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Cherokee disturbances. Message from the President of the United States, relative to the Cherokee difficulties.

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CHEROKEE DISTURBANCES.

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES,

RELATIVE TO

The Cherokee difficulties.

APRIL 13, 1846.

Read, and referred to the Committee on Indian Affairs.

To the Senate and House of Representatives:

In my annual message of the 2d of December last, it was stated that serious difficulties of long standing continued to distract the several parties into which the Cherokee tribe of Indians is unhappily divided; that all the efforts of the government to adjust these difficulties had proved to be unsuccessful, and would probably remain so, without the aid of further legislation by Congress. Subsequent events have confirmed this opinion.

I communicate herewith, for the information of Congress, a report of the Secretary of War, transmitting a report of the Commissioner of Indian Affairs, with accompanying documents; together with memorials which have been received from the several bands, or parties, of the Cherokees themselves. It will be perceived that internal feuds still exist, which call for the prompt intervention of the government of the United States.

Since the meeting of Congress, several unprovoked murders have been committed by the stronger upon the weaker party of the tribe, which will probably remain unpunished by the Indian authorities, and there is reason to apprehend that similar outrages will continue to be perpetrated, unless restrained by the authorities of the United States.

Many of the weaker party have been compelled to seek refuge beyond the limits of the Indian country, and within the State of Arkansas, and are destitute of the means for their daily subsistence. The military forces of the United States stationed on the western frontier have been active in their exertions to suppress these outrages, and to execute the treaty of 1835, by which it is stipulated that "the United States agree to protect the Cherokee nation from domestic strife and foreign enemies, and against intestine wars between the several tribes."

These exertions of the army have proved to a great extent unavailing, for the reasons stated in the accompanying documents, including communications from the officer commanding at Fort Gibson.

I submit for the consideration of Congress, the propriety of making such amendments of the laws regulating intercourse with the Indian tribes as will subject to trial and punishment, in the courts of the United States.
States, all Indians guilty of murder, and such other felonies as may be
designated, when committed on other Indians within the jurisdiction of
the United States.

Such a modification of the existing laws is suggested, because, if offend-
ers against the laws of humanity in the Indian country are left to be pun-
ished by Indian laws, they will generally, if not always, be permitted to
escape with impunity. This has been the case in repeated instances
among the Cherokees. For years, unprovoked murders have been com-
nitted, and yet no effort has been made to bring the offenders to punish-
ment. Should this state of things continue, it is not difficult to foresee
that the weaker party will be finally destroyed. As the guardian of the
Indian tribes, the government of the United States is bound, by every
consideration of duty and humanity, to interpose to prevent such a dis-
aster.

From the examination which I have made into the actual state of things
in the Cherokee nation, I am satisfied that there is no probability that the
different bands or parties into which it is divided can ever again live to-
gether in peace and harmony, and that the well-being of the whole requires
that they should be separated and live under separate governments, as
distinct tribes.

That portion who emigrated to the west of the Mississippi prior to the
year 1819, commonly called the "Old Settlers," and that portion who
made the treaty of 1835, known as the "Treaty party," it is believed
would willingly unite, and could live together in harmony. The num-
ber of these, as nearly as can be estimated, is about one-third of the tribe.
The whole number of all the bands or parties does not probably exceed
twenty thousand. The country which they occupy embraces seven mil-
ions of acres of land, with the privilege of an outlet to the western limits
of the United States. This country is susceptible of division, and is large
enough for all.

I submit to Congress the propriety of either dividing the country which
they at present occupy, or of providing by law a new home for the one or
the other of the bands or parties now in hostile array against each other,
as the most effectual, if not the only means of preserving the weaker party
from massacre and total extermination. Should Congress favor the division
of the country, as suggested, and the separation of the Cherokees into
two distinct tribes, justice will require that the annuities and funds be-
longing to the whole, now held in trust for them, should be equitably dis-
tributed among the parties, according to their respective claims and num-
bbers.

There is still a small number of the Cherokee tribe remaining within
the State of North Carolina, who, according to the stipulations of the
 treaty of 1835, should have emigrated with their brethren to the west of
the Mississippi. It is desirable that they should be removed; and, in the
event of a division of the country in the west, or of a new home being
provided for a portion of the tribe, that they be permitted to join either
party, as they may prefer, and be incorporated with them.

I submit the whole subject to Congress, that such legislative measures
may be adopted as will be just to all the parties or bands of the tribe.
Such measures, I am satisfied, are the only means of arresting the horrid
and inhuman massacres which have marked the history of the Cherokees
for the last few years, and especially for the last few months.
The Cherokees have been regarded as among the most enlightened of the Indian tribes; but experience has proved that they have not yet advanced to such a state of civilization as to dispense with the guardian care and control of the government of the United States.

JAMES K. POLK.

WASHINGTON, April 13, 1846.

WAR DEPARTMENT, Washington, April 11, 1846.

Sir: I herewith transmit the report of the Commissioner of Indian Affairs, with various documents relating to the difficulties among the Cherokees, and to the claims of the several parties into which that tribe is unhappily divided. I approve of the views presented in the Commissioner's report and the measures therein suggested for restoring quiet and preventing future strife among them, and respectfully recommend them to your favorable consideration.

Very respectfully, your obedient servant,

W. L. MARCY.

To the PRESIDENT OF THE UNITED STATES.

WAR DEPARTMENT,
Office Indian Affairs, March 31, 1846.

Sir: I have the honor to submit the following report upon several memorials of different parties of Cherokees, which have been referred to this office.

The Cherokee Indians are divided into three parties or factions, each now memorializing the government. The first, styled the "western Cherokees," or "Old Settlers," west of the Mississippi, are those who, many years ago, separated from the tribe east of that river. They contend that they are a separate and independent community from those who remained east till their removal under the New Echota treaty of eighteen hundred and thirty-five; and that, as such, they are rightfully the exclusive owners of the tract of country now occupied by the whole tribe in common, except the eight hundred thousand acres added to it by that treaty. They, therefore, claim compensation for so much of that country as may be necessary for the accommodation of those who removed under the treaty in question. They also represent the government of the majority, composed of those who adopt the views of John Ross, to be oppressive and unjust, and they wish, therefore, to be separated from that party, in order to enjoy a peaceful government of their own.

This claim of the western Cherokees has heretofore been rejected, but, it is believed, on grounds of government policy rather than of legal right.

In the decision upon the claim, those people were regarded as only contingently independent during their separation from the eastern Cherokees. That separation was not considered final, because the established policy of the United States was to remove the whole tribe—a policy enjoined by obligation to the States in which they were, to extinguish the Indian title to lands within their limits; that "there was no restriction upon emigration from the east," and the evident object of the government was to en-
The treaty of eighteen hundred and twenty-eight put an end to all possible question upon the subject, if it did not furnish the proper construction of all that had previously been done. The preamble recites, that it was "the anxious desire of the government of the United States to secure to the Cherokee nation of Indians, as well those now living within the limits of the Territory of Arkansas, as those of their friends and brothers who reside in States east of the Mississippi river, and who may wish to join their brethren of the west, a permanent home," &c. This was regarded as explicit, and if it were not, "it would seem there could be no doubt of the intention; for the seven million acres would give to every Cherokee west, (reckoning them at six thousand,) man, woman, and child, near twelve hundred acres of land, which would be preposterous." It was considered that, "if there had been no prior recognition of the purposes for which this land was appropriated, it might be contended, with some show of plausibility, that the treaty of eighteen hundred and thirty-five was made with the eastern Cherokees, and that they and the United States could not impair the rights of those west; but there was a full acknowledgment of the general right in the treaty of eighteen hundred and twenty-eight, which does not require the aid of the admissions of James Rogers and John Smith, delegates from the western Cherokees, appended to the treaty of eighteen hundred and thirty-five." Any such question, however, was regarded as having been put to rest by the adoption of the Act of Union between the parties, on the 26th June, 1840, which fully united the western and the eastern Cherokees, and made any separate interest common to all. The western Cherokees contest this decision in the following manner:

At an early period the Cherokees became divided as to their future policy. One party preferred concentrating themselves and cultivating the pursuits of civilized life, under a regular government and fixed laws; while the rest of the tribe desired to remain in the aboriginal or hunter state, which was most congenial to their feelings. Many had already removed to a country west of the Mississippi, more abounding in game, and others were disposed to follow; when, in eighteen hundred and seventeen and nineteen, treaties were made with all the parties, by which those west, and those who proposed to join them, relinquished all their interest in the lands east, and surrendered their proportion of them to the United States; receiving, in exchange, acre for acre, about four million acres of land lying within the limits of the present State of Arkansas; in addition to which, under a promise of the President, made in March, 1818, and recognised and renewed by the Secretary of War, in October, 1821, they were to have the use of the lands immediately west for the purpose of a perpetual outlet in that direction, as far as the jurisdiction of the United States extended. An equitable division was also made in the moneyed interests that had been enjoyed in common, so as to give to each party a share proportioned to their numbers respectively. This, it is contended, was a complete and perfect separation, leaving either party no right or interest whatever to be enjoyed in common. In a few years the progress of the white settlements rendered it important to obtain from the western Cherokees the lands granted them by the treaties of 1817 and 1819. The welfare of the Indians also required that they should remove further west, in order to be free from the harassments and evil effects of being closely surrounded by a white population. Hence the treaty with them of 1828,
by which they agreed to give up the lands referred to, and on which they had made valuable improvements, and to retire further west upon those to the occupancy of which they were, in fact, already entitled, for the purposes of an outlet. This treaty was made with the "Cherokee Indians west of the Mississippi," without any connexion or consultation with the Cherokees east. It gave them, in fee simple, seven million acres of land, and guarantied to them the use of the lands immediately west for the purpose of a perpetual outlet, as promised by the President and Secretary of War. It also provided that "when they may wish to lay off their lands and own them individually, a surveyor shall be sent to make the surveys at the cost of the United States." This treaty contains various other stipulations, in all of which the western Cherokees are recognised as a nation, separate and distinct from those east. The only reference to the latter is an agreement to receive such of them as may wish or be induced to emigrate. It was well known, however, that the eastern Cherokees were entirely averse to emigration. They discouraged it by every means in their power, and passed severe penal laws (some of them inflicting death) for the punishment of any persons who should endeavor to effect any further exchange of lands with the whites. The object of the western Cherokees, in making provision for the reception of emigrants from the east, was simply that they might somewhat strengthen themselves and increase their importance, at a time when they would be surrounded with wild tribes, from whom they had to expect aggressions and difficulties. They never expected the precipitation of the whole body of eastern Cherokees upon them, to take possession of their lands, subvert their government, subject them to another in which they had no share; and, in fact, render them strangers in their own country, as has been the case. After the treaty of 1828, the emigration was greater than could have been expected—caused by the strenuous efforts of the government to that end. They considered it unjust that such considerable numbers should come and share their annuities, and take possession of their lands, without compensation; and, therefore, early in 1832, they applied for an increase in their annuity, in proportion to the number of emigrants, and also for an extension in the quantity of land granted them in fee simple to the same extent; such an extension having been promised by the United States in the negotiation of the treaty of 1828. Delegates of the eastern Cherokees, then in Washington, objected to anything of the kind which would affect their interests, on the ground that they were not parties to, and had nothing to do with the treaty of 1828, and the system of emigration had been adopted without their consent and contrary to the wishes of the eastern Cherokees.

Some of the lands previously ceded to the Creek Indians having been included in the cession made to the western Cherokees by the treaty of 1828, a treaty supplementary to that of 1823 was made with them in February, 1833, as "the Cherokee nation of Indians west of the Mississippi river," for the purpose of re-adjusting the boundaries of their lands, and for other purposes. This treaty guarantied to them, forever, the lands claimed, and also the "perpetual outlet west, and a free and unmolested use of all the country lying west of the said seven millions of acres (the country granted in fee simple) as far as the jurisdiction of the United States extends;" and it provided that "letters patent should be issued by the United States, as soon as practicable, for the land hereby guaran-
tied." Thus, had they chosen, they could, under the provisions of the
treaty of 1828, have had their lands divided, and owned them individu­
ally, and they could not then have been dispossessed of any portion of
them without an invasion of individual right; and, under the treaty of
1833, they were entitled to a patent, vesting in them as a community the
exclusive ownership of the land claimed—separate and wholly distinct
from and independent of the eastern Cherokees. If, as has been contend­
ed, this was not the case, and their possessions and interests were only
joint with those of the eastern Cherokees, they had a right to participate
in the making of the treaty of 1835, and to share equally in all its bene­
fits. They were not allowed to participate in the making of that treaty,
nor have they an equal share in its provisions. Nor did they assent to it,
as alleged, after it was made. It was well known that they were opposed
to its intended provisions. They sent a delegation to look to their inte­
rests in the negotiation; but it was apprehended that their presence might
interfere therewith, and means were sought to eject them from the country
in order to prevent any such interference. The War Department inform­
ed the commissioner who negotiated the treaty, that the delegates of the
western Cherokees "must not, under any circumstances, be admitted to
the council, or recognised in any manner." He was told that their inter­
ference was "unauthorized and officious," and requested, by the exerc­
cise of every proper means, to counteract every effort they might make
out of the council to obstruct the progress of the treaty. It is true that
two western Cherokees did sign and express their agreement to it in be­
half of those people; but one of them, James Rogers, was not a delegate
and the other, John Smith, though a delegate, signed it, not only without
authority, but contrary to instructions. But even had these two persons
authority for what they did, they inserted the express stipulation that it
"shall not affect any claims of the western Cherokees on the United
States."

In regard to the act of union, those who signed it were not selected by
the people for that purpose, and had no authority to act for them; but, if
they had, they signed it upon the express understanding that it was not
to be binding unless ratified by the people; that the western Cherokees
were to be proportionably represented in the government; that neither
John Ross nor William S. Coody was to be a member thereof; that they
were to receive, each, seventy dollars or upwards of the money to be dis­
tributed under the treaty of 1835, as per capita, and to have an equal in­
terest in the lands east of the Mississippi, still claimed by the eastern
Cherokees. The act of union has never been ratified by the people; they
are not represented in the government; Ross and Coody are leading and
controlling members of it; there will be nothing left to distribute, as per
capita money, to any one; and, according to the government's construc­
tion of the treaty of 1835, the eastern Cherokees have no longer any title to the
lands east. The act of union is, therefore, of no binding force or effect.

On the foregoing, supported by lengthened arguments and many sub­
ordinate facts, the western Cherokees base their claim.
The statements of fact made by the western Cherokees appear, in the
main, to be correct. It seems clear that, after the treaties of 1817 and '19,
the western Cherokees retained no title or interest in the lands east, and
that the eastern Cherokees had none whatever to the lands west—they
having been given to the people west for their proportion of the lands east,
acre for acre. Thus, under the treaties mentioned, those people were the sole and exclusive owners of about 4,000,000 acres of land lying within the present limits of Arkansas; and the treaty of 1828, made with them alone as a separate and distinct nation, recognised theirs as the only title to those lands. For these same lands the United States, by the second article of that treaty, stipulated to possess them, “and to guaranty it to them forever, and that guaranty is hereby solemnly pledged, of seven millions of acres of land, to be bounded,” &c; and that, “in addition to the seven millions of acres thus provided for and bounded, the United States further guaranty to the Cherokee nation a perpetual outlet west, and a free and unmolested use of all the country lying west of the western boundary of the above described limits, as far west as the sovereignty of the United States and their right of soil extend.” By the fifth article it was further agreed, “that the United States, in consideration of the inconvenience and trouble attending the removal, and on account of the reduced value of a great portion of the land herein ceded to the Cherokees, as compared with those in Arkansas which were made theirs by the treaty of 1817, and convention of 1819, will pay to the Cherokees, immediately after their removal, the sum of fifty thousand dollars.” Thus, it would appear, that for about four million two hundred thousand acres of land in Arkansas, the United States gave to the western Cherokees seven millions of less value further west, (to the use of which they were already entitled for the purpose of an outlet,) and a portion of the sum of fifty thousand dollars. It is of these seven millions of acres of land, which are now held by the whole Cherokee people in common, that the western Cherokees claim to be exclusive and rightful owners.

The preamble to the treaty of 1828, which has been relied on to prove that the country thus assigned to the western Cherokees was intended and set apart as the final and common home of all the Cherokees, states it to be “the anxious desire of the United States to secure to the Cherokee nation of Indians, as well those now living within the limits of the Territory of Arkansas, as those of their friends and brothers who reside in States east of the Mississippi, and who may wish to join their brothers of the west, a permanent home.” &c. By the eighth article, it is stipulated that the western Cherokees, “having, by this agreement, freed themselves from the harassing and ruinous effects consequent upon a location amidst a white population, and secured to themselves and their posterity, under the solemn sanction of the guaranty of the United States, as contained in this agreement, a large extent of unembarrassed country,” they agree to receive such of their brothers yet remaining in the States as “may be induced to join them, and enjoy the repose and blessings of such a state in future.” These are the only stipulations committing the western Cherokees to receive emigrants from the east; and they bind them to admit only those who may wish to emigrate or may be induced to join them. But so entirely adverse were the eastern Cherokees to emigration, there could have been no well-founded expectation that more than a very limited number could, without some material change of circumstances, be induced to go west; and had it not been for the legislation of the State of Georgia, (which was expected to be followed by similar legislation on the part of the other States in which the eastern Cherokees were,) denationalizing, and extending her laws over them; disposing of her fee simple title to their lands to whites, who dispossessed them, and otherwise
rendering their situation humiliating and distressing, it is not probable
that, to this day, any considerable number would have wished or have
been willing to emigrate. Those who most strongly advocated the treaty
of 1835, were among the most strenuous opponents of emigration, until
they became convinced that they could no longer remain where they
were, in happiness or prosperity, because of the legislation of the States.
These, comprising the treaty party, then desired to join their brethren;
but the Ross party did not wish to emigrate, and would not eventually
have gone, had they not been compelled to do so by military force. They,
at least, were not of the class which the treaty of 1828 bound the western
Cherokees to receive.

The treaty of 1833 was, as stated, for the purpose of adjusting the
boundary between the possessions of the Cherokee and Creek Indians
west. It was made with the "Cherokee nation of Indians west of the
Mississippi river," and by it the United States stipulated to possess them,
"and to guaranty it to them forever, and that guaranty is hereby pledged,
of seven millions of acres of land, to be bounded as follows," &c.; and that
"letters shall be issued by the United States as soon as practicable
for the land hereby guarantied." That treaty also continued the guar­
anty of the outlet west, granted in the treaty of 1828.

The 4,000,000 acres given up by the western Cherokees under the
treaty of 1828, having been purchased by their own means, the exclusive
title to at least an equal quantity of the 7,000,000 acquired by that treaty
will not be questioned; and as a great portion of these lands were re­
garded as being of "reduced value," it is submitted whether their title to
the whole is not equally clear.

The opinion, that the lands set apart by the treaty of 1828 were in­
tended for all the Cherokees, is weakened by the fact, that, by the treaty
of 1817, 4,000,000 acres were given to about four thousand, and that
the treaty of 1828 added only three millions more for at least double that
number. Considering the "reduced value" of these lands, the quantity
thus added was probably only regarded as proportionate to the limited
emigration from the east, then expected to take place. Such, at least,
seems to have been the view of the western Cherokees, from their appli­
cation in 1832 for an extension of their lands, in consequence of the emi­
gation of eastern Cherokees having been greater than was anticipated.
The claim advanced by the western Cherokees is strengthened by equita­
ble considerations, growing out of the fact that they have always cheer­
fully submitted to the measures of the government; that they gave up
their comfortable homes in the east, and have twice been the pioneers of
a new country in the west; encountering all the risks, and suffering all
the hardships, incident to the settlement of a new and distant region.
And it is probable that the example of their enterprise, and of their suc­
cess in making themselves comfortable, happy, and prosperous, in the
west, has exercised a favorable influence upon the great measure of Indian
removal from within the limits of the States.

There can be no question that, in the New Echota treaty of 1835, it
was erroneously assumed that the whole Cherokee country west was the
common property of the Cherokees east and west. Unless, therefore, the
western Cherokees can properly be regarded as parties to that instrumen,
it certainly gives to the eastern Cherokees no title whatever to the 4,000,000
acres clearly acquired by the other party under the treaty of 1828. At
most, it can give them title to only the excess, or 3,000,000, and that in common with the western Cherokees, should it not be considered that such excess was added by the United States as an equivalent in part for the diminished value of the lands thus obtained in exchange for those in Arkansas.

The principal stipulations of the treaty of 1835 were arranged in Washington, previous to their submission to the Cherokees east, and were well known to those west. Major Armstrong, superintendent of Indian affairs west, in a letter to the Commissioner of Indian Affairs, dated June 11, 1835, speaking of a council of the western Cherokees, "convened expressly to take into consideration the treaty offered to the Cherokees east," says, "It is my duty to inform you of a fact that is well known here, that these people are dissatisfied, and will no doubt object to the views of the government, in uniting the Cherokees, unless they can have their wishes, which I assure you are not to be found in the treaty to be laid before the eastern Cherokees." The western Cherokees delegated Joseph Vann, William S. Coody, John Smith, and John Drew, to act as their representatives in the negotiation of the treaty, and to endeavor, "if possible, to effect such arrangements as will unite the two people in one upon the Arkansas, and upon such principles as will be satisfactory to both the eastern and western Cherokees." The interference of these delegates was declared by the Secretary of War "unauthorized and officious;" they were excluded from the council, and the Commissioner was instructed to endeavor to counteract every effort on their part to interfere with the making of the treaty. James Rogers, it appears, was a delegate, having been appointed in the place of one of the others, and, of the four delegates, only himself and John Smith signed their assent to the treaty. As therefore the western Cherokees were known to be opposed to the proposed treaty, and as John Smith admitted that he signed it contrary to instructions, they cannot be considered as having been parties to it. But had the act of Rogers and Smith made the western Cherokees parties to it, there was a special reservation of any claim which the treaty, in its operation with respect to them, might involve. Of such a character the present claim may be regarded.

It is true the United States were under obligations to the States in which the Cherokees were, especially to Georgia, to extinguish the Indian title to lands within their limits; and that, consequently, it was the established policy and intention to remove the Indians as soon as it could be done; and it may have been intended that the Cherokee country west should be the final home of all those people. These considerations, however, cannot affect the title of the western Cherokees, founded, as it was, on positive and specific provisions of treaties. Nor was it probable that their title, even to the whole of the lands, would interfere with the policy of the government. Considering their readiness always to acquiesce in the views of the government, it is fair to presume that such of the lands as might be required for the eastern Cherokees, which they did not need, could easily have been obtained from them, either by the United States, or the eastern Cherokees, for a reasonable compensation. It was at one time proposed to pay the eastern Cherokees for their possessions east, and let them purchase a country for themselves. Had this been done, and they had gone elsewhere, they would not have been considered as having a claim to the country in question; and had they determined
to join the western Cherokees they would have had to pay them for so much of the lands as they needed.

For so much of the lands, which it may be determined belonged exclusively to the western Cherokees, as is necessary for the accommodation of those who removed under the treaty of 1835, they have a just and valid claim to compensation. What the extent of this compensation should be, it is somewhat difficult to say; but they themselves seem to have fixed it in the act of union, by which they agreed to relinquish their exclusive ownership of the land claimed. That act, it is true, cannot be considered binding, because its stipulations have not been, and cannot be, fulfilled; yet it indicates the consideration which the western Cherokees were willing to receive for an equal interest of the other party in the country; and there is no doubt they would have been content had the inducements held out to them to enter into it, and its stipulations, been realized. These were, a representation in the common government, by having one-third of the offices; the exclusion of John Ross and Wm. S. Coody therefrom; and a participation in the sum to be distributed per capita, which, it was estimated, would amount to about seventy dollars each. From the stipulation in the act of union, that they were to have an equal share in the lands east, which the Ross party still pretended to claim, they could have expected no advantage, for they were well acquainted with the provisions of the treaty of 1835, and knew that it entirely extinguished the Indian title to the lands east. If, therefore, they obtain what will be equivalent to the advantages expected to be derived from entering into the act of union, they should, and it is presumed will, be satisfied. Such equivalent will be amply realized in an entire separation from the Ross party, and by the payment of such a sum as would be equal to what they had reason to expect would be their share of the amount to be distributed as per capita. The necessity of such a separation, and the mode of making them the compensation mentioned, will be noticed in a subsequent part of this report.

The treaty party, so called from their having taken an active part and been instrumental in the making of the treaty of 1835, is the second of the three parties mentioned as memorializing the government. Like the old settlers, they complain of injuries and oppressions inflicted by the Ross party, which they set forth at much length in their memorial and papers. They also complain, and go into some detailed statements to show, that wrong constructions have been given to the provisions of the treaty of 1835, by which a large amount, that should have remained for per capita distribution, has been unauthorizedly used for other purposes; and they ask that a fair settlement, according to a just construction of that treaty, be made of the accounts of expenditures under it, in order to arrive at the sum to which they are entitled as per capita.

There is no doubt that the per capita money has been greatly reduced by the large sums placed in the hands of John Ross, as the agent of his party for the management of their removal, and by payments out of the funds set apart for the Indians, which properly should have been made from the treasury. The amount of the payments which should have been borne by the treasury, the government is, of course, bound to refund; but the extent of them cannot be ascertained without a critical analysis of all the expenditures, which it will require some time to make, because of their having been so intermixed and commingled as to render
necessary an examination of almost, if not quite, every separate voucher. Such an examination has been commenced, and will be prosecuted with all practicable vigor, in order to ascertain the amount during the present session of Congress, as an appropriation will be necessary to replace the sum thus unjustly expended out of the Indian funds, and to enable the government to do justice to all parties. In the measures adopted for this end, the claims and representations of the treaty party, in regard to their particular rights, will receive a full and fair consideration.

That a separation, both of the old settlers and the treaty party, from the Ross party, is imperatively required, seems beyond question. Since the removal of that party there have been continual discontent and dissensions, during which the most inhuman and barbarous murders and outrages have been, and continue to be, committed. There have been many acts of the Ross party justifying the discontent of the treaty party and old settlers; such as the determination of that party, adopted on the eve of their departure for the west, to maintain their political organization, power, and laws, without regard to the rights, interests, or feelings, of the old settlers; the murders of the Ridges, Boudinot, and others; the passage of a law screening their murderers; the outlawry of members of the treaty party, simply because of their agency in making the treaty of 1835; and in some instances improperly dispossessing individuals of the treaty party and old settlers of their property. On the other hand, there have naturally been acts of retaliation committed by these parties. The dissatisfaction and vindictive feelings thus engendered still continue in undiminished force, as indicated by the recent murders of numbers of individuals, mostly of the treaty party, and the continued and constant petitions of that party, and of the old settlers, for relief and redress.

The eastern Cherokees, by law, subjected any one to be put to death who should be concerned in any measure having for its object the disposal of their lands. Hence, no doubt, the murder of Boudinot and the Ridges; and hence, also, the foundation of a feeling to which all the signers of the treaty of 1835, and their friends, may fall victims, if the parties remain in their present situation. Will the government suffer men to be thus hunted down, for an act induced by itself, and by which many difficulties between the United States and Georgia were happily avoided? In all the collisions that have taken place, the treaty party, to whom especially the United States owe protection and safety, have been the greatest sufferers. Numbers of them have been compelled to leave their homes and fly the country, and are now in a suffering condition in the State of Arkansas; and if the injuries inflicted upon them have not been instigated by prominent individuals of the Ross party, they have, at least, taken no efficient means to prevent them, or to punish their perpetrators. Under the most favorable view, those of that party holding power are either indisposed or unable to protect the lives and property of the old settlers and treaty party.

The government is the political guardian of the interests and welfare of the Indians, and its duty is to endeavor to prevent and to heal dissensions among them which engender vindictive feelings, leading to bloodshed and oppression; and the 6th article of the treaty of 1835 expressly bids the United States to protect the Cherokee Indians "from domestic strife." Every peaceful and persuasive effort for this purpose, consistent with the Cherokees remaining together as one people, has been tried in vain. The
use of military force is objectionable on many accounts, and to be avoided in all cases where it is not indispensable. In the case of the Cherokees it seems to have been almost impracticable, from the concealment and suddenness attending the outbreaks, and the manner in which those believed to have been their real instigators kept out of view. A separation of the parties appears, then, to be the only means left to be tried, in order to stop the continuance of "domestic strife," and to prevent the repetition of the horrible deeds which have been committed, among the Cherokees.

The treaty party and old settlers are, as stated, united in their wish for a separation from the Ross party; they have been companions in misfortune; there are many points of sympathy and a general good understanding between them, and, in case of a separation from the Ross party, they would doubtless unite and live amicably and happily together, under a separate government of their own.

At this point the question arises, how this separation, with respect to future location, shall be made? whether it be necessary that either party should leave the Cherokee country and go elsewhere? As has been shown, the old settlers are the rightful owners of the larger proportion, if not all, of that country; and it would be greatly unjust to compel them to relinquish their rights, and a third time to undergo the hardships and sacrifices of removal. To require their removal would also not only be inconsistent with the stipulation in the treaties with them, that that country should be their permanent home, but would lead to a heavy drain upon the treasury, in order to satisfy the just claim they would then have to compensation for the lands given up, and to pay them for their improvements, the expenses of their removal, &c.; and it would be giving to the Ross party, for nothing, a vast country—much greater in extent than is either necessary or desirable for them. On the other hand, the removal of the last mentioned party is liable to similar objections. The country is sufficient for all, and if they can be separated within it, without danger of future collisions, it would be the most desirable and beneficial arrangement; as, in another generation, the present feuds and prejudices may be forgotten or forgiven, and the parties be again united under happier auspices. Such an arrangement would preserve the faith of the government to all parties, without any additional charge upon the treasury, and be merely giving to each a just proportion, in severality, of what is now, whether rightfully or otherwise, held in common; and it is believed that, with some additional legislation, it may be so made as to be attended with but little, if any, more danger of collision than ordinarily exists in the proximity of two different tribes of any other Indians.

Prior to the treaty of 1835, the whole Cherokee people enjoyed an annuity of ten thousand dollars, of which, under the treaty of 1819, the western Cherokees were entitled to one third, viz: three thousand three hundred and thirty-three dollars. The treaty of 1835 commuted that annuity for two hundred and fourteen thousand dollars, and added there to three hundred thousand dollars—making five hundred and fourteen thousand dollars, to be invested as a general fund for national purposes. It also provided one hundred and fifty thousand dollars, to be invested as a school fund; and fifty thousand dollars for the benefit of orphans. These sums purchased seven hundred and eight thousand seven hundred and sixty-one dollars and thirty-nine cents' worth of five and six per cent.
stocks, which yield an annual income of thirty-six thousand and eighty-five dollars and sixty-seven cents. Of this sum, the western Cherokees, not being parties to the treaty of 1835, would be entitled to only the amount they received of the old annuity. But as the Ross and treaty party are not entitled to the whole, it is proposed to allot to the old settlers a part of it, proportioned to their numbers, and the treaty party a share in like proportion—the two comprising, it is believed, about one third of the whole Cherokee people. The remainder will, of course, belong to the Ross party. So far as the allowance to the western Cherokees will be an increase of their share of the old annuity, it will be in part payment for so much of their lands as may be taken from them in the proposed division of the country; and it is recommended that Congress be applied to for such a further sum as may be deemed an adequate compensation. A portion of this they will require for the payment of debts which they have incurred; the balance, invested with their share of the national funds, will yield them a liberal annual income for general expenses, schools, &c.

It is expected that the amount that will be found due the "treaty party," per capita, on a fair settlement of the accounts under the treaty of 1835, will be sufficient to put them nearly, if not quite, upon an equal footing with the western Cherokees, if they will consent to invest it with their proportion of the national funds; so that the political union, which now, and may hereafter exist between these parties, will be effectually cemented by an equality in their pecuniary interests and condition.

These arrangements will, in no respect, affect the Ross party, except in taking from under their control the members of the two other parties and their proportions of the national funds. They will not infringe upon any of the just rights of that party. The only difference to them will be that, instead of holding the entire country and the whole of the national funds in common with the old settlers and treaty party, they will hold their full proportion of each separately. Against them, therefore, they can have no good ground of objection.

The third memorial to be noticed is one presented by John Ross and others, who claim to be, and assert that they "are, in fact, the true and only representatives and authorities of the Cherokee nation," as united by the act of union adopted on the 26th June, 1840. This memorial contains a petition, in general terms, for a redress of present grievances, and for the security of the future tranquillity and welfare of the Cherokee people. A very general outline is given of the relations of the Cherokees with the United States, and of the changes in their situation, since Washington's administration; and, as they "are now outside of any State or Territory," and "no State can now complain of intrusion" on their part, a new treaty is asked, which shall define distinctly their new position; direct the issue of a patent in fee simple for their territory; establish on a permanent footing their relations with the United States; and provide for the payment of their just claims. These demands are based on the promise of President Jackson, in 1835, that the country west should be conveyed to them by a patent in fee simple, and upon the letter of President Tyler to them of September, 1841. In that letter Mr. Tyler states: "I still propose, at a future day, to negotiate with you a new treaty; you may assure your people that, so far as I have any power or influence to effect such results, not justice merely shall be done them, but that a liberal and generous course of policy shall be adopted towards them."
Upon the ratification of the treaty contemplated, which shall give to the Cherokee nation full indemnity for all wrongs which they may have suffered, establish upon a permanent basis the political relations between them and the people of the United States, guaranty their lands in absolute fee simple, and prescribe specific rules in reference to subjects of the most interesting character, a new sun will have dawned upon them," &c. The treaty of 1828 is also cited as promising a patent for the lands west in fee simple.

As already shown, the treaty of 1828 was made with the western Cherokees only, and as a separate and distinct community. The eastern Cherokees, comprised principally of the Ross party, can therefore claim nothing under it, unless an interest in the lands west, to the limited extent indicated, be conceded to them. The promise of President Jackson was based on well-founded expectations that the course of conduct of the eastern Cherokees would be very different from that which has been pursued by most of them; on expectations that they would not further resist the uncontrollable necessity of a removal from within the limits of the States, and that all parties would unite peaceably and happily together in the west. But, in consequence of the counsels of Mr. Ross, and the exercise of his extraordinary influence over his infatuated party, notwithstanding the treaty of 1835 was made upon the basis of his own proposition—the submission of the principal condition to the Senate—they resisted every argument and every persuasive means that could be used to induce them quietly to remove in accordance with the provisions of that treaty, which they were told, again and again, was the law of the land, and which, therefore, the Executive was bound to enforce. They opposed every effort for their comfortable removal till the last moment, when it became requisite to use force; and they were compelled to leave their homes under circumstances of haste and want of preparation, that no doubt subjected them to some sacrifices and personal sufferings, which Mr. Ross and his co-delegates have taken every occasion to magnify to the utmost of their power. But, even under these circumstances—the treaty requiring their removal at the end of two years, and the States urgently pressing the United States to a prompt execution of that stipulation; and that time having expired—the government, on the application of the Cherokees, extended the period, so as to give them an opportunity to make all necessary arrangements for their comfortable removal; and, to render that removal the more satisfactory to them, they were allowed to manage it entirely themselves. Whatever losses or sufferings they may have undergone in being compelled, somewhat abruptly, to leave their homes, is justly attributable to their having blindly followed the advice and instructions of Mr. Ross; and, for them, they should hold him responsible, and not the United States. Had they, as did their brethren of the treaty party, gone to work and prepared for removal during the two years allowed them, by the treaty for that purpose, they would have been comfortably removed, without sacrifice or suffering of any description. Their course, since their removal west, has destroyed much of any claim to the liberal or magnanimous consideration of the government. It has been stamped with the murder and oppression of their inoffensive brothers who preceded them, and given rise to well-founded fears, on the part of many of those whose lives have been spared, that there is no safety for them but in exile from their homes and country.
During the administration of Mr. Tyler an effort was made to carry out his promises, but, as will be seen by the correspondence between the Secretary of War and John Ross and his associates, the demands of those persons were so unreasonable as to be wholly inadmissible. They do not now specifically define what their wishes and expectations are; and it is not known whether their extravagant views have undergone any modification.

Any pretensions founded on the act of union are not entitled to consideration, for that act cannot justly be regarded as valid or binding, because, as has been stated, its stipulations and the inducements held out to the western Cherokees to enter into it have not been and never can be fulfilled. And even had it been formally and generally adopted by the western Cherokees, which they positively deny, it was forced upon them by circumstances which entitle any application from them, that it may not be enforced, to the most liberal consideration.

As has been mentioned, the Ross party went west with the determination of preserving their political organization and power. The old settlers naturally did not wish to give up everything and be governed by laws made east of the Mississippi, and which they did not consider suitable to their situation and circumstances. Thus commenced the dissensions between the parties, and several efforts to form a union between them entirely failed. The majority, consisting of the Ross party, adopted a new constitution and passed some new laws for the government of the whole Cherokee people, but to these the old settlers were still unwilling to agree. The department, however, under the expectation that the majority, who asserted themselves to be the victims of persecution, would be governed in the exercise of their power by a spirit of justice and magnanimity towards their brethren of the minority, decided not to recognize any division or separate government among the Cherokees; and that the great principle of a republican government, that the majority shall rule, must be adopted. The payment of all money to the Indians was also stopped, till they should unite and adopt a government to which all would submit. No alternative was left to the old settlers but a submission to the majority. Much excitement existed, and immediately after an abortive effort to form a union and adopt a constitution, proposed by the Ross party, and to which the old settlers and treaty party would not assent, Foutinot and the Ridges were murdered, and laws were passed by the majority screening their murderers and outlawing prominent members of the treaty party. The expectation, as to moderation in the exercise of power by the majority, having been disappointed, the department changed its direction, and directed that an effort should be made to form a union a system of government more just and favorable to the minority, in which there were to have one-third of the offices and power, and from which John and Wm. S. Coody were to be excluded; the former, because, if not arrested to the murders mentioned, he did not at least appear to have used his influence (which was all-powerful with the majority) to prevent them, or to stop the use of the laws screening the murderers; and Wm. S. Coody was to be excluded because he defended those murders as justifiable. Other inducements held out to the old settlers to enter into the act of union have already been mentioned. In compliance with an invitation given by General Arbuthnot under the instructions of the department, a small number of the difficulties met at Fort Gibson, and hav-
ing no other alternative, and taking into view the inducements held out to them, the individuals of the old settlers agreed to adopt the act of union, with the qualification, not embodied in that instrument, but expressly stated and understood, that it was not to be regarded as binding until ratified by their people. The delegates of those people assert that it has never been so ratified, and there is no evidence to the contrary. Mr. Ross and his associates should not, therefore, be recognised as authorized delegates of the whole Cherokee people. They may, however, be recognised as the representatives of that portion of that people called the "Ross party," and any specific claims or representations they may make in that capacity will, of course, be considered in a spirit of fairness and liberality commensurate with their reasonableness and merits.

Should the views herein presented, as to the necessity and mode of separation of the Cherokee people, be concurred in and adopted, it is respectfully suggested that, in order to give the strongest and most authoritative sanction to the measure, Congress be requested to enact a law authorizing the separation, and directing a division of the lands, in such manner as may be found most suitable for the parties, and a similar division of their general funds. Some legislation will also be necessary to restrain the parties, when divided, from collisions with and depredations upon each other, which, unless there be some strong preventive, it must be admitted will be still likely to take place to some extent. Under the power vested in the United States as the responsible guardian of the interests and welfare of the Indians, and in order to fulfil the stipulation in the 6th article of the treaty of 1835, that the Cherokees shall be protected from "domestic strife," it is also recommended that a law be passed extending judicial jurisdiction over those people, so far that when individuals of either party shall be guilty of a criminal offence against the persons of the other party, or of depredations upon their property, and the party to which the individuals committing such offence belong shall fail to prosecute them, and make all practicable reparation for the injury, such offenders shall be tried and punished by the proper judicial tribunal of the United States, in the same manner that its own citizens are tried and punished for like offences. It is further recommended, that when property of one party shall have been injured, taken, or destroyed, by persons of the other party, and the former party fails to make reparation therefor, the Executive be authorized to withhold, from any moneys payable to the party to which the aggressors shall belong, a sufficient sum for the purpose of compensating the person or persons injured. The knowledge on the part of the Indians that the United States possess such power go far to prevent the perpetration of such acts, and one of the most salutary punishments will put a stop to them altogether, thus a necessity for their exercise will, it is expected, rarely occur.

There has also been submitted to this office a paper prepared by Mr. William H. Thomas, as agent of the Cherokee lands yet remaining in North Carolina. The object of this paper is to show that that portion of the Cherokee country lying within the limits of North Carolina had been granted, in fee simple, by act of the legislature of that State, in 1768, to the Cherokees within her limits; that portion of the tribe was not a party to the treaty of 1835, and that title to the lands in question has never been relinquished by them; is, however, the lands have been
taken possession of by the State and sold to her citizens, and as the Indians do not wish to cause embarrassment, and give offence to the citizens by contending for the lands, they claim compensation for them. It is stated that they will be willing to relinquish their claims to the lands on the following conditions, viz:

1st. That, as they propose at a future day to emigrate to the west of the Mississippi, provision be made for a home for them there, and for their enjoyment of a fair portion of the general funds of the nation; and that, if a separation be made of the tribe west, as expected, these advantages be given to them, in connexion with the old settlers and treaty party, which divisions of the tribe west they prefer to join.

2d. That their claims for pre-emption rights, reservations, spoliations committed on their property in 1838, improvements under the treaties of 1817 and 1819, and for removal and subsistence to the amount of $53 33 each, be allowed to them.

3d. That a fair and full proportion of the per capita allowance under the treaty of 1835 be given to them; and,

4th. That it shall be left to their own choice when they shall remove west, removal not forming a condition of the payment of their claims.

As in the case of other Indians with whom the United States have negotiated for a change of their residence, the Cherokees were regarded as having only an occupant usufruct title to the lands they held in 1835, the fee simple title to those lying in Georgia and North Carolina being vested in those States. Whatever rights they had were held in common by the whole tribe east, without distinction of Georgia Cherokees, North Carolina Cherokees, or of any other division whatever. The treaty of 1835 was made without any such distinction, for the whole of their rights to the lands east, wherever they lay. There was no portion of them so far separate or distinct as to render it necessary or material that they should be specially represented in the making of the treaty. The treaty as made has heretofore always been considered and executed as applicable to, and binding upon, the whole body.

The States being considered as possessing the fee simple title to the lands within their limits, derived all the benefits arising from the extinction of the Indian title to those lands. The United States derived none. If, therefore, North Carolina had previously parted with a portion of these benefits, by a conveyance of her fee simple title to the Indians in 1783, as alleged, and the treaty of 1835 did not extinguish that title in the Indians, the claim to a further compensation for the relinquishment thereof would seem to be a question between them and the State, with which the general government has nothing to do. If, however, such a claim were recognised and allowed, the Indians in North Carolina could only benefit thereby to the extent of their limited number, for the grant of North Carolina was not made alone to them, but to the Cherokee nation—the whole Cherokee people.

The treaty of 1835 being the law of the land, the Executive has no authority to consider the Cherokee Indians yet remaining in North Carolina in any other light than as parties to that treaty in common with the rest of the tribe east at the time. It is none to recognise any claim in them not clearly authorized by that treaty. By the first supplementary article of that instrument, all claims to pre-emption rights and reservations were
relinquished by the Indians, and for the latter a monied compensation was substituted. So far, therefore, as the North Carolina Indians were entitled to reservations, and have not been compensated therefor, they are entitled to be paid their value as unimproved lands. They are also entitled to compensation for spoliations upon their property, and for improvements possessed by them, so far as they have not been paid; and they also possess equal right with those who have removed, to share in the money to be distributed \textit{per capita}. If they are removed, the cost thereof is to be paid by the United States. If they prefer to remove and subsist themselves for one year west, they will be entitled to the commutation fixed by the treaty of 1835 therefor, viz. $53\,33$. This amount, it is contended, they are entitled to, whether they remove or not; but as it is expressly stipulated as a commutation for self-removal and one year’s subsistence west, it has been repeatedly and uniformly decided that they have no claim whatever to it, unless they actually remove. Should Congress, upon the representations of the agent of the Indians in question, think proper to grant them any further allowances than those provided for by the treaty of 1835, it is respectfully recommended that it be only on the express condition of their removal west. Their natural and proper home is with their brethren in the west, where, when the present difficulties shall have been put to rest, it is believed they will be much more prosperous and happy than by residing where they now are. Every inducement should, therefore, be held out to them to remove, and none to remain. There will be no difficulty in providing them with a comfortable home there, as the country is large enough for all, and it is understood the old settlers and treaty party will willingly receive them.

Since the foregoing subjects have engaged the attention of this office, there has been referred to it a memorial and protest, with accompanying papers, addressed to the President, and submitted to him by Mr. Ross and his associate delegates, purporting to be signed by sixteen hundred and seventy-six male adults of all parties in the Cherokee nation.

These papers have a bearing upon some of the matters discussed in this report, but it is thought that they do not present a sufficiently authentic or authoritative character to entitle them to any particular consideration on this occasion.

It may be remarked that the signature or mark of Indians is easily obtained to papers of any description, by persons of influence or authority, without the individual having any real knowledge of the contents of the object of the paper he is signing. Little, if any, regard is therefore paid to any document signed by those people generally, unless it is accompanied by satisfactory evidence that its contents were fully explained and understood by them, and that their signature was a voluntary act, free from any improper restraint or inducement thereto. Such evidence is usually supplied by the certificate of the United States agent for the tribe, but none of any description accompanies the papers in question. But were they duly authenticated in a manner mentioned, with the information in possession of the document, it would not be justified in disregarding entirely the petitions and representations of the old settlers and treaty party, because of a claim set up that Mr. Ross and his associate delegates are the only persons authorized to transact business
with the government for them or any portion of them, nor would they in any respect change the views herein expressed.

Very respectfully, your obedient servant,

W. MEDILL.

Hon. W. L. MARCY,
Secretary of War.

List of papers accompanying the report of the Commissioner of Indian Affairs of March 31, 1846, respecting the difficulties among the Cherokee Indians and the necessity of a separation of the tribe.

I. Argument of western Cherokees or old settlers, 6 in number.
II. Argument and statements of treaty party, 4 in number.
III. Memorial and document submitted by John Ross and others, 9 in number.
IV. Statement of Wm. H. Thomas in behalf of North Carolina Cherokees, as their agent.
V. Reports of General Arbuckle, dated January 3d and 6th, and February 12, and March 13, 1846, with accompanying documents.
VI. Reports from agent for Cherokees, dated February 12 and 20, with accompanying documents.

PART I.—No. 1.

WASHINGTON, October 4, 1845.

SIR: In compliance with our promise, we proceed to lay before you the complaints and wishes of the Cherokee old settlers west of the Mississippi, including incidentally those of the treaty party, so called from their being the survivors and friends of those who signed the treaty of 1835.

In approaching you, sir, and the present Executive of the United States, we are sure that we have to deal with men whose minds are open to the voice of truth, and who will not permit any personal inconvenience, or any course of public policy, based on a violation of principle, and pursued at the cost of gross injustice and great suffering to a portion of the human family, to prevent the adoption of such measures as are called for by the honor and good faith of this great republic. To the hasty action of our public authorities, without due investigation into the rights of those whom we represent, and not to any design to do them injury, do we attribute all the wrongs they have suffered and are now suffering.

Our first object is to satisfy your mind as to what were the rights of which the "western Cherokees" have been despoiled. We shall then consider their present condition, and the ability of this government to make reparation.

The first settlement of Cherokees beyond the Mississippi was formed prior to 1790, on the St. Francis river, then within the Spanish province of Louisiana. A few years afterwards, they removed to White river, further in the interior. A constant intercourse was kept up between this colony and their countrymen east, many of whom were tempted to join them by the fine hunting grounds in that region.
The progress of civilization among the Cherokees east had, prior to 1808, given rise to two parties—one in favor of adopting the habits and institutions of the whites, and the other remaining in the hunter state. In that year, these two parties sent delegations to Washington for the purpose of asking that the nation might be separated into two communities; thus enabling each party to pursue its cherished policy without interference from the other. The party of civilization proposed that their country east should be divided by a line; a portion of it assigned to them where they might "begin the establishment of fixed laws and a regular government," and the rest left in possession of their brethren who preferred remaining in their original condition. The hunters also proposed a division of the common property, and, at the same time, offered to exchange their portion with the United States for a country beyond the Mississippi river.

The President, in July, 1809, acceded to the proposition of both parties for a division of their common property, and promised the hunters to make the exchange they desired as soon as they should find a suitable country in the west. All this is clearly and more at large set forth in the preamble to the treaty of 1817, which was made to carry into effect the arrangement agreed upon in 1808 and 1809. (See Book of Treaties; page 209.)

To that preamble we ask your particular attention, because it exhibits the basis of those rights which have been violated. We ask you, after reading it, to consider whether, if the country east had been divided, as desired by the party of civilization, there would not have been two communities independent of each other—one governed by "fixed laws and a regular government," and the other governed by chiefs and warriors, after the fashion of their ancestors? To us the matter appears too plain to admit of a doubt. It is impossible that the two conditions of society can exist in the same community; and that impossibility constituted the only ground on which the original application for a separation was based. Subsequent to 1809, many of the eastern Cherokees had emigrated to the west, and the aggregate number of actual residents on the Arkansas prior to 1817 was computed at 2,000 to 3,000 souls. In 1813, "Ta-ka-to-ka," a distinguished headman, joined them, and was recognised as their principal chief. They carried on war and made treaties with the Osages, and exercised all the powers belonging to any other independent tribe. In that character they were treated by the United States, who kept an agent among them. The treaty of 1817 was but the recognition and regulation of a state of things which already existed.

In the caption of the treaty, three parties are named: "The United States," "the Cherokee nation east of the Mississippi river," and "the Cherokees on the Arkansas river." The representatives of the east, you will perceive, derive their powers, not from the whole body of the Cherokees east and west, but from "the chiefs of the Cherokees on the Arkansas in open council." In the signatures to the treaty the same parties are again exhibited. The first and second articles of this treaty make a cession of lands. The third article provides that a census of the Cherokees, east and west, shall be taken, preparatory to a final separation, exhibiting on the one side the number on the Arkansas, together with the number which might at that time enrol their names for emigration; and, on the other side, the number of those who preferred remaining in the country east. The fourth article provides that the annuities shall be divided in proportion to numbers, and that an additional cession of lands to those
embraced in the first and second articles shall also be made to the United States, so that the division of lands should also be in proportion to numbers. By the fourth article, "the United States bind themselves, in exchange for the lands ceded in the first and second articles, to give to that part of the Cherokee nation on the Arkansas as much land on said river and White river as they have, or may hereafter receive, from the Cherokee nation east of the Mississippi, acre for acre, as the just proportion due that part of the nation on the Arkansas, agreeably to their numbers."

It seems almost impossible to take but one view of this arrangement. The party of civilization and the party of hunters, wishing to live under different governments and follow different pursuits, agree to separate and divide their common property. The division is actually made. The hunters sell their portion to the United States, and take in payment the same quantity of land in a distant country. To say that the hunters retained any interest in the country left behind, or that the party remaining east acquired a common interest in the lands given to the hunters beyond the Mississippi, is to say that the treaty of 1817 is inconsistent with its avowed object and unequivocal language. Not to the whole race of Cherokees were the lands on the Arkansas and White rivers given, but to "that part of the Cherokee nation on the Arkansas." This treaty, you will observe, did not contemplate or provide for a continuous emigration. Its object, so far as the western Cherokees were concerned, was to complete at once a division of the common property, and a separation of the tribe.

By the third article, you will perceive that it was only those "who, at that time, declared their intention of removing," that were to be counted with the western Cherokees in the division of the common property. No eastern Cherokee could thereafter claim a right to any portion of the western property, nor could any one so enrolled, or any Cherokee on the Arkansas, claim a right in the eastern property. Each community had the right to admit emigrants or exclude them, as it might think fit.

Much dissatisfaction arose in the Cherokee nation east, out of the operation of this treaty; and in the winter of 1818 a delegation visited Washington for the purpose of obtaining some modifications. The results you will find in the treaty of 1819; (Book of Treaties, page 265;) by which the census was dispensed with, a further grant of lands made to the United States, in lieu of the proportion to which they might be entitled under that of 1817, and provision made for the division of the annuities—one-third to the Cherokees "west," and two-thirds to the Cherokees "east." The western Cherokees were not represented in the negotiation of this treaty; but their separate and independent rights were distinctly recognised in the sixth article, which provides for the distribution of the annuities. "But," says that article, "if the Cherokees, west of the Mississippi, object to this distribution, of which due notice shall be given them, before the expiration of one year after the ratification of this treaty, then the census, solely for distributing the annuity, shall be taken at such times, and in such manner, as the United States may designate."

