the manufactured tobacco seized in the Indian country belonging to your memorialist was sold at public auction.

That your memorialist appealed his cause to the Supreme Court of the United States, and gave bond in the sum of ten thousand dollars for the retention of his manufacturing machinery pending the consideration of his case by the Supreme Court.

That on the 1st day of May last the Supreme Court affirmed the judgment of the district court, Justices Bradley and Davis dissenting. The opinions of the majority and minority of the court are respectively submitted as part of this memorial.

SUPREME COURT OF THE UNITED STATES.

No. 253.—December Term, 1870.

Two hundred and seven half-pound papers of smoking tobacco, etc., Elias C. Boudinot et al., claimants, plaintiffs in error,
vs.
The United States.

In error to the district court of the United States for the western district of Arkansas.

Mr. Justice Swayne delivered the opinion of the court.

This is a writ of error to the district court of the western district of Arkansas.

The case, so far as it is necessary to state it, lies within a narrow compass. The proceeding was instituted by the defendants in error to procure the condemnation and forfeiture of the tobacco in question and of the other property described in the libel of information, for alleged violations, which are fully set forth, of the revenue laws of the United States. Elias C. Boudinot, for himself and his copartner, Stand Wattie, interposed, and by his answer submitted, among others, the following allegations:

That the firm were the sole owners of the property described in the libel.

That the property was found and seized in the Cherokee Nation, outside of any revenue collection district of the United States; that the manufacturing of the tobacco was carried on in the Cherokee Nation, and that the manufactured tobacco, raw material, and other property were never within any collection district nor subject to the taxes mentioned in the libel, nor were the owners bound to comply with the requirements of the revenue laws of Congress; that the revenue laws were complied with as to all tobacco sold or offered for sale outside of said Indian country, if any such there were; that the claimants are Cherokee Indians by blood, and residents of the Cherokee Nation, and they deny that the property had become forfeited as alleged in the libel.

At the trial the claimants moved the court to instruct the jury that the act of Congress entitled "An act imposing taxes on distilled spirits, and for other purposes," approved July 20, 1864, is not in force in any part of the Indian Territory embraced in the western district of Arkansas; the tenth article of the treaty of 1866 between the Cherokee Nation and the United States was in full force with reference to the territory of the Cherokee Nation; that the sixty-seventh section of the act of 1868 requires stamps to be sold only to manufacturers of tobacco in the respective collection districts, and that it gave the claimants no legal right to buy such stamps to place on their tobacco in the Cherokee Nation, and that they are not responsible for not having done so.

The court refused to give these instructions.

The jury found for the United States, and judgment was entered accordingly. The claimants excepted to the refusal of the court to give the instructions asked for, and have brought the case here for review.

The only question argued in this court and upon which our decision must depend, is the effect to be given respectively to the one hundred and seventh section of the act of 1868 and the tenth article of the treaty of 1866 between the United States and the Cherokee Nation of Indians.

They are as follows:

Sec. 107. "That the internal revenue laws imposing taxes on distilled spirits, fermented liquors, tobacco, snuff, and cigars shall be construed to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same shall be within a collection district or not."—15th Stat., 167. Article 10. "Every Cherokee Indian and freed person residing in the Cherokee Nation shall have the right to sell any products of his farm, including his or her live stock, or any merchandise or manufactured products, and to ship and drive the same to market without restraint, paying any tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian Territory."

On behalf of the claimants it is contended that the one hundred and seventh section was not intended to apply and does not apply to the country of the Cherokees, and that the immunities secured by the treaty are in full force there. The United States insist that the section applies with the same effect to the territory in question as to any State or other Territory of the United States, and that to the extent of the provisions of the section the treaty is annulled.

Considering the narrowness of the questions to be decided, a remarkable wealth of learning and ability have been expended in their discussion. The views of counsel in this court have rarely been more elaborately presented. Nevertheless, the case seems to us not difficult to be determined, and to require no very extended line of remarks to vindicate the soundness of the conclusions at which we have arrived.

In the Cherokee Nation *vs.* Georgia, 5 Peters, 17, Chief Justice Marshal, delivering the opinion of this court, said: "The Indian Territory is admitted to compose a part of the United States. In all our geographical treatises, histories, and laws it is so

considered." In The United States *vs.* Rogers, 4 How., 372, Chief Justice Taney, also speaking for the court, held this language: "It is our duty to expound and execute the law as we find it, and we think it too firmly and clearly established to admit of dispute that the Indian tribes residing within the territorial limits of the United States are subject to their authority, and where the country occupied by them is not within the limits of one of the States, Congress may, by law, punish any offense committed there, no matter whether the offender be a white man or an Indian."

