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INDIANS—CHEROKEE.

MEMORIAL

OF

A COUNCIL HELD AT RUNNING WATERS,

*In the Cherokee nation, in Georgia, November 28, 1834, on behalf of those members of the Cherokee tribe of Indians who are desirous of removing west of the Mississippi.*

JANUARY 19, 1835.

Referred to the Committee on Indian Affairs.

*To the honorable the Senate and House of Representatives of the United States :*

The memorial of the undersigned, in behalf of the people of the Cherokee nation who are in favor of emigration without the limits of the States and Territories, there to enjoy the blessings of liberty as a free and independent nation, to be in amity with the United States, and to dwell under their protection, respectfully showeth to your honorable bodies: That, from time immemorial, the Cherokee nation have composed a sovereign and independent State, and in this character have been repeatedly recognised, and still stand recognised, by the United States, in the various treaties subsisting between their nation and the United States.

That, long before the approach of the white men of Europe to the Western Continent, the Cherokee nation were the occupants and owners of the territory on which they now reside, deriving their title from the Great Spirit, who is the common father of the human family, and to whom the earth belongs.

That on this territory they, and their ancestors, have ever been sole and exclusive masters, until recently, and were governed of right by no other laws, usages, and customs, but such as they themselves thought proper to ordain and appoint.

That upon this territory the United States, by various treaties, entered into from time to time, promised to protect the Cherokee people, and restrain the white people from intruding upon their lands. In addition to this, the United States encouraged the promotion of the arts of civilization, and the education of the Cherokees in the knowledge of letters and christianity; in all of which so rapid was their improvement that, in a

short time, they organized a republican form of government, based upon a regular code of laws and a constitution.

In consequence of a wonderful discovery by a great Indian genius, a Cherokee alphabet has been formed, in which portions of scripture and church hymns have been translated, and now, in their own language, the worship of God is solemnly conducted by the Cherokees themselves.

Instead of roving savages, they have become herdsmen and agriculturists, and now depend upon the productions of their farms for subsistence.

In the full tide of this successful improvement, all their hopes of happiness have been blasted, in consequence of the extension, by force, of the jurisdiction of the States in whose chartered limits the Cherokee country is situated. It is not our purpose now, which would be useless, to discuss the illegality of these compulsive measures of the States.

In the midst of the painful feelings which the destruction of our Government creates in our bosoms, we also perceive, in looking over the map of the United States, that the same melancholy fate has attended the other aboriginal tribes. On this side of the Mississippi scarcely a solitary council fire blazes under the heavens. It is now a matter beyond dispute, that the existence of Indian nations, as States, within the United States, has been contrary to that system, because it has refused to fulfil its faith pledged to us in the treaties.

It is well known that our applications to the President, Congress, and the Supreme Court, to interpose the United States authority in our behalf, have all proved fruitless, as well as that the decisions of the Supreme Court in behalf of individuals claiming the right of protection under the Cherokee laws and treaties, have been disregarded by the State of Georgia. Writs of error, obtained in behalf of two of our citizens, have been treated with contempt, and they have suffered an ignominious death on the gallows. One is festering, still fresh in his grave, who has been executed in the centre of our country, a melancholy proof of the fallen condition of our nation. There is some consolation, in the midst of these calamities, to reflect that we have exerted all the means we had in our power to apply for relief; and that the voice of eloquence and humanity has been heard in our behalf in the halls of Congress.

But, now, our earliest friends have told us that it is in vain to hope for the restoration of our rights.

In view of all these circumstances, we have been compelled to the hard case of choosing an alternative, either of remaining here in a state of vassalage to the States, or that of emigrating to the Western country, and uniting ourselves with the destiny of those who have heretofore gone under previous *incidental* treaties.

In approaching this crisis of our national history, we feel pangs of heart which all nations must feel who look for the last time on the homes of childhood. Language fails to express the sensibilities of the mind when it turns from the country in which we first drew breath to look forward to expend the remainder of our days in exile in a distant land.

Did we act in such emergencies as these for our private comfort, we might choose to die here, and bury our bones in the land of our fathers, where the white people might desecrate our tombs with the ploughshare of the farmer. But when we think of our children, and the duties we owe to posterity, we can never choose to be slaves, but will, at all ha-

zards, seek freedom in the far regions of the West. Although the scars of oppression can never be obliterated from our hearts while we live, yet our children, whose minds are tender, may enjoy happiness in another land. In the decision which we have made on this subject, we have taken the unhappy condition of our people, as individuals, into consideration. It is not to be disguised that there are in existence two parties among our people, whose policies are the antipodes of each other. Since the suppression of our Government, no elections have been held among us, as our constitution requires, which is herewith submitted. (A.)

The people are then necessarily thrown into their original elements. The party who hold the councils at Red Clay have kept themselves in perpetual office by a resolution enacted by themselves. They are willing to take an individual standing in the States, and become citizens. Heretofore, as you will perceive, in looking at the treaty of 1819, the leaders of this party have already received valuable reservations in fee simple.

They hold their councils in the chartered limits of Tennessee. The party which we represent are not in favor of taking reservations of land, and abandoning the political existence of the nation, which they desire, with the assistance of the United States, to transplant to the West.

When we reflect upon the character of our people in general, their ignorance, weakness, and total incapacity to contend in competition with the white man for wealth, science, and fame; and when we reflect on the fearful odds against which we have to run our career, laws expressly made to discredit us as men, with no legal rights to the soil, and all the unrelenting prejudices against our language and color in full force, we must believe that the scheme of *amalgamation* with our oppressors is too horrid for a serious contemplation. At the commencement of our difficulties with the States, what was the chief end of our hopes and cares? Was it not more for the right of self-government, in which is comprehended elements suitable for the prosperity and happiness of man? The inanimate earth beneath our feet was of minor consideration.