Nothing could more conclusively prove that the government of the United States did not then consider itself at liberty, in any arrangement with the eastern Cherokees, to deprive the western of any rights secured to them without their acquiescence or consent. If anything, beyond the face of these instruments, were necessary to explain their object, we have it in the declarations of some of the parties. Mr. Calhoun, who was Sec-
secretary of War in 1817, and himself negotiated the treaty of 1819, assured us, when in the cabinet of President Tyler, that the purpose of these instruments was, to divide the Cherokee people into two communities, as he was ready to state on every proper occasion. John Ross, who was a party to the treaty of 1819, and now claims to be the principal chief of the Cherokee nation, in a letter to a gentleman of Philadelphia, published in 1837, pages 6 and 7, makes the following statement in relation to those treaties, viz:

"A piece of permanent policy was avowed, and the treaty of 1819 was regarded as a final measure. Such of the nation as were disposed to emigrate beyond the Mississippi, and to retain their original hunter habits, were provided for; those who preferred remaining, and to pursue the arts of civilization, were to remain; property which had been held in common, was to be enjoyed in separately; the limits of individual rights were to be fixed, and permanent interests to be held in land."

The western Cherokees assented to the division of annuities proposed by the treaty of 1819, and their territory in Arkansas was measured off to them, embracing about four millions of acres between the Arkansas and White rivers. Thus was the separation of the Cherokees into two communities consummated. The event was followed by the rapid advancement of both in the arts of civilized life. In 1824 the Cherokee nation west so far emerged from the savage state as to adopt a written constitution, and establish a regular government, composed of legislative, executive, and judicial departments, after the model of the United States. "Jolly," who had succeeded "Tolontiskie" as principal chief under the old system, was elected the first principal chief under the constitution; and "Takadoka," who had been the leading chief from 1813 to 1818, was chosen assistant principal chief. Upon the death of Jolly, John Brown was elected; and he was succeeded by John Rogers. Under this government peace was preserved, life and property were protected, schools were established, the Christian religion was taught, and the western Cherokees were rapidly approaching the level of their white neighbors.

All the intelligent and leading men remaining in the Cherokee country east, considered the treaty of 1819 as a final adjustment of their territorial rights, and set their faces resolutely against any future cessions of land to the United States. In May, 1817, the representatives of fifty-four towns and villages had adopted six written articles, providing for the government of the Cherokee nation; by the first of which the powers of government were transferred from the chiefs and warriors to a committee of thirteen, elected for two years. This system existed with some additions until 1827, when a constitution was adopted establishing regular legislative, executive, and judicial departments. There was already a law that if any person should "treat and dispose of any lands belonging to this nation without special permission from the national authorities, he should suffer death." The object of this was to prevent cessions by the chiefs and warriors, as in former times; and another law was passed by the council to prevent meetings "to encourage rebellion against the laws and government of the Cherokee nation," under penalty of "one hundred stripes on the bare back." In 1829 the unwritten law against treating for a sale of Cherokee lands was formally re-enacted by the general council. It was resolved "that any person or persons who shall, contrary to the will and consent of the legislative council of this nation, in general coun-
cil convened, enter into any treaty with any commissioner or commis-
sioners of the United States, or any officers instructed for the purpose, and
agree to sell any part or portion of the national lands, defined in the con-
stitution of this nation, he or they so offending, upon conviction before
any of the circuit judges, or supreme court aforesaid, shall suffer death.”

Thus, the two nations of Cherokees were established under separate
governments. The Cherokees east, instead of having, or claiming to have,
any interest, present or prospective, in the western lands, were bent on es-
tablishing themselves perpetually on the territory left them by the treaty
of 1819, and maintaining thereon a government independent of the States,
within the legal boundaries of which those lands were situated. Many
attempts were made to shake this resolution, which only tended to make
the eastern Cherokees more determined and firm.

In the meantime white settlements were formed in Arkansas, and the
day was at hand when it would become expedient to establish there an
independent State. To afford an ample territory for such a purpose, with-
out embracing the western Cherokees within its limits, it became neces-
sary to induce them to remove further west. This policy gave rise to the
treaty of 1828, (Treaty-book, page 423,) a treaty entered into with the
most perfect good faith on their part, though now adduced to prove their
own consent to their own destruction! In the negotiation of this treaty
the eastern Cherokees had no voice. So far from approving, they regard-
ed it as an insidious attack on their national policy, which, instead of
promoting, sought to prevent, emigration to the west. This has been
abundantly shown in their laws, their memorials to Congress, and various
other public documents. The caption of this treaty, as well as all of its
provisions, recognize the western Cherokees as a separate community,
having a perfect right to cede lands and accept a cession, without the
consent or even the knowledge of the Cherokees east, who outnumbered
them more than two to one.

The preamble sets forth the motives and rights of the parties in ex-
planation of the subsequent stipulations. The first article fixes the west-
ern limits of Arkansas. By the second, “the United States agree to pos-
sess the Cherokees, and to guaranty it to them forever; and that guar-
antly is hereby solemnly pledged, of seven million acres of land,” &c.,
with “a perpetual outlet west; and a free and unmolested use of all the
country lying west of the western boundary of the above described limits,
and as far west as the sovereignty of the United States and their right of
soil extend.” By the fifth article, “the United States, in consideration
of the inconvenience and trouble attending the removal, and on account
of the reduced value of a great portion of the lands herein ceded to the
Cherokees, compared with that of those in Arkansas, which were made
theirs by the treaty of 1817, and convention of 1819, will pay to the
Cherokees,” &c., “the sum of fifty thousand dollars;” and, for the same
consideration, proceeds to secure to them many other pecuniary benefits.
The sixth article provides that, “when they may wish to lay off their
lands, and own them individually, a surveyor shall be sent to make the
surveys at the cost of the United States.” By the seventh article, the
western Cherokees cede to the United States all their lands lying within
the limits of Arkansas. The eighth article commences with a preamble
in the following words, viz:

“The Cherokee nation west of the Mississippi, having, by this agree-
ment, freed themselves from the harassing and ruinous effects consequent upon a location amidst a white population, and secured to themselves and their posterity, under the solemn sanction of the guaranty of the United States, as contained in this agreement, a large extent of unembarrassed country; and that their brothers, yet remaining in the States, may be induced to join them, and enjoy the repose and blessings of such a state in the future,” &c. The stipulation appended to this preamble commences thus: “It is further agreed, on the part of the United States, that to each head of a Cherokee family, now residing within the chartered limits of Georgia,” &c., “who may desire to remove west, shall be given,” &c., “a good rifle, a blanket, a kettle, and five pounds of tobacco,” &c. We pray you to read the whole section, and then say whether its binding effect would not be precisely the same if the preamble were omitted altogether? If so, what obligation did the western Cherokees contract by this section?

We insist that one of two rules of construction shall be applied to this treaty, and we care not which, viz: That it shall be construed according to the rules of law, or according to the rules of equity and good conscience. It has been maintained that this treaty made the lands of the western Cherokees the common property of all the Cherokees, and justified the United States in sending upon them the whole Cherokee nation east, without asking the further consent of the Cherokees west. In law, how could a title to lands be conveyed to a people who were not a party to the deed? The idea is absurd. This treaty contained no grant whatever to the Cherokee nation east. All its grants and concessions, so far as made by the western Cherokees, were to the United States. And what did they grant or concede to the United States in the eighth article? Nothing whatever. On the contrary, the only grant or concession in that article is from the United States to the western Cherokees. The latter were anxious that their eastern brothers should come and live with them; and the former, being desirous of serving them, agreed to pay the expenses of emigrants. This article imposed an obligation on the United States for the benefit of the western Cherokees. This is its only true legal construction. Yet the construction put upon it completely reverses the position of the parties, and imposes an obligation on the western Cherokees for the benefit of the United States. It is maintained that the western Cherokees bound themselves to receive the eastern Cherokees arriving in their country, either singly or by thousands, in all time to come, and to admit them to a joint participation in all their rights, privileges, and property.

Let us admit, for the sake of argument, that the preamble to the stipulation, in the eighth article, is itself a stipulation which bound the western Cherokees irrevocably to receive the eastern Cherokees as naturalized citizens. What was the extent of this assumed stipulation and concession? The object of the government, as expressed in the preamble to the treaty, extended only to providing a permanent home for those eastern Cherokees “who may wish to join their brothers of the west.” The good wishes of the western Cherokees, as expressed in the preamble of the eighth article, extended only to their brothers yet remaining in the States “who may be induced to join them.” And the provision made for emigrants embraces only those “who may desire to remove west.” If, therefore, the mere expression of kind feelings by the western Cherokees
towards their eastern brothers is to be construed into an obligation to receive them as citizens, it can only embrace those who "may wish to join their brothers of the west;" who may go out as voluntary emigrants, incorporate themselves with their body politic, and submit to their laws. There is not a pretext in any word contained in the treaty which can extend this extraordinary construction further, and bind the western Cherokees to receive any of the eastern brothers who might be thrust over the Mississippi contrary to their will, whether singly or by hordes. Much less, if possible, were they bound to receive and treat as citizens those who might come with arms in their hands to overthrow their government, and seize upon their country! But what have we seen? No sooner had the treaty of 1828 been adopted, than the State of Georgia commenced a course of legislation designed to compel the eastern Cherokees to remove beyond Arkansas. That very year an act was passed annexing the Cherokee country to one of the counties, and extending over the Indians the laws of the State. The Cherokees met it by denouncing death against any of their own people who should propose selling their country east, and removing to Arkansas. Georgia proceeded to abolish the Cherokee government, and impose penalties on all who should exercise authority under it; to survey and sell, to her white citizens, the whole Cherokee country, reserving present possession of their improvements to the Cherokees; to disqualify the Cherokees from being witnesses in their courts; to forbid the employment of a white man by the Cherokee, or of a Cherokee by a white man; and, finally, to dispossess the Cherokees of their improvements, under the most frivolous pretexts. A white population poured into the Cherokee country; it was divided into several counties; tribunals were established to enforce the Georgia laws; and an armed force stationed in the country to keep the Indians in awe. The States of Tennessee, Alabama, and North Carolina, followed the example of Georgia. The Cherokee government ceased to be, and the people became outcasts in their own land.

The Cherokees appealed to the Supreme Court of the United States to sustain their government against that of Georgia, but the court decided that the Cherokee community were not such a State as could maintain an action in that tribunal. Writs of error were obtained in that court to protect individual Cherokees, but they were disregarded by the State, and could not be executed by the United States without a civil war. Perceiving that the Executive of the United States would not resist the State authorities by force, and that no alternative was left to the eastern Cherokees but emigration or annihilation, the more honest and patriotic of the nation turned their thoughts towards Arkansas. A treaty party sprang up, headed by Major Ridge, John Ridge, and Elias Boudinot. After strenuous attempts by the government to bring John Ross and the other chiefs into the measure, a treaty was finally made in December, 1835, with a council composed of a small portion of the nation, the Ross party refusing to attend. In the belief that the liberality of this treaty would induce a majority of the nation to acquiesce in it, President Jackson sent it to the Senate, by whom it was ratified. More than four-fifths of the nation, however, denounced the treaty as a fraud on the Cherokees and on the United States; denied its validity, and refused to emigrate. The United States were finally obliged to send their troops into the country and force them into the Cherokee country west at the point of the bayonet.
Now, sir, if we admit that preambles are stipulations, and that the western Cherokees were legally bound to receive those who desired to join them, were they also bound to furnish a home to every unwilling Cherokee east, who might be thrust among them at the point of the bayonet?

Let us look a little further into this emigration. On the 1st day of August, 1838, when the eastern Cherokees had been collected together at “Aquonee camp,” or, as they called it, “captured,” preparatory to removal, they held a general convention composed of “the committee and council and people of the Cherokee nation,” at which they adopted sundry resolutions declaratory of their rights and of the character in which they went to Arkansas. The first resolution asserted their title to the lands east, notwithstanding the treaty of 1835, which they declared to be void. The second was in the following words, viz:

“And whereas the Cherokee people have existed as a distinct national community in the possession and exercise of the appropriate and essential attributes of sovereignty, for a period extending into antiquity beyond the dates and records and memory of man; and whereas these attributes, with the rights and franchises which they involve, have never been relinquished by the Cherokee people; and whereas the natural, political, and moral relations subsisting among the citizens of the Cherokee nation towards each other and towards the body politic, cannot, in reason and justice, be dissolved by the expulsion of the nation from its own territory, by the power of the United States government; Resolved, &c., That the inherent sovereignty of the Cherokee nation, together with the constitution, laws, and usages of the same, are, and by the authority aforesaid, hereby declared to be in full force and virtue, and shall continue so to be in perpetuity, subject to such modifications as the general welfare may render expedient.” (See Doc. 129, H. R., 1st session 26th Congress, p. 37.)

There then was a nation, with an organized government, starting for the Cherokee country west. Had the Cherokee nation east a legal right, under the treaty of 1828, to seat itself down in the Cherokee country west, and set up its constitution, laws, and authorities there, without the consent of the government or people of the Cherokee nation west?

On the 10th June, 1839, after the arrival of John Ross with his nation in the country west, he addressed a letter to the western chiefs, in which he said: “But after the seizure and captivity of the whole Cherokee people east, by the military power of the United States government, a set of resolutions was adopted in general council, expressive of their sentiments and reaffirming all their previous acts in relation to the rights and interests of the nation. From these facts, it will be clearly seen that the great body of the people who have recently been removed into this country emigrated in their national character, with all the attributes from time immemorial which belonged to them as a distinct community, and which they have never surrendered.” “The national committee and council of the eastern Cherokees” were then in session on the soil of the western Cherokees! When the national council of the latter, also then in session, expressed the opinion that by coming into their country the emigrants from the east came under the government and laws therein established, and that it was absurd “for laws created beyond the Mississippi to be brought here, brought to life, and to have full force in this nation,”
the council of the eastern Cherokees used the following language in replying, viz: "That the ancient integrity of the eastern nation should be dissolved and her existence annihilated without discussion, without conditions, and without action of any kind, is utterly inconceivable;" and they proceeded to adopt the following resolution, viz:

"Resolved, That the declarations of the general council of the nation at Acohoee camp, on the 1st day of August, 1838, in reference to attributes of sovereignty derived from our fathers, be, and they are hereby, reasserted and confirmed." (See Doc. 129, as above, pages 48, 51, 53.)

Here, then, were two sovereignties on the same soil; one originally established there, and the other imported from the east. Was this kind of emigration legally authorized by the treaty of 1828? By any rule of legal construction ever recognised among civilized nations, can that treaty be made, in its language or intent, to authorize the United States or the Cherokees east to remove an established government into the territories of the western Cherokees? Did those people intend to authorize a rival government on their own soil, or was the result a legal consequence of their act?

The natural effect of two sovereignties claiming a jurisdiction over the same soil speedily followed. Captain John Rogers, one of the signers of the treaty of 1828, and now representing the western Cherokees, was then their principal chief. The imported community far exceeded in numbers that of which he was the head, and the consequence was that his government was put down by violence. Was this the legal effect of those stipulations in the treaty of 1828 to which Captain Rogers gave his consent? Are these the "repose and blessings" in which he invited the eastern brothers to participate? Was his own deposition and the destruction of his government a legal effect of that instrument?

We need not anticipate your answer. On the assumption that the preambles to the treaty and to the eighth article were stipulations of the most positive character, binding the western Cherokees forever to receive such of their eastern brothers as desired to join them, they could not bind them to admit such as were forced into their country contrary to their will, and much less a whole community, with an organized government strong enough to overthrow their own institutions, seize upon their property, reduce them to subjection, or drive them into exile. If, therefore, the rules of strict legal construction be applied to the treaty of 1828, it is impossible to find in any of its provisions the least pretence for holding the western Cherokees bound to admit forced emigrants upon their territory; and much less another organized community to overpower and destroy them.

If the rules of legal construction be thrown aside, and we resort to "equity and good conscience" as our guide in ascertaining the rights and obligations of the western Cherokees, their wrongs will appear none the less aggravated. There can be no mistake as to the kind of emigration contemplated by both parties to the treaty of 1828. It was to be a willing emigration—an emigration of individuals who were expected to settle down quietly under the Cherokee government west, and incorporate themselves into that community. To produce such an emigration the United States agreed to hold out the inducements mentioned in the eighth article. Equity and good conscience required the western Cherokees to receive all such emigrants, and equally forbade the United States to employ any compulsory means. Very few of the Cherokees east really "wished to
join their brothers of the west,” or could “be induced” to do so by the advantages held out in that treaty. A portion were compelled to remove, unwillingly, by the legislation of the States; but the greater portion by the bayonets of the United States. Good conscience did not require of the western Cherokees to admit into their community or their country either of these classes of emigrants, even had they been presented singly and not in masses sufficient to overwhelm and conquer them. Good conscience revolts at the assumption which would authorize the United States to destroy the western Cherokees, under cover of a treaty professing to secure their happiness “in all future time.” In the fullness of their grat­itude and joy at the prospect of being “freed from the harassing and ruin­ous effects consequent upon a location amidst a white population,” they invited their eastern brothers to join them; and, to enable them so to do, secured the friendly aid of the United States. Good conscience will not now permit these States to point to that invitation as authority for bringing upon them a greater ruin, and make their brotherly kindness an apology for hurling upon them swift destruction. Good conscience will not permit us to tell the western Cherokees—you consented to your own ruin, and on your own heads be the blame! Every man knows that such was not their object or intention, even if such were the necessary effect of their language.

Whether, therefore, we construe the treaty of 1828 by legal rules, or by the dictates of a good conscience, we shall find in it no authority to the United States to force upon the western Cherokees unwilling emigrants, or to throw upon them the whole community east to overrun their country, overthrow their government, and subject them to alien customs and foreign institutions. To us it is strange that any difference of opinion could arise out of the treaty of 1828, so plain are its provisions. The parties to it were the “United States and the Cherokee nation west.” The Cherokees east had nothing to do with it. The Cherokees west, and not the whole Cherokee people, ceded their lands in Arkansas, and received, in exchange, lands further west. If the Cherokees east acquired an interest in the lands received by their western brothers, they must have had an interest in those ceded! And, if so, they have not parted with it to this day, and a large section of Arkansas is now Cherokee property. The eastern Cherokees never claimed or received any portion of the money or annuities, granted by the fifth article, in part consideration for the lands ceded; and, upon the same principle, how could they claim any interest in the lands which constituted the other part? Under the sixth article, the western Cherokees might have proceeded at once to divide their lands and “own them individually”—a provision incompatible with the existence of any common interest in the eastern Cherokees.

In fine, the principles and policy on which this treaty was based appear to us too plain to be mistaken. There were two nations of Chero­kees—the eastern and western. The lands of the eastern were within the limits of independent States, and the people of these States were very anxious to possess them. In making arrangements to remove the western Cherokees further west, the United States availed themselves of their kind disposition towards their eastern brothers to obtain an invitation to them to join them in their new country, and made ample provisions to pay the expenses of emigrants. The western Cherokees parted with no right, and neither the United States nor the eastern Cherokees acquired any. Each eastern Cherokee might, however, as many had done between
1819 and 1828, acquire all the rights and privileges of a western Cherokee by removing into the Cherokee nation west. Emigration and settlement was, and continued to be, their process of naturalization; and every eastern Cherokee, as well before the treaty as afterwards, might, by going through that process, have acquired an interest in the western lands and a voice in the western government. The right was not derived from the treaty, nor did it attach to him before he entered the country, but was dependent on the laws and customs of the western Cherokees and his own voluntary act in becoming a citizen.

The case finds a perfect parallel in the naturalization laws of the United States. Any alien may acquire all the privileges of a citizen and a common interest in our public lands, by going through the process of naturalization prescribed by our laws; but does it follow that every Englishman and Frenchman, Turk and Hindoo, has an interest in our common property without either emigration or naturalization? Or, because we admit voluntary emigrants from all the nations of the earth to become part and parcel of our community, does it follow that whole nations have a right to fling themselves upon us with their organized governments? Or, would it authorize France, if she were to conquer the British islands, to force upon us their whole population, with their king, lords, and commons, to seize on our country and overturn our republican institutions? Equally absurd, in regard to the western Cherokees, are the attempts to deduce from the treaty of 1828 authority or justification for the acts which have annihilated their government and deprived them of their country!!

Here, sir, we will pause. Our desire is to satisfy your mind as to what were the rights of the several parties immediately after the conclusion of the treaty of 1828. That point it is necessary to settle before we proceed to consider what rights of the western Cherokees have been violated. The following positions, we trust, you will find to be established beyond a reasonable doubt, viz:
1. By the treaties of 1817 and 1819, the division of the Cherokees into two communities, independent of each other, was recognised and established.
2. By these treaties the lands and other common property of the Cherokee people were divided between the two communities, and thereafter held in severalty.
3. The right of each party to its lands was exclusive of the other; the Cherokees west retaining no interest in the lands of the Cherokees east, and the Cherokees east acquiring none in those of the Cherokees west.
4. By the treaty of 1828, the Cherokees west exchanged their lands in Arkansas for other lands further west, without parting with their exclusive right, or changing, in the least, the tenure by which they were to be held.

In another communication we will point out the wrongs which have been inflicted on these people under the authority and by the sufferance of the United States.

With high consideration, your obedient servants,

S. C. STAMBAUGH,
AMOS KENDALL,
Agents for the western Cherokees.

Hon. WM. L. MARCY,
Secretary of War.
Washington, November 1, 1845.

Sir: Subsequent to the treaty of 1828, the United States again recognised the separate existence and rights of the Cherokee nation west; that recognition is found in a treaty concluded with them in 1833. (See Treaty-book, page 561.)

If the whole Cherokee race had constituted but one nation, and the Cherokees east had been jointly interested with those west, in the conditions of that treaty, it would surely have been necessary to consult the former (who constituted the majority) in the arrangement of boundaries and title to their country then effected; but the United States saw no such necessity. On the contrary, they dealt only with the western Cherokees, whom they called "the Cherokee nation of Indians west of the Mississippi," whose chiefs and headmen they say, in the caption of the treaty, "were duly authorized and empowered by their nation." Those chiefs, thus empowered by the western Cherokees, without the consent or knowledge of the eastern nation, the United States recognised, in this treaty, as competent to arrange the boundaries of their lands, both with the Creek Indians and with the United States; and to their nation they again ceded the whole Cherokee country, as then described and bounded, adding the further promise that "letters patent shall be issued by the United States, as soon as practicable, for the land hereby guarantied."

The Cherokee nation west, thus established and recognised by solemn treaties; their lands guarantied to them forever; and "letters patent" promised, as soon as practicable, in the most liberal spirit, and in furtherance of the policy of the United States, declared their willingness to receive as equals, and admit to the enjoyment of all their rights and privileges, such of their eastern brothers as desired to join their society and live under their laws. This disposition, always evinced from their first settlement in the west, they had now avowed in a treaty with the United States. But the eastern Cherokees were not only content to live where they were, but had contracted an utter abhorrence of the country west. So determined were they not to "join their western brethren" that they enacted and maintained a law denouncing death upon any one who would propose to sell their country with a view to removal, declaring that they would rather die among their native mountains than live upon the western prairies. Is there any pretext for urging that the western Cherokees ever stipulated or were willing to receive emigrants who came with such a spirit?

In our former letter we touched upon the causes which induced the government to press on the Cherokees east the expediency of removing to the west. After the treaty of 1819, it became the settled policy and determination of the Cherokee nation east to cede away no more of their lands, and to discourage emigration. That policy was obstinately pursued in defiance of all the allurements held out by the United States, and all the sufferings inflicted by the legislation of the several States. Deprived of government, of home, and of the means of comfortable subsistence, "I had rather die in my own country" was the reply of the common Indian when urged to emigrate.

We come now to the first wrong perpetrated on the western Cherokees by the United States. It is found in the second and third articles of the
treaty of 1835, concluded with a portion of the Cherokee nation east. (See Treaty-book, pages 635–6.) Notwithstanding the treaties of 1817, 1819, 1828, and 1833, which ceded and guaranteed the Cherokee country west to the “western Cherokees” exclusively, treating them as fully competent to give and take title thereto, without consulting the Cherokees east, it is here assumed (contrary to the established law and notorious fact) that they were not a separate community! that the territory they had bought with their portion of the lands east, after division, was not their own! that, instead of acquiring a country for themselves by the treaties of 1828 and 1833, as they had supposed, they were dealing for the whole Cherokee race! that lands, which they were competent to acquire without the consent or knowledge of the eastern Cherokees, might be lawfully taken without their own consent or knowledge! and that the separation of the hunters from the cultivators of the soil, the division of country, the emigration to Arkansas, the establishment of two governments, the treaties with the United States recognising their separate existence with separate territories, governments, annuities and privileges, were all but a series of delusive dreams, from which they were now to be awakened, by finding that their nation had never been divided; and that, notwithstanding their treaties and other evidences to the contrary, their lands in the west had always been the common property of themselves and their eastern brothers, who never needed their invitation and consent to come and enjoy them! If their astonishment was great at finding their eastern brothers joint owners of their lands, without emigration or naturalization, it could not be less at finding themselves denied, by the same instrument, a like joint interest in the Cherokee lands east. This principle will be found in the 15th article, which provides that the purchase money for the country east, after satisfying certain claims, “shall be equally divided between all the people belonging to the Cherokee nation east, according to the census just completed, and such Cherokees as have removed west since June, 1833;” thus excluding all who had removed prior to that date! Thus was it assumed that the Cherokee country west was common property, while the Cherokee country east was not common property! and yet it is said that the Cherokees were but one people!

A faint effort has been made to prove that the western Cherokees assented to the treaty of 1835, when, in fact, they exerted themselves to prevent both its conclusion and ratification. At page 377 of Senate document 120, 1st session 25th Congress, will be found a letter from Major P. W. Armstrong, acting superintendent, dated Choctaw Agency, June 15, 1835, in which he states that a council of the western Cherokees had been “convened expressly to take into consideration the treaty offered to the Cherokees east.” “It is my duty to inform you,” said he, “of a fact that is well known here, that these people are dissatisfied, and will, I have no doubt, object to the views of the government in uniting the Cherokees, unless they can have their wishes, which, I assure you, are not to be found in the treaty intended to be laid before the eastern Cherokees.” On page 378, same document, will be found a letter from the western council to their agent, informing him of the appointment of a delegation, consisting of Joseph Vann, William S. Coody, John Smith, and John Drew, who were instructed “to go to the eastern Cherokees, and, if possible, to effect such arrangements as will unite the two people in one upon the Arkansas,” &c. At page 155, will be found a letter from the Acting Sec-
Secretary of War, dated July 27, 1835, instructing the commissioners appointed to negotiate a treaty, that "if the delegation (meaning the delegates above named) present themselves, they must not, under any circumstances, be admitted to the council, or recognised in any manner! Their interference is unauthorised and officious; and you are requested, by the exercise of every proper means, to counteract every effort they may make out of the council to obstruct the progress of the treaty." The commissioners were also requested to examine the intercourse law, to see whether this delegation could not be arrested and sent out of the country! and were further instructed to inform the delegates that, if they came to Washington, they would not be received, nor any business transacted with them. At page 481-2, will be found a letter from one of the commissioners, dated October 8, 1835, noticing the arrival of this delegation, in which he says: "If they are true and faithful, they may be of great service; and, if they are not, I have told Coody what I shall be obliged to do in reference to them!"

Appended to the treaty of 1835 will be found an instrument signed by James Rogers and John Smith, as delegates from the western Cherokees, in which they say they "agree to it in behalf of the western Cherokees;" reserving, however, "any claims of the western Cherokees against the United States." James Rogers, as has been shown, was not one of the delegation appointed by the western council, and seems to have been selected for the occasion, by the United States commissioner.

At page 496 will be found a letter from one of the commissioners, dated December 31, 1835, informing the Indian office of the conclusion of the treaty; and in that letter he says: "I have also succeeded in obtaining the signatures of two of the delegates of the western Cherokees, approving the treaty in toto, and inviting their brethren to an equal participation in all the benefits and privileges of the Cherokee country west. This I deemed a very important measure; and to effect it, I agreed to furnish them money sufficient to bear their expenses to Washington, and they will come on when the delegates from this part of the country go on, which will be on the third Monday in January."

The western Cherokees, however, did not approve of this unauthorized and purchased approval of two of their people. At page 659 may be found a letter from their chiefs to the chiefs of the treaty party, in which their objections to the treaty are stated. At the bottom of this letter is a note, signed by John Smith, in the following words: "Now you see from this letter what I told you all when you wished me to sign the treaty. I told you that I would sign it, though it was not agreeable to our instructions; and you would not agree to any of my propositions; you and our people can settle it yourselves hereafter."

Without stopping to inquire who was right or who was wrong on this occasion, we beg you to consider how these people have been treated. The proposed treaty involved their property, their government, their existence as a community, together with their individual safety and happiness. Yet they are told that any interference on their part was "unauthorized and officious." Though the treaty on the tapis was based on the assumption that the Cherokees east and west were one people, the latter are not only denied all right to a voice in their common affairs, but are considered so thoroughly foreign that they might, perchance, be arrested and sent out from among their own people as intruders.
When, afterwards, they appear on the ground, the commissioner thinks "if they are true and faithful"—that is, if they will violate their instructions and betray their people—"they may be of great service." If not, why, they have no business there, and he knows what to do with them. And he deems it "a very important measure" to have bought the approval of one of the delegates, at the price of a trip to Washington, and hired another Cherokee to assume the character of a delegate, and join in the act at the same price, with an additional gratuity of $2,175 paid to each.

This whole matter evinces a consciousness that a wrong was about being committed on the western Cherokees, which their seeming consent was deemed "important" to palliate. But it is not necessary to dwell on this shameful disclosure. Nor did the western Cherokees acquiesce in the treaty after it was formed. In the fall of 1836 they appointed a delegation to visit Washington, and there, in conjunction with a delegation from the eastern Cherokees, protest against the execution of the treaty. They performed the duty by affixing their names to the protests of the eastern Cherokees. In that to the President, dated March 16, 1837, the following language is used, viz:

"The Cherokee nation never authorized the formation of this spurious treaty. They never conferred upon the individuals who signed it any authority to give their assent. They have never recognised its validity, and never can. They have protested against it as a fraud upon themselves and upon the United States." (Document 120 aforesaid, page 803.)

The memorial to Congress, dated February 22, 1837, speaks thus, viz:

"In the name of the whole Cherokee nation we protest against this unhallowed, unauthorized, and unacknowledged compact. We deny its binding force. We recognise none of its stipulations. If, contrary to every principle of justice, it is to be enforced upon us, we shall at least be free from the disgrace of self-humiliation." (Same document, page 810.)

From that time down to this, the western Cherokees have never given their assent to the treaty of 1835. All its melancholy consequences have been forced upon them by the hand of power.

In our former letter, we presented to you the community of eastern Cherokees transported to the soil of the western, and there setting up their constitution, laws, and authorities. Among all their extravagant assumptions, they did not claim any rightful jurisdiction over the persons of the western Cherokees without their consent. On the 10th of June, 1839, when the councils of the two communities were in session, having been called together for the purpose of uniting them into one, John Ross, in his address to the western Cherokees, said: "Notwithstanding the late emigrants removed in their national capacity, and constitute a large majority, yet there is no intention or desire, on the part of their representatives, to propose or require anything but what may be strictly equitable and just, and satisfactory to the people. Being persuaded that these feelings will be fully reciprocated, I trust that the subject-matter of this council will be referred to the respective representatives of the eastern and western people; and that, in their joint deliberations, we may speedily come to some satisfactory conclusion for the permanent reunion and welfare of our nation." When the "old settlers" on the 11th (next day) invited the eastern Cherokees to state more clearly what their views and real wishes were, they replied, on the 13th, "that we desire to see the eastern and western Cherokees become reunited and live as one people." To ef-
that object, they proposed that each party should appoint an equal number, who, together, should form a committee for the purpose of preparing a code of laws for the new community to be formed out of the two, and "that the respective laws and authorities of the eastern and western Cherokeees shall continue to be exercised and enforced among themselves, until repealed, and the new government, which may be adopted, shall be organized and take effect," &c. (See Doc. 129, House of Reps., 1st session 26th Congress, pp. 48, 49, 50.)

The old settlers very naturally concluded that the eastern Cherokeees, by coming into their country, had placed themselves under the government already existing; and though willing that their eastern brothers should, under the circumstances, at once become citizens, and through the next elections (then but a few months distant) possess themselves of the offices, they would not consent, upon the instant, to change the entire government for their accommodation. Their reply to the proposals of the Ross nation (as simple and clear in diction as it is sound in principle) may be found at page 51 of document 129 aforesaid.

The power, of which the chiefs of this eastern nation, which had been precipitated into the west, could not at once peacefully grasp, they then determined to seize by violence. Having induced a few of the old settlers to act with them, they held a species of popular meeting on the spot, at which on the 20th of June they called a convention of the eastern and western Cherokeees, to assemble at Illinois camp ground on the 1st of July, for the purpose of effecting the desired union, and establishing a new government. Neither government as such had any voice in these proceedings, which were altogether revolutionary. (See page 53.) The council of the old settlers and their people had retired to their homes. The Ridges and Boudinot, who had evinced a determination to submit to the established government, and it was supposed had counselled the "old settlers," with their friends of the treaty party, had also dispersed. The revolutionary conclave remained at Ta-ka-to-ka until the 21st of June concocting their measures. The first result exhibited itself on the 22d, in the dastardly murder of the two Ridges and Boudinot by three bands of assassins, who had evidently gone forth from the council ground for that purpose. Three of the greatest obstacles to the projected revolution were thus removed, and a significant warning was given to all others who might attempt to obstruct Mr. Ross and his adherents in their ambitious designs.

Passing over the intervening scenes, we find the revolutionary convention in session at Illinois camp ground on the 2d of July. How to get rid of the established government of the western Cherokeees was their first difficulty. A few recreant old settlers were induced on that day to invite their ruling chiefs to join the convention. This was followed on the 5th by an invitation, in the "kindest feelings," from John Ross and his associates. Not willing to join in the revolution, the old settlers, under the advice of the United States officers, made sundry propositions for a pacific union of the two communities, all of which were evaded or rejected by the revolutionists, who now claimed to act by an authority above and beyond all organized government. Despairing of any amicable arrangements, the chiefs of the existing government, on the 9th of August, addressed a letter to Captain William Armstrong, clearly setting forth their rights and condition, and closing as follows, viz:
We now, therefore, make our appeal to you, and through you to the government of the United States, to ask that we may be sustained in the enjoyment of our rights and in the execution of our laws; and that the lives and liberties of all our citizens may be protected from violence and disturbance, as promised by treaty." For this paper see document 129, pages 100, 101. It is interesting, as setting forth, with much brevity and clearness, the facts and principles on which the appeal was based.

This appropriate appeal of the existing government to the United States was considered a crime by the revolutionists; and that portion of them which claimed to be "old settlers," proceeded in a separate meeting held on the 23d August to depose John Brown, the principal chief; and John Rogers, assistant principal chief. John Looney, the other assistant, having been won over, was placed at the head of those who punished his colleagues for the very acts in which he participated. The sentence of deposition was in the following words, viz:

"Wherefore, we the people of the western Cherokee nation, in national council assembled, in our own name, and by the authority and in the exercise of our primary and plenary powers, do, for the causes herein set forth, remove the aforesaid John Brown and John Rogers from the office of chiefs of the western Cherokee nation; and, by the authority aforesaid, the said John Brown and John Rogers are hereby deposed and disqualified from exercising in any manner the powers and functions of the chiefs of the western Cherokee nation." For the whole of this extraordinary paper, see document accompanying the report of the Commissioner of Indian Affairs, of November 25, 1839, No. 20.

Probably not twenty bona fide "old settlers" participated in this monstrous act! The highest number of them ever claimed to have been present at the revolutionary movements was only one hundred and fifteen. But you will remark the important fact, that the act purports to have been done not by the whole Cheroke people, but by the western Cherokees only, showing that even at that time the eastern Cherokees did not claim a right to interfere with the western government. To get that government out of the way, by the apparent consent of its constituents, was deemed essential to the consolidation they sought instantly to accomplish.

Thus, through the murder of the chiefs of the "treaty party," and the deposition of the chiefs of the "old settlers," by a few rebels against the legitimate authorities, backed by Ross and his foreign horde, was the path to power open to the eastern chiefs. Passing over, for the present, certain atrocious acts of the convention, sanctioning the murders which had been committed, we come to the "act of union," so called, which forms the basis of the present Cherokee government. That act is published with the Commissioner's report, already referred to, numbered 21. It appears to have been prepared as early as the 12th July, 1839, and to have been finally adopted on the 23d of August. This paper, like all the preceding, is based on the fact that there were two communities to be united into ONE! It then proceeds to declare such a union and fix its terms. It is signed by the presidents and principal chiefs of the two parties and their followers, each maintaining their distinctive characters of eastern and western Cherokees.

Having thus gotten rid of the established government, and merged its constituents in the body of new comers, as far as the act of a handful of usurpers could effect such an object, the revolutionary convention pro-
ceeded on the 6th day of September, 1839, to establish the present Cherokee constitution and government. Yes, sir, the government, thus established, through murder and usurpation as foul and dark as ever stained the page of history, is that which has been, and is now, recognised by the United States as the legitimate government of the Cherokee nation. You will find this spurious “act of union” and this “constitution” prefixed to the printed copies of the Cherokee laws; and you will look in vain through the book for any other acts of the two communities, merging them in one, or establishing a common government. To this act of union and this constitution, and to no others, do the Ross Party point, as their authority for holding the western community as extinct, and its members bound to obey the new government. Can acts, thus projected and consummated, have any legal effect? We should consider it disrespectful seriously to ask you such a question. Notwithstanding these proceedings, the faithful old settlers in October, 1839, chose John Rogers, John Smith, and Captain Dutch as their chiefs for the next term; and, on the 11th of November, 1839, they were recognised by Montford Stokes, United States agent for the Cherokee nation. On that day he issued a formal notice to the Cherokees, in which he said: “As, during my agency of upwards of two years past, I have acknowledged and respected the old Cherokee chiefs and their government as the only government of the Cherokee nation, I shall continue to do so until otherwise instructed by the government of the United States!” [See Doc. 347, Senate, 26th Congress, 1st session, pages 18, 19, 23, (10.)]

Page 8 of the same document, we have the opinion of the War Department, formed upon a full report of all the proceedings, and sent to the Senate on the 31st March, 1840. It is expressed in the following words, viz:

“It seems to be a weak assumption which lays claim to validity in the act of union. There was but one party really present. Whatever pains may have been taken to enlist or to intimidate the old settlers into a junction with the dominant party, those who yielded to the inducements held out were few, and, with one or two exceptions, of little weight; and do not afford a decent color for the assertion that the tribe is united, or that any portion or number of them deserving to be characterized as their representatives, or whose acts could, in any proper sense, bind the old settlers or treaty party, assented to the proceedings of the convention of July, assembled under the auspices of their opponents, or to any other political or legislative act of the Ross party.”

Might we not stop here? Every “political or legislative act of the Ross party,” from that day down to this, has been done by virtue of “the proceedings,” which are here admitted not to be binding on the old settlers—proceedings not affording “a decent color for the assertion that the tribe is united.”

It must be remembered that the United States is not a party to the Cherokee act of union or constitution. At this moment here are the Ross party presenting an act of union and a constitution, founded on murder and usurpation, (so base in their origin as not to give them “a decent color” of validity,) as the only authority by which they hold the western Cherokees in subjection; and, on the other hand, here come the western Cherokees, by two of the chiefs recognised in November, 1839, denying the authority of those acts to bind them, and reclaiming the rights guaranteed to them by solemn treaties, of which they have been violently and
writingly despoiled, under the usurpation above referred to. Can the United States hesitate to say to the Ross party, "if this be (as your laws show) the only authority by which you claim the reunion of the Chero­kees, we must pronounce it void, as we have heretofore done, and must now consider the old government the only legitimate one, held in aban­dance by: domestic violence, the arm of rebellion, and the hand of power?"

We do not charge the authorities of the United States, who, be it still remembered, are not a party to this act of union, with hunting up pretexts to force it on the western Cherokees, and abandon them to their fate; yet if this government had been in the hands of John Ross himself, its policy could not have been better shaped to give impunity to the crimes committed under his orders, or perpetuity to his usurpation. While the usurper purs­ued his object with a steadiness of purpose which would have done honor to a good cause, the government at Washington was feeble, vacillating, and, in its effects, unjust and fatal to those whom it was bound by every obligation of honor and good faith to shield and protect.

The murder of the Ridges and Boudinot, and the usurpation, which followed, were reported to the government here—to that government which was bound, even by the treaty negotiated with these men in 1835, "to protect the Cherokee nation from domestic strife." What was its duty? Domestic strife had shed the blood of its friends, and over­thrown the regular government. The friends of the murdered and the deposed chiefs were restrained from seeking vengeance and redress only by the assurances of the government officers that justice should be done them. The old settlers and treaty party little imagined that the obligation of the United States to "protect the Cherokee nation from domestic strife" would be practically construed as a contract to protect murderers and usurpers! They had a right to expect that the troops of the United States would be ordered to seize the chiefs of the Ross party, and hold them responsible for the murders of the Ridges and Boudinot, and sustain the old chiefs in the exercise of their legitimate authority. But what did they witness? A feeble effort to arrest the murderers, which, in a short time, was entirely abandoned, and a practical abandonment to their fate of both the old settlers and treaty party.

After receiving full intelligence of the murders and usurpations com­mitted in the Cherokee country west, the Commissioner of Indian Affairs, on the 8th October, 1839, wrote to Major Armstrong, as follows: "I am instructed by the Secretary of War, that the great and liberal principle of modern times is the only one, in his opinion, by which the Cherokee nation can be made one in feeling, interest, and government. That a majority shall rule, is an axiom in politics, now substantially admitted almost everywhere, and one that must prevail universally. It is applicable, and its application is as necessary to the Cherokees as to other communities. It is therefore recommended to the Cherokee nation of all parties to assem­ble in national council, and as one people to determine on such laws and regulations as the larger number of them shall think best calculated to insure their prosperity and happiness. To this point it must come. The minority, unless it amount to nearly an equal proportion, must eventually yield to the great mass, whether they arrange their difficulties in a pacific temper, or a resort be had to violence!!!" Again: In direct reply to the appeal of the old settlers for protection, the Commissioner said: "Against the operation of such laws as a majority of the Cherokee nation may pass
and enforce, the United States cannot protect or defend any portion of the tribe; so far from it, they are bound to secure the right to the nation, through the national council, of devising and executing laws. In their dissensions, therefore, concerning domestic polity, the United States cannot inter­fere; but against personal violence or domestic strife, "without or against law, the Cherokees will be protected."—(See documents accompany­ing Commissioner's report of November 25, 1839, No. 30.)

These positions were confirmed by a letter from the Secretary of War to General Arbuckle, dated October 12, 1839—same document. This was a decision in favor of the Ross party and their usurpation. It was based on the assumption that all the Cherokees were one community; that the "old settlers" had no separate rights; and that the Ross party, being a majority, had a right summarily to suppress the old government, and create a new one in its stead! We doubt not but you will agree with us, that this assumption was not warranted by fact or sustained by principle. The Cherokees did not pretend to be one community without a formal act of union, and the United States had themselves made two treaties with the western chiefs, without consulting that majority whom they now discover to be the rightful owners of the Cherokee country west.

On receipt of these instructions in the Cherokee nation, the agent, Governor Stokes, on the 20th December, 1839, united with the usurping authorities (without consulting the rightful government) in an invitation to all the Cherokee people to meet on the 15th January, 1840, for the purpose of ascertaining the will of the majority. On the 24th of December, the old chiefs, Rogers, Smith, and Dutch, protested, in a letter to Governor Stokes, against this proceeding. They assumed the following grounds, viz:

"In the first place, the legal authorities of the Cherokee nation west have not been consulted, nor have they had any agency in convening the people to decide, by vote, which government shall prevail."

"Secondly. We do not predicate the legitimacy of our government barely upon numbers; for long has the United States government acknowledged our government, and treated us as a nation! And how often has Mr. Ross, while wielding the government of the eastern Cherokees, done the same, and contended that we were distinct communities?" They concluded with a proposition that each party should choose twelve men to form an act of union; &c.—(See Senate document 347, 1st session 26th Congress, pages 35-6.)

The meeting called on the 15th January took place, however, and as the old settlers in general and the treaty party did not attend, the act of union and constitution adopted by the revolutionary convention were unanimously confirmed. The Ross party claim that 115 old settlers voted with them on this occasion, while Holt, of the western nation, who was requested to count them, reported thirty-five present, of whom only thirty-three voted.—(Same document, page 45.)

General Arbuckle then informed the chiefs of the old settlers that "agreeably to the decision of the President of the United States," he considered their government at an end. In his report to the Secretary of War, (same document, page 54,) he said: "They are greatly dissatisfied with the late decision of the government, and assured me that it was their intention to claim of the United States the undisturbed possession of seven millions of acres of land, which they think they were entitled to; and that all the
Cherokees who have not voluntarily removed to this country, and have refused to unite with them, shall be removed from the lands they claim; otherwise that they shall be permitted to enjoy a fair participation in the government of the Cherokee nation, and receive an equal share of the sum to be paid for the Cherokee country east, as provided for by the 15th article of the treaty of 1835.

On the 7th February, 1840, the old settlers held a council at Fort Gibson, and adopted an exposition of their rights, concluding with the following resolutions, viz:

"Resolved, That the conduct of Mr. John Ross and his partisans is an unprecedented act of usurpation, unfounded in justice, law, or humanity; and we will not in all future time acknowledge the same."

"Resolved, That the only legitimate government of this nation is the one handed down to us by the original settlers of the Cherokee nation west, and we will, to the utmost of our power and ability, uphold and defend the same."

(Same document, pages 55, 58.)

Let us pause here and contemplate the position in which these unhappy people were now placed. In compliance with the policy of the United States, they had given up their portion of the country east, and accepted an equal quantity of land on the Arkansas and White rivers, with a promise of a perpetual outlet west to the limits of Mexico, which, as our government then (in 1817) maintained, was the Rio Grande del Norte. To make room for the State of Arkansas, at the request of the United States, they agreed, by the treaty of 1828, to retire back upon their outlet, nominally acquiring seven millions of acres for four, but in effect curtailing their territory four millions of acres! In this treaty, the United States induced them to invite their eastern brothers to come and live on their lands and under their government, offering them all the privileges of citizens. Under cover of this invitation, the United States assumed the right to precipitate upon them the entire nation east, at the point of the bayonet! They were even denied the right to oppose the consummation of measures which took from them their country and aimed at their existence. Instead of uniting with them under their government, the new comers insisted on its instant destruction, and the immediate transfer of all power to their own hands. When the western chiefs refused to accede to this insolent demand, the Ross party proceeded forthwith to murder those able and intelligent chiefs, whose influence they feared; to depose the old chiefs from authority by the agency of a few rebels, and to establish an act of union and constitution, founded in blood and usurpation. When the western chiefs appealed to this government for protection, they were virtually told, the United States cannot interfere except in cases of "domestic strife!" There is no "domestic strife" among you; the bloody hand of usurpation has done its work, and you are at peace; so far from protecting you, we are obliged to protect the successful usurpers against any and all efforts on your part to overthrow them! This is "the great and liberal principle of modern times;" "to this point it must come!"

This was the precise position of the United States and the western Cherokees, in February, 1840. The Secretary of War appears to have been afterwards awakened to the injustice which the application of the "majority principle" to this case must inflict; and he resolved to change his ground, but too late to ward off the death blow to the legitimate Cherokee government.
The length of this communication induces us to reserve the last act in this drama for another letter.

With high consideration, your obedient servants,

S. C. STAMBAUGH,
AMOS KENDALL.

HON. W. L. MARCY, Secretary of War.

PART I.—No. 3.

WASHINGTON, November, 1845.

SIR: We now approach the last act in this tragedy of murder and usurpation. To understand it clearly, we must look back to the opinions expressed by General Arbuckle in his letters to the War Department, subsequent to the meeting of the Ross party on the 15th of January, 1840, at which they readopted the act of union and constitution of 1839. In a letter dated January 22, 1840, he said that, in the government formed by the Ross party, "the old settlers are not represented by a single man of their choice," and added, "unless something is done to satisfy the old settlers at an early period, frequent violence and murders may be anticipated in the Cherokee nation."

In a letter dated January 28, he said: "If I were permitted to exercise my own judgment, I would at once dissolve both governments in that nation; and, as they cannot themselves settle this matter without great risk of serious misfortune to their people, I would give to each party a fair representation in the new government, agreeably to their number. This, I believe, would soon give quiet to their people."

Again, in his letter of February 8, transmitting the proceedings of the old settlers, reasserting their rights, he said: "I much regret to notice, by them, that the troubles in the Cherokee nation have not yet ended, provided the old settlers are to be deprived of a fair participation in the government of their nation; and as they appear to make this the material point for which they will contend, I hope it will receive the consideration it is entitled to by the government, which will, as I judge, prevent further difficulties in this nation."

In consequence of these letters, the Secretary of War suspended the functions of the Cherokee agent, and vested General Arbuckle with the entire power to settle the Cherokee difficulties. He was directed, under date of March 7, 1840, to procure "the adoption of a constitution that will secure to every individual Cherokee his personal and political rights, and the free enjoyment of life, liberty and property;" and he was explicitly instructed to insist "that the old settlers shall be represented in the government to be created under the provisions of the constitution to that effect; and that one third of the chiefs shall be chosen from the western, and two-thirds from the eastern, Cherokees."

He was also instructed to take care that John Ross and William S. Coody should be excluded from all participation in the government; the former as parteiceps criminis in the murder of the Ridges and Boudinot, and the latter for defending those atrocities. For these papers see H. R. Doc. 185, 1st session 26th Congress, pages 43, 56, 57; and 54-5. Gen. Arbuckle, in pursuance of these instructions, invited delegations of both parties to Fort Gibson, and there, on the 21st of April, 1840, made them
an address, in which he used the following language, viz: "The government of the United States, as you are apprized, had, some time since, determined that this contest ought to be settled by the known will of a majority of the Cherokee people; and would still desire to adhere to that decision had it not been perceived that, by such an arrangement, the old government or settlers would not, in a government so formed, be represented by a single individual of their own choice; and have, therefore, decided that the old settlers shall enjoy, in the new government, one third of the offices, to be held by individuals of their own choice." * * *

"The Secretary of War has regarded it necessary that Messrs. John Ross and William S. Coody shall not hold office in your nation—the former, in consequence of his public acts in this country; the latter, in consequence of opinions expressed in the presence of the honorable Secretary of War." (See Commissioner's report, 1840, page 38.) General Arbuckle drew up a constitution, in accordance with these views, to which the old settlers agreed; but the Ross party refused to do so, upon an alleged want of authority. The meeting broke up without effecting anything; the Ross delegates promising to call their council, with a view to further action. As, however, they exhibited evident indications of a disposition to procrastinate and evade, General Arbuckle repeatedly called their attention to the subject, and, on the 24th of May, thus concluded a letter to Joseph Vann, assistant principal chief, viz: "I expect to hear from you within a few days, that an early period may be appointed for the assembling of the representatives of each party, duly authorized to establish a government for the Cherokee nation," &c. Again, on the 2d of June, he wrote Mr. Vann, requesting "that twenty-five or thirty of the late emigrants, or their adherents, will assemble at this post on the 10th instant, for the purpose of meeting a deputation from the old settlers and those that have joined them, for the purpose of establishing a government for the nation; and if the emigrants are still unwilling to unite with the old settlers and their friends, it would appear that no alternative is left to settle the difficulties in the Cherokee nation, except by the parties being separated, and each enjoying their own government and a suitable portion of the Cherokee lands and annuity."

This letter brought an answer, dated June 3, in which General Arbuckle was informed "that the council has passed a resolution authorizing the appointment of twelve men as a deputation on the part of the council, to meet a deputation of those of the old settlers that have not united with the late emigrants, on the 10th instant, at Fort Gibson, agreeable to your request." In communicating these papers to the War Department, on the 9th of June, General Arbuckle said, "It will be noticed that the committee on the part of the late emigrants is not appointed to transact the business for which it is required to assemble at this post;" which, as we have already seen, was "for the purpose of establishing a government for the nation."

On the 28th of June General Arbuckle reported the result of this meeting. He said: "The emigrants first presented to the old settlers the act of union entered into last summer or fall, and the enclosed constitution, for their acceptance. This they declined to comply with. The emigrants declared that they had no authority to alter the constitution. It therefore prevailed on the old settlers to accept it without admitting its legality until concurred in by them, and urged the emigrants to enter into an act
of union with the old settlers. These propositions were finally agreed to in the manner shown by the accompanying papers." (For these proceedings see Commissioner’s report in November 1840, pages 40 to 48.)

Those who oppose the claims of the western Cherokees plant one of their principal batteries on this act of union, quoting it to show that these unhappy people consented to their own ruin.

Their first argument is that the Cherokees never were divided into two communities, and their last that the two communities have been merged into one by their voluntary act. Now we denounce this act of union as a fraud and a nullity, of less binding effect, if possible, than that of 1839.

The War Department, after deciding that a majority of the Cherokees must govern, regardless of all pre-existing governments, had changed its ground, having become sensible of its obligation to protect the western Cherokees.