Both these propositions are so well settled in our jurisprudence that it would be a waste of time to discuss them or to refer to further authorities in their support. There is a long and unbroken current of legislation and adjudications in accordance with them, and we are aware of nothing in conflict with either. The subject, in its historical aspect, was fully examined in Johnson *vs.* McIntosh, 8 Wheat., 574. In the eleventh section of the act of the 24th of June, 1812, it was provided "that it shall be lawful for any person or persons to whom letters testamentary or of administration shall have been or may hereafter be granted by the proper authority in any of the United States or the *Territories thereof* to maintain any suit," &c. In Mackey *vs.* Cox, 18 How., 103, it was held that the Cherokee country was a Territory of the United States, within the meaning of this act. The one hundred and seventh section of the act of 1868 extends the revenue laws only as to liquors and tobacco over the country in question. Nowhere would frauds to an enormous extent as to these articles be more likely to be perpetrated if this provision were withdrawn. Crowds, it is believed, would be lured thither by the prospect of illicit gain. This consideration doubtless had great weight with those by whom the law was framed. The language of the section is as clear and explicit as could be employed. It embraces indisputably the Indian Territories. Congress not having thought proper to exclude them, it is not for this court to make the exception. If the exemption had been intended it would doubtless have been expressed.

There being no ambiguity, there is no room for construction. It would be out of place. (United States *vs.* Wiltberger, 5 Wheat., 95.) The section must be held to mean what the language imports. When a statute is clear and imperative, reasoning *ab inconvenienti* is of no avail. It is the duty of courts to execute it. (Morehouse *vs.* Rennel, 1 Clark & Finn., 372. Wolff *vs.* Koppel, 2 Denio, 372.) Further discussion of the subject is unnecessary. We think it would be like trying to prove a self-evident truth. The effort may confuse and obscure but cannot enlighten. It never strengthens the pre-existing conviction.

But conceding these views to be correct, it is insisted that the section cannot apply to the Cherokee Nation, because it is in conflict with the treaty. Undoubtedly one or the other must yield. The repugnancy is clear, and they cannot stand together.

The second section of the fourth article of the Constitution of the United States declares that "this Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties which shall be made under the authority of the United States, shall be the supreme law of the land."

It need hardly be said that a treaty cannot change the Constitution, or be held valid if it be in violation of that instrument. This results from the nature and fundamental principles of our government. The effect of treaties and acts of Congress, when in conflict, is not settled by the Constitution. But the question is not involved in any doubt as to its proper solution. A treaty may supersede a prior act of Congress, (Foster & Elam vs. Neilson, 2 Pet., 314, and an act of Congress may supersede a prior treaty, Taylor vs. Norton, 2 Curtis, 454; The Clinton Bridge, 1 Walworth's Reports, 155.) In the cases referred to these principles were applied to treaties with foreign nations. Treaties with Indian nations within the jurisdiction of the United States, whatever considerations of humanity and good faith may be involved and require their faithful observance, cannot be more obligatory. They have no higher sanctity; and no greater inviolability or immunity from legislative invasion can be claimed for them. The consequences in all such cases give rise to questions which must be met by the political department of the government. They are beyond the sphere of judicial cognizance. In the case under consideration the act of Congress must prevail as if the treaty were not an element to be considered.

If a wrong has been done the power of redress is with Congress, not with the judiciary, and that body, upon being applied to, it is to be presumed, will promptly give the proper relief.

Does the section thus construed deserve the severe strictures which have been applied to it?

As before remarked, it extends the revenue laws over the Indian territories only as to liquors and tobacco. In all other respects the Indians in those territories are exempt. As regards those articles only the same duties are exacted as from our own citizens. The burden must rest somewhere. Revenue is indispensable to meet the public necessities. Is it unreasonable that this small portion of it shall rest upon these Indians? The frauds that might otherwise be perpetrated there by others, under the guise of Indian names and simulated Indian ownership, is also a consideration not to be overlooked.

We are glad to know that there is no ground for any imputation upon the integrity or good faith of the claimants who prosecuted this writ of error. In a case not free from doubt and difficulty they acted under a misapprehension of their legal rights.

The judgment of the district court is affirmed.

D. W. MIDDLETON,
Clerk Supreme Court United States.

SUPREME COURT OF THE UNITED STATES.—No. 253.—DECEMBER TERM, 1870.

Two hundred and seven half-pound papers of smoking tobacco, etc., Elias C. Boudinot *et al.*, claimants, plaintiffs in error, *vs.* The United States. In error to the district court of the United States for the western district of Arkansas.