Without law in the States, we are not more favored than the poor African, who toils out his life under the lashes of his master. He is, in fact, in a better condition, if any better can be said of a slave's life, than are, for the interest of his master protects him from personal injury. The reverse is the fact in regard to us, for it is the interest of the whites to see us dead, that the vacancy thus made upon the right of occupancy of the land may be filled by themselves. Our ill-fated people already sink before the progress of the white people's settlements. If they are seen in their villages and cross-roads, their stores and taverns, they are objects which mantle the cheeks of the honest man with shame, and modesty blushes at their degradation. If the energies of virtue are thus depressed in the kindling of the wood, what will they be in the heated furnace?

It is needless to enlarge in this view of the unhappy condition of our continuance here among the whites. The same consequences will overwhelm all nations who may be subjugated in the same terms of denationalization, without being permitted the privilege of participating in the political rights of the conqueror.

Your memorialists, therefore, can look to no other people than that of

the people of the United States, through their Representatives in Congress, to preserve them from destruction. In this application we approach that august tribunal, which, in conjunction with the President, has the power to speak for our preservation, and it is accomplished. We humbly conceive that the system heretofore pursued in removing our people to the West is defective. It certainly requires an improvement; but by all means the political condition of our nation in the West should be preserved by legal enactments, which, under all circumstances, should secure the right of self-government to ourselves, so far as Congress can secure it to us under the constitution of the United States. The territory now in the possession of the Cherokees, West, is considered to be incompetent for the whole nation, East and West, when united, as will ultimately be the case. An additional extent of habitable land should be given and secured to the Cherokee nation, according to the promises of the United States; the whole of it should be granted in fee simple.

The spirit which dictated the Choctaw treaty of the 27th September, 1830, containing the following stipulation, seems to be the right one, and we desire that it might be extended to our people. "The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw nation a tract of country west of the Mississippi river, in fee simple, to them and their descendants, to enure to them while they shall exist as a nation and live on it, beginning," &c. "That the Government and people of the United States are hereby obliged to secure to the said Choctaw nation of red people the jurisdiction and government of all the persons and property within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw nation of red people, and their descendants, and that no part of the land granted them shall ever be embraced in any Territory or State; but the United States shall forever secure said Choctaw nation from and against all laws except such as, from time to time, may be enacted in their own national councils, not inconsistent with the constitution, treaties, and laws of the United States, and except such as may and have been enacted by Congress under the constitution as required to exercise a legislation over Indian affairs."

And "the United States are obliged to protect the Choctaws from domestic strife and foreign enemies, on the same principles that the citizens of the United States are protected," &c. To secure the liberties of the Cherokee people to their satisfaction, it would seem that the duties of the Government, in regard to their protection, should be defined by law, and at least to allow them the same liberty they enjoyed under the treaties, before their rights were invaded by the States.

The military should have no power to arrest a Cherokee in their own limits; and no coercive measures should be adopted by the United States until proper demands are made for any violations which may be committed against the treaties and laws of the United States by any Indian citizen.

We have, with great pleasure, read two bills reported by the Hon. Horace Everett, in the House of Representatives, which were passed the last session, entitled "A bill to provide for the organization of the Department of Indian Affairs," and a bill "to regulate trade and intercourse with the Indian tribes, and preserve peace on the frontiers," as

an indication of the intention of the Government to protect the Indians; and, as it purports to be an approximation of a better system, we hail the beginning of congressional legislation on Indian affairs as the harbinger of great good to the aboriginal nations.

It will perhaps be readily admitted that, of all the Indian tribes, the Cherokee has made the greatest progress in regard to intellectual, moral, and religious improvement; but, by contesting for the right of self-government too long in their present location, they have not, by treaty, secured the advantages which others have, both in the quantity of land and funded privileges for the purposes of education and the support of their Government. Scarcely would a Cherokee be found willing to emigrate to the West if his rights of soil and liberty were protected, but it is a mistaken idea that a majority would prefer to remain here at the hazard of State subjection.

We have taken pains to ascertain the sentiments of our people on the subject, and it is almost universally agreed that a great majority would remove if they were convinced that they could not be restored to their rights of self-government.

If, then, it is the opinion of Congress that the tide of white population and State jurisdiction, which is pressing upon us, cannot be restrained, it would be the greatest act of humanity to devise immediate measures to remove our people upon as liberal terms as the General Government can afford. We conceive that it would not be asking too much of the Government to grant the Cherokees in the West, when with those who are already there, and who shall hereafter remove from the majority, a perpetual annuity, in amount equal to the Creeks, which shall be under the direction of the Cherokee nation. In addition to this, to do justice to Indians, besides for the payment of their improvements, they should be allowed a liberal sum of money to each individual, from the child up to old age, on their arrival West, in consideration of the right of soil they are compelled to abandon, as well as the hardships they have to endure. Such a provision as that would equalize the compensation to the Indians. Of the poorer sort of our people, the value of their huts and small improvements would be so trifling that the greatest body, under the present system, must arrive in a beggarly condition in the West. The poor Indian is as much entitled to the proportion of the price of his land as the *half-breed*, who has obtained a valuable reservation in former treaties, and will do it again if the humanity of the United States is not thus interposed. The system of reservations works most unequally and mischievously upon our illiterate people. For, a more striking proof of this we cannot have than the spectacle which the poor Creeks exhibit to the eye of benevolence. The Indians are comparatively few in number, and, in the transportation through the distance to their new homes, their comfort and health should be consulted. Tents ought to be furnished, and baggage wagons, in the proportion of one to twenty or twenty-five souls, instead of fifty, should be allowed: even this is too small an allowance to take their necessary baggage. Under the present system only \$18 are allowed to defray the expenses of each individual to the Western country, over a distance of eight hundred miles, as they will be obliged to travel. We must necessarily take with us females in a delicate condition, infants, invalids, children, and decre-

pit old persons. Will not public sentiment of the United States justify a liberal appropriation in this respect? Our habits are not like the roving wild Indian, who can bear the inclemencies of the weather, but we must go out of comfortable houses and warm beds to undergo the hardships of a long journey, and, on our arrival there, must live in camp until we can erect our buildings.