The majority had formed a constitution, and their deputation declared they had no authority to consent to any alteration. They therefore went to the meeting not to negotiate, but merely to receive the submission of the old settlers. The old settlers refused to surrender to the existing government, but General Arbuckle urged them to accept the constitution “without admitting its legality until concurred in by them.” Thus were they induced to sign the act of union which declares that “the constitution, however adopted at Tahlequah the 6th September, 1839, and the laws enacted under its provisions, shall be the governing laws of the nation.”

Thus were they induced to adopt what they peremptorily rejected, and that constitution has been enforced upon them ever since without being concurred in by them.

The reason why the western Cherokees would not accept the constitution is obvious. The Secretary of War and General Arbuckle had promised them that they should have the choice permanently of one-third of the officers of the government, and that John Ross should be excluded from authority; whereas this constitution secured neither of those ends, but left them entirely at the mercy of the Ross party.

To obtain their assent to it, therefore, they were told that it would not be binding on their people until agreed to by them; and they vainly supposed that in giving their assent to it they could secure the promised influence and power in the government of the nation. In accordance with the act of union, the promised proportion of the offices was surrendered to some of their leading men for a fraction of the pending term, before the end of which they expected the necessary alterations would be made in the constitution. Instead thereof, they found themselves, when the fractional term expired, in the same helpless condition as before, with the aggravation that they were considered as having assented to the existing constitution, and thus cut off all hope of redress by their voluntary act.

Thus one of the chief inducements to this act of union altogether failed, or rather was fraudulent from the beginning. Equally delusive were the other considerations which were held forth to secure their assent to it. They were promised from $70 to $200 each per capita money under the treaty of 1835 if they would sign the act, and but for that inducement their signatures would not have been procured. Messrs. Jones, Mason, and Butler, appointed to investigate Cherokee affairs and report to the War Department, in 1844, inquired into the origin of this act of union,
and have given the evidence with their report. (See Senate Doc. No. 140, 28th Congress, 2d session.) The following is an extract from General Arbuckle's evidence, page 17:

"Question. What inducements or assurances, if any, were held out to the old settlers to enter into the act of union?

"Answer. I understood the inducements to be, the enjoyment at once of a just share in the government of the nation, and a participation in any per capita allowance of money due, or which might become due, from the United States, which it was then supposed would amount to not less than seventy dollars to each individual.

"Question. If those inducements and assurances had not been held out to the old settlers, would they, in your opinion, have entered into the act of union at the time the act was agreed to by the parties?

"Answer. I think they would not."

Again, page 22:

"Question. By whom was it said, or from what authority was it communicated to the old settlers, that seventy dollars (or any other sum) would be the lowest amount that would be received by them as 'per capita,' under the 'act of union'?

"Answer. I told them myself that, in my opinion, the per capita money would amount to at least seventy dollars; others thought it would amount to ninety or a hundred dollars."

At page 31, Charles Thornton, one of the western Cherokees who signed the act, but now of the Ross party, states, "There was much talking among the delegation about the per capita. They had all formed high expectations, variously estimating it at from one hundred to two hundred dollars. If all had thought, as I did, that we would get nothing, I think they would not have entered into that act in the same form in which they did agree to it."

It is unnecessary to inform you that not a dollar of this per capita has ever been paid to an old settler, or is likely to be. We do not charge General Arbuckle with intentional deception, but a just view of the subject would have convinced him, as it will you, that neither the Ross government nor the United States had any rightful power to admit the old settlers to a participation in the per capita. That was not a public fund to be disposed of by the Cherokee government, but it was private property, belonging to the eastern Cherokees individually. It was a debt due by the United States to each eastern Cherokee, a vested right which the Cherokee government could not alienate. To such an arrangement as that contained in the act of union each eastern Cherokee must give his individual consent to make it binding; or to justify the United States in dividing the fund among all the Cherokees, eastern and western.

In holding out this inducement, therefore, both the United States and the Ross delegation promised what they had no rightful power to perform; and, were there now a million of dollars to be divided as per capita money, the old settlers could not receive one dollar of it. This consideration, therefore, was not only deceptive, but fraudulent.

Of a similar character is the provision in the act of union, "that all rights and titles to public Cherokee lands, on the east or west of the river Mississippi, with all other public interests which may have vested in either branch of the Cherokee family, whether inherited from our fathers or derived from any other source, shall henceforward vest entire and unim-
paired in the Cherokee nation, as constituted by this union." This was based on the assumption that the treaty of 1835 was null and void; and that the Cherokee country east was still "public Cherokee lands." In fact, such is still the position of John Ross, who asks for that country the sum of twenty millions of dollars! The United States deny the claim; but here was one of their officers urging upon the western Cherokees an act which directly recognises it.

Now, sir, we ask your serious attention to the practical results of those proceedings. A due proportion of the officers under the constitution immediately resigned, and old settlers were appointed in their places. Their terms expired; the constitution remained unchanged; and the old settlers found themselves in a worse condition than they were before. They were promised at least seventy dollars each per capita money. Not a dollar have they received.

They were promised an interest in the Cherokee lands east. Not a dollar's interest will they ever realize.

They were promised the permanent selection of one-third of the officers under the Cherokee government. Not one are they permitted to choose.

They were promised that John Ross should be excluded from the Cherokee government. He has become the standing chief of the nation. Not one solitary benefit have they realized beyond the brief gratification of a few of their leaders in holding offices for a fraction of a term!

These promises were virtually made by the United States, by that government which now inexorably holds them to a compact, every consideration of which has notoriously failed—a government which is not a party to it, though bound by every consideration of honor and good faith to make good to the weaker party the promises of its agent, if it be still determined to force upon them this fraudulent act.

Are the United States ready to fulfil those promises? Are they ready to pay the old settlers seventy to one hundred dollars each, as per capita money? Are they ready to admit an interest on their behalf equal to six or seven millions of dollars in the Cherokee country east? Are they ready to insist on such a change in the Cherokee constitution as will give the old settlers the choice of one third of the government? Are they ready permanently to exclude John Ross from office in the Cherokee country?

If they be not ready to do all this, it does not become them, we respectfully insist, to hold the old settlers to this act of union, even upon the assumption that it was lawfully binding on that community. But we deny that it ever had any legal obligation. There were two communities and two governments in the Cherokee country. The Ross delegation truly alleged that they had no authority to alter their constitution, and their objections were respected. And what authority had the old settlers present to alter or abolish their constitution? It is not pretended that they were appointed or authorized, or that their act was ratified by any general council or convention of their people. In getting rid of their constitution it has not been deemed necessary to observe that "great and liberal principle of modern times," the voice of a majority of those who were governed by it; but a dozen men, invited by General Arbuckle or the principal chief, or picked up for the occasion, were deemed competent to perform the high function of abolishing a government!

It was with some surprise that we read the opinion of the late com-
missioners, Messrs. Jones, Mason and Butler, "that the authority for the proceedings on either side, at Fort Gibson in June, 1840, was adequate;" and our surprise was not at all lessened by a perusal of the evidence on which that opinion was founded.

General Arbuckle, page 17 of their printed report, says: "In what manner that (the deputation) of the old settlers was appointed, I was not aware."

Seven of the twelve old settlers who signed the act of union were before the commissioners, who put to them the following question, page 20: "In what manner were you appointed or authorized to act for the 'western Cherokees' at the time you met General Arbuckle at Fort Gibson, in June, 1840, for the purpose of entering into an 'act of union,' and which you signed on the 26th of June, as seen in the original paper now before you?"

William Rogers answered: "I acted on behalf of the 'western Cherokees.'"

Thomas L. Rogers: "I came here by authority of the western Cherokees. I signed the act of union of my own accord." Page 27, in reply to another question, he said: "I was going off without signing the act, but was called by General Arbuckle, and persuaded to sign it. He further said that we must sign; that it would not be binding on us until ratified and confirmed by our people. I had no authority from my people to sign it, and did so from the representations of General Arbuckle, and the hope that it would prevent the further effusion of blood."

Ezekiel Starr replied: "I came here of my own accord. I signed the act without having any authority to do so from my chief or people."

Charles Reese: "I had no authority from any one, but came on the invitation of General Arbuckle to a meeting for the purpose of bringing about peace between the two parties."

The Wind: "I was not authorized to come by any one; after I arrived, Mr. Andrew Vann appointed me one of the committee."

Broken Canoe: "I came without any authority, on the invitation of General Arbuckle."

Wrinkle Sides: "The same."

Question. "Were there any primary meetings of your people (western Cherokees) held previous to or after this 'act of union,' by which you had authority to come or act for the western Cherokees?"

Answered in the negative by all but William Rogers, who said, "I think there were. They were called, I suppose, to settle the difficulties between the eastern and western Cherokees."

Question. "To whom did you consider yourself responsible for the part you took in signing the act of union?"


Wrinkle Sides: "I do not know, as I am a man of no knowledge."

At page 31 is the answer of Charles Thornton, now a Ross man, which refers back to 1839, and an imaginary deputation appointed at Tahltanuskul as the source of authority, but admits that he himself was appointed on the spot to fill a vacancy. The proceedings of the old settlers in 1839, to which he refers, so far from authorizing the overthrow of their government, insisted that it should be recognised as the only legitimate government of the country.

It was these men, appointed by nobody, and responsible to nobody,
whose acts were never authorized or sanctioned by their people, whom this
government have deemed competent to abolish their constitution, and sub-
ject their people to a new dominion! In view of these incontestable facts
and the failure of the entire consideration which induced the signers of
this instrument to put their names to it, do we use too strong language
when we say that this act of union remains but a naked pretext for refusing
justice and protection to the old settlers! If not, why do not this
government, while holding them with an iron grip to its terms, take some
steps to secure to them the promised consideration? We beg leave to
present one more view of this act of union. The United States are not
a party to it—it purports to be an agreement between two parties of Chero-
kees. For the purposes of an argument merely, let us admit its validity.
The western Cherokees were a community with a government and coun-
try. By thrusting in upon them another community, the United States
took from them their country, or a part of it, in consequence of which
they acquired a just claim to indemnity. They had a right to demand
and receive of the United States the full value of the lands of which they
were thus wrongfully deprived. It was an established claim, from which
the United States could not be released but by payment, or an acquittance
from the western Cherokees. When was this payment made? or where is
the acquittance of the western Cherokees? Does the act of union be-
tween the two Cherokee communities release the United States from any
pecuniary obligation to one party or the other? Not at all. By that act,
if deemed valid, the claims of each community against the United States
were vested in the new community created by their union. If, therefore,
the United States persist in enforcing this fraudulent act, notwithstanding
its original want of authority, and the total failure of every consider-
ation which induced the old settlers to accept it, they cannot, in justice
and honor, refuse to pay for the country which they had already wrested
from its rightful owners. But we rest our argument on the ground; first,
that the act of union of 1840 was void for want of authority in those who
executed it; and secondly, that if duly authorized, it became void for the
deception practised upon the representatives of the old settlers, and the
total failure of the consideration which induced them to agree to it. And
we care not whether the case be judged according to the principles of law
or equity, as established among civilized and Christian communities, con-
vinced that there is no principle of law which will sustain the subversion
of a government on such authority as is here adduced, or hold a party to
a contract, every consideration of which was deceptive and fraudulent;
nor any principle of equity which can bind the signers of that instrument,
much less those whom they assumed to represent, to fulfil its obligations
or regard its conditions. Give these people the benefit of those principles
by which the civilized world is professedly governed, and you must con-
sider them as totally absolved from this compact, which, at the best, was
forced upon them by the helpless condition to which they were reduced
by the wrongful acts of this government.
But if they are to be inextricably held to this instrument, which the Ross
party themselves do not treat as a compact between the two communities,
then we ask, as a matter that cannot be refused in decency or good faith,
that the United States shall make good to them the promises of the offi-
cer by whom they were induced to sign it, that they will secure to them
the promised per capita money; that they will cause such an alteration in
the Cherokee constitution as to give them the choice of one-third of the officers of government; that they will exclude John Ross from all authority in the Cherokee nation, and that they will enable them to realize that interest in the Cherokee lands east which induced them to admit the eastern Cherokees into an equal participation in the Cherokee lands west.

In presenting this view we are not to be understood, for a moment, as abandoning the position that the western Cherokees are now, of right, a separate community, and the exclusive proprietors of the Cherokee country west, whose government has been overthrown by invasion and rebellion; sustained by the United States in abandonment and violation of their solemn obligation to protect them against both, and preserve them forever in possession of their country and the right of self-government. A restoration to their rights, or ample indemnity for the loss of property, rights, and country, and for personal wrong, is what we now ask at the hands of the United States.

With high consideration, your obedient servants,

S. C. STAMBAUGH,
AMOS KENDALL.

Hon. Wm. L. Marcy,
Secretary of War.

WASHINGTON, December 26, 1845.

Sir: To obtain a full knowledge of the state of affairs among the Cherokees, it is necessary to understand the history of the "treaty party" as well as that of the "old settlers."

The resolution of the eastern Cherokees, subsequent to the treaty of 1817, to sell no more of their country to the United States, was not acceptable to the people of Georgia. When that State ceded her western territory, now constituting the States of Alabama and Mississippi, to the United States, the latter agreed to extinguish the Indian title to all lands lying within the limits of that State as soon as it could be done peaceably and on reasonable terms. The lands acquired from time to time by the United States from the Indians, were surveyed and distributed among the citizens of Georgia by lottery. The natural tendency of this system was to create a universal desire among the people for the extinction of Indian titles, that they might have new chances to acquire lands, or make money through a new land lottery. The appetite for more was increased by the acquisition of the Creek lands in 1825, and the State of Georgia became clamorous for the extinction by the United States of the Indian title to the Cherokee country. The establishment of a regular government in that country in 1827, with a written constitution, indicating that those people would never consent to remove, added greatly to the restlessness and importunities of the people of Georgia.

In this state of things, the United States negotiated with the western Cherokees the treaty of 1828, in which the latter were induced to invite their eastern brothers to come and live with them in the west. To those who lived within the limits of Georgia was promised by the United States not only "a good rifle, a blanket, and kettle, and five pounds of tobacco,
and to each member of his family a blanket, also a just compensation for the property he may abandon,” but their expenses were to be paid on their way to the west. They were to be subsisted a year; and each head of a family, or the person carrying with him four emigrants from the State of Georgia, was to receive fifty dollars in cash, and the same in proportion for a greater or less number.

This treaty was concluded in May, 1828, and enrolling agents were sent into the Cherokee country to induce them to emigrate. Very few actually emigrated and joined their brothers in the west under this treaty. To force them to emigrate now became the settled policy of Georgia. On the 28th December, 1828, the legislature of that State passed an act cutting up the Cherokee country, and annexing the several portions to the adjoining counties. It extended the laws of the State over all white persons residing in the Indian country at once, and over the Indians from the first day of June, 1830; abolishing all Indian laws and usages from the same date, and disqualified Indians from being witnesses against white men in the State courts.

The Cherokees were taught by their chiefs that the State of Georgia would not be permitted to execute this law; and they became more resolute than ever against selling their country, and the pre-existing law denouncing death upon any Cherokee who should propose a sale was re-enacted.

In December, 1829, the legislature passed another act confirming the act of 1828, and providing for the punishment by imprisonment of any one who should attempt to prevent emigration, or to deter any headman, chief, or warrior from treating for the sale of the Cherokee country; and imposing the penalty of death, by hanging, on any one who should take the life of a Cherokee proposing to emigrate, or treating for a sale of the country. This act authorized the calling out of the militia to enforce it upon the Cherokees.

An attempt was made to sustain the Cherokee constitution and laws against the laws of Georgia in the Supreme Court of the United States; but it was decided that an Indian tribe is not such a “State” within the meaning of the constitution as could maintain an action in that court. Tassel, a Cherokee, was condemned to be hanged under the laws of Georgia; and the Supreme Court, on application, issued a writ of error to test the constitutionality of the State laws, but it was disregarded, and he was executed.

In the meantime the discovery of gold in the Cherokee country largely increased the avidity of the white people to obtain possession of the Indian lands. Intruders for the purpose of digging for gold were removed by the United States, and the legislature of Georgia forbade the working of the mines by the Indians. In the public imagination here were not only valuable lands, but depositories of gold in untold quantities, which were to become prizes in the lottery to be created for parceling out the Cherokee territory as soon as the Indians could be disposed of.

In December, 1830, the legislature of Georgia passed an act to authorize the survey and disposition by lottery of the entire Cherokee country, reserving to the Indians only the present possession of their improvements, and the lots on which they were situated, though even these were included in the lottery. Punishments were prescribed for those who should obstruct the surveys or deface the lines, and a military force was
provided to protect the surveyors. To increase the number of prizes, the gold region was surveyed in forty-acre lots.

Another act was passed, which declared void all contracts made by Cherokees with white men; and prohibited suits upon such contracts in the courts, whether of law or equity.

By another act, the governor was authorized to take possession of and rent out the improvements left by emigrants to the west under the treaty of 1828 with the western Cherokees, which had been paid for by the United States. They were accordingly rented, by public outcry, to citizens of Georgia.

By another act, it was made a misdemeanor, punishable by confinement in the penitentiary, for the Cherokees to call or hold a council or legislative assembly, or to hold any court or tribunal whatever, or to serve process, or execute judgment under the Cherokee constitution and laws. White persons were excluded from the Cherokee territory, under pain of confinement in the penitentiary, unless they obtained a license from the governor, and took an oath of allegiance to the State of Georgia. A military guard was still maintained to enforce the State laws, and to prevent the Cherokees from working the gold mines in their own country.

Many of the missionaries and others refused to take the oath of allegiance, or leave the country; and were arrested by the military guard, put in chains, tried, sentenced, and marched off to the penitentiary. At the door of the penitentiary they were offered a pardon by the governor, on condition that they would take the oath, or leave the State. Most of them accepted the pardon; but the Rev. Samuel A. Worcester and Elizur Butler preferred the penitentiary to either alternative.

A writ of error in their behalf was sued out from the Supreme Court of the United States, which the governor and legislature of Georgia at once determined to disregard. It was, however, prosecuted to judgment, and the Supreme Court pronounced the law of Georgia unconstitutional and void, asserted the right of the Cherokees to their lands and to sovereignty, virtually overturning the whole fabric of Georgia legislation over the Cherokee country. The Georgia court, however, refused to obey the mandate of the Supreme Court, which had no power to enforce it; the missionaries remained in the penitentiary, and the condition of the Cherokees became more hopeless than ever. Messrs. Worcester and Butler finally yielded to the conditions prescribed, were pardoned by the governor, and left the State.

The Cherokee government was now abolished. Their country was sectioned off and disposed of by lottery, not excepting their houses and improvements, which they held by sufferance. White men, eager to spoil them, were rushing in and settling down upon their lands. A military guard harassed and frequently arrested them. Dram shops sprang up in every neighborhood. Prostitution walked forth in open day, and debauchery of all sorts made the night hideous. A moral ruin was overwhelming this unhappy people, which their more considerate men beheld with grief and indignation, but had no power to avert.

Up to this time, both chiefs and people were unanimously opposed to a sale of their country and to emigration; or if the thoughts of the more sagacious ever turned upon that expedient as the only effective mode of relief, they dared not give these thoughts utterance.

John Ridge was at Washington when the decision of the Supreme Court
in the case of Messrs. Worcester and Butler was given. He immediately waited on President Jackson, and inquired whether the power of the United States would be exerted to execute the decision, and put down the legislation of Georgia. The President told him it would not, and most earnestly advised him to go home and advise his people that their only hope of relief was in abandoning their country and removing to the west.

Ridge left the President with the melancholy conviction that he had told the truth. From that moment he was convinced that the only alternative to save his people from moral and physical death was to make the best terms they could with the government, and remove out of the limits of the States. This conviction he did not fail to make known to his friends, and hence arose the "treaty party." It did not spring up in opposition to the Cherokee government, for that government was annihilated! Its members did not act in violation of any Cherokee law, for all Cherokee laws were abolished! It can scarcely be said that they proposed to sell their country, for that country was already parcelled out among a band of conquerors; at least, such was their condition in Georgia; and the other States, in which some of them lived, had entered upon the same line of policy. He returned home to his family, whom he found exulting in the decision of the Supreme Court, and mournfully told them that their hopes were utterly delusive; that the sun of Cherokee liberty was passing to the west; that their nationality in the east was forever extinguished; and that they had no alternative but to follow the path which a cruel destiny pointed out to them.

John Ridge was a full-blooded Indian, bold, impetuous, patriotic, eloquent, well educated, and devoted to the advancement and best interests of the Cherokee people. He was the son of Major Ridge, a man of great bravery, strong intellect, and, though uneducated, clearly comprehending the interests of his people, and zealously devoted to them. Elias Bondinot was also a full-blooded Indian, the son of Watie, the brother of Major Ridge. He was well educated, wrote fluently, and was wholly devoted to the improvement and well-being of the Cherokee people. These three men became the leaders of the treaty party, not for the injury of their nation, but to save it from further calamities, if not from utter extinction.

The State of Georgia pursued her policy with relentless vigor. In December, 1831, several acts were passed in aid of previous enactments, and the whole Cherokee country, within the limits of Georgia, was made a county by the name of Cherokee, with the same courts, magistrates, and general organization as the other counties. But the Indians were excluded from voting, holding office, or having any voice in the government, nor could they sue in any of the courts.

In 1832, Cherokee county was cut up into ten counties, all of which were immediately organized. As the Indians were excluded from the courts, special officers were provided to hear their complaints and redress their grievances, and the military guard was still maintained.

In 1833, the counties carved out of the Cherokee country gave about 4,000 votes, and sent about twenty members to the legislature. One of the first measures of that body was the passage of an act which forbade the employment by an Indian of any white man, or slave belonging to a white man, or person of color not of Indian descent, as a tenant, cropper, or assistant in agriculture, or as a miller or millwright, on penalty of forfeiting his improvements.
All lands occupied by the Indians, with the improvements upon them, having been drawn in the land lotteries, the holders of these prizes were extremely desirous to thrust the Indians out of their own houses and off their own lands, that they might sell or occupy them. This law had the double effect of depreciating Indian property, by making it impossible to get suitable laborers, and driving them out of possession, if they ventured, by the appropriate means in their power, to make it productive. On the most frivolous pretexts, many of them were turned out of the houses they had built, and from the farms they had improved, by a summary process, for alleged violations of this law. The same act made it unlawful for an Indian to set up a claim against another Indian who was enrolled for emigration, and a felony to prevent, or attempt to prevent, any Indian from emigrating.

Many intelligent Cherokees had now become convinced that their only hope of relief was in emigration; but a large majority of the nation was as bitterly opposed to it as ever. They were not only promised relief by their leaders; but they were told the Cherokee country west was a sterile, unhealthy, and worthless region, in which they must perish by disease or starvation. By way of illustrating their horror of the country west, it was told of an Indian who was condemned to be hanged under the jaws of Georgia, that when he came to the gallows, he said he had rather go to Arkansas than be hanged. The poor fellow supposed that all the whites wanted was to get rid of him.

In June, 1834, a treaty was made by the Secretary of War with a few of the Cherokee chiefs; but it was rejected by the Senate. In the fall of the same year, the same treaty was brought before the Cherokee people, who also rejected it. Parties in the Cherokee country had now become very bitter. The treaty party were denounced as traitors to their country, and were continually threatened with death. Ross and his friends, on the other hand, were charged with a total indifference to the true interests of the Cherokee people; with deceiving the ignorant among them, who constituted a large majority, by encouraging hopes of relief when all grounds for hope had vanished; and with being governed by considerations altogether mercenary and selfish.

In the fall of 1834 both parties sent delegations to Washington—the one headed by John Ross, and the other by John Ridge. The delegation of the treaty party were very desirous to unite with the other in making an arrangement for the emigration of the whole tribe; but the obstinacy of Ross prevented any co operation. A great portion of the friends of the Cherokees in the United States now advised Ross and the other Cherokees to make the best terms they could with the government, and seek a refuge in the west as their only hope; and with being governed by considerations altogether mercenary and selfish.

A treaty on the basis of the Senate's award was, however, agreed to by the Ridge delegation, with the proviso, on their part, that it should not be binding until sanctioned by a general council of the Cherokees; to be called for that purpose. It was agreed that commissioners should visit
the Cherokee country, for the purpose of bringing the subject officially and formally before the Cherokee people.

In the meantime the Georgia legislature had passed an act directing the courts to dismiss all injunctions granted by them to protect Cherokees in the occupation of their improvements, and prohibiting their issue to defeat a grant from the State. Under this law, John Ross, and all those who had taken reservations under former treaties, were driven from their possessions, which were turned over to fortunate Georgians, who had drawn them as prizes.

On the 2d April, 1835, the Rev. J. F. Schermerhorn and Governor William Carroll were appointed commissioners to visit the Cherokee country, explain the treaty to the people, and endeavor to procure their assent to it. Mr. Schermerhorn immediately entered upon the service assigned to him. John Ross and his friends put forth all their influence to prevent acquiescence in the treaty of the Cherokee people. From a council called by him, consisting of about two hundred and fifty of his own partisans, Ross procured a vote rejecting the treaty, and expressing entire confidence in him. A more general council was held in July, to decide how their annuities should be paid, and Mr. Schermerhorn and John Ridge availed themselves of the occasion to address the people at length on the subject of removal. Before they separated, Mr. S. requested both the Ridge and Ross parties to appoint committees to confer with him on the subject of a treaty, but Mr. Ross declined.

A meeting of Cherokees was called in October, at Calhoun, in Tennessee, to receive the commissioners, and canvass the subject of a treaty; but neither Ross nor any of his associates attended. In October Ross and his counsellors met at Red Clay, where were also upwards of a thousand of the Cherokees. Mr. Schermerhorn also attended, in the hope of forwarding the object of his mission; but Mr. Ross managed to prevent his addressing the people. A committee was appointed, ostensibly for the purpose of conferring with him; but to cut off all possibility of effecting anything, the question was submitted to the assemblage whether they would consent to a treaty upon the basis of the Senate's award, and it was decided in the negative. As Mr. Schermerhorn was restricted to the five millions of dollars, and the Cherokees knew it, this resolution was equivalent to a decision that they would not treat with him at all. Yet some correspondence took place between Mr. Schermerhorn and the committee, in which they informed him that they were about to visit Washington to treat with the government. He informed them that they would not be received by the President, who had determined that the negotiation should be concluded in their own country. He also gave notice that a general council of the Cherokee people would be held at New Echota, on the 3d Monday in December, when the United States commissioners would submit to the assembled people the terms of a treaty. The delegation protested against this council, and repeated the declaration of their intention to visit Washington.

On the 3d of November Mr. Schermerhorn, by a notice printed in English and in Cherokee, and circulated throughout the nation, called on all the people to meet him at New Echota on the third Monday in December, to consider the terms of a treaty which he should submit to them. Though informed again by direct authority from Washington, that they would not be received, and that any treaty to be concluded must be nego-
tiated in their own country, the delegation proceeded to Washington, leaving Mr. Schermerhorn to negotiate as he might with the Cherokee people.

About this time the legislature of Georgia passed an act directing grants to be issued to those who had drawn them as prizes, for all lots, tracts of land, and improvements still remaining in possession of Cherokees, authorizing the grantees to take possession after the 25th day of November, 1836. The avowed object of this act was to compel the Cherokees to accept the terms offered by the government, and leave the country.

In this state of things, the council called by Mr. Schermerhorn met at New Echota on the third Monday in December, 1835. Ross and his delegation were in Washington; but all his influence had been exerted to prevent the Cherokee people from meeting the commissioners at the time appointed. From five to seven hundred individuals attended, among whom were very few of the partisans of Ross. With a committee appointed by this meeting, and headed by Major Ridge, the treaty of 1835 was negotiated. It was accepted by the assemblage, and a delegation appointed to take it to Washington and procure its ratification by the Senate.

As soon as the result of this council was known, the partisans of Ross got up protests against its ratification by the Senate, with upwards of fifteen thousand signatures. Though a large portion of these signatures were palpably fraudulent, it was quite evident that the treaty would receive formidable opposition, unless supported by Ross. The delegation who bore it to Washington besought him and his delegation to join them, either upon the treaty as it was, or in procuring such alterations as would make it acceptable; but to their appeal he returned no answer. John Ridge and Stand Watie, who had consented to act with Ross on his assurance that he was in favor of a treaty, and were of his delegation, now abandoned him, and came out in favor of the ratification of the treaty. Ross put forth all his power to prevent it, but in vain. It was confirmed by the Senate in May, 1836, and became the supreme law of the land.

Ross and his partisans were infuriated by this result. Nothing but fear prevented the massacre of all those who had been active in negotiating the treaty, and frequent threats were uttered against them. About this time, in writing to one of his family, John Ridge said: "The Ross party here already count my death as certain. For even this I am prepared. If I can relieve my bleeding countrymen from the destruction which surrounds them, I am even prepared to be immolated to gratify the ambition of my enemies, and the real enemies of the poor Cherokees."

It is matter of history, that Mr. Ross and his partisans continued their opposition to the treaty notwithstanding its confirmation, deluding the Cherokees with groundless hopes, until the army of the United States was sent into their country with orders to seize and conduct them to the Cherokee country west of the Mississippi, which was done in the fall and winter of 1838-'9, being after the expiration of "two years," during which protection was guarantied by the treaty "from and after its ratification."

The Ridges, Boudinot, and most of the treaty party, closed up their business in the Cherokee country east, accepted the commutation of twenty dollars per head for transportation, and in 1837 emigrated to the Cherokee country west. There they settled down under the existing government, and made extensive improvements. Everything was quiet in
the west; the new comers were received in the most friendly spirit, and in the fall of 1837 some of them were chosen to offices under the government of the western Cherokees.

In the meantime the United States, with an apparent indifference to the fate of their friends seldom surpassed, gave strength and power to their mortal enemy, John Ross, by putting into his hands a sum more than treble of that provided by treaty, or paid to the treaty party, with the entire business of emigrating the body of the nation. In the fall of 1838, and the winter of 1838-'9, Ross, at the head of his clans, arrived in the Cherokee country west, with a profusion of money which the government had placed in his hands, under the extravagant contract forced upon it by his obstinacy, and clothed with all the power which money never fails to confer among an ignorant and needy people.

Now commenced the troubles of the old settlers and the treaty party. The old settlers were willing to receive the Ross party as they had done the treaty party, and admit them at once to all the privileges of citizens under their government; but Ross was unwilling to part with power for a moment. He insisted that the government of the western Cherokees should be immediately abolished, and a new one established, which, of course, would be controlled by him through his subservient majority. When this was refused by the old settlers, it was resolved that the leaders of the treaty party, who had united with the old settlers, should be put to death, and a new government established by violence.

The chiefs of the old settlers and Ross party met in June, 1839. The Ridges and Boudinot attended, but left before either of the other parties. On the 14th the old settlers dispersed, having refused an instant surrender of their government to Ross, who, with a conclave of his friends, remained in session until the 20th. What were the subjects of their deliberations other than the call of a revolutionary convention to meet on the first of July, is known only by subsequent events.

On the morning of the 22d June, about daybreak, an armed party of Cherokees, on horseback, headed by a particular favorite of John Ross, surrounded the house of John Ridge. Three of them dismounted, broke down the doors, dragged Ridge from the bed where he was sleeping, surrounded by his wife and children, rushed out with him into the yard, and there inflicted upon him, with their knives, twenty-three stabs, leaving him dead. The assassins mounted their horses and rode to Beattie's prairie, where they breakfasted together, boasting of their achievement.

On the same morning, about 9 o'clock, a party of three Cherokees called at the residence of Elias Boudinot, and, in the presence of several workmen, asked him for medicines, which he was in the habit of giving without charge. As he walked to his house to procure them, in a friendly conversation with these men, they plunged their tomahawks and bowie-knives into his head and back, and he fell dead at their feet. On a show of resistance by the workmen, thirty or forty armed men made their appearance from the bushes.

On the morning of the 21st, Major Ridge had left his residence for Evansville, Arkansas, to visit a sick negro belonging to his family. He was watched by the assassins who had been detailed to destroy him. Finding where he slept on the night of the 21st, they ambushed his path. About ten o'clock on the morning of the 22d, just as he reached the
bottom of a steep hill, he was fired upon from a lofty precipice, and fell dead in the road pierced with five rifle-balls.

It was well understood that Stand Watie, James Starr, John A. Bell, George W. Adair, and others of the treaty party were doomed to death at the same time, and were saved only by timely notice of their danger.

Thus were the friends of the United States, whom they had made use of to obtain the Cherokee country east, and remove the whole tribe to that country west, struck down by men acting under orders from their leader, who, under the lead of John Ross, had opposed that policy from first to last, and now plunged into the hearts of their own countrymen that daggers he would, if he had so directed, long before have had plunged into the hearts of the white people. Yes, and the United States, by placing the emigration money in the hands of this man, gave him the strength and power thus to persecute and murder their friends. But were not these murders followed by a fearful revolution? Did not the United States avenge the blood of the Ridges and Boudinot, and take measures to insure the safety of the surviving individuals of the treaty party? Did they not seize Ross and his associate chiefs, and hold them personally responsible until the actual murderers were punished? What was done? Ross of course denied all participation in the murders, and amused the United States officers with a long correspondence while proceeding steadily, through his revolutionary convention, which met nine days afterwards, to the consummation of his principal object.

One of the first acts of this convention was to pass an act of outlawry against the surviving leaders of the treaty party, offering them a pardon, however, on the most degrading terms. It is ordained and decreed, said they, "that a full and free pardon and amnesty be, and is hereby, granted to all those persons who are liable, as aforesaid, to the pains and penalties and forfeitures of outlawry, and that they be fully exempted, released, and discharged from all liability to prosecution or punishment of any kind whatever, on the aforesaid account," "excepting that they shall not be eligible to any office of profit, trust, or honor in the eastern and western Cherokee community, or under any union or other modification of said communities which may be effected." And even this was not to be available except to those who should come in and make their submission within eight days!

A paper was drawn up for these criminals to sign, in which they are made to say: "Now we, the undersigned, gratefully accepting the clemency of our people, humanely provided for our benefit and relief, do, in the presence of the Supreme Judge and the Searcher of all hearts, and in the presence of this great assembly, hereby sincerely acknowledge our error, and express our deep contrition for the same; and we do declare our readiness to submit to our people, and to make all the reparation in our power for the injury we have done," &c. A few of the treaty party, alarmed by the fate of their chiefs, accepted these degrading conditions; but most of them preferred remaining outlaws.

Look now at the condition of those whom the United States had, encouraged to make a treaty with them, and had a hundred times promised to protect. Their first men were murdered, and all the rest of them outlawed, for no other offence than signing that treaty!

But the convention did not stop here. On the 9th of July they passed the decree of outlawry against the survivors, and on the 10th they par-
doney the murderers of the Ridges and Boudinot! Under pretence of stopping the further effusion of blood, &c., they ordained that a full and free pardon and amnesty be, and is hereby, granted to all persons, citizens of the eastern and western Cherokee nation, who may be chargeable with the act of murder or homicide, committed on the person of any Cherokee previous to the passage of this decree, whether the same may have been committed within the limits of the eastern or western Cherokee country or elsewhere, &c. Thus were a portion of the treaty party murdered, and their murderers pardoned, while the remainder were outlawed, or only permitted to live among their countrymen on the most degrading conditions. The murderers were well known in the Cherokee country, and a portion of them were members of this convention!

On the 20th August, when news of the murders was received at the War Department, the Commissioner of Indian Affairs wrote to Major Armstrong, superintendent, &c., as follows, viz:

“You are therefore instructed to adopt the most prompt and energetic measures to discover, arrest, and bring to condign punishment the murderers of the Ridges and Boudinot. This duty is enjoined by the dictates of humanity as well as by law and the treaty of 1835.”

At the same time, the acting Secretary of War communicated to Gen. Arbuckle the decision of the Secretary, that “the most prompt and energetic measures ought to be adopted by General Arbuckle and Captain Armstrong to discover, arrest, and bring to condign punishment, the murderers of the Ridges and Boudinot.”

On the 8th of September those officers requested Ross to have the murderers arrested and delivered at Fort Gibson. In reply, he alluded to the pardon granted by the convention, and denied the right of the United States to interfere. On the 9th of November, the Secretary of War, in a letter to General Arbuckle, maintained the right and duty of the United States to punish the murderers; stated that such right could not be relinquished, and suggested the arrest of John Ross himself, for promoting intestine strife, and attempting to excite the other Indian tribes against the United States. In the same letter the Secretary said: “I would suggest, however, that in all such instances it will be better to confine the demand to the leaders of the parties that committed the crimes.” This qualification of his orders General Arbuckle communicated to the council of the Ross party on the 14th of December.

In a letter to the Secretary of War, dated December 26, General Arbuckle said: “I have not, as yet, been able to capture any of the individuals implicated, and have directed the search for them to be discontinued during the late council; and this search will probably be discontinued until after the breaking up of the contemplated meeting on the 15th of January, not wishing to throw any impediment in the way to prevent a general attendance.”

On the 3d of January, 1840, General Arbuckle wrote to the Ross council as follows: “The present state of the Cherokee people is such as to render it my first duty to give security and peace to your nation, rather than to seek for a few men, who have committed crimes, as it is believed, by the orders or approbation of their superiors; therefore, if these unfortunate men abstain from further violence on any one, I will not interrupt them in any way until after something is done to give peace and quiet to the Cherokee nation,” &c.
This was the "important conclusion" of the attempts made by the United States to arrest the murderers of the Ridges and Boudinot! This was the "condign punishment" to which they were brought! Never, we believe, was the search renewed; certainly not one of the murderers was brought to justice. On the 15th of January, 1840, Gen. Arbuckle, in the absence of John Ross, procured a repeal of the decree of outlawry against the survivors of the treaty party; and a proposition made by them to divide the country, and let the parties live separately, was favorably received by the War Department; but from that time the government seems to have forgotten that there was such a party! They have been totally abandoned to the tender mercies of John Ross, for which no apology can be found even in any fraudulent and unauthorized act of union! The blood of the Ridges and Boudinot still cries from the ground unavenged, and their orphan children in Arkansas and Vermont, robbed of fathers, property, and country, stand before heaven and earth a reproach to the United States for suffering their steadfast friends to be murdered with impunity.

But, sir, you cannot appreciate the degree of censure which attaches to this government for abandoning a party which was always faithful to the United States and to the true interests of the Cherokee people, without a clear understanding of the character of those men, or rather that man, to whom they have been sacrificed. That we shall make the subject of another communication.

With high consideration, your obedient servants,

S. C. STAMBAUGH,
AMOS KENDALL,

Agents, &c.

Hon. Wm. L. Marcy,
Secretary of War.

P. S.—The papers referred to in this letter will be found partly with the Commissioner's report of 1839-'40; partly in H. R. Doc. 129, 1st session 26th Congress, and partly in Senate Doc. 347, same session.

PART I.—No. 5.

WASHINGTON, December 30, 1845.

Sir: John Ross is an extraordinary man. With scarcely enough Cherokee blood in his veins to mark him as of Indian descent, he has made a large majority of his deluded countrymen believe that he is true to the aboriginal race, while his full-blooded rivals are traitors to their country and their kindred. His ruling passion is avarice. He has been able to gratify it to an extent almost unprecedented, by playing upon the ignorance and prejudices of the Cherokees, and obstinately opposing the policy of the United States. "Cherokee difficulties" are the elements of his power. He comes to Washington every year, spending in luxury and pleasure the funds of the nation, under pretense of settling their difficulties; but never makes a proposition which tends to their settlement. He resisted to the last the removal of the Cherokees under the treaty of 1835, inflicting upon them untold sufferings, and subjecting the United States
to heavy expenditures, otherwise needless; and was rewarded for it, by being put in charge of the emigration on terms which have placed him and his kindred among the richest men on the continent. Thus strengthened for mischief, upon his arrival on the Arkansas, he destroyed his rivals, overthrown the existing government, established his power through blood and usurpation; and in all this he has been tolerated by the United States. Tolerated! Since the subversion of the government of the western Cherokee nation, and the murder of the Ridges and Boudinot, he has not only been recognised as the legitimate head of a legitimate government, but, through special favor, has received of the United States more than half a million of dollars out of the purchase money of the Cherokee country, to which he has not the shadow of honest claim! This man’s history would fill a volume. We must content ourselves with giving enough of it to show the principal wrongs he has committed under the name of “patriotism,” not only against the old settlers and treaty party, but against that ignorant people whom he makes his instruments.

A reference to the treaties of 1817 and 1819 will show that the Cherokees were then divided into three classes. One class, and the largest, was composed of those who desired to remain east, and become cultivators of the soil. The second were those who parted with their interest in the Cherokee country east, ceding it to the United States, from whom they received an equal quantity of land beyond the Mississippi. The third class were those who took reservations under those treaties, in full for their interest in the common property of the Cherokees, agreed to become citizens of the United States, and ceased to be members of the Cherokee nation.

You will find these reservations provided for in the eighth article of the treaty of 1817, and the second and third articles of the treaty of 1819—the latter treaty being made to carry out the provisions of the former.

John Ross was one of the delegation who signed the treaty of 1819, and took a reservation in pursuance of its provisions! By these acts he ceased to be a Cherokee, and became a citizen of the United States! The reservations were within the territory which was then ceded to the United States, and it was a condition of the arrangement that the reservees should promise permanently to reside upon them; thus separating themselves from the Cherokee nation, and becoming citizens of the States. On the 17th June, 1819, John Ross gave the requisite notice to the agent, concluding as follows: “You will, therefore, please to acknowledge this as my notification, in compliance with the aforesaid stipulated condition, that it is my intention to continue to occupy and enjoy, permanently, the land reserved me in that treaty.” (See Doc. 286, H. R., 1st sess. 24th Congress, p. 72.)

The reservation was accordingly conveyed to him in fee simple. He thus received, under an arrangement made by himself, his portion of the common property—ceased to be a Cherokee, and became a citizen of the United States! Now, how could John Ross, after receiving his share of the common property, and becoming a citizen of the United States, in pursuance of a solemn treaty signed by himself, resume the character of a Cherokee without the consent of the United States, and reacquire an interest in the Cherokee country without paying any consideration therefor?

How long he occupied his reservation we know not; but that he sold
it for $5,500, and soon figured again among the rulers of the nation, is a matter of history.

Yes, this patriotic man sold his share of his country, put the money in his pocket, went back for another share, lived upon the national annuities many years, became the mortal enemy of "land settlers," and justified the murder of rival chiefs for selling a country, (of which they were already deprived by the laws of the States,) not for their own benefit, but for that of the whole Cherokee people. During all the scenes of Cherokee suffering, from 1828 to 1839, in which John Ross played so distinguished and obstinate a part, he had no more rights in the Cherokee country than any other American citizen, and might have been removed under the intercourse laws as an intruder!

With the money obtained for that portion of his country, which, by the treaty of 1819, Ross first sold to himself, and afterwards to the whites, he occupied and improved another portion of the common property; and, under the treaty of 1835, which he has always denounced as fraudulent and void, received for his improvements $ out of the purchase money of the Cherokee country.

In 1827, a government, with a written constitution, was established in the Cherokee country, of which John Ross, who had already sold his interest in the country, and become a citizen of the United States, was elected principal chief. The whole Cherokee country was within the chartered limits of North Carolina, Georgia, Tennessee, and Alabama, and the erection of an independent government, among the Indians, produced great excitement in those States. It was one of the main causes which led to the ruin of the Cherokee nation east. In 1828, the State of Georgia extended her laws over the Indian country within her limits, embracing more than half of the Cherokee nation, and subsequently forbade the meeting of any Cherokee council, or court, and the execution of any Cherokee law, and Alabama followed her example. The new Cherokee government was thus thoroughly put down and extinguished; but a small meeting of Ross's friends declared him and his council their permanent authorities until the nation should be restored; all vacancies in the council to be filled by his nomination. Frequent vacancies occurred, which, of course, were filled by his adherents, and John Ross became the government, so far as this organization deserved the name.

Its practical functions, however, were little more than to spend the Cherokee annuities, protest against State legislation, and send annual delegations to Washington, at the head of which always appeared John Ross. Although the condition of the Cherokees had become perfectly desperate, and no hope of preserving them was left, except by removal to the west of the Mississippi, John Ross resisted that measure with a pertinacity which it was difficult to understand. His enemies among the Cherokees, with much reason, attributed it to his avarice and selfishness, charging him with a design to speculate upon the miseries of his countrymen. Then, as now, he had his government paper, called the "Cherokee Phoenix," of which, up to 1832, Elias Boudinot was the editor. It was the desire of Boudinot to open the paper to a free discussion of the condition and prospects of the Cherokee people, and in consequence of the refusal of Ross to permit it, he resigned his post.

In a message to his council announcing this resignation, and recommending the appointment of a new editor, Ross said: "The toleration of
diversified views in the columns of such a paper would not fail to create fermentation and confusion among our citizens, and in the end prove injurious to the welfare of the nation."—(See Boudinot's letters, page 8.)

Boudinot himself, though assailed in the "Phenix," was refused the privilege of making his defence through its columns! By concealment and falsehood, the great body of the ignorant Cherokees were deluded into the belief that they had but to be firm to recover their country and their ancient privileges; that their real friends, who wished by their removal to save them from impending destruction, were their worst enemies; and that John Ross was a disinterested patriot. Their entire subserviency, and the pains taken to maintain the delusion, are vividly depicted in the correspondence of Benjamin F. Curry, emigrating agent, and J. F. Schermerhorn, United States commissioner, during the year 1835.

Ross and his adherents took all possible measures to prevent intercourse between the common Indians and the leading men of the treaty party, as well as the agents of the United States, lest they should be undeceived. No considerable number of them could be assembled together, even to hear the United States commissioner, sent expressly to confer with them; so blind was their devotion to John Ross. But an occasion arose on which it was to be decided by a majority of votes whether the annuities of the nation should be paid to Ross's treasurer or divided among the people. To obtain the money it was necessary that Ross should muster his instruments. The means adopted to use them for the purpose of securing the money and still keep them in ignorance, are thus described in a letter from Mr. Schermerhorn to the Commissioner of Indian Affairs, dated 3d August, 1835, viz:

"At the council they were not permitted to leave their ranks or cross a certain line during the day, and marched off to their camp the moment the council adjourned, and every delinquent was marked. No one but the leaders were allowed to mingle with Ridge and his party, nor to eat at the same table, nor to drink at the same spring. Indeed, they were drilled equal to a Swiss guard, to do only what they were bidden. They were marched by their leaders in solid columns to give their votes as they were instructed, and without knowing, it is believed, the question on which they were voting," &c. (Senate document 120, 2d session 25th Congress, page 461.)

This is believed to be a correct picture of the subserviency of the common Indians to John Ross, as well before that period as afterwards; a subserviency which he was constantly striving to turn to his individual aggrandizement.

In the winter of 1834-'5, the distresses of the Cherokee people were such, under the operation of the State laws, as to induce Ross himself to think of making propositions to the government. His plan was, to part with most of the Cherokee lands in Georgia, upon condition that they should receive a fee simple title to the residue of their country lying in North Carolina, Tennessee, and Alabama, and submit to the laws of the States! It was a plan to extinguish the Cherokee nation east, and make the people citizens of the United States!!

This scheme was looked upon as one of gigantic speculation. Coming to the knowledge of Governor Lumpkin, of Georgia, he addressed a letter to the Secretary of War in opposition to it, dated January 30th, 1835, in which he said: "Ross is the dictator of his party among the Chero-
John Ridge, and a delegation of the treaty party then in Washington, addressed the Secretary of War in relation to this scheme as follows:

"From innuendoes only we have found out that John Ross desires not and never intends to procure national privileges for the Cherokees in the west, or provision for those who may wish to remove, but would join us, if we consented to the destruction of our people, in concluding a treaty on selfish principles. We did not come here to speculate on the destiny of our people," &c.

"They have spoken falsely to the Senate, by stating that 15,000 Cherokees hold their determination to become citizens of the States, and that we only represent 100, who are in favor of removal." (Document 120, page 351.)

Ross's proposition was made on the 14th February, 1835. (See document 286, H. R., 1st session 24th Congress, pages 129, 130, 131.) On the 16th it was rejected by the Secretary of War, (page 132, 133,) who informed him "that any arrangement short of a general removal of your people would neither relieve the difficulties of the present nor prevent those of the future."

On the 25th of February, 1835, (same doc., p. 126, &c.) Ross offered to sell the whole Cherokee country east for the sum of twenty millions of dollars. A proposal so exorbitant was at once rejected. A majority of the United States Senate was, at that time, opposed to the administration, and some of its leading members strongly condemned the policy pursued by the President in relation to the Indians. Ross and his adherents, having been told by General Jackson that he would be as liberal to them as their friends in the Senate, requested that their propositions might be submitted to that body, and promised to be governed by their award.

This request was made in a letter to the Secretary of War, dated February 26, 1835, which concluded as follows: "Being extremely desirous that this unhappy controversy might be speedily adjusted, and deeply sensible of our dependant condition, and confiding in the liberal justice of the United States government, we are prepared, as far as we are concerned, to abide the award of the sense of the American Senate upon our proposition, and to recommend the same for the final determination of our nation." (Page 141, same document.) The request was complied with, and the Senate awarded the sum of five millions of dollars as the price to be given for the whole Cherokee country east. Notwithstanding his pledges, Ross refused to treat on the basis of the Senate's award; and, so far from recommending its adoption to the Cherokee people on his return home, he induced a meeting of them to reject it, and once more send him and his friends on their annual pilgrimage to Washington to procure better terms.

After the treaty of 1835, formed on the basis which Ross had agreed to adopt, had been ratified by the Senate, he had put forth his utmost influence to prevent its execution, and force the government to make a new one with him and his associates. He was successful in inducing four-fifths of his unhappy countrymen to refuse to emigrate in obedience to the treaty, and put the United States to the expense and trouble of sending their army to collect and escort them to the Cherokee country west. In this crisis, John Ross resorted to a stroke of policy by which he effect-
ed all at which he had aimed, and its developments are characteristic of
the man.

At a general meeting of the Ross party in July, 1838, they adopted a
resolution "that it is the decided sense and desire of this general coun-
cil that the whole business of the emigration of our people be undertaken
by the nation; and the delegation are hereby advised to negotiate the ne-
necessary arrangements with the commanding general for that purpose!" They accordingly made a proposition to that effect, which was favorably
received by General Scott, who invited them to submit an estimate. They
did so, making the cost of removal $66 24; afterwards increased to
$66 24. This estimate, General Scott pronounced "an extraordinary
one;" but he was induced to accept it, because, being payable out of the
purchase money of the Cherokee country, "the Cherokee people" (to use
the General's words) "are exclusively interested in the cost as well as the
comfort of removal." The extravagance of this estimate may be appre-
ciated by the fact that the estimated expense of removal, as ascertained in
the Cherokee country and fixed in the treaty of 1835, was $20 per head,
which the Ridges and others of the treaty party accepted as a commuta-
tion, and found adequate to all their expenses, and had a balance left upon
their arrival in the western country. It was proved before a committee of
Congress, in 1843, that some of the treaty party offered to remove them-
selves and families at $40 per head, and that an offer was made to remove
the whole nation at $32 per head.

The Secretary of War in a liberal estimate had placed the cost of re-
moval at $30 per head, which was undoubtedly an abundant allowance.
John Ross charged at the rate of one hundred and three dollars and twenty-five cents a head! He charged for emigrating 13,179 souls—men, wo-
men, and children—the enormous sum of $1,357,745 86!

At $20 a head, the price fixed in the treaty, this emigration would have
cost $262,980, leaving to John Ross & Co. a profit of $1,094,765 86.
At $30 a head, it would have cost $394,470, leaving a profit of
$831,785 86.

No man, we believe, has any idea that this emigration actually cost
over $40 a head, although it was doubtless much more expensive than
was necessary. The agreement with General Scott was, that $66 24 a
head should be allowed for this emigration; and, at that rate, Ross & Co.
were paid by the disbursing agent, receiving $776,398 98, which, if the
service cost them $40 per head, gave them a net profit of $250,438 98.

The payment thus made was sanctioned by the Indian office and War
Department on the ground that the price was fixed in the arrangement with
General Scott, which was a binding contract. The balance of the account,
$581,346 88, was disallowed. Ross took the case up to the President,
who twice sustained the action of the department, and peremptorily re-
fused to allow this monstrous claim; yet, in September, 1841, this account
was re-opened, the whole claim allowed to the last cent, and the amount
paid out of the purchase money of the Cherokee country east! Our busi-
ness now is with John Ross, and not with the officers of our govern-
ment. In what an attitude does he appear in this transaction? (Doc.
288, H. R., 3d session 27th Congress, contains a history of this transac-
tion.)

At page 5, you will perceive that this service was to be undertaken "by
the nation." The proposal of Ross & Co. was, "That the Cherokee nation
will undertake the whole business of removal of their people to the west of the river Mississippi." Pages 10, 11, 12, you will perceive that General Scott was induced to agree to terms which he pronounced "extravagant," because "the whole expense of the emigration is to be paid out of the appropriation already made by Congress, the general surplus of which is to go to the Cherokee nation in various forms; therefore they have a direct general interest in conducting the movement as economically as comfort will permit;" because, "as the Cherokee people are exclusively interested in the cost as well as the comfort of the removal, I do not feel myself at liberty to withhold my sanction." The account, when rendered, exhibited the following caption, viz:

"The United States in account with the Cherokee nation, for the expenses incurred in the removal of the Cherokees under an arrangement with Major General Winfield Scott." And it concluded as follows, viz:

"Balance due the Cherokee nation, $581,346 88½."