Mr. Justice Bradley dissenting:

I dissent from the opinion of the court just read. In my judgment it was not the intention of Congress to extend the internal revenue law to the Indian Territory. That territory is an exempt jurisdiction. While the United States has not relinquished its power to make such regulations as it may deem necessary in relation to that territory, and while Congress has occasionally passed laws affecting it, yet by repeated treaties the Government has in effect stipulated that in all ordinary cases the Indian populations shall be autonomies, invested with the power to make and execute all laws for their domestic government. Such being the case, all laws of a general character passed by Congress will be considered as not applying to the Indian Territory, unless expressly mentioned. An express law creating certain special rights and privileges is held never to be repealed by implication by any subsequent law couched in general terms, nor by any express repeal of all laws inconsistent with such general law, unless the language be such as clearly to indicate the intention of the legislature to effect such repeal. Thus it was held by the Supreme Court of New Jersey, in The State *vs.* Brannin, 3 Zabriskie, 484, that while the provisions of a city charter, it being a municipal corporation, may be repealed or altered by the legislature at will, yet a general statute repealing all acts contrary to its provisions will not be held to repeal a clause in the charter of such a municipal corporation upon the same subject-matter and inconsistent therewith. The same point is decided in numerous other cases. For example, when a railroad charter, subject to repeal, exempted the company from all taxation except a certain percentage on the cost of its works, it was held that this exemption was not repealed by a subsequent general tax law, enacting that all corporations should be taxed for the full amount of their property as other persons are taxed, and repealing all laws inconsistent therewith. But where the repealing clause in the general law repealed all laws inconsistent therewith, whether general or *local* and *special*, it was held that it did repeal the special exemption.* In every case the intent of the legislature is to be sought, and in the case of such special and local exemptions the general rule for ascertaining whether the legislature does or does not intend to repeal or affect them, is to inquire whether they are expressly named; if not expressly named, then whether the language used is such, nevertheless, as *clearly to indicate* the legislative intent to repeal or affect them.

In the case before the court, I hold that there is nothing to indicate such a legislative intent. The language used is nothing but general language, imposing a general system of requirements and penalties on the whole country. Had it been the intent of Congress to include the Indian Territory, it would have been very easy to say so. Not having said so, I hold that the presumption is that Congress did not intend to include it.

The case before us is, besides, a peculiar one. The exempt jurisdiction here depends on a solemn treaty entered into between the United States Government and the Cherokee Nation, in which the good faith of the Government is involved, and not on a mere municipal law. It is conceded that the law in question cannot be extended to the Indian Territory without an implied abrogation of the treaty *pro tanto*. And the opinion of the court goes upon the principle that Congress has the power to supersede the provisions of a treaty. In such a case there are peculiar reasons for applying with great strictness the rule that the exempt jurisdiction must be expressly mentioned in order to be affected.

This view is strengthened by the fact that there is territory within the exterior bounds of the United States to which the language of the one hundred and seventh section of the recent act can apply, without applying it to the Indian Territory, to wit, the Territory of Alaska. And it does not appear by the record that there are not other districts within the general territory of the United States which are in like predicament.

The judgment, according to these views, ought to be reversed.

I am authorized to state that Mr. Justice Davis concurs in this opinion.

Mr. Justice Field did not hear the argument.

D. W. MIDDLETON.
C. S. C., U. S.

---

* See the case of The State vs. Minton, 3 Zab.

Your memorialist further shows that four "white men," citizens of the United States, encouraged by his success in manufacturing tobacco in the Cherokee Nation, also commenced the manufacture of tobacco in the Indian Territory—two in the Cherokee and two in the Choctaw Nation; that they were arrested for a violation of the revenue laws about the same time with your memorialist; but, knowing they were responsible as citizens of the United States to the laws of their country, they took no appeal to the Supreme Court in their cases, and in consideration therefor the criminal prosecutions against *them* were dismissed, although in the case of two of said parties it was proved on the trial that they had intentionally defrauded the Government by selling tobacco in the State of Arkansas without the payment of any tax.

Your memorialist refers to these facts not with the purpose of finding fault with the lenient action of the United States toward its own citizens, but to refer to the simple matter of record, which shows that out of five arrests and indictments for manufacturing tobacco in the Indian country in violation of the internal revenue laws he is the only Indian, and that all but him have been released from prosecution, while over him alone is still held the heavy hand of the law.

Your memorialist further states that after the decision of the Supreme Court in his case was rendered, anxious to be relieved from the criminal prosecution still pending against him, he made application to the Attorney General to have said criminal prosecution dismissed, in answer to which the Attorney General addressed the following letter to the district attorney for the district court in which the indictment against your memorialist was at that time, and now is, pending:

DEPARTMENT OF JUSTICE,
Washington, May 22, 1871.