We believe that the President of the United States is disposed to be as liberal as possible, but he cannot transcend the instructions of the law. All of this, and more of the details which are connected with this system, will readily occur to the consideration of Congress. We leave it to its magnanimity and humanity.

Your memorialists would further show to your honorable bodies, that upwards of one thousand of our countrymen emigrated to the West last season, and, while the greatest portion were ascending the Arkansas river, were providentially visited by that awful pestilence which has inflicted death upon the people of some of the portions of the United States. This deadly cholera fell as a bolt upon some of the lives of these emigrants and their slaves, which were of great value to their owners. In consequence of the hardships of the Indians, connected with the circumstances of the emigrants, it would afford such emigrants as have lost their slaves a great relief to receive compensation from Congress. On the melancholy fate of our countrymen, Lieutenant Joseph W. Harris, of the United States army, has reported to the War Department, to which we refer Congress for information.

Your memorialists feel that their nation has reached a crisis, which it must pass either to safety or destruction. Under the mysterious providence of God, our destiny is in your hands. From a distant shore your ancestors approached our fathers, and stood by them until their descendants have become a great nation, and we have become weak. Long before this crisis which has happened to us, your nation promised us protection, and our nation placed itself under the shadow of your wings. Upon this location that protection has been withdrawn, and we are now as suppliants at your feet. We plead for ourselves and our children. We beg for a country and a secure political existence upon it. An extraordinary occasion has induced us to make this call upon your magnanimity. Will the Congress reciprocate and carry out the sentiments of the President of the United States, in his message of the 8th December, 1829? We beg leave to adopt his language in closing this memorial.

“As a means of effecting this end, I suggest for your consideration the propriety of setting apart an ample district west of the Mississippi, and without the limits of any State or Territory now formed, to be guaranteed to the Indian tribes as long as they shall occupy it; each tribe having a distinct control over the portion designed for its use. *There* they may be secured in a government of their own choice, subject to no control from the United States, other than such as may be necessary to preserve peace on the frontier and between the several tribes. *There* the benevolent may endeavor to teach them the arts of civilization, and, by promoting union and harmony among them, to raise up an interesting commonwealth, destined to perpetuate the race, and attest the humanity and the justice of this Government.”

Major Ridge	his x mark.	C. W. Hicks	
John Fields, sen.	x	Joseph A. Foreman	
Charles Moore	x	A. McCoy	
Bear Meat	x	Ezekiel McLaughlin	
Watit	x	Jacob West	
Te-sah-ta-skee	x	T. J. Pack	
William Silk	x	William Hicks	
The Hammer	x	Luther Moore	his x mark.
Noisy Water	x	John Wayne	x
Smoke Smith	x	Reader Moore	x
John Fields, jr.	x	John Smith	
E-te-cun-a-hee	x	Jacob Nicholson	
Bear up Tree	x	John West	
Sun-an-hee	x	W. A. Davis	
Te-cah-e-skee, or		Elijah Moore	
Otter Lifter	x	John Cockran	x
The Gourd	x	Archilla Smith	x
James Fields	x	Walter Ridge	x
Scon-e-ta-kee	x	Nathan Wolf	x
Ground Mole	x	Moses Harris	x
David Scou-e-tah-hee	x	Alexander Brown	x
Vincent Gould	x	Charles H. Vann	
Rain Crow	x	Ezekiel West	
Te-can-ee, yeeskee	x	Geo. H. West	
John Ridge		Justice Fields	x
Elias Boudinot		Jonas Woodcock	x
S. W. Bell		Timberlake	x
S. Watit		Young Pigs	x
John L. McCoy			

RUNNING WATERS, CHEROKEE NATION, GEO., *November 28, 1834.*

WASHINGTON CITY, *January, 1835.*

We certify that the foregoing signatures were made in council in our presence. Those who could not write their names in English made their marks, and twenty of the signers wrote with their own hands. The original signatures are submitted with the memorial to the Senate.

JOHN RIDGE,

ARCHILLA SMITH, his x mark,

ELIAS BOUDINOT,

*Cherokee Delegates.*

WASHINGTON CITY, *January 14, 1835.*

*To the honorable the Senate and House of Representatives :*

The resolutions herewith submitted were adopted at a council held on the 27th and 28th November, 1834, composed of such Cherokees as are opposed to submitting to the laws of the States, and who consider a removal as the only alternative to save their people from ruin and de-



gradation. By a vote of the council, it was ordered that the resolutions be submitted to Congress as part of the memorial.