"I certify that the foregoing account, amounting to $1,359,745 88½, is accurate and just, and that a balance of $581,346 88½ is due as stated.

"JOHN ROSS, Principal chief and
Superintending Agent of the Cherokee nation for Cherokee removal.

"WASHINGTON CITY, May 18, 1840."

It thus appears that this business was undertaken in the name of the nation, and ostensibly for the benefit of the nation! Ross himself acknowledges, in his account, that it was the business of the nation, of which he was merely the agent, and that the balance is due to the nation. When he came forward to claim a final settlement, he presented as his authority a resolution of the national committee and council authorizing him to apply for and receive from the government of the United States, in the name of the Cherokee nation, the balance due of $581,346 88½, as stated in the account of the "emigration claim," &c. What was the result? When Ross had received this money, on the authority of the nation, which in his account he acknowledged to be due to the nation, and his committee and council modestly asked him to account for it, he told them it was not the nation's money, but his own, and not a dollar of it has he paid over to the nation to this day. Three years afterwards, when, by his body guards, his police companies, his annual visits to Washington, and other extravagancies, he has run the Cherokee nation about $140,000 in debt, the certificates of which had been purchased up at an enormous discount by his kindred and favorites, he paid "over to the nation the sum of $125,000, savings that have been made out of the arrangements with Major General Winfield Scott for the removal of the eastern Cherokees under his superintendence by the employment of public wagons and teams, their sales," &c. (See Cherokee Laws, page 101.) Two days afterwards an act was passed to borrow $12,363 34½ out of the school fund, "to meet the debts outstanding against the nation!!" Giving Ross & Co. credit for this payment, they must have pocketed at least $700,000 clear profit in this transaction, undertaken by these exclusive patriots for the benefit of their nation!!

Let it not be forgotten that this monstrous allowance was made out of the funds which belonged to the Cherokee people—the purchase money of their country—these funds which were to be divided among them per capita!! Every dollar received by Ross out of that fund, beyond the
necessary expense of removal, was a dollar plundered from his countrymen!!! This is the Cherokee patriot!

He first has his own portion of the common property set off to him on condition that he shall become a citizen of the United States, and then sells it for $5,500! With this money he improves another portion of the common property, and sells his improvements to the United States for $5,500, paid out of the purchase money of the Cherokee country!

In the name of patriotism he opposes the sale of a country in which he had no just rights, and which had already been wrested from his countrymen by the States, unless he can prescribe the terms. When the price was fixed by a tribunal of his own selection, he not only refused to redeem his pledges, but opposed the removal of the Cherokees to the last extremity, and then consented to it only on condition that the United States would aid him and his friends in applying to their own use about one-fifth of the purchase money of their country. He who was so resolutely opposed to selling the land, had no compunctions in applying the purchase money to his own use.

The Ridges sold the country for the benefit of the nation; the Rosses, in the name of the nation, put the money in their own pockets. For their honest and disinterested sale, the Ridges were murdered! For appropriating the money, the Rosses have been sustained, honored, and promoted!

Thus were the "Cherokee difficulties" east adjusted; but no sooner had Ross and his instruments reached their peaceful brethren in the west, than he raised a new series of "Cherokee difficulties," which enabled him to maintain his influence with his ignorant countrymen, and apply all their means to the gratification of his desires and the maintenance of his power. Instead of making himself beloved by his countrymen, and leading them in the path of civilization and Christianity, he has made terror the instrument of his dominion, surrounding himself with a body guard or an armed police; ever and anon those who are supposed to be his enemies, fall by the rifles of assassins, who find pardon or impunity at the hands of his government; and regularly as the sun returns from his visits to the south, comes John Ross with his retinue to the seat of government under pretense of settling "Cherokee difficulties," but, in fact, to live upon the Cherokee annuities far from the danger which his tyranny creates!!! It is necessary to study and understand John Ross; for he is the "Cherokee nation" as now constituted and governed. Basing his power on the hatred of the majority towards the minority, which he fosters, he plunders both parties of their money, and has shown by his conduct that he would, if he could, put it into his pocket; coin the Cherokee country, if not the bones of the Cherokees themselves, into gold.

With high consideration, your obedient servants,

S. C. STAMBAUGH,
Hon. W. L. MARCY, Secretary of War.

AMOS KENDALL.

WASHINGTON, January 16, 1846.

Sir: We now propose bringing our exposition to a close, by endeavoring to show that there is nothing in "the faith of treaties? which prevents
this government from doing ample justice to the “old settlers” and “treaty party” among the Cherokees. On the contrary, we invoke the “faith of treaties” as one of the grounds, and the principal one, on which we make this appeal.

The treaty of partition, in 1817, was made between three parties, of which the western Cherokees were one. The treaties of 1828 and 1833 were made with the western Cherokees only. Admitting that all voluntary emigrants who went over and joined the western nation in accordance with the invitation held out by the treaty of 1828 should be considered as part of it, we claim for the community constituted of such emigrants and “old settlers” all the country, annuities, benefits, and privileges, ceded and guarantied by those treaties. As modified by that of 1833, those treaties remain in full force between the parties who made them, by whom they never have been abrogated or changed.

The treaty of 1835 is the only apparent obstacle to the recognition, by the United States, of the treaty of 1833, as now the unaltered law of the land. Whether the treaty of 1835 shall be the guide of our government hereafter, in its conduct towards the Cherokees, is a question not of public faith, but of expediency only. It depends on the will of the United States, and not on any obligation to the present Cherokee government, whether that instrument shall hereafter be considered the law or not. To this position we invoke your serious, solemn consideration.

If there be a contract of undoubted obligation between two individuals, and one of them formally notifies the other that he considers it an imposition and a fraud, and declares that he never will execute it on his part, except by compulsion, is the party so notified longer bound by the contract? Is it not optional with him to enforce it or not? Is he under the slightest legal or moral obligation to enforce it? The answer is too plain to admit of doubt. He may abandon it if he chooses, and seek such other modes of redress as the laws afford him.

*Treaties are contracts between nations. If there be a treaty between the United States and Great Britain which the latter thinks proper to repudiate as a fraud upon her, are the former bound longer to abide by it themselves? Does it not then become a question of policy whether they will adhere to the treaty and compel the other party to adhere to it, or abandon it, and, if need be, seek for redress through a new negotiation? There cannot be a doubt on the subject. By the consent of at least two parties, contracts and treaties are formed; by the consent of the same parties they may be annulled. The disavowal of one party does not, of itself, terminate a contract or treaty, but if consented to or acquiesced in by the other, it does. From the moment of such consent or acquiescence, the contract or treaty is divested of all obligation, legal and moral.

Apply this unquestionable principle to the treaty of 1835, between the United States and the Cherokee nation of Indians! It was made with certain chiefs and headmen of the nation, according to the ancient mode, because the United States could recognise no organized, independent government within the chartered limits of a State. But after the Cherokees were removed to the west, and out of the limits of the States, their government was recognised as the organ of the nation, and so continues to be to this day. Through that organ the “Cherokee nation,” as now constituted, has uniformly disavowed and repudiated the treaty of 1835 as a base fraud, without the shadow of obligation upon that nation. Let us
trace the disavowals and denunciations of this treaty, from its formation down to the present time.

At a council of Ross and his party, held at "Red Clay," the following declaration was adopted on the 24th October, 1835, in anticipation of the treaty concluded in December of that year, viz:

"We, the people of the Cherokee nation, in general council assembled, do hereby solemnly protest against selling our country, on the basis of the five millions of dollars, and will never sanction such a treaty." (See document 286, House of Representatives, 1st session 24th Congress, page 80.)

At a council held at the same place, the following declaration was adopted on the 3d day of February, 1836, in reference to the treaty of the preceding December, not yet ratified, viz:

"Now, be it known, that we, the undersigned, members of the committee and council, in general council convened, do most solemnly protest, before God and man, against the said treaty, and of its ratification by the Senate of the United States, as we are determined never to acknowledge any acts of individuals, without authority, to treat away our most sacred rights and dearest interests of the Cherokee people." (See same document, page 114.)

In a "Memorial and protest of the Cherokee nation" against the ratification of the treaty of 1835, signed by John Ross and others, as "Representatives of the Cherokee nation," and submitted to the Senate on the 11th March, 1836, you will find the following passage, viz:

"The delegation are sure it cannot be the wish of the Senate of the United States to ratify and have enforced upon the unoffending Cherokee people a treaty made without their authority, false upon its face and against the known wishes of the nation. Such is the instrument submitted to your honorable body. For the truth of this statement, should the Senate require further proof, it can be obtained from numerous persons of unimpeachable integrity and veracity. But if it be the fate of the Cherokee people, and the decree has gone forth, that they must leave their homes and native land and seek a new residence in the wilds of the far west, without their consent, let them be expelled and removed by an act of Congress, when they or their posterity in aftertimes may have some claims upon the magnanimity of the American people. The delegation do solemnly declare, they would consider such an act preferable, and more humane than the ratification and enforcement of a fraudulent treaty, false upon its face, and made without the consent of one of the professed contracting parties." (See same document, page 31.)

On the 26th May, 1836, John Ross, being then, as he is now, the embodiment of his party, wrote a letter from Washington to his friend George Lowry, in the Cherokee nation, which contains the following passages, viz: "The Senate have not yet removed the injunction of secrecy from their proceedings upon the fraudulent treaty which they have ratified, and how far they will go to involve the Cherokees I do not know, for I have not been informed; but it is true they have made some alterations in the treaty." * * * * "Some of the members say that the President is displeased with the Senate's amendments, and others say that what has been done cannot be viewed as final until the majority of the whole Cherokee people shall approve of it; for, even according to Schermerhorn's own statement, there is not one in every ten Cherokees who approves of what has been done. But all that has been done would be
nothing if the Cherokees would all be firm in their minds, and consider it the same as if there was no treaty made and ratified, and be strong in this resolution, and not adopt the provisions of the fraudulent treaty made by unauthorized individuals. If they would do this, and remain still and quiet, the government would then give up the idea of treating with them, and we should gain a great deal, and the Cherokees would become enlightened, and our minds would be made glad. * * * * * "I depend on you to inform the people of the contents of this letter, and let them all be informed, so that they may be on their guard and not suffer themselves to be deluded." (See Doc. 120, S., 2d session 25th Congress, page 674—680.)

Having thus taken measures to direct his blind followers at home, John Ross and his delegation, on the 22d June, 1836, appeared before the House of Representatives in another memorial and protest, in the apparent hope of preventing appropriations to carry the treaty into effect. In that paper they said:

"The delegation must repeat, the instrument entered into at New Echota, purporting to be a treaty, is deceptive to the world and a fraud on the Cherokee people. If a doubt exist as to the truth of their statement, a committee of investigation can learn the facts, and they may also learn that if the Cherokees are removed under that instrument it will be by force."

On the 28th September, 1836; another general council, held at Red Clay, among other things resolved, "That the said instrument is null and void, and can never in justice be enforced upon our nation. And we do hereby solemnly disclaim and utterly reject said instrument in its principles and all its provisions."—(Document 120 aforesaid, page 798.)

This council also deputed John Ross and others to go on their annual pilgrimage to Washington, for the purpose of opposing the execution of the treaty. In a memorial to Congress, signed John Ross, principal chief, George Lowry, assistant principal chief, and over two thousand others they said:

"We are denationalized; we are disfranchised. We are deprived of membership in the human family! We have neither land, nor home, nor resting place that can be called our own! And this is effected by the provisions of a compact which assumes the venerated and sacred appellation of treaty."

"The instrument in question is not the act of our nation; we are not parties to its covenants; it has not received the sanction of our people. The makers of it sustain no office nor appointment in our nation, under the designation of chiefs, headmen, or any other title, by which they hold or could acquire authority to assume the reins of government, and to make bargain and sale of our rights, our possessions, and our common country. And we are constrained solemnly to declare that we cannot but contemplate the enforcement of the stipulations of this instrument on us, against our consent, as an act of injustice and oppression," &c.—(Document 120, page 800.)

On the 16th March, 1837, Ross and his delegation, in conjunction with a delegation of western Cherokees, addressed a memorial to the President, in which they said:

"The Cherokee nation never authorized the formation of this spurious compact. They never conferred on the individuals who signed it any authority to give their assent. They have never recognised its validity,
and never can. They have protested against it as a fraud upon themselves and upon the United States.\(^2\) — (Document 120, page 803.)

Again, on the 22d February, 1837, the same parties memorialized Congress, and spoke as follows: "In the name of the whole Cherokee people, we protest against this unhallowed and unauthorized and unacknowledged compact. We deny its binding force. We recognize none of its stipulations. If, contrary to every principle of justice, it is to be enforced upon us, we shall at least be free from the disgrace of self-humiliation. We hold the solemn disavowal of its provisions by eighteen thousand of our people." — (Same document, page 810.)

A council held at Red Clay on the 8th of August, 1837, to receive the report of the delegation, adopted the following resolution, viz:

"Resolved, That the doings of the delegation who have just reported, meet the unqualified approbation of this council, for which they are entitled to our thanks, which are hereby affectionately and respectfully tendered to them." — (Same document, page 990.)

Again were John Ross and others appointed to go to Washington for the purpose of opposing the execution of the treaty on the grounds previously declared. John Musen, jr., esq., who, as the agent of the government, attended this council, made the following statements in his report to the Secretary of War, viz:

"They [the Cherokees] understand their condition perfectly, and appear resolved, be the consequences what they may, not to emigrate under the existing treaty, or to do any act which can be construed as giving assent to it.*** "The chiefs and the better informed part of the nation are convinced that they cannot retain the country. But the opposition to the treaty is unanimous and irreconcilable. They say it cannot bind them, because they did not make it; that it was made by a few unauthorized individuals; that the nation is not a party to it; that it is in fact a fraud upon the Cherokees and upon the United States; that they never will agree that a handful of traitors shall sell their country, and determine the destiny of their people; that they never will believe, until they see the federal bayonet, on the fatal 23d of May next, levelled against the breast of the Cherokee, that the government of the United States can attempt to enforce a proposition so revolting to justice and humanity."*** "The influence of this chief [John Ross] is unbounded and unquestioned. The whole nation of 18,000 persons is with him; the few, about 300, who made the treaty, having left the country, with the exception of a small number of prominent individuals, as Ridge, Boudinot, and others, who remained to assist in carrying it into execution. It is evident, therefore, that Ross and his party are the Cherokee nation." — (Same document, page 984-5.)

With what overwhelming force and effect might the principle contended for in the above report be applied to the revolutionary proceedings in 1839 and 1840, which broke down the western Cherokee nation, and conveyed its "country" and the "destiny of its people" to the usurper, by virtue of the provisions of an "instrument" called "an act of union," assented to by a "few unauthorized individuals," but to which "the nation was not a party." John Ross and his "eighteen thousand" protestors, who so manfully denounced an arrangement made with a minority of their nation as a "fraud upon the Cherokees and the United States," alike "revolting to justice and humanity," seem to have changed
their opinions, which they have so often and eloquently proclaimed, as soon as they placed their foot upon the soil of the western Cherokees. The great chief, whose influence, in the language of his historian, is "unbounded and unquestioned," could then make use of a "handful of traitors," to aid him in breaking down a government and despoiling a nation. But the consistency and patriotism of this great chief are too glaring, throughout the whole proceedings referred to, to require further comment.

As was to be expected, the visit of Ross and his delegation to Washington, under the appointment of the council alluded to in Mr. Mason's report to the War Department, was unavailing; and in 1838 the "federal bayonet" was seen in the Cherokee country driving the deluded Indians together, for the purpose of escorting them to the Cherokee country west of the Mississippi. One of their last acts on this side of the river was a repetition of their former declaration against the treaty of 1835, in all its parts and consequences. It was done at "Aquohee camp, August 1, 1838," and commences as follows:

"Whereas the title of the Cherokee people to their lands is the most ancient, pure, and absolute known to man; it dates beyond the reach of human record; its validity confirmed and illustrated by possession and enjoyment antecedent to all pretence of claim by any other portion of the human race:

"And whereas the free consent of the Cherokee people is indispensable to a valid transfer of the Cherokee title; and whereas the said Cherokee people have neither by themselves nor their representatives given such consent, it follows that the original title and ownership of said lands still rest in the Cherokee nation, unimpaired and absolute:

"Resolved, therefore, by the national committee and council and people of the Cherokee nation in general council assembled, That the whole Cherokee territory, as described in the first article of the treaty of 1819, between the United States and the Cherokee nation, still remains the rightful and undoubted property of the said Cherokee nation, and that all damages and losses, direct or incidental, resulting from the enforcement of the alleged stipulations of the pretended treaty of New Echota, are in justice and equity chargeable to the account of the United States." (Doc. 1, Senate, 1st session 26th Congress, page 417.)

In June, 1839, this declaration, with others, was reaffirmed on the soil of the western Cherokees. The fraudulent act of union concocted by their revolutionary convention in 1839 directly recognises an abiding interest in the Cherokee country east, thereby repudiating the treaty of 1835.

The constitution adopted by the same band of usurpers directly repudiates that treaty in its first article, by declaring that "the boundary of the Cherokee nation shall be that prescribed in the treaty of 1833 between the United States and the western Cherokees," thus recognising the existence of the western nation, and excluding the 800,000 acres added by the repudiated treaty, which to this day remains without an owner. In the 20th section of the 3d article it is again repudiated by the provision that "all acknowledged treaties shall be the supreme law of the land."

In his message to his council, in October, 1844, John Ross held the following language, viz:

"The instrument which was signed by individuals of our nation and John F. Schermerhorn, as commissioner on the part of the United States,
at New Echota, in 1835, and called a treaty, has never been authorized by our nation, nor since, acknowledged by the Cherokee people, so as to make it LEGALLY BINDING; and, withal, its stipulations are so full of ambiguity that the differences of opinion in regard to their construction have been productive of much dissatisfaction. These facts, however unpleasant it may be, will compel us to continue and keep up the painful controversy with the authorities of the United States until the subjects in dispute shall be more satisfactorily arranged.”

These extracts are embodied to show you how uniformly, utterly, and pertinaciously, a majority of the Cherokee nation and their “constituted authorities” (whom the United States now recognize as the only Cherokee party to the treaty of 1835) repudiate, reject, and denounce that entire instrument.

Now, is the United States bound, legally or morally, further to execute a contract which the other party to it insists was a gross fraud from the beginning? Such an absurdity will find no advocates. It is, therefore, a question of expediency whether they will hold the repudiating party to their contract or not. It depends on their will. The whole subject is thrown open for a new adjustment if the United States desire it. By what considerations should they be influenced in the exercise of their unquestionable discretion? The first of those considerations is justice. Here are the “old settlers” of the Cherokee country west, the remnant of a nation, destroyed by the treaty of 1835, who present you with the treaties of 1817, 1828, and 1833, (by them always sacredly regarded,) all the benefits of which are swept from them by the arrangement at New Echota, in which they had no voice. Justice to them requires that the whole matter shall be opened, and their rights, interests, and safety (overlooked or shamefully disregarded when the treaty of 1835 was negotiated) shall now be consulted and protected in a new arrangement of treaty stipulations, which have been denounced by one of the contracting parties as “fraudulent upon the Cherokee people and the United States.”

This government, thanks to the repudiation of John Ross and his adherents, can now do full and ample justice to its old friends the “western Cherokees,” by carrying into effect the treaties of 1828 and 1833, or paying for the lands and possessions held under those compacts, without violating any other treaty acknowledged by the Cherokee nation.

Here, also, are the “spared monuments” of the treaty party, whose chiefs and friends have been murdered and themselves robbed and oppressed, through the wicked exercise of that almost unlimited power which the treaty they formed secured to their nation. Justice to them demands the exercise of authority on the part of the United States, which it may be difficult to find a warrant for in the treaty of 1835. Experience has shown that the men who control the Cherokee nation as constituted under that treaty, if not assassins themselves, are the apologists and pardoners of assassins. Justice to them requires that they should be subjected to other responsibilities than a mere accountability to untaught savages, who, instead of being safe depositories of power, are fit only to be its instruments. The further execution or observance of that treaty (except in regard to individual claims of Cherokees arising under its provisions, and with which the nation has nothing to do) can only operate to benefit them, and further to crush, until it crushes beneath the silent clods of the prairie, the remnants of the old settlers and treaty party. The world
never witnessed a case where a government, pretending to be just and having the power, has forced on an unwilling dependant favor, money, and power, which are used only to destroy its faithful allies and most steadfast friends. We trust that such a page in the history of our beloved country will never be written.

It is said that if the United States refuse longer to recognize the treaty of 1835, it will be considered a recognition of the claim of Ross and his party to the Cherokee country east. Not at all. The purchase money for that country, belonging to the nation, has been paid and invested, as provided by the treaty, which has been acknowledged by the authorities of the nation. If any portion of the purchase money, belonging to the Cherokee people, and to be divided per capita, has been improperly applied by the United States, to the injury of any portion of these people, the error must be remedied. In any new arrangement all monies, paid herefore to the constituted chief, agent, or other authority of the Cherokee nation, for the use and benefit of the people to whom the money belonged, must be charged to the party who received it. Out of the funds provided by the treaty of 1835, and appropriated by Congress to defray the expenses of transportation from the country east, to the country west, of the Mississippi, the individuals belonging to the party who made the treaty received twenty dollars per head! John Ross and others, on behalf of the nation, proposed to remove themselves, provided a certain sum was paid to them. Under an arrangement thus consummated, John Ross, in the character of principal chief and superintending agent of the Cherokee nation for Cherokee removal, applied for, and received from the government of the United States, (trustee of the Cherokee fund,) §1,357,745 66½. His claim, thus presented, contained an item purporting to be a private claim of Lewis Ross for $92,781 50; to deduct which from the whole sum would leave $1,263,338 36½, which was paid to the chief and agent of the nation, out of the funds provided to carry the treaty of 1835 into effect; being, in fact, part of the consideration money to be paid to the Cherokee for the lands ceded by that treaty! The number of Cherokee's, amongst whom this vast sum was to be divided, was estimated at about 12,500 souls; which would allow them, per head, a fraction over one hundred and three dollars! (See Report 288, Com. on Indian Affairs, H. of Reps., 3d session 27th Congress.)

Here, then, it will be seen that the “Ross party” of Cherokees, those who continue to repudiate the treaty of 1835, received, under its provisions, eighty three dollars per head more than the individuals of the party who made that treaty. Let us cast up the account: Twelve thousand and five hundred Cherokees, at $83 each, would amount to one million three hundred and seventy-five dollars! which sum was paid to the “chief and agent of the nation,” and must be considered as so much per capita money paid to these people through his hands. In the proposed settlement, now to be made, the Ross portion of the Cherokees must be charged with the $1,000,375 per capita money. They must also be charged with the whole of the seven millions of acres of land, with the outlet, or such part of it which they may retain in possession; for be it remembered that the treaty of 1835 contemplates no exchange of lands, but provides for the payment of five millions of dollars as the full value of the Cherokee country east, according to an award made by the Senate of the United States upon a proposition submitted by John Ross himself, who agreed to
Every just man in this country will be prepared to make up his verdict when this subject comes to be fully investigated, and will seek in vain for the reasons which parade John Ross and his delegation at Washington every year, and spending nearly all his time in exhibiting his diplomatic talent on the subject of the wrongs which he alleges his people have sustained.

The refusal of the United States to longer recognize the treaty of 1835, as connected with the existing Cherokee nation, as we have said, cannot affect the sale of the country east, under that compact. In any new arrangement (with that treaty out of the way) the United States will have the same power they have now, and no more, to add to the purchase money or not, as they may think just or expedient. To every point growing out of this course, the same remark will apply. The United States can then correct the fatal error committed in 1835, in assuming to have the control and disposal of the country of the western Cherokees, and may settle every thing according to the faith of "acknowledged treaties" and the principles of justice and equity. We ask that no party may sustain wrong by such arrangement, but that full and complete justice be rendered unto all.

John Ross, in his message of 1844, from which we have already quoted, gives most excellent reasons why the treaty of 1835 should be no longer enforced upon the "old settlers" and "treaty party." He says: "The plea of policy and expediency, which was so strongly urged under General Jackson's administration, for the ratification and enforcement of the New Echota treaty, no longer exists, its intentions having been carried out, and our nation removed from their peaceful homes, our beloved country, at the point of the bayonet—the Cherokee people submitting in peace to superior power, and in no instance having committed any breach of the national faith, by which the protection of our rights, as guarantied in our treaties with the United States, can be declared as having been forfeited, they cannot in justice be withheld from us. But inasmuch as this plea, which prompted the general government to carry out this harsh measure for the aggrandizement of certain States, by which our nation has been wronged and seriously injured, no longer exists, we have now, in approaching the government with our grievances, only to desire that our wrongs may be redressed upon just principles, and our national rights secured upon liberal and honorable terms. To say that because the Schermerhorn instrument has been ratified, and is now a law of the land, or that because they possess the physical power to compel the Cherokee people to submit to their will and pleasure, they will not agree to supersede it by a treaty which will be more righteous and satisfactory to the contracting nations, would be beneath the dignity of the United States!"

Yes! throw away the treaty of 1835—a treaty which is now like a law of Congress, having but one party to it—and "the wrongs" of the old settlers and treaty party "may be redressed upon just principles." And it would ill become the United States to avail themselves of this "law of the land," which their own voice can at once make void without the least breach of faith, as an excuse for denying justice and protection to those whom its incautious arrangements (to use no harsher term) have doomed to destruction.

It may be asked, what is then to be done? We answer, there are people to be separated; perhaps a new country to be procured for a portion of
them, or an old one to be divided; and the part of it taken from the rightful owners, without their consent, must be paid for; funds belonging to, or claimed by, a whole community, must be apportioned among the several parties. In fine, the "Cherokee difficulties" are to be finally adjusted, in a manner which shall be just and equitable and binding upon all parties! an end put to "domestic strife," and the character of our republic vindicated before the civilized world.

We are, very respectfully, your obedient servants,

S. C. STAMBAUGH,

AMOS KENDALL.

Hon. WM. L. MARCY,
Secretary of War.

PART II.

Statement and arguments of the "treaty party" of the Cherokees, March 1846.

No. 1.

WASHINGTON CITY, D. C., March, 1846.

Sir: The undersigned, a delegation, duly appointed to represent the wants and grievances of the treaty party of Cherokees, beg leave, as briefly as the nature of their case will allow, to submit through you to the consideration of the Hon. Secretary of War, a statement of the case of the "treaty party."

The necessity of entering into a minute history of the unfortunate treaty party is obviated by a reference to a written statement furnished to you, by the counsel of the western Cherokees, in November last. A copy of that statement (which we beg leave to refer to as "A") do we now annex as an accurate history, so far as it goes, of the origin, progress, and history of the "treaty party." This history, based, as it is, upon the record evidence of the War Department, will prove, we entertain not the least doubt, the purity of the motives of those who were first designated as the "treaty party;" and it will also establish their claim, upon every principle of justice, to the protection of the government of the United States.

The statement "A" shows that in 1840 the treaty party were abandoned to the tender mercies of those who had declared them "outlaws," and all efforts to punish the murderers of the Ridges and Bondinot from that time were abandoned by the United States. This, we would remark, is the more extraordinary, since it has been officially made known to the War Department, that an indictment has been found in Washington county, Arkansas, against the murderers of the venerable Major Ridge, and their arrest and punishment have been vainly sought and demanded by the authorities of Arkansas.

Our enemies, encouraged by the deaf ear turned by the government of the United States to the cries of blood from the ground of a sovereign State, have moved forward with a steady pace to the object, long since de-
terminated upon against the members of the treaty party—their total destruc-

We will not now complain of the petty annoyances, restrictive of the rights and liberties of our partisans, which we have had to endure. We may therefore mention among the most prominent the following: That Jacob West, a white man of the treaty party, was in 1843 tried, condemned, and executed, accessory to a murder perpetrated by a white man, over whom the Cherokee authorities had no jurisdiction; that John W. West was convicted of the same offence, and stripped with one hundred lashes, although it was palpable he had no agency in the offence, and this after a pardon; that about the same time many others were arrested without warrant or authority of law; that a "police company" were established, who arrested whom they pleased, without any responsibility whatever; that the police company has cost the Cherokee nation some fifty thousand dollars per annum, which has been paid out of the common purse; that men have been outlawed, and prices set upon their heads, without a hearing and without trial; and in two instances, the acts of outlawry and the proclamation of the principal chief extend to those whose offence is alleged to have been committed in the State of Arkansas; that in November last, a large number of armed men, as we confidently believe, with the sanction and certainly with the apology of the Cherokee authorities, in a most barbarous and cruel manner, murdered James Starr, Sewell Rider, Stoane, Swimmer, Thomas B. Watie, and Charles Smith, and Buck Starr, an infant son of James Starr; that the Cherokee council, and the "Cherokee Advocate," a newspaper supported out of the common purse of the Cherokee people, offer the most barbarous indefensible apologies for these deeds of blood, and ruthlessly attack the memories of the dead, and hold up to public scorn the living, whom they openly denounce as "traitors" for having sanctioned the treaty of 1835, thereby inciting their deluded followers to further acts of vengeance.

We complain that in consequence of this state of things, no member of the treaty party is safe in the country, and very many have had to take refuge in the State of Arkansas, where they are without homes, and in many cases without shelter. In support of these complaints, we refer to the official reports of your own officers.

Referring now to the proceedings of the general council of the treaty party which we have already had the honor to submit to your consideration, the undersigned were instructed by the members of the treaty party to make known to your government that they deem it impossible for them, the treaty party, to remain in the same community, and under the same government and laws with those who have so cruelly and wantonly violated their every right, and assassinated their friends and kindred. Our longer endurance would only insure a continuation of those stealthy and open assassinations under every possible pretext, and any retaliation on our part would result in the total extermination of our friends, without regard to age or sex. Of this we are sure your government must be convinced; we therefore ask, as the first step towards our relief, the adoption of one of the remedies indicated by the general council of our people, i.e., first, a new home, or, second, a division of the Cherokee domain. The principle upon which either may be accomplished is a subject more properly for the consideration of your government; we therefore forbear any discussion at present as to the choice of remedies.
Intimately connected with this claim and protection for the future, is the claim which the widows and orphans of the murdered signers of the treaty of 1835 and some of the survivors have for "spoliations" to property, consequent upon the bloody tragedies to which we have alluded. It seems to us that these claims are founded alike on the principles of humanity and justice. The claims of this class are few, and will be presented, with the evidence sustaining them, whenever your department shall signify a willingness to hear them.

It is likewise made our duty to ask, from the government of the United States, the payment of the moneys due to the respective members of our party under the fifteenth article of the treaty of 1835. We cannot better express our opinions upon this subject, than by herewith transmitting copies of a memorial and an argument herefore presented to the consideration of the Secretary of War and both branches of Congress. These documents are marked No. 3 and No. 4, and are respectfully referred to as part of our statements.

In addition to what is therein said, we cannot too strongly urge that the claims of our party generally differ very widely from the claims of those who emigrated under the removal contract, as agreed upon between General Scott, for the United States, and Mr. John Ross and others.

The treaty party are those who either accepted a commutation of twenty dollars per head, and removed themselves, or who were removed by the government of the United States; and are in number about 3,000.

The Ross party have, through their leaders, therefore, been benefited to the amount of eighty-three dollars and twenty-five cents each, in which the treaty party have had no participation. Against this expenditure, so far as our people are concerned, they solemnly protest, and now ask for whatever sum would have been due them, had no part thereof ever been improperly expended about this removal.

In making up this amount for per capita distribution, the first question which presents itself is, what sum is properly chargeable upon the sum of five millions of dollars for which the Cherokee country east was ceded? Our solemn conviction is, that the treaty, the acts of appropriation, and the preliminary discussions, as brought to bear in document No. 4 referred to, all duly considered that the $500,000 reserved for 800,000 acres of land, and the $500,000 invested in State stocks, and perhaps the price of improvements, without regard to ouster or spoliation, alone can be legally deducted from the $5,000,000 fund. Nor is there equity or justice in taking out the value of the improvements.

We, therefore, beg that, in making up the accounts, a scrupulous regard shall be had to what was paid for improvements strictly contemplated under the ninth article of the treaty, ousted of possessions, as provided for in the sixteenth article of the treaty; it never, as we feel assured, having been contemplated by the contracting parties, that damages of the latter class should fall either upon the fund provided in the treaty or the supplementary treaty; such claims being in fact individual claims against the United States, many of which arose after the ratification of the treaty.

All our views upon the subject of these accounts can more properly be heard from time to time, as the questions shall arise between the Commissioner and ourselves, or counsel. We shall never be found pertinacious, but will readily yield any opinions of our own, whenever we shall hear good reasons against our convictions. We have the fullest confidence that no of-
cer of your powerful government, having the administration of this great trust fund, can for a moment desire to withhold a single dollar from a poor and suffering people.

We trust that our case is stated with sufficient accuracy to enable the Commissioner to understand, with certainty, the wants of our party. They are: 1st. A separate district of country, upon just terms. 2d. Payment to the sufferers for such losses as they have sustained in the absence of that protection guarantied by the treaty of 1835. 3d. The payment of the per capita money of right due, upon a fair statement of accounts.

If there be any thing omitted upon which the Commissioner would be pleased to consult us, we shall most readily answer any question within our knowledge.

The undersigned are ready to enter into any just negotiations for the settlement of the grievances of their party.

The undersigned have the honor to be, very respectfully, your obedient servants,

WILLIAM MEDILL, Esq.,
GEO. W. ADAIR,
E. STARR,
J. A. BELL,
J. M. LYNCH,
BRICE MARTIN.

The argument No. 4, referred to, is on the files of the War office, being an argument of Judge Paschal, submitted in April or May, 1844, as an expose of the treaty of 1835.

Having retained no copy, the Commissioner will please have the kindness hereto to annex it, in its proper place.

The exposition of the treaty, therein urged, is still respectfully insisted on.

GEO. W. PASCHAL, Attorney and Advocate of the Treaty Party.

PART II.—No. 2.

WASHINGTON CITY, D. C., March, 1846.

Sir: In the statement of the case of the undersigned, in behalf of the treaty party of Cherokees, they omitted to be as explicit in regard to the subject of the emigration of a portion of the Cherokees, by Mr. John Ross and others, as would perhaps be necessary to a clear understanding of the subject.

But before proceeding to point out our objections to the manner of carrying out the trust which General Scott, on the part of the United States, conferred upon John Ross and others, pretending to act on the part of the Cherokee nation, permit the undersigned, in behalf of the treaty party, to say, that we solemnly protest against that "arrangement," or "contract," in all its bearings, so far as the interests of the treaty party are concerned.

We feel assured that no such power was conferred by the treaty of 1835-36, or any other existing law, thus to administer the "trust fund," created for the common benefit of the whole of the Cherokees, from whom the
cession of lands was by that treaty obtained. Our views upon this subject are fully expressed in the memorial and argument, Nos. 3 and 4, which we have already had the honor to submit to your consideration. But as this is a subject affecting deeply the interests of our people, we trust we may again recur very briefly to the reasons which influenced us in our opinions as to the construction of the treaty.

We lay it down as a proposition that the $5,000,000, for which the Cherokee lands were ceded, could not be properly applied for the purpose of emigrating the Cherokee people, and that all application of that fund for that purpose was a violation of that treaty.

In support of this view we may properly urge, that under the treaty of 1828, with the western Cherokees, and the subsequent laws for the emigration of the eastern Cherokees, the United States took upon themselves the removal of all such as enrolled for emigration, at their own expense. They likewise subsisted them one year, paid them for their improvements, and gave very considerable personal benefits. (See 8th article of the treaty of 1828, 9th vol. Laws U. S.)

And by the provisional treaty a schedule is affixed, which attempts to charge the Cherokees with their own emigration. (See House of Reps. Doc. 1st session 24th Congress, page 29.) This proposition was objected to by the Cherokees, and for this reason, among others, they rejected it; and President Jackson, who clearly comprehended the intentions of the United States towards the Cherokees, in submitting the treaty of 1835, sent them a "talk," in which he emphatically said: "These stipulations provide * 3d. For the removal, at the expense of the United States, of your whole people; for their subsistence one year after their arrival in their new country; and for a gratuity of one hundred and fifty dollars to each person." (See same document, p. 42.)

And by the first article of the new Echota treaty, as appears by the treaty and by the journal of the commissioner, a question arose whether the award of the Senate intended that the $5,000,000 should be chargeable with spoliations, which question it was stipulated should be referred to the Senate. This question was decided in favor of the Cherokees; and because the 15th article of the treaty in several particulars was inconsistent with the preceding articles, a supplemental treaty was appended, which gave an additional sum of six hundred thousand dollars, "to include the expense of removal, and all claims of every nature and description against the government of the United States, not herein otherwise expressly provided for. This sum of six hundred thousand dollars shall be applied and distributed agreeably to the provisions of said treaty; and any surplus which may remain after removal shall be turned over to the education fund." The term that the fund thus created should be "distributed agreeably to the provisions of the treaty;" clearly implies that no greater amount should be expended for removal than was limited in the treaty. This leads us back to the 8th article of the treaty, which determines that only twenty dollars per head could be paid for a "communication" in lieu of removal. Had all thus commuted, and there had remained a residue after paying "spoliations," the United States held such residue in trust for the education fund.

The act of Congress of 2d July, 1836, preserves this distinction of objects specified in the first, and "their supplemental article of the treaty." The whole question of removal, as we think we have sufficiently shown, was a trust, beneficial to individuals, and the fund was a trust held by the United
States, over which the Cherokees, as a body politic, if any such existed, had no control.

Nor does the 2d section of the act of 12th June, 1838, change the powers of the United States as respects the trust funds. That act merely adds 1,047,067 dollars for objects specified in the third article of the supplementary articles of the treaty of 1835, and for the further object of subsistence. (See act of 12th June, 1838, 2d vol. Laws U. S.) The history of this act may well be consulted for its interpretation.

And by reference to a resolution of the House of Representatives of 23d May, and the report of the Secretary of War in response thereto of the 25th of the same month, it will be found that removal and subsistence alone were intended by Congress; the $100,000 contemplated being provided by another section of the act of the 12th June. It is true, that in that estimate $30 for each person, instead of $20, was provided.

But this could not change the 8th article of the treaty, so far as commutation was concerned. If, then, the arrangement with Ross be regarded as a commutation similar to that allowed to John Martin, John Ridge, Boudinot, and others, the government was limited to $20 for each person commuted for; and if he be regarded as a contractor, then, on the most liberal rule of construing the act, the estimates consulted would only allow him a payment of $30 to each person removed.

This view of the subject becomes the more important, when we take into consideration that a large amount has been subtracted from the $5,000,000 fund to pay for subsistence—a payment, after the act of 1838, as unauthorized as the payment out of said fund for removal.

We have thought it unnecessary here again to reiterate these views, before speaking of the manner in which Mr. Ross and others fulfilled their contract.

This exorbitant amount for removal was at the time palliated under the pretence that John Ross and others were acting on the part of the "Cherokee nation," and that whatever "profits" should be made would go "into the Cherokee treasury."

The undersigned with great deference deny that Mr. Ross and his associates had the power to enter into such a contract, on the part of the Cherokee nation. They were not chiefs, as we have shown in exhibit "A" to our statement, because the Cherokee body politic had long before that time been annihilated by the extension of the State laws, and the failure to elect, according to the provisions of the Cherokee constitution.

And by the — article of the treaty of 1835, a special committee was constituted, who alone had a right to transact business with the United States, touching matters arising out of the treaty.

This view is not original, but was entertained by the government of the United States after the ratification of the treaty. Nor was this committee silent as to the imposition thus practised upon the Cherokee people. Their protest was laid before General Scott on the 20th August, 1838. (See House of Representatives document No. 1098, 2d session 27th Congress, page 31 et seq.)

Subsequent events have proven how correct were their views, and how fortunate would have been the Cherokee people had their suggestions been heeded. And although this protest was laid before John Ross and others by General Scott, yet they seem to have returned no reply to a charge so
serious; exulting no doubt in the advantage which they had obtained over
the General by false representations, they chose not to enter into a discus-
sion about their future intentions.

We might now enter into many facts going to expose the manner in
which these men profited by this unauthorized transaction. Enough is
shown in the very able report of the Commissioner of Indian Affairs of the
8th August, 1840, to stamp the character of John Ross and his associates
as dishonest men. (See House of Representatives document 1099, 2d ses-
sion 27th Congress, page 613.) But as was there more than once intimated
by the Commissioner, he had only the unsupported statements of John
Ross; and there was much not seen, which rendered the fraud still more
monstrous.

It must be but too apparent that the time occupied upon the road was
purposely lengthened out, with the views which were ultimately obtained.
Various pretenses were adopted with this object; one conductor detained his
detachment several days to send for a few sacks of salt; another stopped
a detachment a whole day to shoe an ox, making at once a cost of a thou-
sand dollars; a third drove up and down the line which divides Arkansas
from the Indian country for several days, viewing the "promised land,"
but not entering, because the delay would put five dollars a day in the
pockets of the conductor, and subtract as many hundreds from the Chero-
kee funds. The advance of $776,398 98 was paid in par funds; but these
to a large amount were exchanged for Tennessee funds, at a profit
of from six to eight per cent.—Mr. Ross and his associates pocketing the
profits, and investing the Tennessee funds in the purchase of wagons,
teams, carriages, horses, and steamboats, which for effect were branded
"C. N.,” thus deluding the poor Cherokees with the belief that they were
drawn by their own teams, in their own conveyances. The same system
of discount was practised by Lewis Ross, the contractor for subsistence
and forage, and the profits upon the exchange of funds pocketed by him-
self and associates.

Indeed, it is useless to travel beyond the record, to show the enormity of
the frauds. The over count of numbers of wagons, teams, forage, and
subsistence, the charge for wagons which never returned, are shown in the
aggregate to amount to $384,876 93. (See document last quoted, p. 12.)

This calculation of the Commissioner is far short of the actual over-
charges. But this estimate is made upon the calculation of $65 88 for
each individual; yet the amount actually paid was $103 25 per head.
This will swell the amount over one-half.

And were sufficient reasons shown by Mr. Secretary Bell for overturn-
ing the able reports of the Commissioner of Indian Affairs, of his prede-
cessor, and of President Van Buren? It only needs an examination of
the papers to show that no single fact supporting the exorbitant demand,
or overcoming Mr. Crawford's well-founded charges, was adduced.

General Scott's notions of the payment "out of the trust fund" show his
entire misapprehensions of the legal power of the United States over this
fund. His testimony, although taken for Ross, clearly establishes that even
he had lost confidence in both John and Lewis Ross's honesty.

The only reason which seems really to have influenced Mr. Secretary
Bell to pay this rejected account, was found in the fact that the "Cherokee
nation, through their committee and council, in national council assembled,
ordered that the aforesaid John Ross be, and is hereby, authorized to pro-
ceed to Washington city, and to urge a settlement of this claim with all possible expedition, and to apply for, and receive from the government of the United States, in the name of the Cherokee nation, the balance due, of five hundred and eighty one thousand three hundred and forty-six dollars and eighty and one-half cents, as stated in his account of the emigration claim, in order that the business growing out of it may be brought to a final close."—(See same document, page 21.)

Now, there is no pretension, even by Mr. Secretary Bell, that even the "treaty party" had entered into "any act of union" by which they compromised any political, much less a personal, right. Indeed, he seems not to have been unmindful that there were distracting parties in the Cherokee country; and he seems to express some conscientious compunctions at the great outrage about to be perpetrated upon the treaty party.

Acting as he did, however, under his construction of the act of a union between the western Cherokees and the act of the national council, already referred to, it becomes our duty to examine this view of the subject.

Every question touching these pretended acts of union has been so recently brought to the consideration of your department, that it is unnecessary for us here to recur to the circumstances under which it was forced upon the western Cherokees. No one even pretended that it was sanctioned by the treaty party. With the decree of outlawry still fulminated against them, the treaty party refused all participation in the convention which entered into the act of union, and formed the Cherokee constitution. Indeed, so unimportant were the treaty party regarded by the Ross party, that they never were noticed as being at all important to any measure. The treaty party not having, therefore, been consulted about this act of union, its quotation by the Secretary of War was gratuitous in the extreme.

And now, admitting, for the purpose of argument, (and we would admit it in no other way,) that the act of union, and the constitution adopted by the convention of 1839, were valid, for the purpose of establishing a social community and a representative government; yet could that government, in the exercise of its delegated powers, do any act to divest individuals of their separate rights to a trust fund held by the United States? Did the act of union make a common fund of all individual property, and claims of individuals? The payment to individuals of hundreds of thousands of dollars previously awarded to them, the adjudication and payment of many claims since that time, the advance of $172,000 of subsistence "to be deducted from the per capita" money to the indigent Cherokees, all prove that no such view of the subject was taken at the time. And even those whose cupidity and avarice the Secretary of War was thus contributing to, at the expense of a starving constituency, no doubt smiled at this blindness to their views of the subject.

They well knew that the act of union assumed that the Cherokee lands east had never been ceded; that they (Ross and his associates) repudiated the treaty of 1835, and excluded the 800,000 acres of land granted by that treaty from their jurisdiction.—(See the act of union, Ho. of Reps. document already referred to, and Cherokee constitution, page 73 et seq.) The cunning and artifice of John Ross is nowhere more manifest than in the saving here reserved, "that the delegation authorized by the eastern Cherokees to make arrangements with Major General Scott for their removal to this country shall continue in charge of that business, with their present power, until it be finally closed." This designing man had no in-
vention of relinquishing his profits, or of allowing others to investigate the
manner of fulfilling his trust.

The very next sentence assumes that the lands "east of the Mississippi
river" are still unceded. But this proposition was urged with still greater
boldness after the result of the Presidential election in 1840 was anticipated.
In his pompous annual message of October, 1840, he says to the Cherokee
national council, "The country taken from us east of the Mississippi river
still remains unpaid for."—(See House of Reps. document already quoted,
No. 1098, page 45.) And after most unblushingly stating that his enor-
mous claim for removal is only "suspended," instead of rejected, and
his fraud exposed from his own unsupported figures, he speaks of the ac-
count "of a balance due the nation," and enters into some particulars.
With a deception but too apparent, he proceeds with an assertion, the false-
hood of which subsequent events too well establish.

"It will be remembered that I myself have made no charge for time nor
services, but that I enrolled myself under a conductor of my own appoint-
ment, and moved with my family on the same terms with my fellow-coun-
trymen: hence I am only interested in common with them. Whenever
the emigration account against the United States shall be closed, whatever
surplus may remain after a discharge of the various items due under it, the
balance will of course be paid over to the nation."

The national council, it will be recollected, were mostly the partisans of
Ross; they but echoed his sentiments. In voting a request that the
United States should pay the balance of his account, they of course did it
with the understanding that the lands "east of the Mississippi were still
unpaid for," and that the payment was to be made out of the treasury of the
United States, and not out of the "trust fund." Is there a word said, even
in this message or resolution, about demanding payment out of the "peo-
ple's" "per capita money?"

There is another statement in this extraordinary message, equally pre-
sumptuous, and we are informed equally untrue. After speaking of the
embarrassment of the delegation, he says: "Thus embarrassed, I claimed,
under a protest, the proceeds of a partial valuation for improvements taken
from me in our late country, and with these discharged the loan of the
nation." (See Doc. 1098, page 45.)

The files of the War Office will show the circumstances of this presump-
tuous protest. It is enough for our purpose that it was understood by his
confiding countrymen as a repudiation of the treaty of 1835. With this
understanding, he was instructed to call for the payment of a demand,
shown by the Commissioner of Indian Affairs to be founded in fraud and
iniquity. But had the Secretary of War carried out the intention of the
national council, however dangerous money has always proven to be in
Ross's hands, we should not complain. But the Secretary of War, while
yet new in his office, reversing the well-matured decision of his predecessor,
and to the ruin of the party who had dared to oppose the extravagant pretensions of John Ross, if his views be not reversed, swept away the remainder
of a fund guarantied by solemn treaty stipulations to the respective mem-
bers of the tribe.

Exulting with his success, and still more elated with a letter of Presi-
dent Tyler, dated 20th September, 1841, (see Doc. 1098, page 71,) they re-
turned to the country, and commenced such divisions of their ill-gotten gains among those who had more or less interest in the removal contract
as pleased themselves. It so happened that John Ross, and Lewis Ross, and William S. Coody, who have been the greatest maligers of the treaty party ever since, pocketed princely fortunes. Fitting out large establishments, living in great style, and having, through different members of their family, established large mercantile establishments in different sections of the country, they have found no difficulty in oppressing those who have dared complain of this open dishonesty. But did they not turn over to the national treasury the immense profits thus amassed? They got $180,000 for the return of wagons, not one of which ever returned. Was this great sum paid to the treasury of the Cherokee nation, and to those suffering countrymen "who had lent their means," and furnished their teams in transporting the Cherokees? Let us see. Those who had furnished teams were never paid one dollar of this constructive return. Only one set of teams ever returned. The owner of these has now a suit pending in Washington city against John Ross for the money thus received and pocketed to another's use. Has Mr. Ross never made a settlement with the Cherokee council for these profits? The history of this matter is soon detailed. The payment was made here, it will be recollected, about the 20th of September, 1841, (see Doc. 1098, page 70.) The files of the Treasury Department will show that these payments (both claim and annuities of over $100,000) were paid in treasury notes.

Mr. Ross, and the treasurer, David Vann, made pleasure trips to the eastern cities, where they were toasted and caressed; and the fact that the orphans of the murdered Boudinot now subsisted by the industry of a pious stepmother, in Vermont, was no doubt forgotten by the entertainers, however often the ghost of the murdered father may have risen to the view of him who now had in his grasp the lost pittance due the fatherless, houseless orphans. After some time spent in these pleasure travels, purchasing princely furniture and costly merchandise, they leisurely returned to their homes, not, however, until the national council, which had assembled in October, had adjourned.

In the meantime, the subject of the per capita money due the Cherokee people under the treaty of 1835 had been brought to the consideration of the national council in the message of the honest second chief, the lamented Andrew Vann.

This message was followed by resolutions, which will be found upon the files of your department, calling upon the government of the United States for this money. The arrival of Mr. Ross, however, and the convocation of the council, caused a suspension of this resolution. Hundreds of copies of the extraordinary letter of President Tyler were printed and circulated; Governor Butler commenced investigating "all sorts of claims," and millions under "a new treaty," such as was extravagantly promised by President Tyler, were confidently anticipated.

To all inquiries of from what fund this large sum was paid, Mr. Ross remained hermetically silent. While the treasurer amused the ignorant people with asking, how could they tell from what forest tree leaves fell during an autumnal gale?

All expenses attending the revolution, so far as the revolutionists charged, were paid out of the national fund, arising from the stock investments; and every claimant was charged interest upon the treasury notes from April 27, 1841, to the date of payment in 1842. Who pocketed this accruing interest, those who handled the funds can best tell. It is no matter
of marvel that, under this state of things, the western Cherokees and treaty party were for a time overwhelmed. With an administration deaf to their complaints, a commanding general on the frontier harsh to their oppressions, an agent led away by the pomp and glitter of their oppressor, they had no remedy. But the very iniquity of the measures began, in time, to produce their legitimate effects. A few sterling Cherokees, who could not be bought by gold, or intimidated by threats, freely discussed these nefarious transactions. In a neighboring press the history of the removal contract was reviewed, and the frauds exposed.

Copies of most of these articles, signed "Lalini" and "Beatie’s Prairie," and published in the Arkansas Intelligencer, were transmitted to the Secretary of War by Senator Fulton and John F. Wheeler, esq. To these we beg leave to refer, and, with the evidence before you, we need not vouch for their truth. We but refer to them as our evidence of how well many of the Cherokees understood their grievances. This discussion became general in the country, and on the 14th of December, 1842, it was followed by a resolution of the national council calling upon the "principal chief, John Ross, for a full fair statement of the amount of money received by him from the government of the United States since the year 1835, and how applied; and what amount is now in his hands (if any) subject to legislation."

This resolution, and the ingenious response thereto, will be found on the 22d page of document No. 234, House of Representatives, 1st session 28th Congress, which document we have already had the honor to submit. We feel no disposition to enter into quotations from that message; nor need we remind you of its utter untruth as regards the arrogant claims set up for himself and associates respecting the act of appropriation of 1835. The allusion to the circumstances attending the "capture" of the people prior to the arrangement with General Scott was intended to turn the resentment everywhere felt against himself upon the treaty party; and in it is also aimed an insult at the United States characteristic of the man.

The evasion and falsehood throughout show the desperation to which John Ross was at last driven. Not having the boldness yet to claim the profits of the removal contract for himself and associates, he promises a settlement in future. "So soon as the papers appertaining to this business can be arranged, and a full exhibit of disbursements prepared, and such claims as yet remain unadjusted be disposed of, the transactions of my superintendency will be reported to the nation through the special agents charged with this duty. There are no moneys in my hands subject to legislation."