SIR: An application has been made to me to direct a dismissal of the criminal proceedings, in the United States court for your district, against Elias C. Boudinot for a violation of the internal revenue law, upon the ground that he acted in the matter *bona fide*, under a mistake of law, and is free from any moral culpability.

The Supreme Court of the United States in its late decision in the case of "207 Half Pound Papers of Smoking Tobacco, &c., Elias C. Boudinot et. al., claimants, plaintiffs in error, *vs.* The United States," though deciding against Mr. Boudinot, used this language:

"We are glad to know that there is no ground for any imputation upon the integrity or good faith of the claimants, who prosecuted this writ of error. In a case not free from doubt and difficulty they acted under a misapprehension of their legal rights."

I do not feel at liberty to direct a dismissal of the criminal proceedings without further information. I understand that the court at which the case, or cases, will be regularly triable, will sit in a few days. You are directed, therefore, to continue the case or cases until the next fall term of the court; and at your earliest leisure you will report to this office your opinion of the propriety of dismissing these cases, together with the grounds of such opinion.

These directions relate to the criminal prosecutions alone.

Very respectfully,

A. T. AKERMAN,
Attorney General.

J. H. HUCKLEBERRY, Esq.,
United States Attorney, Fayetteville, Arkansas.

Your memorialist avers that since this letter of the Attorney General was sent to the district attorney the latter has been directed *not* to dismiss the indictment against your memorialist until further instructed.

Your memorialist further represents that in June last a grand council of all the Indian nations and tribes was held by authority of the Government of the United States in the Indian Territory, by which a memorial was unanimously adopted for presentation to this Congress con-

cerning the case of your memorialist, the concluding paragraph of which is in these words:

> We also respectfully ask that all further proceedings in the case may be stayed, and penalties and forfeitures growing out of it be remitted, as the Supreme Court conclude their opinion, correctly as your memorialists fully believe, by saying, "We are glad to know that there is no ground for any imputation upon the integrity or good faith of the claimants who prosecuted this writ of error. In a case not free from doubt and difficulty they acted under a misapprehension of their legal rights," and as in duty bound your memorialists will ever pray, &c.

Your memorialist further represents that the Bureau of Internal Revenue has as yet declined to recommend a dismissal of the criminal proceedings against him, and that the Solicitor of the Treasury has already given his opinion in writing against any compromise of the civil proceedings against him.

Your memorialist further represents that the only points of difference between his case and the cases of citizens of the United States indicted with him are, that the proof showed the latter had intentionally defrauded the revenue by smuggling unstamped tobacco into a collection district, while it is admitted your memorialist had never done so; and that your memorialist appealed to the Supreme Court, while the said citizens of the United States did not do so.

The only reason, then, your memorialist respectfully represents, why he is still held to answer criminally in his case, and why all propositions of compromise in the civil branch of his case have been peremptorily refused, is, that your memorialist had the presumption to contest his legal right in the courts of this country.

Your memorialist solemnly avers that he did not know he was doing wrong when he appealed to the Supreme Court for a final decision in his case; that he did not do so for the purpose of vexing or annoying the *United States Government, but only to obtain the highest judicial advice* as to whether your memorialist and Commissioners Rollins and Delano were correct in their interpretation of the law.

Your memorialist further represents that he is the only Indian on record who has ever been known to embark in the business of manufacturing; that he flattered himself he would demonstrate to the world that Indian civilization was not a failure; but that, under the benign and fostering care of this great country, he would present to his red brethren a notable example of the benefits of industry, enterprise, and energy.

That your memorialist was ambitious not alone to amass wealth, but to rank first of his race who had ever rivaled the enterprise and success of the white man.

Your memorialist, however, with indescribable mortification represents, that instead of receiving the plaudits, congratulations, and commendations of the country for having established the ability of an Indian to manufacture products for his own people, the doors of the penitentiary in a neighboring State are thrown wide open to receive him; that heads of bureaus and departments frown upon him as a willful violator of the laws, and decline to extend to him that leniency which has been shown citizens of the United States charged with more aggravated offenses.

Your memorialist, as a Cherokee Indian, feels grateful to the President of the United States and to the Secretary of the Interior for the recommendation to Congress to establish a territorial government over the Indian country, feeling confident that by such a wise and just course he and all his Indian brethren will be invested with all the rights and privileges of citizens of this great republic, they being already subjected to the responsibilities of such.

Your memorialist, however, respectfully insists that it would be unjust to punish him further for following the advice of Commissioners Rollins and Delano, when every fact and word of record in his case demonstrates that he has acted throughout in good faith, with no intention whatever of defrauding the revenue of the United States, but rather with an honest and reasonable conviction that he was pursuing a legitimate business.

Your memorialist therefore requests that Congress will afford him such relief as the justice of his case may seem to require.

E. C. BOUDINOT.