JOHN RIDGE,  
ARCHILLA SMITH, his × mark,  
ELIAS BOUDINOT,  
*Cherokee Delegates.*

*Resolutions passed in council of those Chiefs and leading men who are opposed to State jurisdiction, and in favor of emigration, on the 27th November, 1834.*

Whereas a crisis of the utmost importance in the affairs of the Cherokee people has arrived, requiring from every individual the most serious reflection, and the expression of views as to the present condition and future prospects of the nation : And whereas a portion of the Cherokees have entertained opinions which have been represented as hostile to the true interests and happiness of the Cherokee people, merely because they have not agreed with the chiefs and leading men ; and as those opinions have not heretofore been properly made known, therefore,

*Resolved,* That it is our decided opinion, founded upon the melancholy experience of the Cherokees within the last two years, and upon facts which history has furnished us in regard to other Indian nations, that our people cannot exist amidst a white population, subject to laws which they have no hand in making, and which they do not understand. That the suppression of the Cherokee Government, which connected this people in a distinct community, will not only check their progress in improvement and advancement in knowledge, but, by means of numerous influences and temptations which this new state of things has created, will completely destroy every thing like civilization among them, and ultimately reduce them to poverty, misery, and wretchedness.

*Resolved,* That, considering the progress of State authorities in this country, the distribution and settlement of the lands, the organization of counties, the erection of county seats and court-houses, and other indications of a determined course on the part of the surrounding States ; and considering, on the other hand, the repeated refusal of the President and Congress of the United States to interfere in our behalf, we have come to the conclusion that this nation cannot be reinstated in its present location, and that the question left to us, and every Cherokee, is, whether it is more desirable to remain here with all the embarrassments with which we must be surrounded, or seek a country where *we may* enjoy our own laws, and live under our own vine and fig tree.

*Resolved,* That, in expressing the opinion that this nation cannot be reinstated, we do it from a thorough conviction of its truth. That we never will encourage our confiding people with hopes that cannot be realized, and with expectations that will assuredly be disappointed. That however unwelcome and painful the truth may be to them, and however unkindly it may be received from us, we cannot, as *patriots* and well-wishers of the Indian race, shrink from doing our duty in expressing our decided convictions. That we scorn the charge of selfishness and a want of patriotic feelings alleged against us by some of our countrymen, while

we can appeal to our consciences and the Searcher of all hearts for the rectitude of our motives and intentions.

*Resolved*, That although *we love the land* of our fathers, and should leave the places of our nativity with as much regret as any of our citizens, we consider the lot of the *exile* immeasurably more to be preferred than a submission to the laws of the States, and thus becoming witnesses of the ruin and degradation of the Cherokee people.

*Resolved*, That we are firmly of the opinion that a large majority of the Cherokee people would prefer a removal, if the true state of their condition was properly made known to them. We believe that if they were told that they had nothing to expect from further efforts to regain their rights as *a distinct community*, and that the only alternative left to them is either to remain amidst a white population, subject to the white man's laws, or to remove to another country where *they may* enjoy peace and happiness, they would unhesitatingly prefer the latter.

*Resolved*, That we were desirous to leave to our chiefs and leading men to seek a country for their people ; but, as they have thought proper not to do any thing towards the ultimate removal of the nation, we know of none to which the Cherokees can go as an asylum, but that possessed by our brethren west of the Mississippi ; that we are willing to unite with them under a proper guaranty from the United States that the lands shall be secured to us, and that we shall be governed by our own laws and regulations.

*Resolved*, That we consider the policy pursued by the Red Clay council, in continuing a useless struggle from year to year, as destructive to the present peace and future happiness of the Cherokees, because it is evident to every observer that, while the struggle is going on, their difficulties will be accumulating, until they are ruined in their property and character, and the only remedy that will then be applied in their case will be *submission to the laws of the States*, by taking reservations of land and amalgamating with the whites.

*Resolved*, That we consider the fate of our poor brethren, the Creeks, to be a sufficient warning to all those who may finally subject the Cherokees to the laws of the States by giving them reservations.

*Resolved*, That we never will consent to have our own rights and the rights of our posterity sold "prospectively" to the laws of the States by our chiefs, in any compact or "compromise" into which they may choose to enter with the Government. That we cannot be satisfied with any thing less than a release from State legislation ; but that, while we do not intend to have our political interests compromised, we shall not oppose those who prefer to remain subject to State laws.

*Resolved*, That we were disposed to contend for what we considered to be our rights as long as there was any hope of relief *to the nation* ; but that we never can consent to the waste of our public moneys in instituting suits at law, which will result only to individual advantage.

*Resolved*, That it is with great surprise and mortification we have noticed the idea attempted to be conveyed to the minds of our people, that the *nation* can be relieved by the courts of Georgia. That we regard appealing to those courts by the nation for redress as an entire departure from the true policy maintained by the Cherokees in their struggle for national existence.

And whereas a delegation appointed by the Red Clay council, and

clothed with discretionary powers, will shortly proceed to Washington, upon business which may affect the rights and interests of every Cherokee; and whereas we have every reason to believe that the views of those who wish to remove will not be represented in that delegation; and whereas, from letters addressed to the Executive of the United States by a former deputation, from which the following is extracted: "Will you agree to enter into an arrangement on the basis of the Cherokees becoming prospectively citizens of the United States, provided the nation will cede to the United States a portion of its territory for the use of Georgia? and will you agree to have the laws and treaties executed and enforced, for the effectual protection of the nation, on the remainder of its territory, for a definite period, with the understanding that after that period the Cherokees are to be subjected to the laws of the States within whose limits they may be, and to take an individual standing as citizens of the United States, and to dispose of our surplus lands in such a manner as may be agreed upon?" from which it is apprehended that attempts will be made to enter into an arrangement with the State of Georgia and the General Government, upon the principle of relinquishing a portion of the lands, and prospectively submitting the Cherokees to the laws of the States: Therefore,

*Resolved*, That it is expedient to appoint a delegation who will represent the views and wishes of those who do not intend to remain under the laws of the States, but will prefer to remove to a country where the Cherokees can be preserved as a distinct community; that it is important that this delegation should proceed to Washington as soon as possible, to lay before the President and before Congress, by a memorial, the views expressed in the foregoing resolutions, and to ask for such rights and privileges as are calculated to render those Cherokees who are disposed to remove, contented and happy in their new homes.