Nor did the arrogant man suffer this opportunity to escape to offer insult to the United States. In another part of the message he says: "The combined tenor of the two papers seems to embrace even moneys received and expended under the Schermerhorn compact, from which the people have been incited to expect per capita money. Now it is well known that the nation has always disclaimed that compact, and that I have disclaimed it also. How, then, could per capita money, under its provisions, come into my hands?"

Is not the character of the man for veracity here sufficiently exposed? He had been told by General Scott, by the Commissioner of Indian Affairs, by the Secretary rejecting, and the Secretary paying the claim, that all above the stipulated fund for removal would be a deduction from the per capita money, and would therefore be unjust to those who did not partici-
And in the fatal decision of Secretary Bell, which completed the many acts of unauthorized dis-\[\text{sp}o\text{i}l\]ation upon the five million fund, he says: "The sum now demanded amounts to $486,939 50\frac{1}{4}. It is alleged to be payable out of the balance of the Cherokee fund, created by the treaty of 1835 and the law of 1838, to the representative or agent of the Cherokee people in trust for them," &c. And yet, as if he never blushed for a falsehood, he gave utterance to sentiments so easily exposed. Nor are we left to construction to prove the falsehood in this message. The excitement in the country against him increased. A contest for the chieftaincy came on that year. Extravagant expenditure of money had to be employed to secure his re-election. But the power of the large stores of Lewis Ross, of George M. Morrill, son-in-law of Lewis Ross, of R. J. Meigs, son-in-law to John Ross, and of the well-lined purse of William S. Coody, nephew of John, employed in presents, extending credits, and in purchasing up the press, hitherto used to expose the frauds of this removal, prevailed. John Ross carried the election.

An accidental murder, by one John Work, a straggling citizen of the United States, happened the next day. This was the pretext for again commencing a war of extermination upon the treaty party. Jacob West, Lovely Rogers, and John W. West, all of whom were innocent of all participation in the crime, were seized and chained. A guard of hundreds was employed; great excitement kindled in the country. Without jurisdiction and without crime, Jacob West, a white man, was hanged, and his son condemned, pardoned by the chief, and then striped with a hundred lashes. The Vann tragedy served for excuse to outlaw the Starrs, and attempts to destroy the sympathy on the frontier for the treaty party. An army was raised; many, very many, innocent men were arrested, and chained for weeks, on every frivolous charge; and, in many instances, discharged without a charge or hearing.

Those who dared to hold meetings in the State of Arkansas, to petition for a payment of the per capita money, and an escape from these grievances, were denounced, in a correspondence with General Taylor (since made official,) as traitors "concocting mischief against the common country."

One act of violence followed another until the nation became involved in an inextricable debt. During a session of three months of the national council, during which time John Ross had no time to make the promised exhibit of his "superintendency," the council audited national debts to the amount of $137,000 above the national and education fund, (which latter has been shown, on a previous occasion, to have been applied to pay guard-hire.) Ross's adherents became clamorous for money, and, without any statement of accounts, John Ross placed at the disposal of the council $125,000, which, in his message, he said was the "savings" upon the wagon return—the constructive sum of $180,000. This payment being in treasury notes, an interest of $1,200 had accrued, which was charged up and made a part of the $125,000. Nor was this the only saving in the payment. The captains of "police companies," and every other official, had issued national certificates; it being known that Ross had "no funds subject to legislation." These certificates suffered a heavy depreciation. They were bought up by the Ross merchants, before mentioned, at dis-
counts at over one-third; and the payment may, therefore, be said to have been from John Ross to his relatives, the merchants.

Yet, such was the credulity of his deluded partisans that many of them regarded this long-deferred money not only as an evidence of par excellence honesty, but of most disinterested liberality. This is the last which the national council has ever heard of the "savings" upon this contract. Even this sum was forced from him, to save himself from the vengeance of the hireling banditti so long employed to murder and oppress honest men, and guard the slumber of the occupant of "Park Hill," against visions of the bloody corpses of the assassinated Ridges, and Boudinot, and Jacob West, who had been consigned to the gibbet to satisfy the feelings of the treasurer, David Vann, who had suffered a just chastisement for his arrogance.

In summing up this detail, we have overlooked many facts as startling as those already narrated; and we wish, in conclusion, not to be understood as for a moment conceding that we are to look to John Ross for money of right due to us.

The United States, not John Ross, is the trustee of the whole Cherokee fund.

If, under mistaken notions of his honesty, high officials have entrusted him with an agency which he has abused—have placed into his hands funds not authorized by law, and he has misapplied those funds, or converted them to his own use, your own courts are open, and you have your remedy against the dishonest defaulter. You can as well sue him as you can Captain Collins, who, it appears, made away with $65,000, placed in his hands for the purpose of subsistence.

But the poor and suffering Indians have no such remedy. They look to your government as their great trustee for the moneys long since withheld. Shall they look in vain?

But we will not permit this opportunity to escape, to again assure you that the distribution of these just dues, while subject to the oppression of John Ross and his government, would only be another means of bringing on our unoffending partisans more sore oppression. The very receipt of it would be regarded as an overt act against his power, and would be punished accordingly.

Give us, then, and give us quickly, a home where our people can receive their just dues, and enjoy them without murderous banditti, arrogant police, blood-thirsty chiefs and counsellors, a lying print, and a mercenary guard to harass, murder, slander, libel, oppress, and make them afraid.

The undersigned have the honor to remain, very respectfully, your obedient servants,

GEO. W. ADAOIR,
JOHN A. BELL,
E. STARR,
BRICE MARTIN.

Wm. Medill, Esq.,
Commissioner of Indian Affairs.
MEMORIAL OF THE "TREATY PARTY" OF THE CHEROKEE INDIANS,

Praying that the accounts of the expenditures of money under the treaty of 1835-'6 with the Cherokees may be examined into, and all misapplication of funds corrected and reappropriated.

To the honorable Senate and House of Representatives of the United States in Congress assembled.

Humbly complaining to your honorable bodies, your memorialists, Cherokees, who emigrated west, under the treaty of 29th December, 1835, beg leave to represent: That, from the year 1828, the condition of the eastern Cherokees became intolerable. They were surrounded by a white population, who made daily incursions upon them. They were deprived of their laws by the legislation of the States; denied their oaths and rights of suitors in courts. In 1830-'1, their lands were surveyed and granted to the citizens of Georgia by virtue of her laws. Your memorialists, in common with others of their nation, again and again appealed to the executive, legislative, and judicial departments of the government for relief. Basing their claims upon thirteen treaties, as well as upon the laws made to regulate trade and intercourse with the Indian tribes, your memorialists were slow in believing that the United States either could not or would not afford them protection and restore them to the peaceable enjoyment of their homes. But after the result of the suit of Worcester vs. Georgia, in the Supreme Court of the United States, the Cherokees were advised by their best friends in the United States that their only hope for relief was to be found in a treaty with the government of the United States, and a cession of all their possessions east of the Mississippi river. This alternative had long been urged upon the Cherokee people; but, influenced by every consideration which binds the Indian to the lands where are buried the bones of his fathers, they had resisted the proposition with a unanimity rarely equalled by a whole people on any subject.

Necessity, however, became a power sufficiently strong to overcome the deepest prejudices known to the human mind. The moral degradation to which the poor Cherokees were reduced, together with the impossibility of their being relieved in their then situation, induced many of the most discerning men of their nation, as early as 1833, to become the open advocates of a treaty—a cession of the lands east—and a residence west of the Mississippi river. They were impelled to this course, not from choice, but from fearful necessity. Those who thus boldly opposed the views of the great majority, their deep-rooted prejudices, and the "Cherokee authorities," were subjected to the most bitter persecutions. They were denounced as traitors to their country, and threatened with total extermination. As a party, they were encouraged by the United States; and to such a degree did the miseries and deprivations of the Cherokees attain, that among the intelligent the advocates of a treaty increased. This party looked forward to a removal from among a white population as the sure means of a peaceful residence, where they would be free from the dreadful calamities which surrounded them.

In 1834-'5, a delegation, friendly to a treaty, and known as the most
distinguished men of the "treaty party," visited Washington, with a view of urging a speedy arrangement with the government of the United States for the speedy removal of their people. A regular delegation, also, of the anti-treaty party that year visited Washington, and made some propositions for a partial cession of the country; which propositions were rejected by the President. A proposition was then made to cede the entire country for such sum of money as the American Senate should award. The Senate voted the gross sum of five millions of dollars as an adequate consideration for the country east. Commissioners, on the part of the United States, were sent out in the ensuing summer, for the purpose of negotiating a treaty with the Cherokee nation.

The history of their negotiations is well known.

Those who had agreed to treat on the basis of five millions, now refused to do so; and every measure was taken to defeat the treaty, without due regard to future consequences. A general council of the whole nation was called to assemble at New Echota in December, 1835. In the meantime it will be recollected that such measures were taken by the government of the United States as to leave no alternative but to submit to the terms offered, or be left to the mercies of the States, whose citizens would admit of no longer delay in their removal. No choice was therefore left; they must either enter into the treaty, or see the great body of their people driven from their homes, and left without a resting-place on the earth. Under these circumstances, a portion of the nation entered into a treaty with the United States for the entire cession of their country east of the Mississippi river. Whether it was right or wrong for a minority thus to act against those who claimed the right to exercise the Cherokee government, and to represent a great majority, it is not now necessary to discuss. All that could be said against the treaty will be found in the protest and remonstrances, and accompanying documents, of the Cherokees, while the same was before the Senate for ratification. By the history of the times and the facts in relation to the matter, let it be judged. It was at least ratified by the Senate of the United States, and sent forth by the proclamation of the President. By the constitution of the United States did it become the supreme law of the land; and, as a party, the United States were bound for the fulfilment of its every provision, according to the letter. If, by the violation of any of its provisions, individual Cherokees have been made to suffer, or have not received the benefits promised under that treaty, each individual so injured surely has a right to appeal to the law-making power of the United States for redress.

Viewing the subject in this light, your memorialists come before your honorable bodies, and, in behalf of themselves and families, claim that they are entitled, individually, to a per capita division of money, which has long been wrongfully and unjustly withheld from them. In support of this position, they would most respectfully call the attention of your honorable bodies to such provisions of the treaty itself, and the facts in connexion therewith, as seem to bear upon the case.

By the first article of the treaty of December 29, 1835, it is declared "that the Cherokee nation hereby cede, relinquish, and convey to the United States all the lands owned, claimed, or possessed by them east of the Mississippi river, and hereby release all their claims upon the United States for spoliations of every kind, for and in consideration of the sum of
five millions of dollars, to be expended, paid, and invested in the manner stipulated and agreed upon in the following articles:

2: But as a question has arisen between the commissioners and the Cherokees, whether the Senate, by their resolution, by which they advised that a sum not exceeding five millions of dollars be paid to the Cherokee Indians for all their lands east of the Mississippi river, have included and made any allowance or consideration for claims for spoliations; it is therefore agreed on the part of the United States that this question shall be again submitted to the Senate for their consideration and decision; and if no allowance was made for spoliations, that then an additional sum of three hundred thousand dollars be allowed for the same.

The second supplemental article of the treaty aforesaid recites an agreement to refer the question of spoliations to the Senate; and by the third supplemental article of said treaty, “it is therefore agreed that the sum of six hundred thousand dollars shall be, and the same is hereby, allowed to the Cherokee people, to include the expenses of their removal, and all claims of every nature and description against the government of the United States not herein otherwise expressly provided for.”

“This sum of six hundred thousand dollars shall be applied and distributed agreeably to the provisions of said treaty; and any surplus which may remain, after removal and payment of the claims, shall be turned over and belong to the education fund.”

Thus did the United States agree to pay to the Cherokee nation for their lands and spoliation claims, five millions six hundred thousand dollars. This sum (less five hundred thousand dollars agreed to be paid by the Cherokees for lands west of the Mississippi river) was appropriated by act of Congress of the 2d July, 1836, the respective sums being designated as objects specified in the first article, and the third supplemental article of the treaty of December 29, 1835.

The spoliation claims actually proven up were found, upon the report of the commissioners, as will hereafter be shown, to exceed half a million; and the expenses of removal greatly exceeded what had been anticipated. In other words, it was discovered that the computation for spoliations and removal was too small. Accordingly, we find in the act of Congress of the 12th of June, 1838, entitled “An act making appropriations for preventing and suppressing Indian hostilities for the year eighteen hundred and thirty-eight, and for arrearages for the year eighteen hundred and thirty-seven,” the following section:

“Sec. 2. And be it further enacted, That the further sum of one million forty-seven thousand and sixty-seven dollars be appropriated out of any money in the treasury not otherwise appropriated, in whole for all objects specified in the third article of the supplementary articles of the treaty of eighteen hundred and thirty-five, between the United States and the Cherokee Indians, and for the further object of aiding in the subsistence of said Indians for one year after their removal west: Provided, That no part of said sum of money shall be deducted from the five millions stipulated to be paid to said tribe of Indians by said treaty.”

Thus it will be seen that by the treaty, and the acts of appropriation under that treaty, the United States became liable to pay the Cherokee nation (or the people thereof) the following sums:

First, for the cession of lands under the 1st article - $5,000,000
Second, for spoliations and removal - 600,000
Thirdly, for spoliations, removal, and subsistence - $1,047,067

This sum, for the purposes of fair computation, we will say, was passed to the credit of the Cherokees by the Treasurer of the United States. And to what proportion thereof are your memorialists respectively entitled? We know that there are those possessing much wisdom who contend that, by the supplemental article of the treaty, the United States are prohibited from touching the five millions (less five hundred thousand dollars) for any purposes whatever, except for the purpose of per capita division. This argument is plausible, but it seems not to have been the understanding of the commissioners, who negotiated the treaty, as appears from their published addresses to the Cherokees. We will therefore take the treaty as it has been frequently expounded by the executive officers of the United States; and, according to their construction, we contend that a very large sum should yet remain unexpended, subject to per capita division. The fifteenth article of the treaty reads thus:

"It is expressly understood and agreed between the parties to this treaty, that, after deducting the amount which shall be actually expended for the payment of improvements, ferries, claims for spoliations, removal, subsistence and debts, and claims upon the Cherokee nation, and for the additional quantity of lands and goods for the poorer class of Cherokees, and the several sums to be invested for the general national funds, provided for in the several articles of this treaty, the balance, whatever the same may be, shall be equally divided between all the people belonging to the Cherokee nation east, according to the census just completed; and such Cherokees as have removed west since June, 1833, who are entitled, by the terms of their enrolment and removal, to all the benefits resulting from the final treaty between the United States and the Cherokees east."

Before proceeding to an enumeration of these several objects, we will remark, that that part of the treaty which related to the goods for the "poorer class" was abrogated by the fourth supplemental article of the treaty. The proper subjects of expenditures were, therefore, 1st. Improvements and ferries; 2d. Spoliations; 3d. Removal; 4th. Subsistence; 5th. Debits of the Cherokee nation; 6th. Lands ceded to the Cherokee nation; 7th. National and education funds.

In expending these several sums of money, we assume, 1st. That the United States was trustee of the people of the Cherokee nation, as individual creditors of the United States, for the respective amounts to which each individual was entitled. 2d. That the United States was trustee of the Cherokee nation as a body politic, for no other funds than such funds as, by the treaty, were to go into the Cherokee treasury, subject to the disposition of their national council; and, 3d. That if the United States have paid any portion of the funds which belong to the Cherokee people individually, to the body politic, it follows, as a corollary, that such sum has been improperly paid, and no act of Congress, or proceeding of the Cherokee national council, or chiefs, can divest such individual Cherokees of their claims on the United States for such sum of money so wrongfully expended.

Presuming that these positions will not be questioned, we will now proceed to examine, first, how much should have been expended under each
item before enumerated, and, as a consequence, how much is justly due each individual Cherokee according to the census of 1835; and to form some conception of the probable improper expenditures, and hence of the necessity of an appeal to Congress to have the amount due your memorialists reappropriated.

And, first, of expenditures for improvements and ferries. These were claims to be paid to the several Cherokees who owned improvements individually. Such became individual creditors of the United States to the amount of their respective valuations, according to the 9th article of the treaty, which provides that "the United States agree to appoint suitable agents, who shall make a just and true valuation of all such improvements now in possession of the Cherokees as add any value to the lands, and also of the ferries owned by them, according to their net income, and such improvements and ferries from which they have been dispossessed in a lawless manner, or under any existing laws of the State where the same may be situated." By a further clause in said article, the "missionary establishments" were to be paid for according to a like valuation. These were, in truth, the only uncertain expenditures provided for in the treaty, and these were soon reduced to a certainty by valuations. Active agents were soon appointed for the various districts in the Cherokee country, and their reports made in due time to the proper commissioners, every figure of which remains on file at the Indian bureau.

Your memorialists, by an examination of the books of valuations, and the actual payments which have been made to individuals respectively, and to the missionary establishments, have found this fund to amount to one million six hundred and eighty-three thousand one hundred and ninety-two dollars ($1,683,192.) But of this sum a large amount was improperly paid as spoliations which arose in this way: The 16th article of the treaty declares that "It is hereby stipulated and agreed by the Cherokees, that they shall remove to their new homes within two years from the ratification of this treaty; and that during such time, the United States shall protect and defend them in their possessions and property, and free use and occupation of the same; and such persons as have been dispossessed of their improvements and houses, and for which no grant has actually issued previously to the enactment of the law of the State of Georgia of December, 1835, to regulate Indian occupancy, shall again be put in possession and placed in the same situation and condition in reference to the laws of the State of Georgia as the Indians that have not been dispossessed; and if this is not done, and the people are left unprotected, then the United States shall pay the several Cherokees for their losses and damages sustained by them in consequence thereof."

Many persons were dispossessed, and none were ever restored to possession; but for such cases no appropriation ever was made; yet the commissioners went on to pay some five hundred thousand dollars for spoliations under this act.

For the present, therefore, we will say that the United States are entitled to a credit for this sum. It will, however, hereafter be shown that even this sum must be reduced some five hundred thousand dollars improperly allowed; or rather for claims paid under the 16th article of the treaty for which no appropriation had been made, and improperly charged as paid under the 9th article for which appropriation was made,
The second item of expenditures is for spoliations, being for claims and a certain class of reservations under former treaties.

Your memorialists have estimated from the same data that the sums thus paid to Cherokees individually amounted to five hundred and seventy thousand five hundred and eleven dollars and sixty-seven cents ($570,511 67). Thus it will be seen, that for the two items of improvements and spoliations, we give the United States a credit of two millions two hundred and fifty-two thousand six hundred and three dollars and sixty-six cents ($2,252,603 67.) But this is a mere matter of accounting; and although we have taken much pains in our calculations, and many of us have great familiarity with the subject, yet we do not pretend that we are certainly accurate; for by a report of the honorable Committee of Indian Affairs, (forming House of Representatives document No. 288, 27th Congress, 3d session,) we find that a credit of these two items of only two millions two hundred and seventeen thousand three hundred and twenty-eight dollars and ninety cents ($2,217,328 90) is claimed, making a difference in our favor of thirty-five thousand two hundred and seventy-four dollars and seventy-seven cents. As this committee had access to the accounting officers of the department, we shall assume their data as correct, and make our future calculations accordingly.

The third item of expenditures is for removal. By the thirteenth article of the treaty and supplemental articles, and additional appropriation of 1828, it will be recollected that no part of the five millions of dollars stipulated for in the first article of the treaty could be taken for spoliations or removal. This should be borne in mind, although we have for the present placed them to the general debit of the United States. The credit for removal may at first appear uncertain, and from this misconstruction have the Cherokee funds been subjected to the greatest abuses which they have suffered. Upon a careful analysis of the subject, however, all the difficulty will be found to disappear.

By the eighth article of the treaty it is provided that "the United States also agree and stipulate to remove the Cherokees to their new homes, and to subsist them one year after their arrival there; and that a sufficient number of steamboats and baggage wagons shall be furnished to remove them comfortably, and so as not to endanger their health; and that physicians, well supplied with medicines, shall accompany each detachment of emigrants removed by the government. Such persons and families as, in the opinion of the emigrating agent, are capable of subsisting and removing themselves shall be permitted to do so; and they shall be allowed in full for all claims twenty dollars for each member of their family; and in lieu of one year's rations, they shall be paid thirty-three dollars and thirty-three cents, if they prefer it."

We have now quoted all the provisions of the treaty, as well as appropriation bills, in relation to the removal of the Cherokees. This claim for removal, we contend, was in each case an individual claim. First, because each individual who chose might remove himself, and thus make himself a creditor against the government for each member of his family whom he had removed. Secondly, because each individual who chose to remain a citizen of the State actually became a creditor to the government for each member of his family remaining with him, and received the same as a commutation in money. Thirdly, because each individual, without consulting any chief or any authority of the nation, had a right to claim his removal in a "suitable steamboat or baggage wagon."
The question therefore presents itself, what sum might the United States deduct from the Cherokee funds for the removal of each individual removed by the government?

For the several reasons above specified, we answer, no more than twenty dollars per head. To allow of any other construction would be to admit of injustice and inequality never known in any treaty. It would be to allow the United States government a sum greater for removal than those who received commutation were paid. Very many of your memorialists commuted for the removal of themselves and families; they received the pittance of twenty dollars per head, and, excepting the expenses of purchasing wagons, teams, and outfits, (which, in the most cases, were useful in the west,) they found this sum amply sufficient.

Under no economical arrangement, when the government were removing great numbers, could it have cost more. We contend, therefore, that the estimated commutation is a limitation of the United States to twenty dollars per head for each individual transported in kind. The first detachment of emigrants cost no more; no other estimate was at first made; nor can any other conclusion be legitimately drawn. And so well satisfied were Congress of this, that, in the additional appropriation of 1838, it is expressly provided, "that no part of said sum of money shall be deducted from the five millions stipulated to be paid to said tribe of Indians by said treaty." We are the more confirmed in our conclusions, because, when six hundred thousand dollars were taken as the estimate for spoliations and removal, three hundred thousand dollars were mentioned as the sum for the former, and the same sum for the latter purpose. (See instructions of C. A. Harris, Indian Commissioner, to Messrs. Lumpkin and Kennedy, Senate Doc. No. 120, 2d session 25th Congress, page 149.)

Assuming, therefore, that it will be conceded that twenty dollars per head is the largest sum which the United States might expend for the purposes of removal, and we will inquire what sum might the United States claim as a credit for removal? The solution of this question depends upon the number of persons actually removed. We have no means of ascertaining the actual number removed; because the statements of the United States officers and of John Ross, who removed many of the Cherokees by contract, differ some sixteen hundred souls. But it is easily ascertained what number of Cherokees there were entitled to transportation in kind, or commutation for removal. The number of persons of the Cherokee nation, according to the census of 1835, including whites and blacks and North Carolina Indians, was sixteen thousand seven hundred and forty-three. Thus, at $20 per head, the United States would be entitled to a credit of three hundred and thirty-four thousand eight hundred and sixty dollars ($334,860) for removal.

The same arguments which apply to the data for removal, apply with precisely the same force to the data for subsistence. The only difference is, that such as commuted for their own subsistence (as very many did) were entitled to thirty-three dollars and thirty-three cents for each person so subsisted. Upon this basis, therefore, the United States are entitled to a credit for subsistence of five hundred and eighty thousand and forty-four dollars and nineteen cents ($558,044 19.) These several items of improvements, spoliations, removal, and subsistence, it is respectfully submitted, cover all the expenditures which could be made for the Cherokees individually, and without the voice of the chiefs. These persons respec-
tively became creditors of the United States, upon the proper certificates of the commissioners, or emigrating agents, of the amounts severally due them. These four sums, in the aggregate, amount to three millions one hundred and ten thousand two hundred and twenty-nine dollars and ninety-five cents ($3,110,229.95.)

The amounts paid and invested for the Cherokee nation as a body politic, are easily determined. They were fixed by treaty stipulations, and admit of no variation. They are as follows: Debts of the Cherokee nation as stipulated by the tenth article of the treaty, sixty thousand dollars; the sum agreed to be paid for eight hundred thousand acres of land, described in the treaty, and ceded to the Cherokees, five hundred thousand dollars, ($500,000;) the sum in funds, vested in State stocks, as a national, education, and orphan fund, as stipulated in the tenth article, and fourth supplemental article of the treaty, five hundred thousand dollars.

Your memorialists are well advised and believe that these several sums constitute the only credits to which the United States are entitled.

The account current will therefore stand thus:

The United States in account with the Cherokees, under the treaty of 1835.

<table>
<thead>
<tr>
<th>DR.</th>
<th>CR.</th>
</tr>
</thead>
<tbody>
<tr>
<td>To this amount appropriated under the first article of the treaty, including amount retained for land</td>
<td>$5,000,000</td>
</tr>
<tr>
<td>This amount appropriated under the third supplemental article of the treaty</td>
<td>600,000</td>
</tr>
<tr>
<td>This amount of additional appropriation for objects specified under the third supplemental article, and for subsistence</td>
<td>1,047,067</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$6,647,067</strong></td>
</tr>
</tbody>
</table>

CREDITS.

By this amount paid for improvements under the ninth article of the treaty | $1,647,917.33 |
This amount paid for spoliations under the ninth article and third supplemental article of the treaty | 570,511.67 |
This amount allowed for removal, estimating numbers according to the census of 1835, at $20 each | 334,860.00 |
This amount allowed for subsistence upon the same basis at $33 33 each | 558,044.00 |
This amount paid for debts of the Cherokee nation, as per tenth article | 60,000.00 |
This amount paid for lands not appropriated, but withheld | 500,000.00 |
Paid for national funds, tenth article | 200,000.00 |
Paid for education, tenth article | 150,000.00 |
Paid for orphan, tenth article | 50,000.00 |
**Added to the education fund, fourth supplemental article** | 100,000.00 |
| **Total** | **$4,171,333.00** |

Leaving a balance against the United States of $2,475,734.
Your memorialists, therefore, claim that the balance due and subject to per capita division, according to the provisions of the treaty of 29th December, 1835, is two millions four hundred and seventy-five thousand seven hundred and thirty-four dollars. Divide this, as the treaty stipulates, and was expressly intended by the contracting parties, by 16,743, the number of inhabitants, and the amount due each individual, “to be paid to the heads of families,” is one hundred and forty-seven dollars eighty-six cents six mills and two-thirds of a mill, ($147 86 6½.) But upon a just estimate, it will be found that each individual is entitled to about one hundred and fifty dollars; because the commissioners (Lumpkin and Kennedy) paid many persons who were dispossessed of their improvements, before the expiration of the two years allowed, according to the sixteenth article of the treaty, for the removal, “spoliations,” by way of “damages” or “rents,” for such disturbance; whereas all such cases of ouster and of failure on the part of the United States to restore and protect the occupants so dispossessed to the enjoyment of their improvements, formed independent charges against the government, for which no appropriation has ever been made. About five hundred thousand dollars, we are advised, was thus appropriated, paid, and deducted from the general fund subject to per capita division.

Your memorialists have yet to learn how they can be far mistaken as to the amount due them. The whole subject is a mere matter of accounts; and the purposes for which the money should have been distributed by the United States, our great trustee, are specified and limited. Surely it will not be contended that the United States might travel beyond the objects in the treaty, their deed of trust, and the acts of appropriation, in search of objects not therein specified. Much less should it be contended that our great guardian might improvidently expend the money for any of the objects specified. Every specification was a check on such rule, and the moment such encroachment was made, that moment there would necessarily be a deficit in some other object, properly chargeable upon the United States.

Your memorialists are, nevertheless, under the necessity of complaining that there has been a very grievous misapplication of these funds; and hence the necessity of our humbly petitioning your honorable bodies to have them re-appropriated. In approaching this subject, they do so with great respect; for we are convinced that none of the distinguished executive officers who have managed this great trust of the United States would wantonly have abused the rights of a single Cherokee, much less the poor and destitute, who never have received one dollar in money under the provisions of any treaty. Your memorialists are, therefore, led to believe that the whole error has arisen from the change of policy and hasty action incident to a change of administration. With these remarks, which are made with deference to all who have been engaged in the distribution of these funds, we now proceed to give our views in regard to the improper payments which have been reported, and are painfully known to our people.

We approach this subject with the more confidence, since we have learned that it is partially understood by your honorable bodies. In the very able report of the Committee on Indian Affairs, of the last session of Congress, (House of Reps. Doc. No. 288, 27th Congress, 3d session, page 4,) we find these remarks:

“The payment to John Ross, of the sums which he has received over
and above the amount agreed to be paid him, will probably be regarded as a matter of no pecuniary importance to the United States. These sums were paid out of the fund arising under the treaty, or that which was appropriated by the act of 12th June, 1838. But it must be recollected that a portion of the funds, arising under the treaty, were applicable to certain specific objects; and if the government has misapplied these funds so far that there does not remain sufficient to meet the object, the deficiency, created by its abuse of its trust, must be made good out of the treasury. The payment to John Ross was an injury to that part of the nation who did not participate in the profits of his contract, and it is likely to prove an injury to the government in the manner just mentioned."

We differ from the committee in the position that an improper "payment to John Ross," or any other, can be a matter of no "pecuniary consequence to the United States." On the contrary, we think that we have clearly shown that every dollar of the funds was applicable to the "specific objects" as set forth. We nevertheless refer with confidence to the document just quoted, as containing many facts conducing to prove the justice of our claim. We herewith annex a copy of said report, marked A, and pray that the same may be printed as part of our memorial. It will be borne in mind that, according to our estimate, the United States were only entitled to deduct from the fund, for removal, $334,860; but by the table annexed to said report, page 52, there was paid to John Ross, for removing somewhere about eleven thousand souls, one million three hundred and fifty-seven thousand seven hundred and forty-five dollars and eighty-six cents ($1,357,745.86) making, according to the estimate of the committee, one hundred and three dollars and twenty-five cents ($103.25) for each person so removed!

We regret exceedingly that the committee, in the table published by them, have confounded the expenditures for removal with the expenditures for subsistence. This is not according to the spirit or letter of the treaty. On the contrary, the removal is provided for in the third supplementary article, and no part of the expense could be deducted out of the general fund any more than could the claims for "spoliations." The acts of appropriation, as well as the treaty itself, prove this. Nor does the additional act of appropriation of 1838, to meet "objects specified in the third supplementary article of the treaty of 1835, and also for the purposes of subsistence," give any such right. On the contrary, that act of appropriation was understood, at the time, to mean no more than that whatever surplus should remain, after paying spoliation claims and removal, should be paid towards subsistence. To contend for any other construction is the most favorable argument which could be adduced in our behalf. It is to make the third supplementary article, and the act of appropriation of 1835, a saving of the whole five millions to the Cherokees. It is, in other words, to say that the framers of the third supplementary article of the treaty intended, by a master stroke of policy, to make the six hundred thousand dollars a fund for paying for "improvements and subsistence," as well as all other objects not in said third supplementary article specified. Your memorialists, therefore, respectfully invite a reference to the accounting officers, in order that the expenses of removal and subsistence may be separated.

Having said this much, we will proceed with the table as it appears by
the figures of the committee. Stripped of all circumlocation, it stands thus:

Amount paid John Ross, emigrating agent and superintendent of removal, out of the fund appropriated under the third supplementary article of the treaty - - $776,398 98

This amount paid to said John Ross, out of the funds appropriated under the 1st article of the treaty of 1835 - - $81,346 88

$1,357,745 86

Amount paid for removal, transportation, and subsistence of the Cherokees, and for pay and expenses of superintendents, agents, interpreters, and steamboats, and all objects of a contingent nature, the same being deducted from the general fund, appropriated under the first article aforesaid - - $402,309 15

This amount, paid for the same objects, being deducted from the amounts appropriated by the third supplementary article - - $154,167 37

$556,476 52

Amount paid to individuals for commutation of transportation and subsistence, who removed themselves—deducted from the general fund - - $165,574 16

Paid for the same objects—deducted from the fund under the third supplemental article - - 1,140 00

$1,167,346 56

This amount paid Glasgow and Harrison, for 4,914,122 rations, and the transportation of 1,795,969, all being deducted from the general fund - - 674,527 97

$2,755,464 53

Thus it will be seen that, for the objects of transportation and subsistence, the government has expended two millions seven hundred and fifty-five thousand four hundred and sixty-four dollars. To this sum may be added one hundred and seventy-two thousand three hundred and seventeen dollars and forty-seven cents, paid for rations furnished the poorer classes of Cherokees, under contract with General Arbuckle, of the 28th April, 1840—making the whole amount expended for transportation and subsistence, alone, two millions nine hundred and twenty-seven thousand seven hundred and eighty dollars and ninety-eight cents ($2,927,780 98.)

Of the sum expended in 1840, we will speak before we have done.

Of this $2,927,780 98, which is reported to have been expended for removal and subsistence, there seems to have been charged to the general fund $1,596,074 63, while only $931,706 35 is charged to the third supplementary article. It will be recollected that $1,647,067 was appropriated for the purposes of “spoliations and removal,” the surplus to be applied to subsistence. Take away the $931,706 35, which is charged to have
been paid, and there remains a balance of $715,410.65 to be paid towards spoliation claims. We have shown, upon the best information in our power, that only a little exceeding half a million of dollars of claims were proven up. There should, therefore, be a balance of this fund of about $170,000 unaccounted for.

How does this amount for transportation and subsistence contrast with ours upon the data which we have already furnished? Allowing $20 per head as the limitation for removal, and $33 33 per head as the limitation for subsistence, and these two items could only amount to $892,904; making a difference in the expenditures proper and the expenditures exclusive of the rations furnished in 1840, of $1,862,560.51. Add to this sum the $434,384.02, the sum (less a few defalcations) which the committee, to whose report we have referred, find yet to be in the treasury, and it makes $2,296,944.53; being only $178,789.47 less than the amount claimed as yet justly due by your memorialists.

It will therefore be at once seen, that the great expenditures have been for removal and subsistence, and principally the former. It is therefore our duty to make a short and careful examination of this subject in the order in which the items are stated in the foregoing account. The first charge is a round sum of $1,357,745.86, paid to "John Ross, as agent of the Cherokee nation." The circumstances attending this charge, the arrangements made with General Scott, and the views taken of the different executive officers, are published with the report already referred to. But these documents are far from satisfying your memorialists that the receipt of Mr. John Ross is any voucher against the claims now urged by your memorialists. In the first place, we contend that under the treaty, which was the only proper guide to the United States, no authority existed to employ Mr. John Ross, or any other Cherokee or Cherokees, at a greater sum per head than might have been paid to any citizen of the United States, or any other emigrating agent.

If, therefore, we are right in our position that twenty dollars per head is the ultimatum which might be deducted from the Cherokee funds for removal, why, then, all above this sum which was paid to John Ross is chargeable to the United States, and not to the citizens of the Cherokee country. John Ridge, John Martin, John Huss, and many of your memorialists, commuted for the removal of themselves and families, and received therefor a commutation of twenty dollars per head. If, therefore, the arrangement of John Ross and others be viewed as an arrangement of Cherokees, for the removal of Cherokees, according to the treaty stipulations, can they be viewed in any other light than as commuting for the removal of so many souls? And where is the authority for paying to them more than had been paid to others? What entitled these gentlemen to greater immunities than others had enjoyed? Was it because they had resisted a treaty until longer delay was ruinous, and desperation drove others to comply with the demands of the government, and then resisted the treaty by every means except resorting to arms? But we complain not of the favoritism shown these men, with about as much justice as a fond father bestows his fortune upon a prodigal son, to the exclusion of obedient children, provided the government, like the father, will reward our refractory brethren at their own expense. But we, who voluntarily abandoned our homes as soon as the treaty was made; who bore the fatigues of the journey through an inclement season; furnished our own wagons and
teams; paid our own ferriages; acted as our own physicians and conductors; purchased our own provisions on the route; and all for the pittance of twenty dollars per head—solemnly protest against surrendering the money of right due to us, to pay for a profligate contract with half a dozen individuals of our nation. We are aware that those who enjoyed the benefits of the contract, and all who have borne out Mr. Ross, have always contended that the appropriation of $1,047,067 was obtained at the solicitation of Mr. Ross, and the delegates then at Washington, and forms no part of the money appropriated under the treaty of 1835; and that therefore they are entitled to it. But we appeal to the act itself, and to the congressional journals of the time, as a refutation of this argument. Even, however, admitting the argument, that the whole $1,047,067 appropriated for the objects specified under the third supplementary article, might lawfully be expended for "spoliations" and removal, and, therefore, all which was not paid for the former might be devoted to the latter object; and where was the right to take $581,346 88 from the 5,000,000 fund, and placing it in the pockets of Mr. John Ross and the delegates who conducted the removal? That act of appropriation itself declares "that no part of the sum shall be deducted from the five millions." This argument at most but amounts to this: By the treaty the United States covenanted to remove the Cherokees in "suitable steamboats and baggage wagons;" and by the treaty they covenanted to pay for certain claims of individual Cherokees on the United States, being "a fulfillment of former treaties." The former expense was to be deducted from the $5,000,000, and the latter the subject of a separate appropriation, after the amount due the respective claimants should be ascertained by commissioners. But before the ratification of the treaty, the parties agreed to add a supplemental article to make the sum definite. Six hundred thousand dollars, it is estimated, will cover both items of expense. But when the claims are proved up, and the expenses of removal begin to be ascertained, it is found that the sum is insufficient. The United States might well have said to the Cherokees: You agreed on $300,000 as a sufficient sum to cover the claims of your citizens arising under former treaties; you must therefore make a pro rata dividend. But to this just view of the subject, the Cherokees might well have replied: You agreed to remove us for a like sum, and the amount being found insufficient, you must therefore pay the balance of the expenses of the removal yourselves. This, so far as the removal is concerned, seems to have been precisely the view taken of the subject by Congress; but in her liberality, the United States even go further, and make up the deficit for spoliations and reservations; and as it was by this time supposed that $33 33 per head would be too small an amount to subsist each individual for a year, they make an appropriation sufficiently large to cover that amount also.

But even after taking this liberal view of the subject, we contend that the United States were still our trustees, and in the removal should have observed economy; and if the removal was effected by contract, the usual rule of allowing competition should have been observed. Surely it will not be contended that the guardian might expend an unlimited amount for a paltry expense of her own. Every attempt to justify taking a part of the general fund for the purpose of removal, but more deeply involves the United States.

Your memorialsists are not unaware that it has been contended that this liberal contract was given to Mr. Ross and others, by a vote of the Chero-
kee national council; that they were acting as delegates of the nation; that it was, therefore, in fact a contract of the nation, and consequently a matter in which the United States have "no concern;" that the "Cherokees alone were interested;" "that all the profits should go into the Cherokee treasury;" and the last $566,343 88 were paid, it is said, in accordance with a vote of the "Cherokee national council;" and, therefore, to Mr. John Ross and his associates must the Cherokees, "who have not been benefited by this contract," look.

These arguments may all seem specious, but they are uncandid and untenable. In the first place, it is an attempt to establish a mere loose, non-committal, indefinite correspondence of General Scott, then in command of the United States troops in the Cherokee nation, on the part of the United States, and of John Ross and six others on the part of the Cherokees not removed on the 25th July, 1838, in lieu of a treaty which had been ratified by the United States, in part fulfilled, and under which most of your memorialists had already removed.

What voice had those west of the Mississippi in this arrangement? They could have none, nor did they ever give their assent to it. In the second place, it is an attempt to change the trusteeship, which the United States had voluntarily assumed in that treaty, from their own hands to the hands of a few individuals, who had assumed to themselves the right of acting for the nation; and this, too, without any acknowledgment of theirs that they were acting under that treaty, or assented to any of its terms or provisions. On the contrary, we refer to all the correspondence of the "delegates" in proof of the assertion, that they never undertook to act under the treaty, or even to acknowledge its binding force. In the whole correspondence allusion is not even made to it. And although the Secretary of War, Mr. John Bell, in his decision of the 6th of September, 1841, is pleased to say that he is principally influenced to pay Mr. John Ross’s claim "of $581,346 88½," as stated in his account of emigration claim, because a vote of the Cherokee national council had asked it; yet do we solemnly protest that not one of those who voted this resolution, or one of the Ross party, ever has acknowledged that this large sum of money, or any portion of it, was to be, or was, deducted out of the money appropriated under the treaty of December 29, 1835. In proof of this, we herewith annex the copies of certain resolutions of the national council of 1842, and the message of John Ross, principal chief, in reply thereto, and mark them B and C. By them it will be seen that Mr. Ross still denies that he has ever received any money under the Schermerhorn treaty, and expressly says, "that neither himself nor the Cherokee nation" has ever acknowledged it.

But admitting that the Cherokees who pretended to delegate to Mr. Ross and others of the delegation, authority to act for the Cherokee nation, were a majority of the nation, or that those who voted a request that the balance of Mr. Ross’s account should be settled, after the same had been rejected by the Indian Commissioner, the Secretary of War, and the President of the United States, for reasons which appear fully in documents, represented a majority of the nation, did these resolutions confer a right to pay this money out of the general fund? So far as the treaty, party is concerned, it will not be pretended that they had any voice, in either of these votes. Before the first authority was conferred, it is well known that
many of them had peaceably gone to their new homes west of the Mississippi river.

Before the resolutions of the Cherokee council of 1840, asking the payment of his (John Ross's) account, their prominent leaders had been sent to "that bourne from whence no traveller returns," by means too well known to your honorable bodies. Whether the bloody tragedies by which they fell were caused by their yielding to the solicitations of the government and signing a treaty for the relief of their people; or whether a fear that they might cause a review of the removal contract now under discussion, it is too late to inquire. Suffice it to say, that for want of that "protection" promised in the treaty they became the victims of a well-concerted and bloody conspiracy; and their orphans are driven from a country purchased with the blood of their sires. The treaty party proper, it is well known, were never represented in what is now termed the government of the Cherokees. On the contrary, they now refer to the reports of the honorable Secretary of War and Indian Commissioner, accompanying the President's message of December, 1839, in proof of the position, that this very convention which formed this new government proclaimed the remaining signers of the New Echota treaty outlaws; and that while acts were being done and votes being given, which, it is said, have seriously affected their rights, the most prominent of the treaty party were driven from their homes by the stronger party. By a decree of that same "convention" some of your memorialists were declared "outlaws," and denied the immunities of "freemen for five years."

Copies of so many of these documents as tend to show that the treaty party could have had no voice in the "government" which it is pretended voted away this large fund, are hereto annexed marked D, and numbered 1, 2, 3, 4, 5, 6, and 7.

But admitting that the national committee and council represented the whole Cherokee nation, will it be pretended that they could vote away money due the Cherokees, individually, by solemn treaty stipulations? Let us inquire what were the national funds of the Cherokees, about which their national council might legislate? We hear of no national funds of the treaty except the five hundred thousand dollars education, orphan, and national fund. This sum, together with $200,000, commuted under former treaties, was vested in State stocks, and the national council, though still denying the validity of the treaty, vote away the interest annually. But could they thus have voted away any Cherokees valuation or improvement? That they never attempted. Even those who have ever denied the treaty have pocketed these sums, whether entitled to a hundred dollars, or to twenty thousand, or forty thousand. Several of the most clamorous opposers of the treaty actually receive sums of money averaging from ten to forty thousand dollars. To this they were entitled under the treaty, and no one could deny it to them.

Could the national council have voted away a certificate of commutation for transportation or subsistence, or an award of "spoliation," a reservation or damages of property? Such a notion is absurd. Upon the same principle, after deducting the money expended for these several items, and investments in State stocks, (the only national fund,) and the balance, "according to the census of 1835," is due to heads of families per capita. Could the United States, we ask, be discharged from their obligation to pay this sum, except upon the individual receipts of heads of families?
Were these not also individual claims? And is not each person so entitled an individual creditor of the United States government? No one has ever received our authority to receipt for this sum of money. There is not a Cherokee in the nation of any party who would say that he had ever delegated any such authority. Admitting that the Cherokee national council are a representative government, and yet they can no more vote away the private property or private dues of their constituents than can your honorable bodies vote away the private property of your constituents. Many of your citizens have had just claims allowed against your own government. What legislature would undertake to vote such claims away? What legislature would claim for your national treasury an individual indemnity against Spain or France?

We come now to the second item of expenditures to which we have referred. It is stated in the report as “an account paid for removal, transportation, and subsistence of the Cherokees, and for the pay and expense of superintendents, agents, and interpreters, and conductors, and hire of wagons, teamsters, and all objects of a contingent nature, $556,476 52.”

This is really an unaccountable charge. It is so general that we cannot of course be expected to point out any particular objections to the items. Your honorable bodies will of course call for the items upon which so extraordinary a charge is made. This sum is deducted from the general fund of the nation; but no account of items whatever is rendered. But how the expenses of “superintendents, agents, and conductors,” are chargeable to the Cherokees, we are yet to learn. These were all officers appointed by the United States, and were multiplied to great numbers, thus affording employment to many hungry expectants. But why they should be paid by the Cherokees they cannot understand. As well might we be charged with the expense of any other branch of the public service. Is it possible, we would respectfully inquire, that the superintendent of Cherokee removal and the valuing agents, and many other agents employed, were paid at the expense of the poor Indians? The amount seems not only to warrant this conclusion, but also the conclusion that the heavy expenses of the United States army, including the pay of officers and soldiers, were all placed to our account. What is meant by incidental or contingent expenses we are equally at a loss to determine. For we find in the same appropriation bill of 1838 an additional hundred thousand dollars (of which we have here taken no account) appropriated to meet objects of this kind. The same objections exist to the charge for hire of “steamboats and wagons.” In a word, for reasons already sufficiently amplified, we protest that the whole charge is unauthorized by the treaty, or by any rule of justice or equity. No person who negotiated that treaty on either side, ever dreamed of such a charge. We pray a strict investigation into this charge, in order that the account may be corrected.

The next item in the table of the committee is an amount paid individuals for commutation of transportation and subsistence who removed themselves, $166,714 16. What a valuable commentary is this upon the other charges for transportation and subsistence, amounting to almost three millions of dollars! Here is the whole expense of removing and subsisting three thousand one hundred and twenty-six Cherokees, being one-fifth of the whole nation. These were that part of the nation who gave the government no trouble. No army had to be employed to bring them into depot; no rations for them; no money was expended for blankets
for them; no physicians or medicine were employed for their benefit; but they are those who came peaceably away, at their own expense, in the confident belief that those who remained behind would follow; and that the money appropriated for their common benefit would be equally divided. Such of those persons as live are your memorialists; they now ask but justice for themselves and children and families.

We have little to say in regard to the sum of $674,527.97 paid Glasgow and Harrison. In amount, it is subject to the same objections as the amount paid John Ross under the contract for removal. As between the United States and the contractors, they have both been justly denounced "stupendous frauds."

Let your honorable bodies but send for papers and persons, and investigate the facts in relation to both these cases. You have the power; you have the means of information; we have not. Your interests are involved; (if justice be done us;) ours are not. We pray that the account be corrected; that all above thirty-three dollars and thirty-three cents per head be stricken out, and the balance of the sum re-appropriated.

The circumstances under which the rations, amounting to $172,216.47, were issued by General Arbuckle, under contract of 28th April, 1840, are strong arguments in favor of the application of your memorialists. Owing to the revolutionary measures and civil commotions consequent upon the violent course of the Ross party in 1839, the United States refused to pay to the Cherokees, individually or collectively, any portion of their funds, until their difficulties should be settled. In consequence of this course, many of the poor class of Cherokees, having made no crops in 1839, were, in 1840, correctly represented to the government as being in a starving condition. These were the very emigrants of 1838, who had already cost the Cherokee nation, as the account now stands, $103.25 per head, besides the enormous sum of some fifty-five dollars each for a year's subsistence furnished by Glasgow and Harrison, to say nothing of the contingencies already exposed. The Secretary of War, therefore, in his humanity, but apparently regardless of the interests of those who had received no benefits under the treaty, issued an order to General Arbuckle to cause rations to be issued to the poor class of Cherokees, and the amount thus received to be charged to the recipients. A large number of individuals thus received rations to the amount of nineteen dollars per head, until the amount was swollen to $172,316.47.

We trust that we have successfully shown what were the national, and what were the individual funds, appropriated under the treaty of 1835; 2d, what were the objects intended; and the specific amounts rightfully applied to each; 3d, that, after paying these several objects their respective amounts, the balance is subject to a per capita division according to the census of 1835; 4th, we have shown very near the amount which is justly due each individual; 5th, we have shown that, owing to an egregious misapplication of these funds, an appeal to Congress is necessary.

There only remains in the treasury, says the report to which we have referred, $275,499.59. This is leaving only thousands, in lieu of as many hundred thousand dollars justly due! And even this sum, we are advised, is being applied to claims arising under the sixteenth article of the treaty—spoliations for being dispossessed of improvements, and not restored to possession as guarantied in the treaty. Many of your memo-
rialists have just claims of that character, but they patiently wait the arrival of commissioners in the country to investigate their complaints.

Your memorialists now confidently come before your honorable bodies, claiming not mercy but justice. We frankly acknowledge that in granting us justice, however, you will do an act of mercy to many.

Under the 9th article of the treaty, the rich were paid for all their labor bestowed since the first dawning of civilization among us. Their every farm-house and fruit-tree were valued and paid for. Under the 13th article and third supplemental article, those having claims for reservations, secured under former treaties, being the rich and more intelligent, who had shared the benefits of the treaties of 1817 and 1819, divided exceeding half a million of dollars among themselves. By the operation of the 9th article, the rich and speculating collected their debts and from the less provident. All these and many others were advantages secured to the rich.

But what single advantage have the poor received under this treaty? None whatever. They were transported in herds, it is true, and by these "stupendous frauds" half a dozen designing men amassed princely fortunes, which have enabled them to control the country ever since. Further than the transportation and the being indifferently fed on the road, through a protracted journey of one hundred and twenty days of piercing winds and drifting snows, they have received no benefit. Not one dollar of money paid John Ross has ever reached the Cherokee treasury. How could it? It formed no part of the national fund. It is not subject to the control of our council. It is the property of those to whom your government improvidently gave it. The framers of the treaty of 1835 thought that they had secured an equal division of at least two millions and a half of dollars. Such was the calculation of the venerable commissioner in his talk, when urging the treaty. He had the census before him, and he had well calculated the expenses. He spoke the just interpretation of the instrument, but it has been greatly perverted, and the funds grossly misapplied. Acting upon the full belief that the treaty would be carried out, and the per capita money paid, many of the best men in the nation have exhausted their substance in feeding the poor and clothing the naked. Many of their lives have been thus saved through protracted winters; implements of husbandry, and powder and lead, have been furnished them on credit. In sickness they have been medicined; after death, such as have been removed from the heavy sorrows which weighed them down in a land where they found nor home nor peace nor comfort, found decent interment. The capital of the adventurous Cherokee merchants has been exhausted; their credit in the mercantile cities is gone, and they regarded as faithless by their liberal mercantile brethren, not for want of honesty or disposition to pay, but because the poor deluded Cherokees have not received their just dues.

We pray you turn us not away, because this application comes not through the "Cherokee constituted authorities," their national committee and council. You talked not thus to us when urging upon us the necessity of a treaty. You told us that these pretended chiefs and rulers were evil advisers; and bade us act as men, who understood their own interests. You said that the money should be divided among the whole people; and you so had it written. The fund which is asked never could go into the Cherokee treasury. That treasury swallows up
the interest on the $764,000 per annum, of which the poor Indian never receives a dollar. It goes to the salaried officers; to the payment of the delegations, and of guards to protect the chiefs in their violent measures, which have baptized our land with the blood of our Ridges and Boudinofs, and driven from the Cherokee government their lawful humane rulers, our Browns, our Rogerses, and our Vanns. This oppressed minority now fly to you as a last resort! We dare not even assemble to consult as a party, and to appeal to you as representatives of such. For although our numbers have greatly increased, yet the mighty influence of over thirteen hundred thousand dollars has prevailed over us by a bare majority. Many, however, who have sustained the tottering power thus raised by money and violence over us, were the very refugee Creeks who were removed at the expense of the suffering Cherokees.

We therefore come before you as individuals, under your protection, and forming, in some sort, an integral part of the United States. If one of us have suffered damage by having his private property taken for public use, he may appeal like any other citizen to the Congress of the United States. Such is precisely our case. The money due us individually has been taken to pay the debts justly chargeable to the United States. This is a small sum to your nation; but it is a great sum to us. We ask not in behalf of those Cherokees who are politically opposed to us; they will speak for themselves. They acknowledge not your treaty; but still contend for some twenty millions of dollars for the country which they have left behind. They claim that country by a title paramount to the treaty with which you have enriched their leaders, and they charge you all damages which they have sustained in their feelings, their persons, and their property. Their leaders have even caused them to believe that, by urging this claim, or by receiving money under the "Schermerhorn treaty," they would be abandoning a greater claim for millions of dollars. How far they are sincere, is not for us to inquire. We will throw no obstacle in their way. As the true friends of the poor and uneducated Cherokees, we should like to see them paid the money provided for them under the treaty, and wrongfully withheld. That they would receive it, we have no doubt. They would no more refuse it than the rich enemies of the treaty refused pay for their improvements and reservations. But we pretend not to represent them. We but speak for ourselves and families. We have always been the friends of your government, and we cannot believe that justice will now be denied us.