*Resolved*, That, in appointing a delegation to represent us, we do it not from a spirit of opposition, not wishing to interfere with any efforts to relieve the Cherokees, as a distinct community, from the operation of State laws: but when that original policy has been departed from, and propositions have been made by a deputation to sell a portion of the lands, and to submit prospectively to State jurisdiction, it behooves us, without injuring any of our citizens, to watch over our own rights, and the rights of all those who wish to perpetuate the Cherokees as a distinct community.

*Resolved*, That the foregoing resolutions be signed by the chairman and secretary of this council.

ELIAS BOUDINOT, *Chairman.*

RUNNING WATERS, November 28, 1834.

A. McCoy, *Secretary.*

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A.

*Constitution of the Cherokee Nation, formed by a convention of Delegates from the several districts, at New Echota, July, 1827.*

We, the representatives of the people of the Cherokee nation, in convention assembled, in order to establish justice, ensure tranquillity, pro-

mote our common welfare, and secure to ourselves and our posterity the blessings of liberty ; acknowledging, with humility and gratitude, the goodness of the Sovereign Ruler of the Universe, in offering us an opportunity so favorable to the design, and imploring his aid and direction in its accomplishment, do ordain and establish this constitution for the government of the Cherokee nation.

## ARTICLE I.

SEC. 1. The boundaries of this nation, embracing the lands solemnly guarantied and reserved forever to the Cherokee nation by the treaties concluded with the United States, are as follows, and shall forever hereafter remain unalterably the same, to wit : Beginning on the north bank of Tennessee river, at the upper part of the Chickasaw old fields ; thence, along the main channel of said river, including all the islands therein, to the mouth of the Hiwassee river ; thence, up the main channel of said river, including islands, to the first hill which closes in on said river about two miles above Hiwassee old town ; thence, along the ridge which divides the waters of the Hiwassee and Little Tellico, to the Tennessee river at Tallassee ; thence, along the main channel, including islands, to the junction of the Cowee and Nanteyalee ; thence, along the ridge in the fork of said river, to the top of the blue ridge ; thence, along the blue ridge, to the Unicoy turnpike road ; thence, by a straight line, to the main source of the Chestatee ; thence, along its main channel, including islands, to the Chattahoochee ; and thence, down the same, to the Creek boundary at Buzzard Roost ; thence, along the boundary line which separates this and the Creek nation, to a point on the Coosa river opposite the mouth of Wills creek ; thence, down along the south bank of the same, to a point opposite to Fort Strother ; thence, up the river, to the mouth of Wills creek ; thence, up along the east bank of said creek, to the west branch thereof, and up the same to its source ; and thence, along the ridge which separates the Tombeckbee and Tennessee waters, to a point on the top of said ridge ; thence due north to Camp Coffee, on Tennessee river, which is opposite the Chickasaw island ; thence to the place of beginning.

SEC. 2. The sovereignty and jurisdiction of this Government shall extend over the country within the boundaries above described, and the lands therein are, and shall remain, the common property of the nation ; but the improvements made thereon, and in the possession of the citizens of the nation, are the exclusive and indefeasible property of the citizens respectively who made, or may rightfully be in possession of them : *Provided*, That the citizens of the nation, possessing exclusive and indefeasible right to their respective improvements, as expressed in this article, shall possess no right nor power to dispose of their improvements in any manner whatever to the United States, individual States, nor to individual citizens thereof ; and that, whenever any such citizen or citizens shall remove with their effects out of the limits of this nation, and become citizens of any other Government, all their rights and privileges as citizens of this nation shall cease : *Provided, nevertheless*, That the Legislature shall have power to readmit, by law, to all the rights of citizenship, any such person or persons who may at any time desire to

return to the nation, on their memorializing the general council for such readmission. Moreover, the legislature shall have power to adopt such laws and regulations as its wisdom may deem expedient and proper, to prevent the citizens from monopolizing improvements with the view of speculation.

#### ARTICLE II.

SEC. 1. The power of this Government shall be divided into three distinct departments—the Legislative, the Executive, and the Judicial.

SEC. 2. No person or persons, belonging to one of these departments, shall exercise any of the powers properly belonging to either of the others, except in the cases hereinafter expressly directed or permitted.

#### ARTICLE III.

SEC. 1. The legislative power shall be vested in two distinct branches—a Committee, and a Council; each to have a negative on the other, and both to be styled the General Council of the Cherokee Nation, and the style of their acts and laws shall be,

“Resolved by the Committee and Council in General Council convened.”

SEC. 2. The Cherokee nation, as laid off into eight districts, shall so remain.

SEC. 3. The committee shall consist of two members from each district, and the council shall consist of three members from each district, to be chosen by the qualified electors of their respective districts, for two years; and the elections to be held in every district on the first Monday in August, for the year 1828, and every succeeding two years thereafter; and the general council shall be held once a year, to be convened on the second Monday of October in each year, at New Echota.

SEC. 4. No person shall be eligible to a seat in general council, but a free Cherokee male citizen, who shall have attained to the age of twenty-five years. The descendants of Cherokee men by all free women, except the African race, whose parents may have been living together as man and wife, according to the customs and laws of this nation, shall be entitled to all the rights and privileges of this nation, as well as the posterity of Cherokee women by all free men. No person who is of negro or mulatto parentage, either by the father or mother side, shall be eligible to hold any office of profit, honor, or trust under this Government.

SEC. 5. The electors and members of the general council shall, in all cases except those of treason, felony, or breach of the peace, be privileged from arrest during their attendance at election, and at the general council, and in going to, and returning from, the same.

SEC. 6. In all elections by the people, the electors shall vote *viva voce*. Electors for members to the general council for 1828 shall be held at the places of holding the several courts, and at the other two precincts in each district which are designated by the law under which the members of this convention were elected; and the district judges shall superintend the elections within the precincts of their respective court-houses,

and the marshals and sheriffs shall superintend within the precincts which may be assigned them by the circuit judges of their respective districts, together with one other person, who shall be appointed by the circuit judges for each precinct within their respective districts; and the circuit judges shall also appoint a clerk to each precinct. The superintendents and clerks shall, on the Wednesday morning succeeding the election, assemble at their respective court-houses, and proceed to examine and ascertain the true state of the polls, and shall issue to each member, duly elected, a certificate; and also make an official return of the state of the polls of election to the principal chief, and it shall be the duty of the sheriffs to deliver the same to the Executive: *Provided, nevertheless,* The general council shall have power, after the election of 1828, to regulate, by law, the precincts and superintendents and clerks of elections in the several districts.

SEC. 7. All free male citizens, (excepting negroes and descendants of white and Indian men by negro women who may have been set free,) who shall have attained to the age of eighteen years, shall be equally entitled to vote at all public elections.

SEC. 8. Each house of the general council shall judge of the qualifications and returns of its own members.

SEC. 9. Each house of the general council may determine the rules of its proceedings, punish a member for disorderly behavior, and, with the concurrence of two-thirds, expel a member, but not a second time for the same cause.

SEC. 10. Each house of the general council, when assembled, shall choose its own officers; a majority of each house shall constitute a quorum to do business, but a smaller number may adjourn from day to day, and compel the attendance of absent members in such manner, and under such penalty, as each house may prescribe.

SEC. 11. The members of the committee shall each receive from the public treasury a compensation for their services, which shall be *two dollars and fifty cents* per day during their attendance at the general council; and the members of the council shall each receive *two dollars* per day for their services during their attendance at the general council: *Provided,* That the same may be increased or diminished by law; but no alteration shall take effect during the period of service of the members of the general council, by whom such alteration shall have been made.

SEC. 12. The general council shall regulate by law, by whom, and in what manner, writs of election shall be issued to fill the vacancies which may happen in either branch thereof.

SEC. 13. Each member of the general council, before he takes his seat, shall take the following oath, or affirmation, to wit: "I, A B, do solemnly swear (or affirm, as the case may be) that I have not obtained my election by bribery, threats, or any undue and unlawful means used by myself, or others, by my desire or approbation, for that purpose; that I consider myself constitutionally qualified as a member of and that, on all questions and measures which may come before me, I will so give my vote, and so conduct myself, as may, in my judgment, appear most conducive to the interest and prosperity of this nation; and that I will bear true faith and allegiance to the same, and to the utmost of my ability and power observe, conform to, support, and defend the constitution thereof."

SEC. 14. No person who may be convicted of felony before any court of this nation, shall be eligible to any office or appointment of honor, profit, or trust, within this nation.

SEC. 15. The general council shall have power to make all laws and regulations which they shall deem necessary and proper for the good of the nation, which shall not be contrary to this constitution.

SEC. 16. It shall be the duty of the general council to pass such laws as may be necessary and proper, to decide differences by arbitrators to be appointed by the parties who may choose that summary mode of adjustment.

SEC. 17. No power of suspending the laws of this nation shall be exercised, unless by the legislature or its authority.

SEC. 18. No retrospective law, nor any law impairing the obligations of contracts, shall be passed.

SEC. 19. The legislature shall have power to make laws for laying and collecting taxes, for the purpose of raising a revenue.

SEC. 20. All bills making appropriations shall originate in the committee, but the council may propose amendments, or reject the same.

SEC. 21. All other bills may originate in either house, subject to the concurrence or rejection of the other.

SEC. 22. All acknowledged treaties shall be the supreme law of the land.

SEC. 23. The general council shall have the sole power of deciding on the construction of all treaty stipulations.

SEC. 24. The council shall have the sole power of impeaching.

SEC. 25. All impeachments shall be tried by the committee: when sitting for that purpose, the members shall be upon oath or affirmation; and no person shall be convicted without the concurrence of two-thirds of the members present.

SEC. 26. The principal chief, assistant principal chief, and all civil officers under this nation, shall be liable to impeachment for any misdemeanor in office; but judgment, in such cases, shall not extend further than removal from office, and disqualification to hold any office of honor, trust, or profit, under this nation. The party, whether convicted or acquitted, shall, nevertheless, be liable to indictment, trial, judgment, and punishment, according to law.

#### ARTICLE IV.

SEC. 1. The supreme executive power of this nation shall be vested in a principal chief, who shall be chosen by the general council, and shall hold his office four years, to be elected as follows: The general council, by a joint vote, shall, at their second annual session after the rising of this convention, and at every fourth annual session thereafter, on the second day after the houses shall be organized, and competent to proceed to business, elect a principal chief.

SEC. 2. No person except a natural born citizen shall be eligible to the office of principal chief; neither shall any person be eligible to that office, who shall not have attained to the age of thirty-five years.

SEC. 3. There shall also be chosen at the same time, by the general council, in the same manner, for four years, an assistant principal chief.