Our petition, showing our numbers, is with you. We ask a full consideration of our demands, and a just decision. We beseech you delay not a decision. Let us know our fate, and know it speedily. If our poor are to be given up to starvation, and those who yet have the means of subsistence to be left to the resentment of those who vindictively persecute all who do not bow to their power, let us know our sad fate without delay. Our prayer is,

1st. That we may be paid the money justly due us as heads of families, according to the 15th article of the treaty of 1835.

2d. That, in order to afford that protection against "domestic strife" promised in the treaty, a line of geographical division may be run, and the party opposed to Mr. Ross separated from the party who immigrated under him, and still uphold him. The reasons for the latter request are
fully set forth in the memorial of western Cherokees, which we have examined, and which will be before your honorable bodies.

[The undersigned, duly appointed delegates of the treaty party, now refer to the names of the treaty party on file before the Senate Committee on Indian Affairs, which show the petitions of the heads of families of 2,500 Cherokees of the treaty party whom they have been appointed to represent.]

J. A. BELL,
EZEKIEL STARR,
Representatives of the Treaty party of Cherokees.

EXHIBIT A.

[Exhibit A, being Ho. Rep. Doc. No. 288, 3d session 27th Congress, referred to in the memorial, was printed at the last session, and hence it was not ordered by the House to be printed with this memorial.

The following documents are specially referred to for the information of Congress.

For the history of the causes which led to the origin of the two parties of Cherokees, and the treaty of 1835, see Cherokee nation vs. Georgia, 5 Peters' Rep. page 1; Worcester vs. Georgia, 6 Peters' Rep. 515; Senate Document No. 120, 2d session 25th Congress; and Senate Doc. 286, 1st session 24th Congress, pp. 67 to 77.

Protection promised the advocates of the New Echota treaty, both personally and pecuniarily, and assurances that their persons, their safety, and their money should not be sacrificed at the will of the dominant party. (See Senate Document No. 120, 2d session 25th Congress, pages 90, 93, 101, 102, 470; and 5th and 6th articles of the treaty of 1835.)

For the intention of the contracting parties in negotiation of the treaty, the best interpretation as to its construction, see award of the Senate of $5,000,000. Senate Journal.

Provisional treaty, Senate Doc. No. 286, 1st session 24th Congress, page 32; sec. 2, 17, and 18, of said provisional treaty, and particularly the schedule in sec. 18. See Journal of the Commissioners who negotiated the treaty; Senate Doc. No. 120, 2d session 25th Congress, p. 514, et seq.; and articles 1, 13, and supplemental treaty.

The whole Document 120 is particularly referred to.

As to construction of the treaty.

Reservations under treaties of 1817 and 1819, not to be paid for out of $5,000,000, or $600,000 fund; but by the United States. (See journal commissioners above referred to, 13th article of the treaty; and opinion of Attorney General Butler, Op. Book of Attorneys General, pp. 1161-2.)

Yet, in violation of this opinion, these reservations have been paid for out of the money of the Cherokees. (See Ho. Rep. Doc. No. 288, 3d session 27th Congress, page 52; Ho. Rep. Doc. No. 391, 1st session 28th Congress, page 63.)

Spoliations and expenses of removal and subsistence, not chargeable on the $5,000,000 fund, but on the $600,000, provided in the 3d supplemental
article, and the appropriation of $1,047,067, appropriated by act of 1838. (See talk of President Jackson, Senate Doc. No. 120, 2d session 24th Congress, pp. 41, 42; journal of commissioners already referred to, same document. See instructions to commissioners, same document, 149, 150.)

History of the act of appropriation of 1838—Senate Doc. No. 466, 2d session 25th Congress; report of Secretary of War of May 23d, 1838; Ho. Rep. Doc. No. 401, 2d session 25th Congress—shows that only removal and subsistence were estimated for.

The intention of the legislature, when discovered, must prevail; any rule of construction declared by previous acts to the contrary notwithstanding. (Brown vs. Barry, 3d Dallas, 365; 1 Con. Rep. 165; United States vs. Fisher, 2d Cranch, 358.)

And in the construction of statutes, it is frequently necessary to refer to its history and to the local history. (Preston vs. Brewster, 1 Wheat. 116; 3d Cond. Rep. 508.)

And see, generally, the rules of construction adopted by the Supreme Court of the United States, as collected in 3d vol. Peters' Dig., page 571, et seq.

Spoliations for the dispossession of the Cherokees, as contemplated in the 16th article of the treaty, are not to be paid by the Cherokees out of either fund; but formed independent charges against the United States, for which no appropriation has ever yet been made; and yet several hundred thousand dollars have thus been paid. See instructions to commissioners, already referred to; and see Mr. Cave Johnson's report of present session of Congress, where the Secretary of War says, the word "rents" is never mentioned in the treaty. See also Ho. of Rep. Doc. No. 46, 1st session 25th Congress, page 226.)

EXHIBIT B. AND C.

Whereas it is the duty of the representatives of the people of the Cherokee nation to require information and legislation on all subjects touching the rights and interests of those whom they represent:

Therefore, be it resolved by the national council, That Mr. John Ross, principal chief, be, and he is hereby, requested to lay before the national council, during its present session, a full and fair statement of the amount of money received by him from the government of the United States, since the year 1835, and how applied, and what amount is now in his hands (if any) subject to legislation.

To the National Committee and Council, in National Council convened:

If the intention of the resolutions of your bodies of the 14th inst., calling for a settlement of all moneys received by me from the United States government since the year 1835, and how applied, and also the amount (if any) in my hands subject to legislation, be to seek information respecting the public moneys of the nation, I reply that the annuities were received by the treasurer of the nation, John Martin, and by him disbursed under the laws of the eastern Cherokees, up to the fall of 1837; and in 1841, the
annuities and school fund were received by the present treasurer, Mr. David Vann.

In the summer of 1838, in the absence of the delegation appointed to represent our wrongs to the government of the United States, and to ask redress, our people were captured by the troops of the United States under pretext of carrying into effect the provisions of Schermerhorn's treaty. Under these operations they were forced from their homes; some marched before the troops through rivers and mud, to the forts and camps in which they were confined, and some driven in boats at the point of the bayonet. Our people well remember the sufferings they endured, and it is affliction to call to mind the frightful ravages made among them by sickness and death; and the ruinous loss of property they sustained by this cruel treatment. While these things were doing, the delegation was pressing on the attention of the government of the United States the claims of the nation. The result of which was, a special appropriation of $1,147,000.

Had this appropriation not been made, the whole of the expenses of the emigration must have been defrayed out of the funds provided by the Schermerhorn treaty, as was contemplated by the makers of it, as well as by the distinct stipulations of the instrument itself. This amount, then, is a clear gain to the Cherokee people. Out of this appropriation, a sum of money was received by the delegation, was disbursed by the national committee in discharge of the debts of the nation. Soon after their return from Washington, in order to stop the transportation by water, already in progress under the direction of the United States officers, the same delegation was authorized by the national committee and council, and people of the Cherokee nation, in general council assembled, to make arrangements with General W. Scott for the removal of the people through the agency of our own people. This authority is recognized and reaffirmed by the act of union, vesting in the delegation, who, it says, shall continue in charge of the business with their present powers until it shall be finally closed.

Under this arrangement, advancements were made by General Scott out of the same appropriation, and applied to the purposes of emigration.

In 1841, the arrearages due on the emigration, so long withheld, were received agreeable to the resolution of the national council, passed on the 11th day of November, 1840, out of which, as stated in my message, since the adjournment of your extra session last year, the disbursements of the claims upon the emigration, under the arrangement of General Scott, were resumed under my superintendency, and the payments continued for about three months, up to the time of my departure for Washington. So soon as the papers appertaining to this business can be arranged, and a full exhibit of disbursements prepared, and such claims as yet remain unadjusted be disposed of, the transactions of my superintendency will be reported to the nation through the special agents charged with this duty. There are no moneys in my hands subject to legislation.

The sentiments of the petition from certain citizens of Delaware district, placed in my hands by your directions, viewed in connexion with your resolutions, imply that I have received all moneys paid by the government of the United States on account of Cherokees, since the year 1835, without having rendered any account of them. The combined tenor of the two papers seems to embrace even the moneys received and expended under the Schermerhorn compact, from which the people have been incited to expect
per capita money. Now it is well known the nation has always disclaimed that compact, and that I have disclaimed it also. How, then, could per capita money, under its provisions, come into my hands? Yet there can be no doubt immense sums of money were expended under its provisions, and charged to the nation, which it would be very proper to examine into.

I have no documents in my possession with information respecting disbursements under that compact; but if the books and papers of the committee of thirteen who acted under it, together with those of the commissioners, were laid before the council and people, they would no doubt shed much light on the subject. It is known to the Cherokee people that several points in controversy, as well as their public and private claims against the United States, remain open and unadjusted; and though the delegation, in the late negotiation with the Secretary of War, failed to procure their settlement, we still hold not only just and equitable claims on the United States government, but the unequivocal promise of the President that they shall be satisfied; and, as you have been informed in my message, commissioners have been appointed for the purpose of investigating these claims.

JOHN ROSS.

EXECUTIVE DEPARTMENT, December 20, 1842.

EXHIBIT D.

No. 1.

Whereas the removal of the eastern Cherokees to this country has brought together the two branches of the ancient Cherokee family, and rendered it expedient that a union of the two communities should be formed, and a system of government matured and established, applicable to their present condition and satisfactory to all parties; And whereas a general council of the representatives and people of both communities was appointed for that purpose by the joint call of their respective authorities, which met accordingly at Ta-ka-to ka, on Monday, the 3d day of June, 1839:

And whereas the representative branches of said general council having been unsuccessful in effecting the objects for which the general council was convened, the people, who formed a constituent branch of said general council, called a national convention of the people of the eastern and western Cherokees, to meet at Illinois camp-ground, July 1, 1839, to take those important matters into consideration; which convention has assembled accordingly, and is now in session:

And whereas, in the interval between the call and the meeting of this national convention, the unhappy fact of Major Ridge, John Ridge, and Elias Boudinot's being killed occurred; in consequence of which violent threats against the lives of innocent and peaceable citizens were made by some of the friends of the deceased, by which the tranquillity of the community has been interrupted, and a state of excitement and alarm produced, dangerous to the public safety and destructive to domestic and social order:

And whereas the unfortunate persons deceased, together with others
in connexion with them, had by their acts unhappily exposed and laid themselves liable to the pains and penalties and forfeitures of outlawry:

Therefore, in order to stop the further effusion of blood, to calm the present unhappy excitement, and to restore peace and harmony and confidence to the community, we, the people of the eastern and western Cherokees, in general council assembled, in our own name, and by the authority and in the exercise of our plenary powers, do ordain and decree, and by these presents it is ordained and decreed accordingly, that a full and free pardon and amnesty be and is hereby granted to all those persons who are liable, as aforesaid, to the pains and penalties and forfeitures of outlawry, and that they be fully exempted, released, and discharged from all liability to prosecution or punishment of any kind whatever, on the aforesaid account; and that they be restored to the protection of the community, and the enjoyment of the benefits of the laws, to all intents and purposes, as if the acts which rendered them liable to the penalties aforesaid had not been committed—excepting that they shall not be eligible to any office of profit, trust, or honor, in the eastern and western Cherokee community, or under any union or other modification of said communities which may be effected.

Nevertheless, the general council shall have power, after the lapse of five years; if, in their opinion, the good conduct of any person or persons affected by this decree shall render it proper to revoke, with regard to such person or persons, that portion thereof which declares them ineligible to office, and thereby restore them to the enjoyment and exercise of all the immunities and franchises of the community; provided, however, that, in order to guard the public peace and the personal security of the citizens from being endangered by the operation of this decree, the benefits of its provisions shall be available to those persons only who shall, within eight days* after the passage of this decree, appear before the general council, and shall retract or disavow any threatenings which may have been made by themselves or their friends against the life or lives of any citizen or citizens of the eastern or western Cherokee nation, or against that of any other person, in revenge, or as a retaliation for the death of the unfortunate persons deceased, or for any other cause, and shall give satisfactory assurances that, for the time to come, they will demean themselves as good and peaceable members of the community. That in order effectually to carry out the intentions of this decree, to suppress disturbances, to remove public nuisances, and to preserve good order and tranquillity, eight auxiliary police companies shall be organized throughout the country by voluntary association; each company to be commanded by a captain and lieutenant, and such subordinate officers as may be required, who shall be elected by the people, any of whom may also be removed by the people whenever they deem it necessary.

* Ordered, by the Cherokee people in general convention assembled, That inasmuch as information concerning the decree of amnesty passed on the 7th instant, had not reached some of the persons affected by its provisions, that the time specified for their giving assurances for the future maintenance of peace be extended until further provisions shall be made by the convention for that purpose; the intention of the said decree being solely to obtain assurances for the preservation of the peace, and not to endanger the safety of any person whatsoever.

Given under our hands, by order of the general convention, this 13th day of July, 1839.

True copy:

S. G. SIMMONS,
expedient. The whole of these companies to be under the general command of Jesse Bushyhead, 1st, and Loony Price, 2d, in command: provided, always, that the general council shall have power by law to control, modify, suspend, or discontinue these police companies as the welfare or safety of the country may require.

Given under our hands, at Illinois camp-ground, this 7th day of July, 1839. By order and on behalf of this general council of the eastern and western Cherokees in national convention assembled.

[Numerously signed by the people in convention.]

No. 2.

Whereas, by a decree of the general council of the eastern and western Cherokees, in national convention assembled, at Illinois camp, July 7th, 1839, it is provided that a full and free pardon and amnesty be granted to certain persons, who, by their acts, had exposed and laid themselves liable to the pains and penalties of outlawry, and that they be fully exempted, released, and discharged from all liability to prosecution or punishment of any kind whatever, on the aforesaid account; and that they be restored to the protection of the community, and to the enjoyment of the benefits of the laws: provided, however, that the benefits of this decree shall be available to those persons only who shall retract or disavow any threatenings which may have been made by themselves or their friends against the life or lives of any citizen or citizens of the eastern or western Cherokee nation, or that of any other person or persons, in revenge for the death of Major Ridge, John Ridge, and Elias Boudinot; and shall give satisfactory assurances that for the time to come they will demean themselves as good and peaceable citizens of the community:

Now, we, the undersigned, gratefully accepting the clemency of our people, humanely provided for our benefit and relief, do, in the presence of the Supreme Judge and Searcher of all hearts, and in the presence of this great assembly, hereby sincerely acknowledge our error, and express our deep contrition for the same; and we do also declare our readiness to submit to our people, and to make all the reparation in our power for the injury we have done; and we do hereby recall and retract any threatenings which may have been made by ourselves or any of our friends against the life of any person whatever; and we do disavow any such threatenings made by any of our friends, in revenge or retaliation for the death of the persons aforesaid, or for any other cause; and, in conformity with the requirements of the ordinance and decree aforesaid, we do, in the presence of the Supreme Judge, and in this general council, solemnly pledge ourselves to abstain from all acts which may in any way or manner disturb the peace and endanger the security of the community or of any individual thereof; but that, for the time to come, we will sacredly regard these our solemn assurances, and in good faith demean (ourselves) as good and peaceable citizens, in fulfilment of the obligations involved in this pledge, and in the true intentions of the ordinance and decree.

Given under our hands, at Illinois camp-ground, in the presence of the national convention, this 10th day of July, 1839.
No. 3.

Know all men by these presents, that, in order to stop the further effusion of blood, to calm the present unhappy excitement, and to restore peace and harmony and confidence to the community, we, the people of the eastern and western Cherokees in national convention assembled, in our own name, and by the authority and in the exercise of our plenary powers, do ordain and decree, and by these presents, it is ordained and decreed accordingly, that a full and free pardon and amnesty be, and is hereby, granted to all persons, citizens of the eastern and western Cherokee nation, who may be chargeable with the act of murder or homicide, committed on the person of any Cherokee previously to the passage of this decree, whether the same may have been committed within the limits of the eastern or western Cherokee country or elsewhere. And by the authority aforesaid, we do further ordain and decree, that all persons so chargeable are, and by these presents are declared to be, fully exempted, released, and discharged from all liability to prosecution, punishment, or disabilities of any kind whatever, on the aforesaid account; and that they be restored to the confidence and favor of the community, and to the enjoyment and protection, and benefits of the laws, to all intents and purposes, as if the act or acts for which they stand chargeable had not been committed.

Given under our hands, at Illinois camp ground, this 10th day of July, 1839. By order of the national convention.

IN NATIONAL CONVENTION.

ILLINOIS CAMP-GROUND, July 12, 1839.

Sir: We deem it proper to report further to you for your information the proceedings of the national convention in reference to the late excitement.

In order effectually to stop the further effusion of blood, the convention has, by a decree, buried all past grievances in oblivion, on the sole condition of the parties giving assurances to maintain the peace in future.

Measures have been taken to inform those persons who claimed protection at the fort of these proceedings, so that the collecting of their friends to secure themselves from violence is rendered altogether needless.

These provisions, which are in exact conformity with your wishes, as well as with our own, will prove to you our determination to prevent mischief, and to promote peace.

We have the honor to be, sir, your friends, and obedient humble servants.

Signed by George Lowry, John Ross, and others.

Extract from a letter of John Ross, and others.

The decree which has been passed, so far as we are concerned, throws a veil of oblivion over all past offences, on as reasonable terms as any offend-
ers and violators of our laws could expect; and a number of those who were exposed to the penalties of our laws have come in, accepted of the terms, been received with open arms, and are now in peace and safety, to traverse the country and pursue their common avocations free from the fear of harm. Among those who had violated the laws were individuals connected to many of us by the closest ties of consanguinity. No exceptions were made for them—none were asked; and shall we make distinctions? No; the fiat has passed, and cannot be charged with partiality. If any of our people refuse to abide the Cherokee laws, the world is large, they can leave us; but if they remain in our country, being a part of our people, they must come under our laws.

No. 5.

Whereas a decree was passed by the Cherokee people, in national convention, at the Illinois camp ground, on the 7th day of July, 1839, providing for a general amnesty to all such individuals as had, by their acts and conduct, exposed and made themselves liable to the penalty of outlawry, and all such persons being requested to appear in eight days from the date thereof before the general council, to avail themselves of its provisions; and whereas it was again ordained by the Cherokee people, on the thirteenth day of July, 1839, that the time specified above should be extended until further provision should be made by the convention:

And whereas some of the individuals affected by the aforesaid decree have not availed themselves of its liberal and humane provisions, and by their improper conduct are endangering the peace of the country and threatening the lives of valuable citizens: It is, therefore, ordered by the convention, that public and general notice be and is hereby given to all such persons as have not availed themselves of the benefits of the aforesaid decree, to appear before this convention on or before the 4th of September, 1839, and comply with its requisitions; it being essential to the preservation of peace, that the life of a citizen shall not be unlawfully endangered. It is further ordered, that two persons be selected to disseminate through the country, and, if possible, personally notify all such individuals as are hereby affected, to come forward in accordance with this order.

Done in convention, in behalf of and for the whole Cherokee people, at Tah-le quah, this 28th day of August, 1839.

Signed by George Lowry, John Ross, and others.

True copy, original retained in this office.

THOMAS IRWIN, Clerk.

No. 6.

At a meeting of the treaty party of the Cherokee nation of Indians, held at Price's prairie, in the Cherokee nation, on Tuesday, the 20th day of August, 1839; on motion, George W. Adair was called to the chair, and Thomas Wilson was appointed secretary. The objects of the meeting
were explained by the chairman. The following preamble and resolutions were offered by John A. Bell:

Whereas, on the 22d day of June last, our three distinguished friends, Major Ridge, John Ridge, and Elias Boudinot, were cruelly and inhumanly assassinated, and, as we are informed and really believe, by an order of the partisans of John Ross, in consequence of the deceased having signed the treaty of December 29, 1835;

And whereas, since that time, the state of anarchy and confusion in the country has been intolerable, and the decree passed by the partisans of John Ross, as well as many other circumstances, clearly demonstrate that all the signers of the treaty and many of their friends are in imminent danger of secret and cowardly assassination;

And whereas a civil war is seriously deprecated, inasmuch as it would tend to the total destruction of our nation: Be it, therefore,

1. Resolved, That we regard the recent conduct of the partisans of Ross, in the murder of the deceased, in the decree passed relative to the signers of the treaty and their friends, and in the keeping together of so great a number of persons, armed in a military and hostile manner, deserving the reprobation of all mankind, and meriting the severest punishment.

2. Resolved, That, inasmuch as we would seriously deprecate a civil war, we will not engage in one, unless assured that it is the only means left for our personal safety.

3. Resolved, That we believe it to be right that we should appeal to the government of the United States for the punishment of the murderers of the deceased Ridges and Boudinot, and for justice and protection for ourselves and families.

4. Resolved, That, for that purpose, we will send a delegation of two—viz: John A. Bell and Stand Watie—to Washington city, in order to lay our grievances before the Secretary of War.

5. Resolved, That the chairman appoint a committee of six to draft an address to the Secretary of War, making known our grievances and our wants, and to report the same, forthwith, to this meeting, for adoption.

6. Resolved, That the said John A. Bell and Stand Watie, our delegates, be intrusted with full authority to enter into arrangements with the Secretary of War for our protection and relief.

The chairman appointed the following persons a committee, under the 5th resolution: Charles Rose, John Field, James Starr, Thomas Wilson, William Roling, and William Lassley. The committee appointed reported the following address, which was adopted by the meeting:

CHEROKEE NATION, August 20, 1839.

The undersigned, a committee appointed by the party of Cherokees known as the treaty party, to represent the recent history of events in relation to themselves and their present condition to the honorable Secretary of War, beg leave respectfully to state:

That a great portion of the treaty party emigrated to the Cherokee nation west as early as arrangements were made for their removal, under the treaty of December 29, 1835; that the remainder of their party emigrated during the last year; that, on their arrival, they found their brethren, known as the Cherokees west, in the possession of a country healthy and
fertile, and every way adapted for the prosperity of the Cherokee people. They found a government regularly organized, with a code of laws suitable to their condition, and equal in their operations. Such of the treaty party as arrived at an early day were permitted to associate in the council of their brethren, and to hold offices under the government; all either purchased or improved farms, bought cattle, and embarked in various branches of business, according to their several skills. They welcomed that portion of their countrymen opposed to the treaty to their new homes, and extended to them every act of courtesy and kindness in their power; many of their friends extended to the poorer class credit, in order to enable them to purchase the articles of husbandry and make shelter for their children. The treaty party believed all was going well, until the call of a council on the first Monday in June last.

Upon the adjournment of Mr. Ross's part of this meeting, his party called for a council of the whole nation, to meet on the first day of July.

On the 22d of June, their three distinguished men, known as the leaders of their party, Major Ridge, John Ridge, and Elias Boudinot, were cruelly assassinated by the partisans of John Ross. The number and prominence of the persons engaged in these massacres prove that the plot was arranged at the previous council, and the perpetrators of the horrid deeds selected and chosen, and organized into three separate banditti. But, if proof were wanting, the subsequent proceedings are a proof of the truth of our assertion.

We beg, however, that the honorable Secretary of War will bear in mind that this "convention" was only attended by the partisans of Mr. John Ross. The treaty party have only been able to obtain the copies of the proceedings of that meeting hereto annexed, and numbered. What further steps have been taken they cannot know, for Mr. Ross's council still continues in session. But, from the history of the past, the decree itself, and the daily threats which we hear in the country, the treaty party are not only convinced that their enemies approved the murder of their friends, but would sanction the total destruction of themselves.

The honorable Secretary of War will see the humiliating condition upon which we are required to save our lives. We must, however, submit to these conditions, thus degrading to ourselves and reproachful to the United States government itself, or to be driven from the country, or engaged in a civil war in self defence. The government of the United States is well aware that either alternative would be equally destructive to ourselves and families. Were we tamely to submit to the dictation of our enemies, we have too many reasons to know that there would be no safety for us. Before we can consent to leave the country, which we love quite as well as our enemies loved the country which they have left, we must inquire where we are to go; and what are we to do with the homes which we have purchased and improved? Hardly as we are oppressed, and flagrant as are our injuries, we value too highly the Cherokee blood to engage in the horrors of a civil war, unless driven to it in acts of self defence, and thus be the destruction of our own people.

The treaty party deny that they have committed any acts deserving of punishment. If they have violated any law, they are willing to be tried by its provisions, and abide the decision of the proper tribunals of their country.

But they acknowledge not the power or nobocracy of John Ross or his
constituted authorities. They will never submit to his authority or dictation. As the only alternative, then, which seems to be left them, they confidently and solemnly appeal to the government of the United States for justice and protection. They cannot, like Mr. Ross, invest themselves with military guards of their countrymen for life, and promise them pay from money due their whole countrymen; and they are too well warned of the consequences of remaining at home and attending to their ordinary concerns. Secret assassinations would again go on, and their whole party be destroyed, before any declaration of hostilities would be made, which the military of the country would feel authorized to treat as "domestic strife."

The treaty party have, therefore, sent their trusty friends, John Abell and Stand Watie, to the Secretary of War, to solicit that protection promised in the treaty, and which they confidently believe the government of the United States are able and willing to afford. They solemnly ask for redress for the murders of their friends, who have been assassinated without a hearing, without a trial, and without a crime. They ask that their own lives remain not in jeopardy. They ask that the money due to the Cherokees under the treaty be not paid to a party who acknowledges not its sanction, destroys its framers, and yet, with their characteristic cupidity, seek to appropriate its benefits to accomplish the ambitious purposes of their leaders.

The ways and means of their relief they pretend not to dictate; but they confidently appeal to the government of the United States, and, as their only hope, trust to them for relief.

Signed in behalf of the meeting.

Hon. J. R. PoInsett, Secretary of War.

September 2, 1839.

Dear Sir: Enclosed we send you a copy of a communication from Mr. Ross's convention. You will see that they have given us until the 4th of this month to come forward and sign the pledge. They are anxious for us to "comply with the requisition, it being essential (they say) to the preservation of peace that the life of a citizen shall not be unlawfully endangered."

They tell us plainly that our lives will be in danger if we do not comply within the time given. We have been told by some of these conventioners that a portion of their body insisted upon closing the decree and marching forthwith upon us, without giving us any timely notice of its being closed. It is impossible that we can remain as we are much longer. It seems a duty we owe to ourselves that we prepare to defend our persons; likewise that we send some persons to the city of Washington to fully apprise the government of the United States of our situation, and insist upon its interposition. However, these are matters that we wish to consult you on, and we wish you to speak fully and frankly to us on these important subjects.

We have the honor to subscribe ourselves your obedient, humble servants,

GEORGE W. ADAIR,
J. A. BELL, and others.

Capt. Wm. Armstrong, Acting Superintendent, W. T.
HEADQUARTERS, 2D DEPT., W. DIVISION,
FORT GIBSON, SEPTEMBER 4, 1839.

GENTLEMEN: I received, on the 2d instant, from George W. Adair, John A. Bell, and others, a copy of your decree of the 21st ultimo, by which it appears that they are required to appear before your convention on or before this date; otherwise to be regarded outlaws.

It is true that the decrees in relation to the individuals referred to do not particularly state the principal offence with which they are charged; yet it is distinctly understood that the material offence for which they are outlawed (if they do not comply with the conditions of your decrees) is, their having signed a treaty made with the United States at New Echota, on the 29th day of December, 1835.

They have demanded protection from the government of the United States; and inasmuch as said government regarded the signers of the treaty referred to competent and duly authorized to conclude that treaty, it could not therefore be anticipated by the United States that any other portion of the Cherokee nation could or would attempt to hold said individuals criminally responsible for that act.

If they have made threats against any one or more individuals of the Cherokee nation, they ought certainly to give a suitable pledge or security to demean themselves in a peaceable manner, and to abstain from violence to any one.

I request that you will favor me with a reply to this communication by the return of the bearer.

I am, gentlemen, very respectfully, your obedient servant,

M. ARBUCKLE,
Brevet Brig. General U. S. A.

JOHN ROSS, Esq., and others, in convention near the Illinois river.

S. G. SIMMONS,
A. D. C. and A. A. Adj. Gen., Dept. W. D.

PART II.—No. 4.

The following argument is submitted in support of proposition B, stated in the premises, and establishes the following positions:

1. The right of the treaty party, as such, to protection and security.
2. Their right to per capita division of money, after deducting from the $5,000,000 no more than the objects specified in the 2d, 9th, and 10th articles of the treaty of 1835 and 1836, being only about $2,000,000.

Argument in behalf of the treaty party of the Cherokees.

The undersigned have been selected as the counsel of a portion of the Cherokee family to represent their grievances to the government of the United States.

They esteem it no humble distinction to have been selected as the
advocates in such a cause, and they only regret that this remnant of a once powerful people, now "feeble and scattered, and borne down," until their very misfortunes seem to confirm theological speculations in regard to their descent from the lost tribes of Israel, have not had the means and ability to procure advocates whose names would command more attention, and whose abilities and researches might better elucidate the principles upon which their rights are based. But, whatever we shall lack in strength, we trust that we shall make up with no feigned zeal in the cause.

Preparatory to a statement of the grievances of our clients, we have searched their history from the days of the landing of the pilgrim fathers until the present time. In the retrospect, we have seen them in the possession of the seashore and the mountains, the lords of the free soil, where now dwell in stately palaces the aristocratic sons of Virginia, the descendants of Boon, the quiet North Carolinians, the chivalrous South Carolinians, the proud Georgians, and the enterprising Tennesseans; all, or nearly all, of these lands were theirs. They are now ours. On the soil so lately theirs now dwell the inhabitants of six populous States of this mighty confederacy. On this soil have fortunes been made and descended. Here have sprung up some of the greatest warriors and statesmen of which America can boast. This soil, so lately owned by the Cherokees, has given birth to no less than seven American Presidents, besides hundreds of distinguished names. Are there none, then, in power who are willing to examine their history and their rights? Most opportunely for the Cherokees, this examination seems to be forcing itself upon the American people; and there is, at this moment, before the Supreme Court of the United States a cause of momentous importance, which renders it necessary for that wise tribunal to search their history from 1730 until a very late period. They have been compelled to look back to the time when that great and good superintendent, John Stewart, could excuse these "children of the forest" for taking five lives, because the government of England had failed, for two years, to pay them five hundred dressed deer skins which they were acknowledged to owe them. Even Lord Botetourt, at that early day, regarded the offence as one rather of the English government, for failing to keep her promise, than as an offence of the Indians, who revenged this "paltering in a double sense." (See the records and documents in the case of Porterfield vs. M. L. Clarke et al., herewith transmitted.)

Have the principles of justice since that time become less refined? Should other than good faith now characterize our dealings with these men—slow to resentment, and yet slower to forgive? It would seem, at least, that there must be some good reason for a change of policy. For we appear at your doors prepared to show that millions are due to the Cherokees, under solemn treaty stipulations, which have been now for eight years wrongfully and unjustly withheld. The greatest monarch in Europe did not dare, in 1767, to refuse to the warlike Cherokees five hundred deer skins, which she owed under the promise of her agent. The powerful government of the United States, in 1844, cannot gainsay that she owes to them five millions of dollars, by virtue of solemn treaty stipulations.

In order to a thorough understanding of the "Cherokee question," as now presented, it becomes necessary to glance, for a single moment, at
their situation after the ratification of the treaties of Holstein and Tellico. The Cherokees, owing to a combination of causes, were the first of any of the tribes to make any considerable advancement in civilization. As early as 1800, many of them began to practise the arts of the husbandman; and, influenced by the half-breeds, and more intelligent native Indians, a great number showed a willingness to lay aside the hunter's life, and to become civilized. Their boundaries had become greatly circumscribed by continual cessions for trifling considerations, and by encroachments of the whites without any consideration whatever. Those who wished to throw aside the hunter's life, and to adapt themselves to the habits of the white men, had to encounter the fiercest opposition of the superstitious and savage among them. These jealousies often led to conflicts, and superstitious prophets, who claimed supernatural exemption from all dangers, often became the victims of those a little higher advanced in civilization, who believed they could not better serve the Great Spirit—the God of the white man and the Indian—than by slaying impostors in the presence of their credulous followers. The contention between the civilized Cherokees and the huntsmen soon became so great that they themselves doubted the possibility of their remaining together.

Accordingly, we find that, as early as 1808, two delegations, one from the upper towns and one from the lower towns of the Cherokees, visited Washington for the purpose—the former of entering upon the pursuits of agriculture; the latter to make arrangements for purchasing hunting grounds farther west. The President, in his talk, expressed a desire to gratify both parties; and such arrangements were made that, before the year 1817, a large portion of the Cherokees had been transferred to lands on the Arkansas and White rivers. (See book of Indian Treaties, page 209.)

The arguments respecting the relative rights of the different branches of Cherokee families, growing out of these arrangements, will be more fully discussed by that branch of the Cherokee family called the western Cherokees. This narration will, however, bring to view one or two important facts, not so well understood as they ought to be.

1st. The cessions made by the treaties of 1817 and 1819 contained a very large and valuable tract of country, amounting to several millions of acres.

2d. Among those who took reservations were very many prominent men, who became citizens of the respective States where their reservations were situated; thus renouncing every right to any interest in the Cherokee country east and west of the Mississippi river. These men soon afterwards sold their reservations for large sums, ranging from three to five and eight thousand dollars each, and returned to the Cherokee country east, where they established a power which has been the source of great perplexity to the Indians and the United States. (See Senate document of 1st session 24th Congress, No. 286, page 57.)

The facts in this document are all authentic history. We intend to make further use of the information thus to be found, before we have done.

In 1828 both branches of the Cherokee family were rapidly advancing in the scale of civilization and moral improvement. The Cherokees east had a written constitution and laws, excellent schools, farms, negroes, and every species of property which endears a man to his home and society. A large portion of the tribe were then, as now, illiterate; but there was a
sufficient dissemination of intelligence to convince the most prejudiced observer that, as a community, the Cherokees had laid aside the hunter state, and assumed the habits of the civilized man.

The Cherokees west had fought and overcome the wild Osages; had established their organic laws, and every regulation necessary to their happiness.

They were recognized as two separate and distinct communities, with no other relation to each other than that of language and consanguinity.

It was in 1828 that the United States conceived the plan of purchasing the country then occupied by the Cherokees west, for the use of the Territory of Arkansas. The manner of purchase was by an exchange of lands, and the payment of a pecuniary difference by the United States. In effecting this arrangement, none but the western Cherokees were consulted.

During this same year Georgia passed a prospective law, the effect of which was the total annihilation of the Cherokee body politic east of the Mississippi. We do not feel called on to examine the provisions of the laws of Georgia, and their effects, minutely. They are too well known, and two deeply engrafted on the history of our country. They are everywhere scattered over our legislative, judicial, and executive history. By 1833 the conquest of the States over the Cherokee country east was completely accomplished. The executive, the legislative, and the judicial branches of our government had been appealed to in vain. As a last resort, some of the Cherokees became the advocates of a cession of their lands by treaty, and the removal of their whole people to some other country. These people were soon denominated "THE TREATY PARTY." They were branded by their opponents with the most opprobrious epithets. Every effort has been made by their enemies to place them in a disadvantageous light. The most intolerant must, however, always admit that they were driven to their course by a most fearful necessity—a necessity which consulted no other policy than a desire to be relieved from calamities incomparably more humiliating than abject slavery. They were driven by force of circumstances to this, as an only alternative. Their heroism in opposing the strength of the rich and influential usurer, and of the ignorant mass, whose very cupidity was flattered with the hope that the whites would all be driven back, and that their property would then be divided among them, cannot but excite the deepest admiration. Designing leaders found it to their interest to encourage this credulous and ignorant mass in their delusion.

Suffice it for us to say, at the present, that the origin of two parties in the Cherokee country east had a very rational foundation; and it is equally natural that those who opposed removal should be found greatly in the majority.

It becomes our duty, in this place, to pursue, for a single moment, the history of the origin of the two parties in the Cherokee nation, known as the "treaty" and the "anti-treaty" parties. The divisions among these people resulted, not so much from any difference of views as to the administration of Cherokee polity under their laws and constitution, as from a fearful necessity, which compelled the most discerning men in the Cherokee nation to become the advocates of a treaty.

The whole series of the legislation of the State of Georgia in regard to this unfortunate people is to be found in the case of the Cherokee nation vs. Georgia, and of Worcester vs. Georgia, and in the documents accom-
panying the treaty of 1835, when before the Senate for ratification. No one can expect to understand this subject thoroughly without a careful examination of these cases and documents. They will satisfy any one, beyond cavil, that this system of legislation annihilated the whole Cherokee body politic, and resolved the people into their original elements. A new community had gone among the people of this imperfect state, (the Cherokee nation,) against the will of the latter; they, the whites, had gone under the protection of their own sovereigns, (the States,) and set up the laws of their governments, respectively, as the rule of action for themselves and the Indians. These latter had been subjected to the laws thus forcibly extended over them, and severely punished for any infraction thereof; they dared not look to those who had previously governed them, or to raise any resistance to the will of those who oppressed them. This state of things, in all ages, has amounted to a conquest by the stronger power, and the subjugation of the weaker to unconditional terms. Resistance at first would have been regarded as war on the part of the Indians; but, after the extension of the laws, the surveys and grants of the land, the acknowledgment of the civil jurisdiction, and the regular organization of the courts, resistance would have fallen under the ordinary sentence prescribed for traitors or murderers. And as the States thus extending their laws and organizing their communities formed integral parts of the American Union, the Cherokee domain and its inhabitants became, in fact, for every political and social purpose, a part of the great political association of the United States.

Offenders against the United States in the Cherokee mountains of Georgia or Alabama were subjected to precisely the same punishment as offenders in New York or Boston. An appeal lay from the civil cognizance of the new judicial circuit, comprising none but the Cherokee counties, precisely as it would from the courts of Savannah; a member of Congress elected from any one of the counties in the Cherokee nation would have been as readily recognised as from Milledgeville; and, in fact, every principal regulation which applied to the oldest portion of the State applied with precisely the same force to the new counties of the Cherokee nation. It is difficult, amidst this unprecedented state of things, to define with precision the relations of the Cherokees at this period to the government of the United States. The possibility of their becoming a sovereignty while in the States had never been conceded. They certainly now wanted every essential of a sovereignty. The sovereign power in every State rests in the law-making power, and the administrators of those laws are only the representatives of that sovereignty. But here the Cherokees had neither the power of enacting new laws to meet their peculiar exigencies, nor of enforcing their old ones. Any attempt to do so was punished by the States as a felony.

This discussion at this time may look like vague speculation, but it is one of great magnitude when viewed in the present aspect of Cherokee affairs. At present we only design using this argument for the purpose of accounting, upon natural principles, for the internal divisions which sprang up and have continued among the Cherokees themselves. Those who contended that amidst this state of things resistance to the State laws would only increase the evil, and tend to the greater moral degradation of the Cherokee people, and at last result in their total ruin, ventured to inquire among themselves for a remedy. The only remedy
ever pointed out by the United States had been an entire cession of the Cherokee lands in exchange for other lands west of the Mississippi river. This alternative was chosen as the least of two evils. It was dictated by no spirit of speculation or adventure. On the contrary, the advocates had to overcome all their prepossessions in favor of the homes of their fathers, as well as the bitter prejudices against the lands offered to them. The inducements which led to this choice among the “treaty party” are so lucidly and candidly set forth by that great and good, and pious man, whose untimely fate and tragic end every lover of the Christian religion must always lament, (Elias Boudinot,) that we shall content ourselves here with calling the most respectful attention to his valuable exposure; forming Senate document No. 12 of the 25th Congress, 2d session. We could add nothing to what is therein so clearly and lucidly expressed.

Those who express these views were at once subjected to the bitterest abuses by the opposite party. It mattered not that Mr. Ross and his party pointed out no remedy for existing evils; it mattered not that the people were daily driven from their homes; that many were perishing with hunger; and still more, of every age, sex, and degree, were gradually sinking into the whirlpool of intemperance, and other vices still more alarming. Still, while their chiefs, their “constituted authorities,” however powerless, stood between this ignorant mass and the United States, every effort at removal was vain and unavailing.

The intelligent men who staked their reputations and safety upon the only possible remedy presented for relief—that of removal—were not unmindful of the danger which they incurred. They had all the worst passions and the bitterest prejudices of the illiterate Indian to contend with, yet a solemn sense of duty could have no choice; and we hazard nothing in saying that the most pure and patriotic feelings prompted the advocates of a treaty, and that many of them were even prepared for the dreadful sacrifice which the sequel shows awaited them.

Among the prominent causes which influenced the “treaty party” to yield to the necessity of advocating a treaty, was the fact that, under the survey and lottery system of the State of Georgia, very many Cherokees had been dispossessed of their homes, and turned upon the world by the merciless grantees; others of the poor and defenseless, who were not allowed their oaths in a court of justice, had been robbed of their possessions and personal property by the lawless population, who, prompted by love of gold and speculation, had overrun the country. It thus soon became apparent that the longer a treaty was delayed, the heavier would become the charges upon the United States. The conquest had been in violation of pre-existing treaties, which guaranteed to the Cherokees their possessions. Every infraction, therefore, of Cherokee liberty, and every despoliation of their property, was an act of “plunder,” or a “spoliation.” This will account for the controversy which arose about spoliations, and which is several times incorporated in the new Echota treaty: this will account for the large awards to individual claimants. This question of spoliations could only be settled by treaty or reprisals. In this instance the undertaking was to settle the matter by treaty. How far this has been done is now necessarily a part of the Cherokee subject.

We have been thus particular in referring to the operations of the State laws, because, among the instructions issued to the Cherokee commissioners whose terms of service lately terminated, we find that the Commis-
sioner of Indian Affairs labored under an entire misapprehension on the subject. With these remarks, we will proceed to a discussion of the history of the treaty itself. In order thoroughly to understand the provisions of this treaty, it becomes necessary to advert carefully to the history of its formation.

In the year 1834-'35 two delegations, the one headed by John Ridge, the other by John Ross, visited Washington; the former was in favor of a treaty, the latter opposed to it. The lowest offer made by Mr. Ross for a cession of the country was $20,000,000, besides an indefinite sum for spoliations. (Senate Doc. No. 286, 1st session 24th Congress, pages 126 to 132.)

This proposition gave offence to the Secretary of War, and the negotiation was about to be closed, when some arrangements were made which resulted in the final submission of the question of value of the Cherokee country east of the Mississippi river to the Senate of the United States.

In a memorandum furnished to the Hon. John P. King, Senator from Georgia, for the use of the Senate, on the 28th of February, 1835, a view of the subject was taken by the Hon. Secretary of War well calculated to cheapen the estimate to be placed on the country by the Senate, to whose award the question had been referred. (Senate Doc. No. 129, 2d session 25th Congress, page 97.)

In the view of the subject presented, the Secretary of War took the ground that the 7,000,000 acres which, by the treaties of 1828 and 1833, had been ceded to the western Cherokees exclusively, was the common property of the eastern and the western Cherokees, or, from the generality of the expression, that it was the country of the eastern Cherokees; whereas that country was then, and is now, exclusively claimed by a separate community, who are shown, in their arguments and representations of facts, to have paid a full value for it; and, admitting the construction put upon the 8th article of the treaty of 1828 by the Commissioner of Indian Affairs, and we will now premise that the United States would have been bound by its obligations, which, before we have done, we will show would have imposed upon them, as the accounts now stand, a debt of no less than $4,500,000; and, what was equally as unfair in the memoranda of the Secretary of War, he estimated the whole country to be ceded by the Cherokees at 7,000,000 acres of land, only 1,500,000 acres of which he reminded the Senate would inure to the benefit of the United States, the balance being claimed by the States of Georgia, North Carolina, and Tennessee. Yet the United States had received, as a consideration for their obligations to extinguish the Indian title in Georgia, the principal part of Alabama, and perhaps all of the rich State of Mississippi. (See case of Cherokee Nation vs. Georgia, 5th Peters's Reports. Worcester vs. Georgia, 6th Peters.) This extinguishment was to be made upon peaceable and reasonable terms; and, for a like consideration, the State of North Carolina had ceded her claim to the Western Territory.

It mattered not, therefore, whether the profits from the sale of these lands resulted to the benefit of the United States, or to the States. The United States were negotiating with a weak and helpless people, who had already suffered many wrongs; and now that the question of award was about to be submitted to the American Senate, it should have been stripped of every other consideration except the value of the domain to the United States. No pecuniary consideration could have purchased the
tract of country from the Indians. Necessity compelled them to submit
to the award of one of the contracting parties; and, in submitting this
award, an agreement is made calculated to lessen the sum to be given
more than two-thirds. 1. We contend that the Senate were misled as to
the title of the United States to the land which is to form the future home
of one of the contracting parties. 2. The Senate were told that no great
benefits are likely to result from the cession to the United States. 3. The
Senate are told that the Cherokees are to get an additional tract of coun-
try of 800,000 acres, when, in fact, it is intended to deduct this sum from
this award, be the award much or little. (See the memoranda above
quoted, pages 98 and 99.) But this memoranda is useful for the memo-
rialists in another point of view; it shows the history of the two par-
ties then existing in the Cherokee nation. The honorable Secretary of War
then declares that “the President would not consent, for one moment, to
put to hazard the pecuniary interest or personal safety of those who have
been endeavoring to promote the views of the government, and, at the
same time, to secure the welfare of their own people. Their interests
must, under any circumstances, be provided for.” (See same document,
pp. 90, 93, particularly 101, in third suggestion, which is more expli-
cit.) The suggestion of the Secretary follows, that the award should be
made in the alternative; i.e. both with and without reference to the coun-
try to be exchanged west of the Mississippi river.

The award, however, was made in a gross sum, and with a view to an
exchange of lands, and the Senate decided “that a sum not exceeding five
millions of dollars be paid to the Cherokee Indians for their lands and
possessions east of the Mississippi river.” (See Senate Journal.)

This was the award of the Senate. It was allowing 62½ cents per acre
for the Cherokee domain, estimating the country at 8,000,000 of acres,
being in fact the correct quantity.

Exactly what this award intended to include, immediately became the
subject of discussion, and certainly was not at the time clearly understood.

On the 6th of March, 1835, the Secretary of War communicates to the
Ross delegation the award of the Senate, and proposes negotiations.
These gentlemen, in answering, naturally remark: “We also beg leave to
inquire whether we are to understand, from your communication of this
date, that five millions of dollars, resolved by the Senate, should be paid
the Cherokee Indians for all their lands and possessions east of the Mis-
sissippi river, as embracing all their expenses of transportation and sub-
stance for twelve months after their arrival at their new homes—for
blankets, guns, &c.; or whether that sum is an offer, as really appears
from the resolution to be, only for the extinguishment of the title to the
lands east of the Mississippi river, and for the houses and improvements
of the Cherokee inhabitants situated thereon, and the United States will,
in addition, pay for the expenses of transportation, provided for under
the general plan, for Cherokee removals, which has been adopted from the pro-
visions of the treaty of the 6th day of May, 1828, between the United
States and that portion of the Cherokees residing west of the Mississippi;
and, also, whether an additional extent of territory will be added to the
one already laid off for the Cherokees west of that river, and of what
extent?” (See Senate document No. 286, above quoted, pp. 142 and 143.)
In order to a just and fair understanding of this inquiry, we would now
call serious attention to the 8th article of treaty of 6th May, 1828, which
has been made to operate so fatally upon the claims of the western Cherokees.

The honorable Secretary of War seemed not, however, to advert to or regard the provisions of the treaty of 1828. In answer to the delegation, he says: “The sum of $5,000,000, which is offered for your claims east of the Mississippi river, will, as I have already informed you, be in full for your entire cession. The application of it will be such as you desire, a just regard being had to individual rights.

“Nothing more will be paid for removal, or for any other purpose whatever.” (See Senate document, p. 142, above quoted.) The Secretary here closed the correspondence with the delegation. How the Secretary avoided the obligations of the treaty of 1828, as that instrument has been since interpreted, is wholly inexplicable. The truth is, that the interpretation given by the Secretary we will hereafter show to be incorrect.

Failing in his attempt at negotiations with John Ross and his delegation, the honorable Secretary of War immediately turned his attention to John Ridge and his delegation. And we find that, on the 14th of March, 1835, John F. Schermerhorn, on the part of the United States, and John Ridge, Elias Boudinot, S. W. Bell, John West, and others, entered into a provisional treaty, which was to be binding should it receive the assent of the Cherokee nation. (See Senate document 286, above quoted, page 32, et seq.) We invite a careful consideration of this provisional treaty; because, although it is not the treaty which was afterwards ratified, yet it contains many provisions of the same treaty. And every alteration made was a concession in favor of the Cherokees. The 2d and 3d articles of this provisional treaty show that the value ($500,000) of the 800,000 acres agreed to be ceded by the new treaty was deducted from the $5,000,000, and that the $4,500,000 was to be distributed and paid by the United States. But, then, in the 2d article, the Cherokees are only made to convey “all their right and title to the lands owned, claimed, and possessed by them, including the lands reserved by them for a school fund east of the Mississippi river.” And, in the first article, there is an express reservation in favor of the Cherokees, in the following words: “But it is always understood that the treaty stipulations in former treaties, that have not been annulled or superseded by this, shall continue in full force.” Several of the articles of this treaty are, verbatim et literatim, the same which were afterwards adopted. We would now also call attention to the 9th article of this treaty. It insures all personal benefits, and rewards of “blankets, rifles, and kettles,” promised in the treaty of 1828; and it promises, in addition, one hundred and fifty dollars to every soul removing in one year, and one hundred dollars to those removing after that time. This was the foundation of the promise of per capita money. This was the greatest inducement to the treaty. Has any alteration been made which relieved the United States from this promise to a weak and confiding people?

The 18th article of the provisional treaty affords an excellent interpretation in favor of the Cherokees. It furnishes a schedule for the application of the $5,000,000. The article declares, that if the estimate for any given object shall be found too small, the deficiency shall be supplied from other objects; and if too large, the surplus shall be carried to other objects. The schedule is in the following words:
For removals                      $255,000
subsistence                        400,000
improvements and ferries           1,000,000
claims and spoliations              250,000
domestic animals                     10,000
national debts                        60,000
public buildings                      30,000
printing press, &c.                        5,000
blankets                                36,000
rifles                                    37,000
kettles                                  7,000
per capita allowance                  1,800,000
general fund                             400,000
school fund                               160,000
orphans' funds                           50,000
additional territories                   500,000

$5,000,000

This schedule adds $262,251 76 commutation of school fund, and annuity under previous treaties. These amounts have nothing to do with the treaty of 1835. We have marked removals, claims and spoliations, domestic animals, public buildings, printing press, &c., blankets, rifles, and kettles, in italics, because they were each and every one of them stricken out, as will hereafter be shown, in the treaty which was ratified; and, instead of $610,000 having been invested in State stocks, as was at first intended, only $500,000 was invested as a national and school fund, making a difference of $110,000. These several items, so stricken out of the provisional treaty, amount to $740,000. Add this to $1,800,000, and the amount to be divided per capita would amount to $2,540,000.

Now, has this sum been lessened by any increase of any one of the estimates, or by the incorporation of any new expense not enumerated in this schedule? We confidently assert that there has been no such increase, or any additional item. There could be no dispute about any item, except those of improvement and subsistence. They were the only ones which were left uncertain. And, before we have done, we pledge ourselves to show that the estimates for these are rather too large than too small.

Thus stood matters when the two delegations left Washington. Those who favored the treaty were not left in any uncertainty as to what their people had to expect. Those who opposed the treaty had to contend against the prospect of money being paid to individuals for improvement, and per capita. Those who advocated the treaty had assurances that their pecuniary and personal safety should not be left to the mercy of the "dominant party." They could promise a suffering constituency relief from their oppression; a peaceful home in the west; pay for their improvements; comfortable transportation; a year's subsistence; blankets, rifles, kettles, and one hundred and fifty dollars, to each member of their families.

The next thing in the order of time, as tending to show the understanding of the contracting parties, was the instructions of the venerable President Jackson, when sending the commissioners to urge this treaty
upon the Cherokee people. In his talk to the Cherokees, this aged veteran speaks in just and feeling terms of the great difficulties which surrounded the Cherokees, and the impossibility of relieving them in their then situation. In his address he says:

"These stipulations provide—1. For an addition to the country already assigned to you west of the Mississippi, and for the conveyance of the whole of it by patent in fee simple; and, also, for the security of the necessary political rights, and for preventing white persons from trespassing upon you.

"2. For the payment of the full value, to each individual, of his possessions in Georgia, Alabama, North Carolina, and Tennessee.

"3. For the removal, at the expense of the United States, of your whole people; for their subsistence for a year after their arrival in their new country; and for a gratuity of one hundred and fifty dollars to each person," &c.; going through all the items mentioned in the schedule. (See pages 41 and 42 of document already quoted.)