SEC. 4. In case of the removal of the principal chief from office, or of his death, resignation, or inability to discharge the powers and duties of the said office, the same shall devolve on the assistant principal chief, until the inability be removed, or the vacancy filled by the general council.

SEC. 5. The general council may by law provide for the case of removal, death, resignation, or inability of both the principal and assistant principal chiefs, declaring what officer shall then act as principal chief until the disability be removed, or a principal chief shall be elected.

SEC. 6. The principal chief and assistant principal chief shall, at stated times, receive for their services a compensation, which shall neither be increased nor diminished during the period for which they shall have been elected; and they shall not receive, within that period, any other emolument from the Cherokee nation, or any other Government.

SEC. 7. Before the principal chief enters on the execution of his office, he shall take the following oath or affirmation: "I do solemnly swear (or affirm) that I will faithfully execute the office of principal chief of the Cherokee nation, and will, to the best of my ability, preserve, protect, and defend the constitution of the Cherokee nation."

SEC. 8. He may, on extraordinary occasions, convene the general council at the seat of Government.

SEC. 9. He shall, from time to time, give to the general council information of the state of the Government, and recommend to their consideration such measures as he may think expedient.

SEC. 10. He shall take care that the laws be faithfully executed.

SEC. 11. It shall be his duty to visit the different districts at least once in two years, to inform himself of the general condition of the country.

SEC. 12. The assistant principal chief shall, by virtue of his office, aid and advise the principal chief in the administration of the Government at all times during his continuance in office.

SEC. 13. Vacancies that may happen in offices the appointment of which is vested in the general council, shall be filled by the principal chief during the recess of the general council, by granting commissions, which shall expire at the end of the next session.

SEC. 14. Every bill which shall have passed both houses of the general council, shall, before it becomes a law, be presented to the principal chief of the Cherokee nation. If he approve, he shall sign it; but if not, he shall return it, with his objections, to that house in which it shall have originated, who shall enter the objections at large on their journals, and proceed to reconsider it. If, after such reconsideration, two-thirds of that house shall agree to pass the bill, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered, and, if approved by two-thirds of that house, it shall become a law. If any bill shall not be returned by the principal chief within five days (Sundays excepted) after it shall have been presented to him, the same shall be a law, in like manner as if he had signed it, unless the general council, by their adjournment, prevent its return, in which case it shall be a law, unless sent back within three days after their next meeting.

SEC. 15. Members of the general council, and all officers, executive and judicial, shall be bound by oath to support the constitution of this nation, and to perform the duties of their respective offices with fidelity.

SEC. 16. In case of disagreement between the two Houses with re-



spect to the time of adjournment, the principal chief shall have power to adjourn the general council to such a time as he thinks proper, provided it be not to a period beyond the next constitutional meeting of the same.

SEC. 17. The principal chief shall, during the sitting of the general council, attend at the seat of Government.

SEC. 18. There shall be a council, to consist of three men, to be appointed by the joint vote of both houses, to advise the principal chief in the executive part of the Government, whom the principal chief shall have full power, at his discretion, to assemble; and he, together with the assistant principal chief, and the counsellors, or a majority of them, may, from time to time, hold and keep a council for ordering and directing the affairs of the nation according to law.

SEC. 19. The members of the council shall be chosen for the term of one year.

SEC. 20. The resolutions and advice of the council shall be recorded in a register, and signed by the members agreeing thereto, which may be called for by either house of the general council; and any counsellor may enter his dissent to the resolution of the majority.

SEC. 21. The treasurer of the Cherokee nation shall be chosen by the joint vote of both houses of the general council, for the term of two years.

SEC. 22. The treasurer shall, before entering on the duties of his office, give bond to the nation, with sureties, to the satisfaction of the legislature, for the faithful discharge of his trust.

SEC. 23. No money shall be drawn from the treasury but by warrant from the principal chief, and in consequence of appropriations made by law.

SEC. 24. It shall be the duty of the treasurer to receive all public moneys, and to make a regular statement and account of the receipts and expenditures of all public moneys, at the annual session of the general council.

#### ARTICLE V.

SEC. 1. The judicial powers shall be vested in a supreme court, and such circuit and inferior courts as the general council may, from time to time, ordain and establish.

SEC. 2. The supreme court shall consist of three judges, any two of whom shall be a quorum.

SEC. 3. The judges of each shall hold their commissions four years, but any of them may be removed from office on the address of two-thirds of each house of the general council to the principal chief, for that purpose.

SEC. 4. The judges of the supreme court and circuit courts shall, at stated times, receive a compensation, which shall not be diminished during their continuance in office; but they shall receive no fees or perquisites of office, nor hold any other office of profit or trust under this nation or any other Power.

SEC. 5. No person shall be appointed a judge of any of the courts before he shall have attained to the age of thirty years, nor shall any person continue to execute the duties of any of the said offices after he shall have attained to the age of seventy years.

SEC. 6. The judges of the supreme and circuit courts shall be appointed by a joint vote of both houses of the general council.

SEC. 7. There shall be appointed in each district, under the legislative authority, as many justices of the peace as it may be deemed the public good requires, whose powers, duties, and duration in office, shall be clearly designated.

SEC. 8. The judges of the supreme court and circuit courts shall have complete criminal jurisdiction in such cases, and in such manner, as may be pointed out by law.

SEC. 9. Each court shall choose its own clerks, for the term of four years; but such clerks shall not be continued in office unless their qualifications shall be adjudged and approved of by the judges of the supreme court; and they shall be removable for breach of good behavior at any time, by the judges of their respective courts.

SEC. 10. No judge shall sit on trial of any cause where the parties shall be connected with him by affinity or consanguinity, except by consent of the parties. In case all the judges of the supreme court shall be interested in the event of any cause, or related to all or either of the parties, the legislature may provide by law for the selection of three men, of good character and knowledge, for the determination thereof, who shall be specially commissioned by the principal chief for the case.

SEC. 11. All writs and other process shall run, in the name of the Cherokee nation, and bear test, and be signed by the respective clerks.

SEC. 12. Indictments shall conclude, "against the peace and dignity of the Cherokee nation."

SEC. 13. The supreme court shall hold its session annually at the seat of Government, to be convened on the second Monday of October in each year.

SEC. 14. In all criminal prosecutions, the accused shall have the right of being heard, of demanding the nature and cause of the accusation against him, of meeting the witnesses face to face, of having compulsory process for obtaining witnesses in his favor, and, in prosecutions by indictment or information, a speedy public trial by an impartial jury of the vicinage; nor shall he be compelled to give evidence against himself.

SEC. 15. The people shall be secure in their persons, houses, papers, and possessions, from unreasonable seizures and searches; and no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without good cause, supported by oath or affirmation. All prisoners shall be bailable by sufficient securities, unless for capital offences, where the proof is evident, or presumption great.

#### ARTICLE VI.

SEC. 1. Whereas the ministers of the gospel are, by their profession, dedicated to the service of God, and the care of souls, and ought not to be diverted from the great duty of their function, therefore, no minister of the gospel, or public preacher, of any religious persuasion, whilst he continues in the exercise of his pastoral functions, shall be eligible to the office of principal chief, or a seat in either house of the general council.

SEC. 2. No person who denies the being of a God, or a future state of rewards and punishments, shall hold any office in the civil department of this nation.

SEC. 3. The free exercise of religious worship, and serving God, without distinction, shall forever be allowed within this nation: *Provided*, That this liberty of conscience shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this nation.

SEC. 4. Whenever the general council shall determine the expediency of appointing delegates or other public agents, for the purpose of transacting business with the Government of the United States, the principal chief shall have power to recommend, and, by the advice and consent of the committee, shall appoint and commission such delegates or public agents accordingly; and, on all matters of interest touching the rights of the citizens of this nation, which may require the attention of the United States Government, the principal chief shall keep up a friendly correspondence with that Government, through the medium of its proper officers.

SEC. 5. All commissions shall be in the name and by the authority of the Cherokee nation, and be sealed with the seal of the nation, and be signed by the principal chief.

The principal chief shall make use of his private seal until a national seal shall be provided.

SEC. 6. A sheriff shall be elected in each district, by the qualified electors thereof, who shall hold his office for the term of two years, unless sooner removed. Should a vacancy occur subsequent to an election, it shall be filled by the principal chief, as in other cases, and the person so appointed shall continue in office until the next general election, when such vacancy shall be filled by the qualified electors, and the sheriff then elected shall continue in office for two years.

SEC. 7. There shall be a marshal appointed by a joint vote of both houses of the general council for the term of four years, whose compensation and duties shall be regulated by law, and whose jurisdiction shall extend over the Cherokee nation.

SEC. 8. No person shall, for the same offence, be twice put in jeopardy of life or limb, nor shall any person's property be taken or applied to public use without his consent: *Provided*, That nothing in this clause shall be so construed as to impair the right and power of the general council to lay and collect taxes. All courts shall be open, and every person, for an injury done him in his property, person, or reputation, shall have remedy by due course of law.

SEC. 9. The right of trial by jury shall remain inviolate.

SEC. 10. Religion, morality, and knowledge being necessary to good government, the preservation of liberty, and the happiness of mankind, schools and the means of education shall forever be encouraged in this nation.

SEC. 11. The appointment of all officers, not otherwise directed by this constitution, shall be vested in the Legislature.

SEC. 12. All laws in force in this nation at the passing of this constitution shall so continue until altered or repealed by the Legislature, except where they are temporary, in which case they shall expire at the times respectively limited for their duration, if not continued by act of the Legislature.

SEC. 13. The general council may, at any time, propose such amendments to this constitution as two-thirds of each house shall deem expedient; and the principal chief shall issue a proclamation, directing all the civil officers of the several districts to promulgate the same as extensively as possible, within their respective districts, at least nine months previous to the next general election; and if, at the first session of the general council after such general election, two-thirds of each house shall, by yeas and nays, ratify such proposed amendments, they shall be valid to all intents and purposes as parts of this constitution: *Provided*, That such proposed amendments shall be read on three several days in each house, as well when the same are proposed as when they are finally ratified.

Done in convention, at New Echota, this twenty-sixth day of July, in the year of our Lord one thousand eight hundred and twenty-seven. In testimony whereof, we have, each of us, hereunto subscribed our names.

JOHN ROSS, *Pres. of Con.*

John Baldrige, his x mark.

*Delegate of Chickamauga dist.*

George Lowrey,

John Brown,

Edward Gunter,

*Del. of Chatooga dist.*

John Martin,

Joseph Vann,

Kelechulee, his x mark

*Del. of Coosawatee dist.*

Lewis Ross,

Thomas Foreman,

Hair Conrad, his x mark

*Del. of Amohee dist.*

James Daniel,

John Duncan,

*Del. of Hickory Log dist.*

Joseph Vann,

Thomas Pettitt, his x mark

John Beamer, his x mark

*Del. of Etowah dist.*

Ooclenota, his x mark

Wm. Boling, his x mark

*Del. of Taquoe dist.*

John Timson,

Situwakee, his x mark

Richard Walker, his x mark

*Del. of Aquohee dist.*

A. McCoy, *Sec. to Con.*