The instructions issued from the War Department, on the 2d of April, 1839, after recounting the history in relation to the award of five millions of dollars, says: "You will, therefore, under no circumstances, increase the amount of consideration to be given. If, however, the Indians should prefer to receive the whole amount, viz.: $5,000,000, in lieu of the sum of $4,500,000, and of the additional tract west of the Mississippi river, estimated at 800,000 acres, you are at liberty to give them the whole sum in money, and to withhold the additional tract." (See Senate document No. 120, 25th Congress, 2d session, page 101.)

Nor were the Cherokees, in fact, left any choice as to the acceptance or rejection of this treaty upon this basis.

On the 25th of May, 1835, the Commissioner of Indian Affairs remarks: "Most assuredly the President will not, under those circumstances, sanction any expectation that more favorable arrangements will be offered the Cherokees hereafter," &c. (See document last quoted, page 108.) Many other passages to the same effect might be cited, but these are known to all concerned, and are everywhere scattered through the documents already quoted.

In regard to the personal and pecuniary safety of the applicants now before the government, the President, through the Secretary of War, on the 2d of April, 1835, remarks: "But there is one consideration which must, under no circumstances, be overlooked; and that is, the necessity of a just security for all the Cherokees; so that a dominant party, if such exist, and is disposed to exert its power, may not be enabled to violate the rights of individuals, and particularly of those who may have rendered themselves obnoxious by their efforts to promote the plan of removal. You will, therefore, take care that the rights of individuals be properly guarded, so that the amounts coming to them, for their improvements, expenses of removal, &c., shall be paid to themselves, and not placed at the disposal of any other persons. Those portions of the funds which are applicable to the purposes of the tribe generally, such as annuities, school money, orphan money, &c., will, of course, be left to the management of the title itself." (See Senate document No. 120, 2d session 25th Congress, page 102.) Again, on the 19th of April, 1835, the President, speaking through the Cherokee agent, to John Ross, says: "From these causes, should violence be threatened, or death to any one of these men, or their
party, ensue, or should any attempt be made to prevent a fair, unbiased expression of their preferences for freedom in the west to slavery here, incurable evils to the Cherokees are naturally to be expected; for all of which, I am directed, by the President of the United States, to say that you and your council will be held responsible."

These were the promises, these the inducements, these the threats, held out through that summer and autumn, while the United States commissioners were in the country of the Cherokees, urging the treaty. So much vigilance was shown in regard to the personal safety of the friends of the treaty, that, when a threat was heard against John Ridge, immediate measures were taken by the agent of the government to arrest the danger. (See Senate document No. 120, 2d session 25th Congress, page 470, et seq.)

Again, in regard to the pecuniary benefits to result from this treaty, Mr. Schermerhorn, in his address to the whole Cherokee nation assembled at Running Waters, after reciting the smaller advantages, thus flatters the poor: "The United States will also pay $150 per head to every Cherokee who enrolls and removes the first year, and $100 to those who remove the second year after the ratification of the treaty; but no pay of this kind will be made to those who remove after two years. This is truly a provision for the poor of the nation.

"The wealth of the rich men consists in their lands, improvements, and negroes, but the poor man's riches are his women and children. A poor man, if he has ten children, if he removes the first year, will get, when he arrives at the west of the Mississippi, $1,500; and the same proportion if his family are larger or smaller." (Senate document No. 120, 2d session 25th Congress, page 458.)

But this provisional treaty, with all these advantages, with all these promises, was voted down by the Cherokee people and their national council. The objection, it was urged by the government of the United States, was not to the instrument, or its provisions, but owing to the obstinacy of the leaders. Accordingly, we find that the President immediately determined not to receive or entertain any propositions to be offered by the committee of twenty, appointed by the October council of Cherokees to proceed to Washington.

It would seem, from the proceedings of the October council of 1835, at Red Clay, that the question whether or not the Senate, by their award, intended to include spoliations and just claims of citizens of the Cherokee nation against the United States, was one of the main difficulties; for we find, at that council, that Mr. Schermerhorn intended to insert a provision of an additional sum, subject to the future decision of the Senate. (See Senate document No. 256, 2d session 25th Congress, page 94.) This was in fact one of the difficulties in the way; and a ground of objection taken by the Cherokee committee of twenty was, their fear that the Senate would not ratify the treaty, with such an additional sum. (See letter of the committee of twenty, same document, pages 90, 91.)

Let us now proceed to the journal of the commissioner, and of the general council of the Cherokees assembled at New Echota, in December, 1835, who then and there negotiated the treaty.

In this journal, page 514 of the same document, the commissioner says, "The Cherokee committee insisted—" 1. That the Senate, by their award, in which they advised that a
sum not exceeding $5,000,000 be allowed to the Cherokees for all their lands and possessions east of the Mississippi river, did not include any allowance for claims for spoliations, the losses and dangers sustained by their people from the intrusions of the citizens of the United States, and taking from them their possessions and property by the extension of the laws of the State over them.

"In order to get rid of this difficulty, the commissioner agreed that this matter should be referred to the Senate of the United States, to determine whether anything had been allowed by them for these claims, in the award of $5,000,000, or not; and if no allowance had been made for the same, then an additional sum of $300,000, which is $50,000 more than they were estimated at a year since, but not more than they have since been increased during the past year."

Thus was an estimate of $300,000 inserted to pay for claims against the United States, and in the nature of spoliations.

The Indians, it will be seen, insisted that there should be no contingency, as it was evident, from the language of the resolution itself, that these claims had not been taken into consideration. The commissioner then agreed that the treaty should not be presented to the Senate, without the consent of their delegation, until we had satisfied ourselves that no allowance had been made by the United States Senate for the same, in their award of $5,000,000. The second observation in the journal of the commissioner relates to the subject of reservations, which were strenuously insisted on by the Cherokees, and which, if obtained, would have afforded them great pecuniary advantage. Accordingly, we find an allowance of pre-emption, in lieu of reservations, in the 12th article of the treaty, to which it may be necessary hereafter more particularly to refer.

There was another point of discussion among the contracting parties, as appears from the journal of this convention, which seems never to have received due consideration.

On page 516 of the document last quoted we find the following statement:

"3. There was also, I found, another subject which had occasioned much difficulty among the Cherokees, and which they insisted should be provided for in the treaty, and that was, reservations under former treaties."

"By the treaties of 1817 and 1819 the United States acquired about 4,000,000 of acres of lands from the Cherokees, in the States of Georgia, North Carolina, Tennessee, and Alabama, for which they gave the Cherokees an equal quantity in the Territory of Arkansas, and a certain number of reservations in those States. This, as appears, was the only consideration allowed by the United States for this extensive and valuable cession of lands by the Cherokees. Those, however, who removed to Arkansas, were paid for their improvements, and removed at the expense of the government. The complaint of the Cherokees was, that some of those reservations in Alabama and Tennessee had not yet been granted; and that in some instances the reservees had been obliged to purchase their lands from the State of Tennessee, rather than engage in a long and expensive litigation to obtain or retain them. Those made in North Carolina had all been bought by that State from the Indians; and those in Georgia the Indians had been paid for, by the obligation of the United States to extinguish the Indian title to the lands within that State."

In order to remove, if possible, these complaints, and satisfy the Indians
of the disposition of the United States to do them ample justice, the 13th article of the treaty was inserted on this subject, which only provides for carrying out the provisions of former treaties, as far as practicable, and which the honor and good faith of the United States renders indispensable.

By referring to the able letter of Mr. Schermerhorn, found in Senate document 286, 1st session 24th Congress, page 67 to 77, (ten pages of useful historical matter, without which it is impossible to understand the Cherokee question,) it will be seen that the Commissioner well understood this whole subject of reservations, their very numbers and names, and was the last man in the world to have involved the United States in an unjust liability in favor of men against whom he felt the deepest enmity. Let us then examine first the 13th article of the treaty, which had not been included in the schedule of the provisional treaty, or embraced in the award of $5,000,000. How could it have been so embraced, when the subject never had been mentioned in the Senate or discussed at the time?

(The reference is to such reservations as are described in Vol. 6, pages 702 and 748, of Laws of United States. See also Indian Treaties, page 7.)

The result of the deliberations of Mr. Schermerhorn and the Indian committee is found in the 13th article of the treaty of 1835, and is in these words: “In order to make a final settlement of all the claims of the Cherokees, for reservations granted under former treaties to any individuals belonging to the nation by the United States, it is hereby stipulated and agreed, and expressly understood by the parties to this treaty, that all the Cherokees, and their heirs and descendants, to whom any reservations have been made, under any former treaties with the United States, and who may not have sold or conveyed the same by deed or otherwise, and who, in the opinion of the commissioners, have complied with the terms on which reservations were granted, as far as practicable, in the several cases, and which reservations have since been sold by the United States, and the original reserves, or their heirs or descendants, shall be entitled to receive the present value thereof, from the United States, as unimproved land, and all such reservations as have not been sold by the United States; and when the terms on which the reservations were made, in the opinion of the commissioners, have been complied with as far as practicable, they or their heirs or descendants shall be entitled to the same. They are hereby granted and confirmed to them; and also, all persons who are entitled to reservations under the treaty of 1819, and who, as far as practicable, in the opinion of the commissioners, have complied with the stipulations of said treaty, although, by the treaty of 1819, such reservations were included in the unceded lands belonging to the Cherokee nation, are hereby confirmed to them, and they shall be entitled to receive a grant for the same; and all such reserves as were obliged, by the laws of the State in which their reservations were situated, to abandon the same, or purchase them from the States, shall be deemed to have a just claim against the United States for the amount paid by them to the States, with interest thereon, for such reservations, and, if obliged to abandon the same, to the present value of such reservations as unimproved lands; but in all cases where the reserves have sold their reservations, or any part thereof, and conveyed the same by deed or otherwise, and have been paid for the same, they, their heirs or descendants, or their assigns, shall not be con-
sidered as having any claims upon the United States under this article of the treaty, nor be entitled to receive any compensation for the lands disposed of. It is expressly understood by the parties to this treaty that the amount to be allowed for reservations, under this article, shall not be deducted from out of the consideration money allowed to the Cherokees for their claims for spoliations and the cession of their lands; but the same is to be paid for independently by the United States, as it is only a just fulfillment of former treaty stipulations.”

It would have been perhaps more methodical to have taken up the treaty in the order pursued by the memorialists; but we found it necessary to present it historically. This we think we have now done with all candor and fairness.

The first article, for and in consideration of $5,000,000, cedes to the United States “all the lands owned, claimed, or possessed by them east of the Mississippi river, and hereby releases all their claims upon the United States for spoliations of every kind.” Now, surely, it will not be contended, with the 13th article before us, that, under the head of spoliations, were included the reservations which were described in the 13th article, and the price of which it was expressly declared should not be deducted from $5,000,000.

But now came the question of reference, which had formed the first head of discussion at “Red Clay” and at “New Echota.” The condition mentioned in the journal of the commissioners is in the following words: “But as a question has arisen between the commissioners and the Cherokees whether the Senate, in their resolution by which they advised that a sum not exceeding five millions of dollars be paid to the Cherokee Indians for all their lands and possessions east of the Mississippi river, have included and made any allowances for spoliations, it is therefore agreed, on the part of the United States, that this question shall again be submitted to the Senate for their consideration and decision; and if no allowance was made for spoliations, that then the additional sum of three hundred thousand dollars be allowed for the same.”

Thus it would seem, from the first article, that it was intended, should the Senate agree, to pay for the cessions for land and for spoliations $5,300,000. No other interpretation can be gathered from the journal of the commissioners, and the first article of the treaty itself. The article of “spoliations” included in the provisional treaty, for which $250,000 was charged in the schedule, is thus stricken out, or rather the fund is increased $300,000 for that object. We will now, therefore, first examine the treaty as it stood when completed at New Echota, and before it underwent any alteration.

The second article recites the treaties of 1828 and 1833, and sets forth the boundaries of the country granted to the western Cherokees, and then recites, very coolly, that, “whereas it is apprehended that in the above cession there is not contained a sufficient quantity of land for the accommodation of the whole nation,” &c., “in consideration of $500,000, the United States hereby covenant to convey in fee simple,” &c. 800,000 acres of land, describing it. This sum reduced the $5,000,000 to $4,500,000. The third article of the treaty stipulates for a patent.

The fourth article stipulates for paying of the Osage reservations, &c., at the expense of the United States.

The fifth article relates to the security of the title.
The sixth article refers to their protection, and provides for the security of that party, who had so often been promised protection.

The seventh article provides for a delegate in Congress whenever Congress shall provide for the same.

The eighth article is in the following words:

"The United States also agree and stipulate to remove the Cherokees to their new homes, and to subsist them for one year after their arrival there; and that a sufficient number of steamboats and baggage wagons shall be provided to remove them comfortably, and so as not to endanger their health; and that a physician, well supplied with medicines, shall accompany each detachment of emigrants removed by the United States' government. Such persons and families as are, in the opinion of the emigrating agent, capable of removing and subsisting themselves, shall be permitted to do so; and they shall be allowed in full for all claims for the same twenty dollars for each member of their family; and in lieu of their one year's ration, they shall be allowed the sum of thirty-three dollars and thirty-three cents, if they prefer it."

The ninth article declares "that the United States agree to appoint suitable agents, who shall make a just and fair valuation of such improvements now in possession of the Cherokees as add any value to the lands; and also of the ferries owned by them, according to their net income; and not such improvements and ferries from which they have been dispossessed in a lawless manner by the States where the same may be situated."

The balance of the article provides for paying some debts of the Cherokees out of such valuations, and for a valuation of the missionary stations. It will be recollected that the schedule in the provisional treaty had supposed a million of dollars for these objects of improvements and ferries. About the practical operation of this article we have much to say before we have done.

The tenth article provides for investing $200,000 in State stocks as a national fund, $50,000 as an orphans' fund, $150,000 as a school fund—making $400,000. The previous annuities and school fund of the nation were also commuted; but this did not affect the $5,000,000 fund. $60,000 was also set aside by this article, to pay the debts which the Cherokee nation owed. And in the very conclusion of this article appears this clause, which seems to have attracted very little notice since:

The sum of three hundred thousand dollars is hereby set apart to pay and liquidate the just claims of the Cherokees upon the United States for spoliations of every kind that have not been satisfied under former treaties.

This clause is standing, like Daniel's prophecy, where it ought not to be. Surely it cannot be argued, after what has occurred in the journal, the first article, and in the third supplemental article, that the Cherokees intended to deduct $300,000 from the $5,000,000, to pay the spoliations of their own people against the United States. If the clause means anything, it imposes an additional charge of $300,000 on the United States to be paid as spoliations, and which, by the way, has never been appropriated.

The eleventh article of the treaty agrees to commute the permanent annuity of the nation, then amounting to $10,000, two-thirds of which had been previously paid to the eastern, and one-third to the western Cherokees, for $214,000; " and that their present school fund, amounting
to fifty thousand dollars, shall constitute a part of their permanent school fund of the nation."

The twelfth article provides for paying the personal benefits of the treaty for their claims, improvements, and per capita to such as chose to become citizens of the States. It also provides for pre-emption to the heads of families in North Carolina, Tennessee, and Alabama. It also provides for a committee of thirteen, whose compensation is not fixed, to transact the business arising under the treaty. It also provides for the expenditure of $110,000 for the benefit of the poorer class of Cherokees. The thirteenth article provides for the payment of reservations, under former treaties, at the expense of the United States. This article has already been quoted at length.

The fourteenth article provides for pensions of disabled warriors, of course at the expense of the United States. These are all the articles which relate to the application of the funds. The easiest and most simple solution is perhaps to be found in the 15th article, which declares, as follows: "It is expressly understood and agreed between the parties to this treaty, that after deducting the amount which shall be actually expended for the payment of improvements, ferries, claims for spoliations, removal, subsistence, and debts and claims upon the Cherokee nation, and for the additional quantity of lands and goods for the poorer class of Cherokees, and the several sums to be invested for the general national fund, the balance, whatever the same may be, shall be divided between all the people belonging to the Cherokee nation east, according to the census just completed; and such Cherokees who have removed west since June, 1833, who are entitled by the terms of their enrolment and removal to all the benefits resulting from the final treaty between the United States and the Cherokees east," &c.

This article, as has been justly remarked, is certainly obnoxious to the charge of very great ambiguity. The punctuation is awkward enough, but we are instructed to admit that it was the intention of the parties that the per capita money, whatever the sum might be, should be divided among all who were on the census of 1835, and all who had enrolled since 1833. This certainly was not a fair provision for the Cherokees, for such enrolled emigrants had already been paid for their improvements, (or ought to have been paid,) as provided in the treaty of 1828; had got their blankets, rifles, kettles, tobacco, and $12 50, for each member of their family; and had been removed and subsisted for a year at the expense of the United States. Now their brethren were, according to the construction of the honorable Secretary of War, already referred to, to get their own removal; their own subsistence; get no blankets, rifles, kettles, nor the $12 50, for all going from Georgia; and yet to divide their per capita among those who, according to the learned Attorney General's opinion, had, by abandoning their improvements, relinquished their interest in the soil, being "pro tanto," so much of the whole domain to the benefit of the United States. (See particularly the opinion of Attorney General Berrien, Opinion Book, page 751 to 756.) But, passing over the question of unfairness in the construction, let us now resort to the schedule referred to in the provisional treaty. In doing this, for the purpose of this argument, we will take away the provision in regard to the question of spoliation mentioned in the first article of the treaty yet to be referred to the Senate.
The schedule would now stand thus:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Improvements</td>
<td>$1,000,000</td>
</tr>
<tr>
<td>For removal</td>
<td>$250,000</td>
</tr>
<tr>
<td>For subsistence</td>
<td>$400,000</td>
</tr>
<tr>
<td>For claims and spoliations, as per 10th article</td>
<td>$300,000</td>
</tr>
<tr>
<td>For general fund, as per 10th article</td>
<td>$200,000</td>
</tr>
<tr>
<td>For orphan fund, do</td>
<td>$50,000</td>
</tr>
<tr>
<td>For school fund, do</td>
<td>$150,000</td>
</tr>
<tr>
<td>For additional territory</td>
<td>$500,000</td>
</tr>
<tr>
<td>For goods for the poorer classes, as per 12th article</td>
<td>$100,000</td>
</tr>
<tr>
<td>Per capita division</td>
<td>$2,050,000</td>
</tr>
</tbody>
</table>

\[\text{Total: } \$5,000,000\]

This, we say, would have been, and was, the estimate of the parties at the time, independent of the reference to the Senate. The only supposed numbers are for the improvements, the removal, and subsistence. But the amount of computation for removal had been lessened five dollars per head, and the exact number ascertained to exceed 16,000. The increase, therefore, for removal and subsistence, may cause an addition of one-fourth. From the sum to be divided per capita, there might, therefore, have been properly deducted $162,500, the number of inhabitants having been estimated before the completion of the census at 12,500 souls. (See provisional treaty, schedule, &c.)

All the advantages, therefore, promised in the provisional treaty, in the shape of "domestic animals, public buildings, printing press, rifles, and kettles," might be purchased with this additional sum of per capita money. Besides these, there were other arguments in favor of the New Echota treaty. Pre-emptions were secured to certain citizens; $100,000 to poor citizens, who could not obtain pre-emptions; pay for reservations due under former treaties, be the amount great or small; and in the 16th article a guaranty of restoration to those who had been dispossessed, and protection for two years, or spoliations to an indefinite amount in case of failure; and those spoliations to be paid by the United States. And in the 18th article an advance of two years' annuities, to feed and clothe the poor and starving Indians.

This was the treaty of 1835, when submitted to the President of the United States. Let us examine, which we should with great care, what alterations this treaty underwent by supplement or codicil.

The first question to be referred was that contained in the journal, and first article of treaty. It will also be recollected that the reverend commissioner had got a better bargain for the United States than the President, in his talk, had asked. Again: We quote that great man's words: "3d. For the removal, at the expense of the United States, of your whole people; for their subsistence for one year after their arrival in their new country," &c. This open hearted man doubtless intended that the removal, if not the subsistence, should be at the expense of the United States; and he no doubt felt indignant at the chaffering diplomatist who had thus saddled this expense upon the Cherokees. He could see at once, that notwithstanding the plain limitation to twenty dollars per head, yet that disputes and abuses might arise. The President also saw in the
treaty the same rock upon which the Creeks, the Chickasaws, and Choctaws had split—reservations—the foundation of the ruin of all Indian tribes who have ever had them, the Cherokees not excepted.

It therefore became necessary to go further than the mere question of reference about "claims and spoliations;" and a supplementary treaty containing material alterations was added and sanctioned by the delegation then at Washington. (See 9th vol. Laws U. S., 1355. See Indian treaties.)

"Supplementary articles to a treaty concluded at New Echota, Georgia, December 29, 1835, between the United States and the Cherokee people."

"Whereas the undersigned were authorized at the general meeting of the Cherokee people, held at New Echota, as above stated, to make and assent to such alterations in the preceding treaty as might be thought necessary; and whereas the President of the United States has expressed his determination not to allow pre-emptions or reservations, his design being that the whole Cherokee people should remove together, and establish themselves in the country provided for them west of the Mississippi river: It is therefore agreed, that all the pre-emption rights and reservations provided for in articles 12 and 13 shall be, and are hereby, relinquished and declared void."

So far as the enjoyment of the property in pre-emptions and reservations went, here was, undoubtedly, an extinguishment of any right to them. This subject will be more fully considered hereafter. It is to articles second and third to this supplemental treaty, that we now invite serious attention.

**Article II.**

"Whereas the Cherokee people have supposed that the sum of five millions of dollars, fixed by the Senate in their resolution of the 10th of March, one thousand eight hundred and thirty-five, as the value of the Cherokee lands and possessions east of the Mississippi river, was not intended to include the amount which may be required to remove them, nor the value of certain claims which many of them hold against citizens of the United States, which suggestion has been confirmed by the opinion expressed to the War Department by some of the Senators who voted upon the question; and whereas the President was willing that this subject should be referred to the Senate for their consideration, and if it was not intended by the Senate that the above mentioned sum of five millions of dollars should include the objects herein specified, that in that case such further provisions should be made therefor as might appear to be just."

Now, what were the objects of reference in that third supplementary article specified? They were, "the amount which may be required to remove them," and the value of "certain claims which many of them hold against citizens of the United States." Are we left to the preamble alone for the solution of this question? We are not; for the third supplemental article resolves itself.
ARTICLE III.

"It is therefore agreed that the sum of six hundred thousand dollars shall be, and the same is hereby, allowed to the Cherokee people, to include the expense of their removal, and all claims of every nature and description against the United States not herein otherwise expressly provided for; and to be in lieu of the said reservations and pre-emptions, and of the sum of three hundred thousand dollars for spoliations described in the first article of the above mentioned treaty. This sum of six hundred thousand dollars shall be applied and distributed agreeably to the provisions of said treaty, and any surplus which may remain after payment of the claims so ascertained shall be turned over to the education fund.

"But it is expressly understood that the subject of this article is merely referred hereby to the consideration of the Senate, and if they shall approve the same, then this supplement shall remain a part of the treaty."

The Senate did approve this article, and it is therefore become a part of the treaty. Before we proceed, however, to our notions of the only legitimate interpretation to be given to this treaty, we beg leave to quote so much of the fourth article as relates to the funds.

ARTICLE IV.

"It is also understood and agreed, that the sum of one hundred thousand dollars, appropriated in article XII for the poorer class of Cherokees, and intended as a set off to the pre-emption rights, shall now be transferred from the funds of the nation, and added to the general nation fund of four hundred thousand dollars."

What, now, will the common understanding of any man say were the alterations of the original treaty? What were the advantages in favor of the United States, and what in favor of the Cherokees?

1st. The advantages to the United States were, 1. The abolition of the right, under the 12th article, "to such heads of families as are desirous to reside within the States of North Carolina, Tennessee, and Alabama, subject to the laws of the same, and who are qualified and calculated to become useful citizens," &c., "had to a pre-emption right to one hundred and sixty acres of land, or one quarter section, at the minimum Congress price, so as to include the present buildings or improvements of those who reside thereon;" and it was also an abolition of the still more dangerous right "of those who do not reside there at present to locate within two years any lands not occupied by persons entitled to pre-emption privileges under this treaty." These pre-emption rights would have opened the door to all the school of speculators, speculations, and frauds, which had been perpetrated in the Creek, Chickasaw, and Choctaw countries. It was a death-blow to the hopes of many of the Cherokees, who would doubtless have amassed fortunes under this treaty. And, 2d. There were abolished, in favor of the United States, the following two classes of reservations, described in the 13th article of the treaty: "All such reservations as have not been sold by the United States, and where the terms on which the reservations were made, in the opinion of the commissioners, have been complied with as far as practicable, they, or their heirs or descendants,
shall be entitled to the same. They are hereby granted and confirmed to
them; (2) and also all persons who were entitled to reservations under
the treaty of 1817, and who, as far as practicable, in the opinions of
the commissioners, had complied with the stipulations of said treaty, although
by the treaty of 1819 they were included in the unceded lands belonging
to the Cherokee nation, are hereby confirmed to them, and they shall be
entitled to receive grants for the same." These valuable privileges, of oc-
cupying reservations and receiving grants for the same, were taken away
by this supplemental treaty.
This is not the proper place to expose the inconsistent and preposter-
ous constructions sometimes hastily given to this branch of the subject.
This will necessarily receive due notice before we are done.
Let us now inquire if the Cherokees received no additional benefits for
this compromise of valuable rights, all of which were fully discussed, as
appears from the journals of the commissioners, so often adverted to.
With an unbounded reverence for the opinions of President Jackson, they
yielded privileges which would have lessened the value of the domain
ceded to the United States more than two millions of dollars. Yes, we
repeat, that had these preemptions and reservations been continued in the
treaty, the million and a half of acres lying in Alabama (to say nothing
of the lands in North Carolina and Tennessee) would have been wholly
valueless to the treasury of the United States. All would have been lo-
cated by the heads of Cherokee families.

But the Cherokees did receive a consideration, however inadequate, for
this valuable surrender.

"It is therefore agreed that the sum of six hundred thousand dollars
shall be, and the same is hereby, allowed to the Cherokee people, to in-
clude the expense of their removal, and all claims of every nature and de-
scription, not herein otherwise expressly provided for; and to be in lieu
of said reservations and preemptions, and of the sum of three hundred
thousand dollars for spoliations described in the first article of the above
mentioned treaty."

The reservations not then possessed by the Cherokees, but which
they had lost by former treaties, were guarantied to be paid for, under the
13th article, (not out of the five millions, but) at the expense of the United
States, "being only a just fulfillment of former treaties." Such remuner-
ations, it is respectfully contended, were not affected by the third supple-
mental article. They still remained charges against the United States,
and the $600,000 was to pay "claims and spoliations," "removals," and
to be in lieu of "reservations" still occupied. Any other construc-
tion would seem to us to be unmeaning and illogical.

Be this as it may, however, it is now certain that the "claims and spa-
liations" mentioned in the first article, and the removal and expenses
thereof provided for in the 8th article, were removed from the objects enu-
merated in the 16th article, as forming a part of the schedule enumerated
therein; and the universal principle of law, that "persons and things
in the law enumerated were more strongly excepted than if any formal
words had been used to that purpose," applies here with as much force
as ever it did in the days of Coke or the chief baron Gilbert. "Things not
included are excluded," is a first maxim, familiar to every tyro. But here
were things, before estimated and included, now excepted by the for-
mality of a codicil.
Six hundred thousand dollars were thus added, but not to the general fund, and the accounts to be marshalled as heretofore; but it was made to answer certain objects, which were, by this special agreement, enumerated. The only provision which remained, in regard to removal, was the limitation to twenty dollars per head for removal, or the right which each individual had to claim removal "in a suitable steamboat or baggage-wagon, accompanied by a physician;" and the only provision which remained in regard to the distribution of the $300,000 for claims, spoliations, &c., was the manner of the ascertainment of the objects to which the sum should be paid. The pay for one class of reservations and the expenses of removal were all taken from the five million fund, and had to be borne out of the fund of $600,000. In other words, while certain valuable privileges of the Cherokees were abolished, amounting to an indefinite sum, by which the United States were gainers to the amount of millions, besides being relieved of a troublesome population, the Cherokee people were to be made certain of a much larger sum for *per capita* division. There were now stricken from their schedule "expenses of removal, claims and spoliations."

This is not the proper place to adduce arguments on a question so plain.

We will refer at once to the appropriation bill to carry into effect the provisions of this treaty. The first bill is to be found on page 453, 9th vol. of Laws of United States, and was approved July 2, 1836. It is necessary to examine this act with some care, as a report of the Commissioner of Indian Affairs, dated November 29, 1839, shows several errors from the haste of examination, both with regard to the appropriation for the extinguishment of the titles for certain Osage half-breeds, and on the subject of "marshalling the accounts." The only provisions which at all affect this subject are as follows: "For the amount stipulated to be paid for the lands ceded in the first article of the treaty with the Cherokees of the 29th of December, one thousand eight hundred and thirty-five, deducting the cost of land to be provided for them west of the Mississippi, under the second article of the treaty, four millions five hundred thousand dollars."

The bill then provides for six specific appropriations (not one of which is chargeable to the $5,000,000 or to the $600,000 fund) amounting in all to $131,105.

Then occurs the appropriation of $600,000 in these words: "For the removal of the Cherokees and for spoliations, according to the third article of the supplementary treaty with the Cherokees of the 1st of March, 1836, six hundred thousand dollars."

Congress thus regarded the treaty in its true light, as a supplementary treaty, with specified objects, and not as a mere addition to the general fund.

The question probably here, as properly as anywhere else, presents itself, what objects contemplated in the treaty were not provided for by these acts of appropriation?—and there were certainly many objects of expense, such as an army of valuing agents, superintendents of removal, committee of thirteen Cherokees, physicians, medicines, and various unavoidable contingencies which nobody ever dreamed of at that day, which were no more chargeable to the Cherokees than the $56,105 already mentioned, appropriated to pay for "Osage reservations," "Union Mission," "ex-
penses of commissioners, clerk, and interpreter.” These were the incidental expenses of executing the treaty, all of which were intended by the contracting parties to fall upon the United States.

And, secondly, there were certain benefits still existing in favor of the Cherokees, which, owing to the indefiniteness of the amount, were still unprovided for. These were the value, in money, of two classes of reservations, and also spoliations arising under the 16th article of the treaty.

On the 6th of December, 1837, (see Opinion-book of Attorney General, page 1161-2) the Attorney General, in answer to sundry questions propounded to him, says “the 13th article, (of the treaty of 1835-6) in order to settle all claims for reservations granted under former treaties, made provisions for all such claims as follows:

“1st. Those reservees who had not sold or conveyed their reservations, and had complied with the terms on which they were granted, but whose reservations had been sold by the United States, were to be paid by the United States the present value thereof, as unimproved lands.”

“2d. Those who had been obliged by the laws of the States to abandon their reservations, or to purchase them from the States, were to be paid by the United States the amount paid to the State, with interest, or, if obliged to abandon, the present value of unimproved lands.”

“3d. The reservations not sold by the United States, and the conditions of which had been complied with by the reservees, were confirmed to such reservees and their descendants, and were to be granted to them; and this was to extend to all reservees under the treaty of 1817, although by the treaty of 1819 these reservations were included in the unceded lands.”

The learned Attorney General thus gives a somewhat careful analysis of the third supplementary article, and then makes the following statement:

“In the event of an answer in the affirmative of the above question, (are all or any of the reservees or claimants to reservations under the twelfth, thirteenth, and supplementary articles of the treaty of December, 1835, with the Cherokees, entitled to compensation in money, in lieu of their interests?) the following questions are proposed:

“2d. Must such a compensation be provided by the United States, or must it be paid by the Cherokees?”

“3d. If by the Cherokees, must all be satisfied out of the $600,000 set apart in the supplementary articles?”

“4th. Should the $600,000 be deemed applicable, and should prove insufficient to effect all the objects for which it is provided, how is it to be divided? and how are the objects not completed to be accomplished?”

“These questions,” says the Attorney General, “may conveniently be answered together.”

The thirteenth article closes with the following provision: “It is expressly understood by the parties to this treaty that the amount to be allowed for reservations under this article shall not be deducted out of the consideration money allowed to the Cherokees for their claims for spoliations and the cessions of their lands, but the same is to be paid for independently by the United States, as it is only a fulfilment of former treaty stipulations.”

“The consideration money here referred to was, first, $5,000,000 mentioned in the resolution of the Senate referred to in the treaty; and,
secondly, the sum of $300,000 conditionally provided in article first. The second and third supplementary articles grant the sum of $600,000 for the express purpose of removal and all claims of every nature and description against the government of the United States not herein otherwise expressly provided for, and to be in lieu of said reservations and pre-emptions, and the sum of $300,000 for spoliations described in the first article of the above mentioned treaty. This sum of $600,000 is to be applied and distributed agreeably to the provisions of said treaty, and any surplus which may remain after removal, and the payment of the claims so ascertained, shall be turned over and belong to the education fund."

"These provisions are to be taken in connexion with the unabrogated parts of the original articles; and, thus regarding them, I am of opinion—

"1st. That the compensation to be made to reservees, of the first and second classes above mentioned, must be paid by the United States, and not out of the moneys allowed by the treaty to the Cherokees. This was expressly engaged by the 13th article, and is not altered by the supplement."

The learned Attorney General then proceeds to say that the reservees of the third class lose their residences, but get compensation in money out of the third supplementary article; that pre-emptions were only inchoate rights which never were perfected; and that they were abolished, "and inured to the benefit of the nation," "because," continues the Attorney General, "no particular individual, at the making of the treaty, had any pre-emption right," &c. Exactly how the abolishing of pre-emption rights inured to the benefit of the Cherokee nation, it is difficult to see. That such a measure greatly inured to the benefit of the United States, there can be no doubt.

We have not quoted this opinion for the purpose of grubbing out that part which is favorable to our cause. We would leave that to those who would seize the third proposition of that opinion as an authorization for the illegal application of the five million fund.

The opinion, so far as quoted by us, is little more than a recapitulation of such provisions of the treaty as the Attorney General discussed. It was approved by the War Department, and transmitted to the commissioners at the time as their rule of action; and although, from the peculiar language of the treaty constituting that commission, they were independent tribunals, yet is the opinion entitled to respect; nor does the opinion, as we will hereafter show, warrant any other construction than that already contended for.

The Commissioner of Indian Affairs, it is true, on the 29th of November, 1839, suggested a somewhat different reading to the opinion of the Attorney General; but that report of the Commissioner, with all due deference we must say, was made soon after he came into office, and does not show his usually logical research. It is inconsistent with itself, because it first assumes that it matters not how the accounts were marshalled, as it would be all the same to the Cherokees; and afterwards assumes, that the amount appropriated under the third supplementary article was more than sufficient for the special objects enumerated, (both of which assumptions are unwarranted by the facts;) and "a fortiori" he asserts, that had the Attorney General known that the Cherokees had more money, he would have given a different view of the liabilities of the United States. We know that the quantity has often been made an excuse for robbing
Indians of land; but never, until the New Echota treaty, did we hear of the agrarian principle being applied to their money.

The Commissioner admits "that the opinion of the highest law officer of the government on this subject must be taken as conclusive."

The position, therefore, is established, that reservations of the first and second class debts against the United States were to form the subject of subsequent appropriations. This opinion of the Attorney General was transmitted by the War Department to the Cherokee commissioners appointed under the 17th article of the treaty, on the 12th December, 1837; and they were instructed to conform to the opinions, and "to transmit as early as practicable an estimate of the amount that will be required." (See report.) And on the 19th of June, 1838, they were instructed to make no payment whatever for reservations under the treaties of 1817 and 1819, but to report their adjudications in each case to the War Department.

It is enough for our present purpose to say, that no appropriation for such reservations has been made to this day; yet ye have official data for saying, that between $160,000 and $200,000 has been deducted from the five millions fund to pay for these objects, so universally admitted to form independent charges against the United States. The memorialists surely have the right to have this sum, which all admit has been wrongfully paid, reappropriated. And we may further remark, that although the Cherokee commissioners were, in the instructions issued to them on the day of ——, 1836, specially directed to invoke the services of valuing agents, and to keep a separate list of all who were entitled to spoliations under the provisions of the 16th article of the treaty, (and great were their number;) and although large amounts, as will hereafter be shown, were so ascertained, not one dollar has ever yet been appropriated to meet this charge. (See Senate Doc. No. 120, 2d sess. 25th Cong., p. 154.)

We will now advert for a moment to the history of the difficulties which arose in the execution of the treaty. A great deal of this is spread over document No. 120, 25th Congress, 2d session.

Major Benjamin F. Curry was immediately charged with the superintendence of removal; and it was also made his duty to appoint the valuing agents, under the 9th article of the treaty. A small army of these were appointed, (and, by the way, for months and years they were paid out of the Cherokee funds.) General Wool was invested with the military command; Wilson Lumpkin and William Carroll (afterwards John F. Kennedy) were appointed commissioners under the 17th article. Their instructions were issued on the 25th July, 1836. (See Senate Doc. No. 120, 2d sess. 25th Cong., p. 149.)

In the instructions, that very able Commissioner, C. A. Harris, who was familiar with the understanding of all parties, separates the $600,000 fund and says: "The sum of three hundred thousand dollars is appropriated to pay claims for spoliations; if they shall fall short of this sum, the balance will be applicable to the expense of removing the Cherokees." The census of the nation had now been ascertained, and the number ascertained to be 16,743 souls, besides 1,592 slaves. And although many of the leading Cherokees undertook to remove themselves, and received the commutation therefor of twenty dollars per head, (being all that was allowed by the treaty,) yet it soon became apparent that the estimate of $300,000 for removal would be too small. Experience soon found that
nothing would be left from spoliations to defray this expense, for it will be recollected that the third class of reservations were chargeable to this head also. It had not at that day entered into the mind of any one that the five millions fund could be made answerable for this deficit. Such a construction would have been considered a great outrage of the instrument, which at last had to be enforced, as to many, at the point of the bayonet.

A difficulty also occurred in regard to subsistence. The treaty limited the sum to be paid to $33 33 cents per head. The contract let by Capt. Collins would cost a much greater sum. It was also made one of the grounds of opposition to the treaty by that party of Cherokees who opposed the treaty, that, by the 8th article of the treaty of the 6th of May, 1828, the United States were bound to subsist emigrants at their own expense; and that now the pittance for which the country was ceded, was made chargeable with this enormous expense. These difficulties increased, until it became necessary to take legislative action on the subject.

Accordingly, we find that on the 5th of June, 1838, the Committee on Indian Affairs, (through their able and humane chairman, Hon. Hugh L. White,) after a full review of the whole subject, made a report. (See Senate Doc. No. 466, 25th Cong., 2d sess.) Among other things, they say: "By the treaty before referred to, the sum of six hundred thousand dollars was agreed to be paid by the United States, for the purpose of indemnifying those who had been injured by depredations committed by citizens of the United States, and for the purpose of enabling the Indians to remove to their new homes. How this fund has been disposed of, and whether any, or what part of it, yet remains to be expended, the committee do not know."

"They believe the five millions of dollars given by the treaty as the difference in value between the countries exchanged, and the six hundred thousand dollars before mentioned, allowed for spoliations and a fund for removal, constitute a very liberal consideration on the part of the federal government, yet the committee would feel much better satisfied that too much should be done for the Cherokee than too little. If, therefore, the voluntary grant of an additional sum can be made the means of hastening their removal to their new homes, of dispensing with the use of a large military force, and of insuring confidence in the justice of the government, they believe economy, humanity, and peace will be best consulted by making the grant."

"With a view to attain these objects, the committee would recommend to the Senate that in the passing of some appropriation bill, yet to be acted on, an item be inserted placing a reasonable sum of money at the disposal of the Executive."

And on the 23d of May, 1838, the House of Representatives by resolution called upon the War Department for an estimate of the appropriation, proposed to be made. The Secretary of War, on the 25th of that month, in answer to said resolution, communicates to the House the following estimate:

The payment of the expenses of removing the remaining Cherokees, estimated at 15,840, at $30 per head $475,200 00
Amount on hand applicable to that purpose 39,300 00
Balance to be provided for 335,900 00
If it should be deemed expedient to make any further provision for the payment of the subsistence of the emigrants for one year after their arrival west, it will require, estimating the whole number at 18,335, thereby including those who have already emigrated, and allowing the amount stipulated to be paid by the treaty, viz.

$33 33 per head 611,105 55
Add for the contingencies, under estimates, both of number to be removed and of expenses to be incurred 100,000 00

The amount of the annuities, payment of which is asked for by the delegation 33,330 00

$1,080,335 55

The annuity of $33,330 is shown by the report of the committee of the Senate, last referred to, to have been provided for in the commutation of the annuities. The bill took the course recommended by the Senate committee.

And in the appropriation bill of that year, approved June 12, 1838, entitled, "An act making appropriations for preventing and suppressing Indian hostilities for the year 1838, and for arrearages for the year 1837," we find the following sections:

"Sec. 2. And be it further enacted, That the further sum of one million forty seven thousand and sixty-seven dollars be appropriated, out of any money in the treasury not otherwise appropriated, in full for all objects specified in the third article of the supplementary articles of the treaty of 1835, between the United States and the Cherokee Indians, and for the further object of aiding in the subsistence of the said Indians for one year after their removal west. Provided, That no part of said sum of money shall be deducted from the five millions stipulated to be paid to said tribe of Indians by said treaty," §2.

"Sec. 3. That for satisfying all claims for arrearages for annuities, for supplying blankets and other articles, for clothing the Cherokees who are not able to supply themselves, and which may be necessary for their comfortable removal, and for medicines and medical assistance, and for such other objects as the President shall deem proper to facilitate the removal of the Cherokees, one hundred thousand dollars be appropriated out of any money in the treasury not otherwise appropriated."

As superabundance of proof, we have given the history of this act, as an exposition of the intention of the law-makers. This, however, was not necessary, as the language itself is sufficiently explicit. The intention was to aid in the object specified in the third supplemental article. The estimate shows that there was also an intention to relieve the general fund entirely of the charge for subsistence. The language of the law is also to the same effect; and had the benevolent and liberal objects of the legislators been pursued, the $5,000,000 fund would have been entirely relieved from every charge for subsistence as well as removal. In other words, the government had at last resolved to fulfill her obligations still existing under the treaty of 1828, and never yet abolished, so far as removal and subsistence are concerned. Here, in truth, "in order to insure..."
confidence in the justice of the government," Congress had given, not a "voluntary grant," but had passed a law to cover the expense of a pre-existing obligation, made and entered into at a time when millions and millions would have been paid to have prevented the catastrophe, dreadful, heart-rending, and ruinous to the Cherokees under the operation of the State laws.

And if any doubt before existed as to who should pay for the medical attendance and medicines, for valuing agents, interpreters, conductors, &c., &c., as the treaty provided and the President might direct, that was now settled beyond cavil; just as a previous act of appropriation had settled the question about the pay of the "commissioners and their clerks," the pay for "Osage reservations for union missions," &c., &c.

The only objects yet remaining unprovided for, and which are yet unprovided for, are,

1st. Pay for reservations under the thirteenth article of the treaty, as decided by the Attorney General; and,

2d. Pay for spoliations to such as were forcibly ousted from their possessions.

These were not provided for by the act of 1838, because, in the language of the Secretary of War, of the Indian Commissioner, and of the late Attorney General, (as appears in their unpublished reports,) "the appropriation of 1838, of $1,047,067, was only an enlargement or extension of the $60,000 provided for in the 3d supplementary article, and for the additional objects of subsistence." These were special objects; this a special appropriation. The supplemental treaty limited and specified its objects as to numbers; the consecutive history as to the subject-matter; other parts of the treaty, to be taken according to the universal rule as pari materia of the same law, divided the sums to be expended, and limited the special objects to certain amounts. The appropriation bill of 1838 provided for the same objects in general terms, and extended its provision to another object. But as under the treaty the executive officers were limited to twenty dollars per head for removal, they might now perhaps justify themselves in looking to the estimate and the history of the legislators—"the old law, the mischief, and the remedy"—for an interpretation of a section which, owing to the shortness of the time, was made a rider upon another bill, the subject-matter of which was thought to be sufficiently applicable. Thus the report of the committee, and the estimate of the Secretary of War, become the proem or preamble to the general provision, which, in its language, is limited as to its objects.

By this rule of interpretation, which can only be allowed in favor of the grantor or the party binding themselves ex necessitate rei, the sum to be allowed for removal may be extended from twenty dollars per head, allowed under the old law, to thirty five dollars per head, allowed under the new law remedial. The old law allowed them twenty dollars per head for removal; the mischief was the smallness of the estimate; the remedy was the enlargement of that sum; the obligation to remove the Indians resting on the United States. But the legislature, in expressing their intention, fall back upon the journals of Congress, and use their adopted estimates as a preamble. Now, if it may be used for one purpose, it must be used for another; and if the whole estimate be taken together, we find only two instead of four objects expressed; spoliations and reservations being wholly left out of the account. And the estimate stands for re-
moval and subsistence alone, a hundred thousand dollars, being an "under estimate," based upon the hypothesis that the numbers estimated might fall short of the actual number to be removed and subsisted; whereas, the memorialists have abundantly shown, the number estimated was one-fourth too much in both cases; which should, in fact, leave one-fourth in the treasury, applicable to the education fund, or, under the most favorable construction, to the United States, applicable, first, to the payment of "spoliations;" secondly, to the payment of a particular class of reserves; and, lastly, to the purposes of education.

Will it be said that any portion of this fund was a voluntary grant, and that, therefore, the United States might misapply it or recall it? They could no more do so than they could recall the donation to Mrs. Harrison, or to any other donee. Like all other funds appropriated under the treaty, the moment the amounts were appropriated, that moment the United States became the trustee of individuals of the Cherokee nation, to whom the funds belonged, for the amounts which should respectively be ascertained to be due them; and the trustee of the body politic of the Cherokee nation for so much as was to be invested in State stocks, being no more nor less than $500,000.

Now, the amount to be ascertained in favor of individuals was to be ascertained by commissioners appointed by the President of the United States, who, by the aid of valuing agents, (see article 9th,) and emigrating agents, (see article 8th,) and thirteen Cherokees, (see article 12th,) were to ascertain the amounts due individuals respectively. The removal and subsistence certificates became requisitions on the treasury of the United States; the certificates of the commissioners, made in pursuance of their final decrees, for any of the objects specified in the treaty, were of a like character, and were payable out of the trust fund, or out of the treasury of the United States, according to treaty stipulations. The balance remained in trust in the treasury of the United States, for the several individuals entitled to per capita division, according to census.

That great and learned man, the lamented Legaré, just before his death, when speaking, as Attorney General, in regard to the funds appropriated under this very treaty, says:

"The government is a mere stakeholder for the use of those who are really entitled to the proceeds paid over under the treaty. The question who, of a number of citizens laying claim to the whole or part of the proceeds, are so entitled, is one to be adjudicated by the courts of their common country." [Meaning the commissioners appointed to adjudicate claims.]

Again: He continues, "It is true that the government, as a stakeholder, cannot be compelled to answer in our courts without its consent. But this does not relieve it, in foro conscientiae, from its duties as trustee to see justice done according to the constitution. Neither does it, or can it, exempt from responsibility any individual who happens to be put in the possession of the funds affected with such a trust." (See the Attorney General's opinion in the case of Johnson K. Rodgers vs. the United States, delivered May 19th, 1843.)

This was perhaps the last opinion of that profound jurist; and it fixes beyond a doubt the trust character of the whole $6,647,067 already appropriated, as well as the sums, whenever they shall be appropriated, already adjudicated, as provided in the 13th and 16th articles of the treaty.
Of the soundness of the law and the principles, there can be no doubt. It therefore only remains to be seen to what credits are the United States entitled for sums lawfully adjudicated and paid out of the $4,500,000.

These credits could only be obtained legally: first, for the price of improvements provided for in the 9th article of the treaty.

2d. For the several objects provided for in the 10th article.

The schedules showing the valuation of all improvements were forwarded to the office of the Commissioner of Indian Affairs, as early as 1836-7.—(See Senate document No. 120, 2d sess. 25th Congress, p. 154.)

And on the 2d of June, 1838, the Commissioner of Indian Affairs reports these valuations at "about $1,000,000."—(See Senate document No. 410, 2d session 25th Congress, page 3.)

The memorialists give credit for exceeding sixteen hundred thousand dollars paid for improvements. But they very properly allege that over half a million of dollars paid was either not provided for in the treaty, or, if provided for, should have been paid as "spoliations;" not under the third supplemental article, but under the 16th article of the treaty.

It will be recollected that the laws of Georgia were extended over the Cherokees in 1828. Emigration at once commenced. All emigrants were paid for their improvements. Under the laws of Georgia, and under the opinion of Attorney General Berrien, already quoted, these improvements were rented out. They had, however, in all cases been transferred by the emigrant Cherokee to some neighbor, to whom, under the treaty of 1835, they were again valued, and the occupant allowed rent by the commissioners.

Again, it was an early and special object of the laws of Georgia to dispossess all reservees who had taken reservations under former treaties, became citizens of the States where they were situated, and then returned to the nation. These, and many others, including the very richest men of the nation, were all dispossessed in favor of Georgia grantees.

For a true and summary history of these extraordinary proceedings, see Senate document 286, 1st session 24th Congress, pp. 4, 5, 6.

These persons et id omne genus were all paid for their improvements, and then allowed “rents” from the day of their ouster until the 23d day of May, 1838, being the expiration of two years after the ratification of the treaty.

We will here cite a few cases from the books now before us, in order that the attention of the committee may be called to an examination of the records.

That the second class of these unfortunate persons were entitled to some remuneration for these cases, is not denied. But that the common fund, or any portion of the four million five hundred thousand dollars, should be subject to such a charge, is warranted by no principle of justice.

The first case which we cite is that of Lewis Ralston:

It will be seen that Ralston had the place of Charles Duncan and several others valued and paid for; Duncan, it will be seen, from the rolls of file in the Indian Bureau, had been paid for this idea of improvement, and had emigrated to Arkansas under the treaty.

Ralston’s valuation, as appears from the map in the exhibit, is as in the exhibit marked A.

The valuation of Joseph Vann is as marked in exhibit B.
John Ross, who swore that he never would have any of the benefits of the New Echota treaty, had his improvements valued and paid for, in exhibit C.

It will no doubt strike you with some surprise, that the "spoliations for rent," in these three cases, amounted to fifteen thousand one hundred and four dollars; and this whole amount was charged under the 9th article.

The inquiry arises, what is there in this or any other article of the treaty that authorized the paying of these or any other Cherokee "rents?" The word, as is very justly remarked by the Commissioner of Indian Affairs, is not once mentioned in the treaty; and hence he truly said to the late board, that "there is not the least foundation for such an award." We have not had time to extract from the books an exact estimate of these unwarrantable payments; but we verily believe that they are half a million of dollars. Every dollar thus taken was put into the pockets of the rich, whose wealth consisted in "his houses" and "his fields," at the expense of the poor, whose wealth consisted in "his women and his children."

The only apology to be found for such a misapplication of funds, is in the sixteenth article of the treaty.

That article is in the following words, and forms a new class of claims against the United States: "It is hereby stipulated and agreed by the Cherokees that they shall remove to their new homes within two years from the ratification of this treaty, and that during such time the United States shall protect and defend them in their possessions and property, and free use and occupation of the same; and such persons as have been dispossessed of their improvements and houses, and for which no grant has actually issued previously to the enactment of the laws of the State of Georgia of December, 1835, [1833] to regulate Indian occupancy, shall be again put in possession, and placed in the same situation and condition in reference to the laws of the State of Georgia as the Indians who have not been dispossessed; and if this is not done, and the Indians are left unprotected, then the United States will pay the several Cherokees for their losses and damages sustained in consequence thereof."

The Cherokee commissioners and General Wool were specially instructed to see this article of the treaty enforced. For the manner of General Wool, in executing these orders, he received the severe censure of the legislature of Alabama, who, in their preamble, declared that "he (General Wool) had taken upon himself to adjudicate the claims of our citizens to the right of their possession—to their improvements; and, in the enforcement of those adjudications, had brought about a most ruinous and fatal conflict between our own most worthy citizens, the consequences of which have already resulted in their taking of each other’s lives."

The resolution charges nothing less than a wanton usurpation by the military over the civil authorities. These charges led to a court of inquiry; which enabled General Wool to invoke this 16th article of the treaty in his defence, and thus acquit himself before his brother officers triumphantly. (See Ho. of Reps. doc. No. 46, 1st sess., 25th Cong.) The proceedings of this court of inquiry contain much valuable information, and show the understanding of the War Department as to this article at the time.

We have referred to it here, particularly, as we have recently noticed, in the instructions issued by the Commissioner of Indian Affairs, a great misapprehension as to the intent and meaning of this 16th article of the treaty. The Commissioner supposed it had allusion to some fifty
reservees who took reservations in Georgia under the treaties of 1817 and 1819, and who were subsequently brought out by the United States, owing to the fact that the United States were under convention to extinguish the Indian title in Georgia. Now this article had no reference whatever to such reservees, but related to hundreds of cases which had arisen, and to many more which did arise within the two years.

The Commissioner and General Wool found it impossible to restore any of the persons dispossessed to their possessions, or to protect them in the enjoyment of their homes. The commissioners were directed to cause the valuing agents to "assess damages" in such cases, and to make separate reports thereof to the War Department. (See Senate document No. 120, 2d sess., 25th Cong., page 151.) Such reports we know, in some cases, were made; and notwithstanding no appropriations were made, yet the commissioners went on thus to pay immense sums, under the name of "spoliations for rents."

The Cherokees were thus made to pay, out of their own funds, the very damages which the United States had undertaken to pay. The practical operation of this rule may be thus illustrated:

The State of Pennsylvania runs a railroad over a citizen's land; but, by a law, promises to pay such person's damages. The citizen obtains an award ad quod damnum, by a jury, and presents himself at the treasury for the amount of the verdict. The State casts about and sells his house, and pays the citizen out of the proceeds. Here the United States, by treaty, guarantees to protect the Indians in their property and occupancy of their improvements for two years, and to restore such as had been dispossessed. This was only a reiteration, in a new form, of that which had been before solemnly guaranteed in thirteen different treaties. The Cherokees, fearing that new treaties would be no better enforced than old ones, had an additional guarantee, that "if this be not done, and the people be left unprotected, then the United States will pay the several Cherokees for their losses and damages sustained in consequence thereof." They restore nobody to possession, nor do they protect anybody in possession. Every attempt to do so brings the military into conflict with the civil authorities, who are remarkably jealous of State rights. The Cherokees complain, and ask for "their losses and damages sustained severally by them." Valuing agents are sent out as jurors ad quod damnum. They make their reports, and "to the court of their common country," the commissioners. The commissioners confirm their reports, and record their judgments, the standard in all cases being the yearly rents of the improvements from which the Indians had been driven from the time of his ouster to the expiration of two years from the ratification of the treaty. The judgment or decree stands; but when the certificates issue, in the nature of requisitions, the common fund of the Indians, held by the United States, their great trustee, is seized and applied to the payment. This rule, we are instructed to say, was at length abandoned, and very many sufferers of this class have not been paid to this day.

In considering, therefore, what further appropriations are necessary to carry out the several provisions of the treaty of 1835, too much consideration cannot be given—first, to the question, how much has been improperly applied to reservations? Second, how much has been improperly applied to the payment of damages and losses under the 16th article of the treaty, and charged under the 9th article? Third, what further appropr-
ation is necessary to pay Cherokees so dispossessed of their property and possessions, and not restored, and for whom no provision has ever been made? because the \textit{cestui que trust} has a right to call upon the trustee to correct his accounts. Fourth, what portion of the $2,900,000, shown by the memorialists to have been paid for the two objects of removal and subsistence, has been improperly paid? It was our intention to have established this whole doctrine of trusteeship; but the principle is well elucidated in the quotation from the learned and lamented Legare. The fund is a trust fund, and the memorialists are entitled to it, and there is no escape for the United States. The applicants are poor, and should not be driven to the expense of litigating their rights in the courts of your country.

Having said thus much, it would seem scarcely necessary that we should travel over a history of the misapplication of the Cherokee funds. That ground is well occupied by the memorialists. They present one startling fact, at which every honest man must shudder. The five million fund, according to the published documents from which they quote, has been made to bear an expense of some two millions of dollars for the two objects of "removal and subsistence," while the million six hundred and forty-seven thousand dollar fund has been drawn upon, to the tune of some two hundred thousand dollars, to pay for reservations which have been decided by the highest law officers of the government to be chargeable to the United States. The overcharges, in relation to the removal contract, have been subjects of peculiar aggravation. John Ross has been paid over "thirteen hundred thousand dollars, for removing about eleven thousand souls." (See House Doc. No. 1098, 27th Congress, 2d session, and House of Reps. No. 288, 3d session 27th Congress.)

This money has been made the instrument of the most tyrannical oppression to the memorialists. It is shown in the memorial that he yet denies that he ever received any portion of this money out of the treaty of 1835. Every person knows this to be a piece of great mendacity. Yet all must now admit that the payment was wrong, and unwarranted by the treaty, and a gross violation of a great and sacred trust by the United States.

Where is that protection so often and solemnly promised these memorialists by the United States? Let the blood of their slaughtered chiefs; let the cries of their helpless innocents, scattered from Vermont to the wilds of Arkansas; let the remaining signers of the treaty, driven from their country, and with the treaty in their hands, negotiated by the illustrious Jackson, answer the question. If, in their poverty, they are disgraced, your government, in its prosperity, is doubly so. If they are weak, helpless, and powerless, and borne down by a strong foe, every principle which binds man to man demands that your government should extend to them a helping hand. They demand this money, and they demand a country to shield them from the vengeance of those whom their money, wrongfully paid by their trustee, emboldened to the greatest outrages upon their persons.

They have asked you for a division of their common domain. If this cannot be granted, we pray you, in the name of that justice which ardently desires to render every man his due, to turn them not away. You are the guardian; they your wards, your children.

Pay them the money promised them under the treaty; give them some
consideration for their land, or their improvements on the lands granted to them.

Could the blood of their Ridge, their Boudinot, their Smith, and their West, speak from the ground, we are sure you would not be deaf. Could the ghost of that aged sire, whose martial deeds won laurels second only to those of the hero of the "Horse Shoe" and "New Orleans," now appear in your halls, not less bloody and terrible than Hector appeared to Aeneas, is there an American whose conscience would not upbraid him for the cruel neglect of his children and their descendants? That venerable brave, whose war-cry was never heard except when on the path of America's enemies, fell four years ago upon American soil. He fell for having placed his name to the same treaty with that second Washington of America, whose life yet lingers in the socket, surrounded by his friends, at the Hermitage. The liberality of an American Congress has just done justice to his name. Our prayer is, that, in his last days, no grim spectre may point his memory to the bloody corpse of his aged brother-in-arms, "the lion who walked upon the mountain top," and who fell a victim to his wise, yet fatal advice, under the solemn pledge of the protection of the warrior President of the United States.

The venerable ex President might indeed exclaim, "Shake not thy gory locks at me—it was not I that did it." But then the crime becomes a crime of the country, whose faith and protection the venerable Jackson had promised. We would not enlarge. All that we ask is an extension of that golden rule, the divinity of which your missionaries have taught these humble people to believe—"As ye would that others should do unto you, even so do ye unto them."

GEO. W. PASCHAL.
AMOS KENDALL.
S. C. STAMBAUGH.

PART III.—No. 1.

To the President of the United States:

The undersigned, delegates from the Cherokee nation, in discharge of the duty assigned to them, beg leave most respectfully, sir, to address to you this memorial, on the part of their much injured and suffering people. They earnestly invoke your attention to this, their prayer, and confidently rely upon the magnanimous and liberal spirit of the government, and the kind feeling of the American people toward the red man, to redress their present grievances, and to secure their future safety and tranquillity.

Since the year 1785, when, by the treaty of Hopewell, the Cherokees promised to bury the hatchet forever, they have never made war upon the white man; no—to the contrary. More than once they have stood by their brothers, when battling with fierce and faithless tribes, and have poured out blood freely, and without stint, in the cause of the white man. For this, they take to themselves no credit, as they considered it a duty; but, at least, it is an evidence of sincerity in their professions of fidelity to their white brethren.
By the treaty of Hopewell, the boundaries of the Cherokee nation were defined. By the treaty of Holston, in 1791, a cession of lands was made, and the 7th article thereof is in these words: "The United States solemnly guaranty to the Cherokee nation all their lands not hereby ceded." In 1794, another treaty was made at Philadelphia, confirming that of 1791, particularly as to boundaries. Another treaty, made in 1798 and '99, provides for a further cession of lands, and repeats the guarantee of the "remainder of their country forever, as made and contained in former treaties." Other treaties followed, providing for further cessions of land; and finally, in 1832, under the "treaty of 1835," our people were expelled their country at the point of the bayonet. In this forced movement of the nation, torn up by the roots, driven from their humble homes, and confined in camps open to the weather, many sickened and perished; and, on the long journey to the distant country allotted to them, many more of the aged and infirm, and of our women and children, sunk from exposure and exhaustion. Such, sir, unhappily, is too true a picture. But, in the midst of their distress and despair, the Cherokee warriors listened to the counsel of their chiefs, and made no attempt at resistance. To the white man, this forced emigration was bloodless. To the poor Indian, it was fraught with distresses and losses, which will long remain in the memory of the tribe. Is it, then, asking too much to save us from a recurrence of like scenes? Indeed! indeed! we hope not.

In the preamble to the treaty of 1828, it is said, that in the far west the Cherokees shall have a permanent home, and which shall, under the most solemn guarantee of the United States, be and remain theirs forever; a home that shall never, in all future time, be embarrassed by having extended around it the lines, or placed over it the jurisdiction, of a Territory or State; nor be pressed upon by the extension, in any way, of any of the limits of any existing Territory or State. The first article of this treaty defines the western boundary of Arkansas.

The second article runs thus: "The United States agree to possess the Cherokees, and to guaranty it to them forever, (and that guarantee is hereby solemnly pledged,) of seven millions of acres of land, to be bounded as follows," &c. "In addition to the seven millions of acres, thus provided for and bounded, the United States further guaranty to the Cherokee nation a perpetual outlet west," &c. &c. Now, sir, to relieve us from the apprehension which we cannot but feel, that similar dreadful scenes to those described above may occur again, and our people be again driven forth into the wilderness, we intreat that these guarantees and pledges of the government, so often repeated, be carried into effect by giving to our nation a patent for their lands west—a full title to a permanent home, as promised, where we shall not again be disturbed. Cannot this boon, or rather this mere act of justice, be granted to the remnant of the once numerous aboriginal people of this continent, whose lands extended from the Atlantic ocean to the river Mississippi, and which wide domain forms now the richest and most essential part of your great republic, supporting in affluence millions of your people? Surely, in exchange for such an empire, you will not disappoint the hopes of our people by refusing the only title to the comparatively little territory where it has been your pleasure to place them, in which they can feel secure. More than half a century ago, General Washington, that just, and good, and great man, made a talk to our fathers, and signed it with his great name. At the conclusion,
he says: "I shall subscribe my name to this talk, which shall be written in your book, in order to be preserved among you as a witness to our transactions together, and to which you may have recourse in future. This book you will sacredly preserve." We have preserved it sacredly, and now, in our great need, we have recourse to it. At the beginning of his talk, General Washington says: "I am highly satisfied with the confidence you repose in me, and in the United States, as your friends and protectors. We shall, indeed, rejoice in being the instruments of the Great Master of breath, to impart to you and your whole nation all the happiness of which your situation will admit; to teach you to cultivate the earth, and to raise your own bread as we do ours—to raise cattle—to teach your children such arts as shall be useful to them; and to lead you, by degrees, from one information to another, in order not only to better your situation on this earth, but, by enabling your minds to form a more perfect judgment of the great works of nature, to lead you to a more exalted view of the Great Father of the universe. Rest, therefore, on the United States, as your great security against all injury." These words of kindness sunk deep into the hearts of our fathers, and the result is, that our nation from paganism has been converted to the blessed faith of Christianity—from savage hunters, depending upon the chase for a precarious subsistence, to a civilized agricultural community. We have an alphabet of our own; and our written republican constitution and the simple laws suited to our condition are printed in our own language, as are the Holy Scriptures, many useful books, and a newspaper. We have eighteen public schools, and some private institutions of like character. Our people are generally moral, industrious, and well informed as to the public affairs of their country, and upon general subjects. We are, then, a civilized and Christian people; and we appeal to the sense of justice of the government and people of the United States to make us safe in the country we now occupy. Our position towards the United States is now changed; we are outside of any State or Territory; the policy of the government as to the removal of the Indians has been carried out; no State can now complain of intrusion on our part. We ask a new treaty which shall define distinctly our new position, direct the issue of a patent in fee simple for our territory, establish on a permanent footing our relations to the United States, and provide for the payment of our just claims. We ask, sir, the fulfilment of the terms held out to us by General Jackson and by Mr. Tyler. The first, then President of the United States, in an address to our people east of the Mississippi, dated Washington, 16th March, 1835, urging us to go to the west, says: "The United States have assigned to you a fertile and extensive country, with a very fine climate adapted to your habits, and with all the other natural advantages which you ought to desire or expect. I shall, in a short time, appoint commissioners for the purpose of meeting the whole body of your people in council. They will explain to you more fully my views, and the nature of the stipulations which are offered to you. These stipulations provide—1st. For an addition to the country assigned to you west of the Mississippi, and for the conveyance of the whole of it by patent in fee simple; and also for the necessary political rights, and for preventing white persons from trespassing upon you." The other stipulations, eight in number, provide for our removal at the expense of the United States, payment for lands, and all just claims, &c. We thus briefly advert to this promise of President Jackson. We quote
now the words of President Tyler, in his letter to our delegation of September, 1841, in which he offers us indemnity for the past and security for the future. Mr. Tyler says: "I still propose, at a future day, to negotiate with you a new treaty. You may assure your people, that, so far as I shall have any power or influence to effect such results, not justice merely shall be done them, but that a liberal and generous course of policy shall be adopted towards them. Upon the ratification of the treaty contemplated, which shall give to the Cherokee nation full indemnity for all wrongs which they may have suffered, establish upon a permanent basis the political relations between them and the people of the United States, guaranty their lands in absolute fee simple, and prescribe specific rules in reference to subjects of the most interesting character to them and their remotest posterity, a new sun will have dawned upon them," &c. The execution of these offers of President Jackson and of President Tyler, which we think we have fairly earned by our progress in civilization, under the paternal advice of the great Washington, and by our forbearance, fidelity, and suffering, is all we ask, and we conceive it to be but simple justice.

The eastern and western Cherokees, by solemn, mutual agreement, have united and formed themselves into one body politic, under the style and title of the Cherokee Nation. The undersigned claim to be, and are in fact, the true and only representatives and authorities of the united people of the Cherokee nation, now present at the seat of government of the United States, as shown by our credentials. For confirmation of the fact that our people are united under a fixed and satisfactory government, and for an utter denial that there is any foundation for the complaints which have reached the ear of the government, of cruelties and oppression practised by our authorities upon the "old settlers and treaty party," we are perfectly willing to rest upon the report of the commissioners of the United States sent out less than a year ago to inquire on the spot, and report as to the real state of things in the Cherokee country. These are gentlemen of high character, and cannot be mistaken, or have been deceived in their conclusions upon the subject referred to them, and especially as two of them, Col. Mason and Mr. Butler, had long resided in the country, and were familiar with the course of events there. We beg leave, in conclusion, to make a few short extracts from that report, which we ask to be taken as part of this memorial. The commissioners say—

As to the act of union: "Under instructions from the War Department, Gen. Arbuckle called a meeting in April, 1840, for the purpose of forming a complete union of the Cherokee people, which broke up without any definite action. A second effort was made that resulted in bringing the parties together at Fort Gibson, in June, 1840, and the signing by the deputations or committees of each, of the second act of union, the 26th of that month."

"With regard to that meeting and its proceedings, it appears—

"1st. That a committee of the 'western Cherokees' duly attended, deliberated, and consulted together, for many days.

"2d. That they were regarded by General Arbuckle, and the delegation from the government of the 'eastern Cherokees,' which met them, as duly authorized representatives of their people; their authority to act as such not being questioned at the time."
3d. That their chief, or head man, Capt. John Rogers, though personally not well inclined to the union, lent the sanction of his presence all the time; that he nominated Andrew Vann, one of the head-men of his side, to be second chief of the nation, under the terms of the compact before it was signed; and afterwards, the same day, gave the toast, ‘what has been done this day—may it never be undone,’ (in taking wine with Richard Taylor, one of the committee of ‘eastern Cherokees.’)

4th. That the stipulations with regard to office were at once fully and satisfactorily carried out, and that many of those who now deny its validity, and several who signed it, took office, and the required oath, under the act, among whom are the son and brother of the ex-chief, (Capt. Rogers,) at the time, and now, considered two of the head-men of the western Cherokees.

5th. That Capt. Rogers and many others have received from the national treasury of the new government, thus consolidated, moneys for old claims, or services rendered under the old government; some more than ten years prior to the union.

6th. That the proceedings at Fort Gibson were never referred back to the people of the ‘western Cherokees’ for confirmation, nor does there seem to have been any intention of such reference. What was said in this connexion appears to have been in reference to the ‘constitution,’ which was furnished by the ‘eastern Cherokees,’ and subscribed to at the same time by the committee of ‘western Cherokees;’ and

7th. That the now complaining parties acquiesced quietly in the new government, which went into and long continued in operation, peaceably and uninterruptedly.

Of the committee of twelve, who signed the act of union of 1840, as deputies of the ‘western Cherokees,’ but now deny authority (except one) for so doing, seven of the number were chosen by the same party, the 6th of December, at Tahluntusky, with others, to represent their complaints before this commission! If the deputies, by whose instrumentality their government was merged, and the independence of their people, as a separate community, lost forever, acted, in 1840, ‘without authority,’ or even exceeded the measures of delegated powers in a matter so weighty, can it be believed that seven of the number would be deputed now to represent them in any capacity? Such abiding confidence in agents, unauthorized or faithless, is not characteristic of the red men, and widely departs from custom, as the dark and gloomy deeds recorded in their history mournfully attest.

The commissioners believe that the authority for the proceedings on either side, at Fort Gibson, in June, 1840, was adequate; that the benefits in which the western Cherokees were to participate, in the way of ‘per capita,’ &c., were calculated upon; and that the expectancy of such pecuniary gain induced many, and reconciled others, to unite as one nation under one government; while all, for the most part, were more anxious to see harmony restored among the Cherokee people than averse to the union—the measure generally believed at the time best calculated to insure it. And the commissioners are of opinion that the ‘act of union’ was acquiesced in, and virtually confirmed, by the Cherokee people.

The first general election was in August, 1841, when the voice of the aggregate people alone could be heard in deciding who should or should not then fill the various offices. But so completely do party lines seem
to have been obliterated at that time, that the majority of both legislative bodies, and of the officers generally, were from among those formerly known as 'western Cherokees.'

"Inquire whether any and what specific acts of violence or oppression, or deprivation of the possession of property, have been exercised upon the chiefs, or common Indians, of the 'old settlers' or 'treaty party,' since the arrival of the Ross party in the Cherokee country west, in 1838." (Letter of instructions)

"1st. Many specific complaints have been entered of the deprivation of liberty, by arrests alleged to have been made without just cause. Some of the arrests, it appears, were made on the requisition of the United States authorities, and others, in general, for sufficient cause; some on suspicion, in times of great excitement and alarm, when vigorous measures were deemed requisite for the maintenance of peace and good order. But it does not appear that the arrests have been numerous, or wantonly made, though it is likely that the surveillance exercised by some of the police companies may, in some instances, have been carried too far. The arrests complained of occurred in the autumn of 1843, none having been made since.

"2d. 'Deprivation of the possession of property.'

"Most of the complaints under this head refer to the national reservation of the salines, always held to be public property, and so declared by the old settlers in their laws as far back as 1829, and again in 1833, when they were re-enacted and amplified, but which fact they did not reveal to the commission. The existing Cherokee government, in 1841 and 1843, only confirmed and amended what their predecessors had established, as the sensible laws on the subject show. The authorities evince a commendable spirit of just regard for the rights of individuals, by appointing intelligent agents to value the improvements and outlay, with a view to reimburse those dispossessed.

"3d. 'Cannot enjoy their lives in safety.'

"The complainants have not shown in any case that life has been taken or endangered by the Cherokee authorities since the 'act of union,' except in the administration of wholesome laws. It cannot be denied that human life in the Cherokee country is in danger—great danger. But the danger lies in the frequent and stealthy incursions of a desperate gang of banditti—'half-breeds'—notorious in the nation as wanton murderers, house burners, and horse stealers, but whose fraternity is not of the dominant party; nor are the dangers from these outlaws most dreaded by the parties who send up their complaints of the insecurity of life.

"All the complaints admit that the forms of the law were duly observed; but in what community, even the most enlightened, do parties defeated or convicted, including sympathizing friends, feel satisfied with the judgment of the court or verdict of a jury?

"In view of all these ascertained facts, the allegation that 'they cannot live in peace in the same country with their alleged oppressors' is of little
weight, and ought not, in the opinion of the commissioners, to be entertained.

"The commissioners have discovered that even while on the spot, where they are able in most cases to elicit the truth, complaints have come up, either frivolous in the extreme, or not true. And it is believed that the 'old settlers' and 'treaty party' enjoy, under the 'act of union' and the constitution of the Cherokee nation, liberty, property, and life, in as much security as the rest of the Cherokees.

"The united people of the Cherokee nation. As a final and certain means of restoring the harmony and promoting the improvement of the Cherokee people, the commissioners beg leave strongly and respectfully to recommend that their authorities be heard in support of their claims on the United States, and that a new treaty be concluded on the just and liberal basis set forth and promised in the letter of his excellency President Tyler, September 20, 1841. By such a measure, it is believed, not only will the good faith of the United States be triumphantly shown, but they will be more than repaid for this liberal policy in the beneficial results to the Cherokee nation, and its rapid progress to the position of an enlightened and well ordered community.

"So great and desirable a result could not fail to have a commanding influence and moral effect upon the numerous adjacent tribes, far beyond any measure which the commissioners can recommend. And this policy would be in perfect keeping with the early designs of the general government, in its beneficial efforts to advance the red people from a savage to an enlightened race—from wandering hordes to agricultural and civilized communities.

"Upon the result of the experiment of the Cherokee people, in their praiseworthy efforts to live under a free and representative government of their own, and to become tillers of the soil, as recommended by all the sages of the republic, depends the success of the great system of Indian amelioration so ardently wished for by every philanthropist."

Such is the conclusion of the report of the commissioners, and your memorialists earnestly pray that the suggestion therein made be adopted and carried into effect.

WASHINGTON CITY, November 8, 1845.

JOHN ROSS,
DAVID VANN,
J. VANN,
JOHN LOONEY,
RICHARD FIELDS.
R. TAYLOR,
TH. WALKER.

PART III—No. 2.

WASHINGTON CITY, November 8, 1845.

MARCH 25, 1846.

HONORED SIR: In obedience to duty, the undersigned delegation of the Cherokee nation would most respectfully submit for your favorable consideration a memorial and protest, with the accompanying documents, from the
Cherokee authorities and people, signed by sixteen hundred and seventy-three male adults, without distinction of parties, relative to the affairs of their nation.

The papers embraced in these documents consist of two reports, one being made by Messrs. George Hicks, Stephen Foreman, John Thorn, and William S. Coodey, under instructions from the acting chief, and the other by a select committee of the national council; also, of two letters from Brigadier General M. Arbuckle to Major George Lowry, the acting chief, and of his reply to the same; and a letter from the acting chief to Colonel James McKissick, United States agent. They are marked thus—A, B, C, D, E, F.

The sentiments expressed by the Cherokee authorities and people on the various subjects of which these papers treat, in connexion with the memorial which we had the honor of addressing to your excellency on the 8th day of November, 1845, fully show the great object which our nation have so ardently desired to attain is that of a speedy and amicable settlement of their affairs with your government, by which their present grievances may be redressed, and their future safety and tranquillity secured.

In the consummation of this important subject, through the justice and magnanimity of your auspicious administration, we should rejoice to be the bearer of the glad tidings to our anxious and distressed people, and to dispel every foreboding cloud from their minds, so that they may be encouraged by every laudable incentive to devote themselves to the improvement of their condition, and to enable them to reap the fruits of their labor in peace, prosperity, and happiness.

We have the honor to be, your excellency's most obedient servants,

JOHN ROSS, Principal Chief,
R. R. TAYLOR,
RICHARD FIELDS,
DAVID VANN,
C. V. McNAIR,
STEPHEN FOREMAN,
T. WALKER,
JOHN THORN,
JOHN LOONEY.

To His Excellency JAMES K. POLK,
President of the United States.

PART III.—No. 3.

To the President of the United States:

Sir: In years past, many of us found it necessary, for the expression of our true wishes and opinions, and in support of our acknowledged rights to approach your distinguished predecessors in the character of memorialists.

The reasons which thus called us forth were of deep importance to us; when our public and private rights were at stake, and when gloom and fearful forebodings hung like dark clouds over our heads. After the trials and afflictions which pressed so heavily upon us in leaving forever the homes of our forefathers, in travelling over many long and weary miles to
our present location, and in once more uniting together and getting into successful operation a constitution and code of laws so well adapted to our wants and conditions, we fondly hoped that our national afflictions were at an end. We hoped that, after the many promises made to us of the right of self-government, and freedom from disturbance in the exercise of that right, it would never be necessary to intrude ourselves upon your notice, and ask your aid to secure it to us unimpaired by attacks from any hands, much less those of persons of our own blood and nation. But in this we have been mistaken. And we now feel compelled to approach you in the form of protest and supplication.

We ask your ear but for a moment. We have but few words to say. You are doubtless familiar with the history of events among the Cherokees, from the establishment of their government up to the time of the departure of the present delegation of the nation now at Washington.

But since then, and within a few weeks past, other events have occurred among us of a painful and exciting nature, and the origin and character of which have been greatly misrepresented by individuals of our country, who have seized upon them for the purpose of fostering prejudice against us, and working out sinister ends of their own, regardless of the rights, the feelings, and interests of their common country. We allude to the recent distressing and unfortunate murders that have been committed on our soil, and among our people. That you may more fully understand the causes and extent of these recent difficulties, we respectfully beg your patience while we trace rapidly the history of the last two or three years.

By referring to the report dated at Fort Gibson, January 17, 1845, and signed by General Roger Jones, Richard B. Mason, Lieutenant Colonel 1st Dragoons, and P. M. Butler, Cherokee agent, commissioners sent by your predecessor into the Cherokee country to investigate the complaints and difficulties in the Cherokee nation, you will find the following statement:

"The complainants, 'old settlers' and the 'treaty party,' have not shown in any case that life has been taken or endangered by the Cherokee authorities since the act of union, except in the administration of wholesome laws. It cannot be denied that human life, in the Cherokee country, is in danger—great danger. But the danger lies in the frequent and stealthy incursions of a desperate gang of banditti—half breeds—notorious in the nation as wanton murderers, house-burners, and horse stealers; but whose fraternity is not of the dominant party, nor are the dangers from these outlaws most dreaded by the parties who send up their complaints of the insecurity of life. Since the commission has been in the nation, not less than three or four wanton Indian murders have been committed; two within the line of a contiguous State. All the complainants admit the forms of the law were duly observed. The ample share in the offices of the nation by the western Cherokees, especially in the judiciary, (for the bench has been filled chiefly from among them,) ought to lull suspicion of partial administration of the laws, and at least encourage them in the reasonable hope of equal security in life, liberty, and property.

"In view of all these ascertained facts, the allegation that they cannot live in peace in the same community with their alleged oppressors is of
little weight, and ought not, in the opinion of the commissioners, to be entertained.

"The commissioners have discovered, that while present on the spot, where they are able in most cases to elicit the truth, complaints have come up either frivolous in the extreme or not true; and it is believed that old settlers and treaty party enjoy, under the act of union and the constitution of the Cherokee nation, liberty, property, and life, in as much security as the rest of the Cherokees."

It will be seen from the above that the insecurity of life among the Cherokees arose, not from the people generally, nor from any unkind feelings existing among them, but from the stealthy incursions of a number of banditti. This banditti consisted of Thomas Starr, Ellis Starr, Ellis Rider, Ellis West, and others, who, as is well known, have committed for three years past a number of the most cold-blooded murders and robberies. To enumerate all the bloody deeds committed by them is not deemed necessary. We need only state, that by their hands have been brutally murdered not less than sixteen persons, including citizens of the United States.

To put an end to these outrages, which so disgraced our country and placed in jeopardy the persons and property of all good citizens, no efforts were spared. Since the perpetration of the first of these unlawful deeds, the private citizens of the nation, as well as the officers, used every exertion, and spent many thousands of dollars to bring them to justice. But these efforts and expenditures, owing to the narrow limits of our jurisdiction, and the many evil disposed persons who would afford them protection and assistance, all proved unavailing. The people still forbore to resort to harsh measures to free the country of them, wishing at all times, and under all circumstances, however trying and exciting, to give full allegiance and submission to the laws of their country.

Thus these wicked, murderous men evaded every effort to bring them to justice, and became bolder and more dangerous from the increase of their gang, and the stealthy manner in which they always committed their murderous deeds. At length they came within three miles of Tahlequah, the seat of our government, while the council was in session, attempted to shoot Mr. R. J. Meigs, a white man by birth, but a citizen by marriage, robbed his house, and burnt it down with all its contents. At the same time they also murdered, and mangled in the most cruel and shocking manner, two of our brothers, without the least provocation. This last outrage, taken in connexion with so many others, greatly excited our whole people, and, although aimed only at a few murderers, who have been preying on us for years, and evaded every effort to arrest them, they have been most grossly misrepresented and seized upon by private citizens, in and out of our nation, for the purpose of furthering schemes of self-aggrandizement.
No effort has been or will be spared to torture them into political movements, to convince your government that our laws are unequal and oppressive, and that we cannot live together as one people. But against such construction we unanimously protest. The whole of these unfortunate disturbances have nothing political about them, being directed entirely against men who have run a long career of crime.

We do, therefore, most respectfully but solemnly protest against any private individuals of our country effecting any measure or measures of a public nature with your government. They have no authority to perform any act that shall be binding upon us. The delegation now at the seat of your government, composed of John Ross and others, including the bearers of this memorial, Stephen Foreman, Judge Thorn, and C. V. McNair, are the only persons authorized to transact and settle our affairs; their acts only will be binding on us.

Above all, we do most earnestly protest against any private Cherokees performing any act that shall impair in any way the integrity of our present country. That you may understand more fully the relations we hold as regards the time of our settlement in this country, those of us who are properly denominated old settlers attach to our names the letter O; those denominated treaty men, the letter T; and those emigrants, the letter E; but in this, our memorial and protest, we are as one man.

[Here follow the signatures, 1,676 in number, represented to be of male adults of all parties in the nation, but in the handwriting of eight or nine persons. Interspersed among the names are what purport to be copies of the proceedings of meetings in six different places in the nation, generally of the character of the following:]

At a meeting of citizens of the Cherokee nation, held at Tahlequah this day, in pursuance of a previous call, Colonel W. S. Adair was called to the chair, and appointed Stephen Foreman secretary.

The object of the meeting having been explained, the following preamble and resolutions were read and adopted:

Whereas the unsettled state of our affairs are such as render us deeply solicitous for the action that may be had thereon by the government of the United States; and whereas the recent disturbances have been greatly misrepresented by designing persons, to the detriment of our good name and the prejudice of our government and authorities; and whereas strenuous efforts are made by certain private individuals of our country to accomplish certain ends that are calculated and designed to subvert our institutions and impair the integrity of the Cherokee nation; and whereas, in view of these facts, it has been determined by the proper authorities of this nation to fill the vacancies existing in the lawful delegation of the nation now in Washington; therefore,

Be it resolved, That we recognise nothing of a party movement in the unfortunate disturbances that have recently occurred in our country, and earnestly protest against such construction being placed upon them in the adjustment of our difficulties with the United States government.

Resolved, That we protest, as one man, against any private citizens of our country, under whatever name and capacity they may profess to act, doing anything whatever with the United States that may at all impair any rights secured to the Cherokee nation, and that no such act will be binding on us.

Resolved, That our confidence in the honesty, patriotism, and ability to
settle all our public business with the United States, of John Ross, John Looney, David Vann, Thigh Walker, Richard Fields, Richard Taylor, Stephen Foreman, Clement V. McNair, and John Thorn, delegates of the Cherokee nation, remains full and unshaken.

Resolved, That, as the expression of our opinions and wishes, the following memorial, to which we affixed our respective names, be forwarded to the delegation, to be laid before the President of the United States.

Resolved, That we recommend to the friends and citizens of the Cherokee nation to hold meetings in their respective districts, and unite with us in signing this memorial.

Tahlequah, February 4, 1846.

Part III.—No. 4.—A.

Tahlequah, Cherokee Nation,
November 25, 1845.

Sir: In obedience to your instructions, we proceeded, on the 18th inst., to Flint District, "for the purpose of obtaining full information relative to the condition of affairs in that district, and along the line," and to use our best exertions to allay the excitement produced in that section by the late outrages at and near Mr. Meigs's, and the consequent death of Starr and Rider. In order to make our statement plain, it will be proper to premise that on Saturday night, the second instant, a number of men, among whom were Thomas Starr, Ellis Starr, Washington Starr, Suel or Ellis Rider, and Ellis West, came to the house of Mr. R. J. Meigs, presented a number of guns through a window, and demanded admittance. Mr. Meigs escaped through a back door, but was shot at by one of the party as he passed. They then fired the house, and every thing but the brick walls was reduced to ashes. This produced great excitement and alarm among the citizens. On the Tuesday evening following, the bodies of two Cherokees were found, about a mile from Mr. Meigs's house, murdered and mangled by the same miscreants, in a manner too horrible to be described. These things, in addition to at least sixteen other murders committed by these persons, many of them aggravated by circumstances of the most shocking barbarity, roused the feelings of our citizens to an extreme pitch of exasperation; and a number of persons formed themselves into a company to pursue the murderers. They went in search of them to their usual places of resort—the residence of the Starrings and Riders. The result was, the death of James Starr and Suel or Ellis Rider, and the wounding of Washington and Buck (or Wm.) Starr, sons of James Starr. The company not finding all the individuals known to have been concerned in the perpetration of these atrocities, assembled at Samuel Downing's, to defend themselves in case of an attack from them or their accomplices. The apprehension of such an attack was greatly increased by the fact that the company were ignorant of the object for which the United States troops were ordered into the vicinity.

On our arrival at Downing's, near Evansville, we learned that the number of persons in arms had been greatly exaggerated. Instead of two or three hundred, we found but about fifty, and that the number has at no time exceeded sixty.

In the course of the day many persons came, chiefly as spectators, and mostly without arms. Soon after we reached Downing's, the United States
agent came. He informed us that a number of persons had fled across the line for safety, fearful that their lives were in danger, and that it was reported by them that the killing of Starr and Rider was a party movement, and that some of them spoke of never returning to the nation, as they expected to get a new country to which they would move. The people present, however, assured us that no attempt had been made to injure any of them—that they had not at any time meditated any molestation or interruption to any one, excepting those known to have been concerned in the outrages which have so long disgraced the country and kept the people in dread of their lives. Of the truth of this statement we have no doubt.

In conversation with the agent on the subject of the people returning to their homes and laying down their arms, the question arose whether it would be safe to advise them to do so, while they had no assurances that these desperadoes would desist from their murderous practices. He agreed that it would not. We therefore advised them to disperse as a body, but to be on their guard.

The agent appeared anxious that those who had fled across the line should return, and said he would see as many of them as he could, and meet us again at ten o'clock the following day, at W. S. Adair's, for further conference. He also informed us that the United States troops had not been ordered out by any complaint or request of his, but at the instance of some individuals at Evansville, and vicinity, whose names he did not mention. After a friendly address to the people, interpreted by Judge Foreman, he departed apparently much pleased with the events of the day.

After further conversation with the people, our instructions were more fully explained, and such advice given by us as seemed to be necessary and proper, and best calculated to allay excitement and restore quiet. It may be proper here to add, that in all their excitement no unkindness has been shown to any citizen of the United States. No armed party has crossed the State line, and a general feeling of friendship has been manifested towards the whites.

On the following day we met the agent as agreed upon, a number of Cherokees being in attendance. He said he had seen many of those who had fled across the line, and that they appeared hard to convince. We told him that we had done all we could, and would now return to Tahlequah; that if those who had gone across the line would not return it was their own business, as they had gone of their own accord, and could remain as long as they chose. They had shown a determination, in our opinion, not to be satisfied—were striving to make this a party affair for effect—that they were invoking the sympathy and aid of the whites by false statements, and endeavoring to seduce, by false reports, as many as possible of our people to leave their homes and join them, merely for the purpose of giving some character or plausibility to their denunciations of the Cherokee authorities, and that we had no power to lay the national authorities at their feet.

Very respectfully, your obedient servants,

GEORGE HICKS,
STEPHEN FOREMAN,
JOHN THORN,
WM. S. COODEY.

Major George Lowry, Acting Principal Chief.
Report and resolutions made by a select committee, and unanimously adopted by the National Council of the Cherokee nation, respecting disturbances and the extraordinary course and high-handed conduct of Brigadier General Arbuckle.

The committee to whom were referred two communications from Brigadier General Arbuckle, and other papers relative to the excitement and disturbances in the country, beg leave to remark: That the origin of this excitement is to be sought in events which took place more than two years ago, and that a brief statement of facts relative to the conduct of certain men, at that time, will be necessary, in order to set this matter in its proper light. In the summer of 1843, as is well known, a conspiracy was formed for the purpose of subverting the government of the nation. The first overt acts of which were the destroying of the election papers of Saline district, the murder of Isaac Bushyhead, and the brutal maltreatment of David Vann. Jacob and John West, parties to that conspiracy, were apprehended and tried. During the progress of the trial another conspiracy was formed to rescue the prisoners out of the hands of the officers of the law. At the same time, and by the same parties, was matured a regular system for murder, robbery, house-burning, horse-stealing, and other depredations. The first victim was Kelly, a citizen of the United States, murdered in cold blood for the sake of a few dollars. Mr. Vore and his family, and a traveller staying with them for the night, all white people and citizens of the United States, were the next victims of the operations of this horrid confederacy. This family was murdered, the house and store robbed, and the buildings burnt, together with the bodies of the dead. Among the immediate agents in these inhuman deeds were Tom Starr, Ellis Starr, and Bean Starr. The murder of the Vore family was but a part of an extensive plot against the lives and property of a number of our most valued and peaceable citizens; but the further prosecution of which was happily defeated by disclosures made by individuals of their number, by which it was ascertained that the master-spirit in originating, planning, and directing this plot, as well as the general system of rapine and blood, was the notorious James Starr. All which was confirmed by the dying testimony of his own son, Bean Starr.

To protect the community against the outrages of this desperate gang, and, if possible, to apprehend and bring them to justice, police companies, for one year, were organized in the fall of 1843, and in 1844 were continued for another year. On the 18th of October last, their term of service expired, and there was no police company in the nation. No sooner was this ascertained, than these desperadoes started from their hiding places, became emboldened in their career of crime, and on the 1st of November perpetrated some of their most daring acts of butchery, robbery, and arson, in the very face of the national council still in session.

It is to be borne in mind that it was not the sympathy and alarm, produced by these fresh acts of outrage, that roused the people at once to take arms against this banditti. It was the long suppressed, concentrated feeling of indignation, exasperated by the continued series of butcheries which they had practised on our citizens, and the facilities afforded them.
by their friends and advisers for the further perpetration of crime, and the evasion of the penalties of the law.

We are far from justifying rashness and violence under any circumstances, but there may be cases in which are many and strong palliating circumstances. If in any case the maxim of the committee of the "treaty party," so called, in their complaints to the late United States commission, that "necessity became a law," can be admitted, that of the death of Starr and Rider is surely one. Thousands and thousands of dollars had been expended in efforts to procure the arrest and trial of these men, not only without success, but without checking the progress of their work of blood among our citizens; and all this chiefly by the management of James Starr.

But all this is said to be a party matter. It may be well to inquire who made it so. Did any act of the national authorities make it a party matter? Have they enacted laws to punish any course of conduct not criminal? Let the laws be examined for an answer. But the Stairs, and the Wests, and the Riders, it is said, are treaty men; then let those who recognise murderers, and horse-thieves, and house-burners to be of their fraternity, bear the responsibility of such recognition. The authorities of the nation, and the people sustaining the authorities, are not to be held accountable for their acts. Do those who call themselves the "treaty party" wish to be considered as keeping up this gang of marauders to prey upon and kill their countrymen who differ from them in opinion? Let the advocates of these worthless, blood-thirsty wretches answer.

The committee, to illustrate more clearly the absurdity of the charges lavished upon the authorities of the nation, and efforts making to prejudice public sentiment abroad, would call the attention of the national council to the report of the commission appointed on the 18th October, 1844, "to examine into the causes and extent of the discontents and difficulties among the Cherokees." It will be recollected that the "treaty party," in the most positive and imposing form, had repeatedly sent up their complaints to the government of the intolerable oppressions practised upon them by the "Ross" or dominant party; these were represented as being so grievous that "they could not enjoy their liberty, property, and lives in safety, and that it was impossible for them to live in peace in the same community with their alleged oppressors." The commission was specially instructed to inquire into every alleged act of "violence, oppression, or deprivation of the possession of property," &c., since the arrival of the "Ross party" in the Cherokee country west, in 1838. The treaty party appointed a committee of twenty-four persons, (Ezekiel Starr, chairman,) to set forth and substantiate their complaints. Numerous specific charges were preferred by them, and all their energies concentrated in their support. After a full, fair, and patient investigation of all matters, the commissioners terminated their labors by an elaborate report to the Secretary of War, dated at Fort Gibson on the 17th of January, 1845. In reference to these charges, they say—

"The complainants have not shown in any case that life has been taken or endangered by the Cherokee authority since the "act of union," except in the administration of wholesome laws. It cannot be denied that human life in the Cherokee country is in danger—great danger. But the danger lies in the frequent and stealthy incursions of a desperate band of
banditti—‘half-breeds’—notorious in the nation as wanton murderers, house-burners, and horse-stealers, but whose fraternity are not of the dominant party, nor are the dangers from these outlaws most dreaded by the parties who send up their complaints of the insecurity of life. Since the commission has been in the nation, not less than three or four wanton Indian murders have been committed; two within the line of a contiguous State. In view of all these ascertained facts, the allegation, that they cannot live in peace in the same community with their alleged oppressors, is of little weight, and ought not, in the opinion of the commissioners, to be entertained.” “The commissioners have discovered that, even while on the spot, where they are able, in most cases, to elicit the truth, complaints have come up either frivolous in the extreme, or not true. And it is believed that the ‘old settlers’ and ‘treaty party’ enjoy, under the ‘act of union’ and the constitution of the Cherokee nation, liberty, property, and life, in as much security as the rest of the Cherokees.”

Not a single charge or allegation by the “party” was established. Wearyed with complaints and agitation, the people were anxious for repose, and for a brief space the elements of discord and crime were apparently lulled. It was the stillness which precedes the storm. The illusion passed away in another terrible outbreak of the banditti, horrible in its character, and designedly insulting to the authorities of the nation. A portion of the people, feeling that the laws had failed in the object of protection to the innocent and punishment of the guilty, acting upon a cherished maxim of the friends of lawless vagabonds, that “necessity became a law,” punished some of the wicked instruments of these continued outrages. When lo! the whole country is convulsed; a martial display of United States troops; the authorities of the nation officially charged with high crimes, and denounced in language of threat, by Brigadier General Arbuckle. All upon wild rumor, or supposed facts.

On a former occasion, in September, 1843, when the country was thrown into a state of much alarm by the discovery of certain plots, before adverted to, and consequent murders, General Taylor, then in command of the 2d military department, writes to the principal chief, and says: “The recent murder of Vore’s family has given rise to many rumors, from which it is difficult for me, in the absence of the agent, to gather authentic matter for a report to Washington. I will thank you to communicate whatever information you may deem proper to impart in relation to the outrage, and all the circumstances attending the pursuit of the individuals supposed to have committed it, as well as any other intelligence calculated to correct the erroneous and mischievous impressions too often derived at Washington from the crude representations of the public prints.” Again, in October following: “It is only necessary for the agent to represent to the commanding officer of Fort Gibson that military force is required, to have it promptly furnished.” “There is, I fear, too much reason to believe that much of the excitement in the Cherokee nation has proceeded from evil-disposed people in the State; and that to the same cause may perhaps be traced many of the recent robberies and murders in the nation.” In the same month the assistant adjutant general issued a special “order,” (No. 24,) in reference to these outrages and the employment of military force, and is particular to restrict the commandant of Fort Gib-
son, in sending out troops, that it be done "when called upon by the Cherokee agent, or acting agent;" (see 2d, 3d, and 4th sections.)

General Taylor was desirous of obtaining authentic information from the United States agent, or, in his absence, from some other reliable, responsible source; and that military action should be based on information furnished by the agent. No information was sought by Gen. Arbuckle from either the agent or chief. Why it has become necessary now to pursue a course of policy at variance with that practised in 1843, we are left entirely to conjecture. The agent was at Tahlequah, and saw the mangled bodies of two peaceable citizens; was apprized of a recent act of house-burning; repaired to Flint district when informed of the death of Starr and Rider, and arrived simultaneous with a company of United States troops, not called for by him, or sent to aid in arresting or punishing the confederacy of fiends who prey alike upon the lives and the property of both citizens of the United States and Cherokee nation. The agent was upon the ground, but did not deem it necessary to call upon the military. General Arbuckle was at Fort Smith, (in the State,) and did think military action all important. Who was most competent to judge of the necessity, others may decide.

The killing of Starr and Rider is regarded by General Arbuckle as emanating from the national council. The authorities of the nation have been put upon trial, and, in his own language, "condemned," "without judge, jury, or any manner of hearing." And almost in the same breath in which high crimes are imputed to them, they are called upon to adopt measures "to allay the excitement" caused by their acts, and to do other things which are dictated. The course of this officer cannot be viewed otherwise than as most extraordinary, and highly detrimental to the interests and peace of the Cherokees. His sanction is given to disguise as a party matter the killing of Starr and Rider, and evidently wishes to hold the authorities of the nation responsible. He requires that pledges shall be given by the national council to individuals who have fled across the State line from imaginary fear, or a conscientiousness of criminality by too close an intimacy with the bandits. He has stationed the military within the State line to protect these individuals, and invites all who entertain fear to take refuge under the stars and stripes of the United States; and we are notified that subsistence will be furnished them at the expense of the nation! If the United States troops are not sufficient for his purposes, we are informed that the militia of the State will be called into the service.

If the past conduct of this officer affords an index of the future, may God save us from his protection. It were well for us to know our fate. If the mere ipse dixit of a military officer, in the absence of any offending cause, can substitute his discretion in violation of treaties and the immutable principles of justice, it may well be inquired, what is left to bind our confidence in the government, or what tie of friendship may not be severed by the sword?

The committee, in the discharge of the duty assigned them, respectfully submit the above as the result of their labors, with the accompanying resolutions.

W. S. COODEY,
JOHN BENGE,
C. V. MoNAIR.

TAHLEQUAH, C. N., December 1, 1845.
Resolved, That we deprecate the course of General Arbuckle, in regard to the recent disturbances in this nation, as unauthorized and detrimental to the peace of the frontier.

Resolved, That we protest against the invitation and inducements offered to our citizens to leave the country, under a promise of protection and subsistence at the expense of the nation.

Resolved, That we do not recognise in the military a right to interfere or dictate in the legislation of the national council.

Resolved, That our confidence in the justice and integrity of the government of the United States continues unshaken.

Resolved, That a copy of the above report and resolutions be furnished by the chief to the United States agent, and forwarded, also, to the delegation at Washington city.

The above report and resolutions were read, considered, and unanimously adopted, by the national council.

And, on motion, sent to the council.

A. FOREMAN,
President of the National Committee, pro tem.

E. HICKS,
Clerk of the National Committee.

Concurred:

A. CAMPBELL,
Speaker of the National Council.

D. M. FOREMAN,
Clerk of the National Council.

TAHLEQUAH, December 1, 1845.

PART III.—No. 6—C.

HEADQUARTERS 2D MILITARY DEPARTMENT,
Fort Smith, November 15, 1845.

Sir: On the 11th instant I received intelligence of the recent commotion in the Flint district of your nation. In order to learn the exact facts in the case, and to quiet the disorder, if possible, I immediately despatched an officer of rank and experience (Major Bonneville) to the scene of disturbance. His report is now before me; and, greatly to my surprise and regret, I learn from it that the murder of Starr and Rider, and the wounding of two of Starr's sons, and the consequent disturbance in the Cherokee nation, have resulted, directly or indirectly, from resolutions of the national council, or orders issued in pursuance thereof.

It appears from the evidence in my possession, (acknowledged to be correct by the captain and lieutenant of the light-horse company which committed the murders,) that no resistance was made on the part of any of the victims; in fact, nothing was done in the remotest degree to justify these outrageous proceedings. That a lad of twelve or thirteen years of age was pursued, and dangerously if not mortally wounded, proves that the "police" must have had some other object in view besides the vind-
cation of the laws. Agreeably to the law, resisting, or aiding or abetting, &c., only, authorized the light-horse to take violent measures. No resistance was offered, yet the light-horse went to the extreme of committing murder, in violation of the very law of the nation under which they claimed to be acting. If the object of the Cherokee government was merely the arrest of criminals, I can only say the authority was intrusted to rash and indiscreet hands.

The result of these proceedings has been to drive from their homes, into the State of Arkansas, more than one hundred men. From the reckless proceedings of the light-horse, or police, they fear, and I think very justly, to return; having no guaranty, however innocent they may be, that they may not fall victims, like their friends, to the illegal and savage acts of an armed and irresponsible body.

These people, deprived of their ordinary means of support, must be provided for, in their distressed circumstances, by the United States government; but I take leave to say it will doubtless be done at the ultimate expense of the Cherokee nation. Should the families of the individuals referred to be molested in their persons or property, and they also be compelled to leave the nation, the expense of their support, as well as all losses and damages they may sustain, will also be a charge against the nation.

The acts of the national council, or rather the manner in which they have been carried out, have created a general suspicion among the refugees of the justness of their government. They hesitate to place themselves again in its power, lest some summary process be instituted against them, without an opportunity being afforded of proving their innocence. They fear to return, because, although nominally they live under a government of laws, there is no law, or it is disregarded, (as the recent acts of its agents too plainly show,) and they are at all times liable to be shot down, without judge, jury, or any manner of hearing. Every crime committed in the nation is (as they represent) at once attributed to them or their councils, and therefore they live under a constant apprehension of violence.

This state of things is extremely detrimental to the interests of the government of the United States, as well as to that of the Cherokee nation; and I have great reason, therefore, to urge that the Cherokee national council take immediate measures to allay the excitement, and give assurances to the refugees that they will be protected in their persons and property if they return to their homes. Some positive act of the Cherokee government alone can give confidence to the refugees, and induce them to return.

The light-horse must be disbanded at once, and the persons concerned in the murder of James Starr and Rider arrested. Nothing short of this would be becoming a country of law; the guilty individuals must be tried for murder, otherwise the Cherokees must cease to think they live under a government of law.

The peace of the Cherokee nation must be secured; and I am determined to adopt all proper measures to effect this cherished object of government. In pursuance of which, I have already sent a company of dragoons to the disturbed district for the purpose of preserving order; and, should it become necessary, an additional force will be placed in that quarter.
I desire that you will submit this communication to the national council, and inform me, as soon as may be, of the measures taken to secure peace to the nation.

I am, sir, very respectfully, your obedient servant,

M. ARBUCKLE,
Brigadier General United States Army.

GEORGE LOWRY,
Acting Principal Chief, Cherokee nation.

PART III.—No. 7—D.

HEADQUARTERS 2d MILITARY DEPARTMENT,
Fort Smith, November 20, 1845.

Sir: Since my last letter to you, the Cherokee Advocate of the 13th instant has fallen into my hands. It is much to be regretted that such sentiments are published to your nation; the effects must be most unfortunate.

You have a case of recent house-burning, and of the murder of two men. From this the whole nation is called upon to rise, and lawless butcheries are palliated. All who have enemies, however innocent, may be marked as suspected persons, and become victims.

It is understood there are two or three outlaws from your nation. These, no doubt, have a few bad men associated with them; they may have been at the burning of the house of Meigs, and committed many other outrages upon your people. Such men certainly deserve the severest penalty of the law, and it is but just that they should be apprehended and punished if found guilty, and all those strongly suspected of participating in these highly criminal outrages; but this number cannot be so great that the sheriff cannot at any time command a posse sufficient to apprehend any offender or offenders. No resistance, so far as I have heard, has been offered to even those lawless bands prowling about the country, murdering those they suspect of having committed a crime, and perhaps those they dislike. Much less would be the prospect of resistance to a sheriff and his posse in carrying out the laws of the nation. Then why this general proscription—this call upon the nation to turn out and kill? Many have already fallen victims, and these armed bands are even now threatening to destroy those who are unwilling to join them in the murders. These assassinations have cast a terror among a large class of your people; they cannot be all evil-doers, murderers, and house-burners, but they have fled from this state of things. And is it certain a single one of those who put fire to the house of Meigs, or committed any other offence, has been killed?

Your council cannot approve of such acts; they are of a character too lawless to meet the approbation of men in official stations—of men who do not sacrifice all justice, all love of country and of good order, to inveigle and blind passion. I call upon you as the chief, as the head of the nation, to put a stop to this state of unheard of proceedings, and restore the calm that has so violently been disturbed. As the first step to the re-
to turn of confidence and good order, and to show that these things have not emanated from the council of the nation, it becomes the duty of that body to give you aid to apprehend at once, and bring to punishment, the ringleaders of these cold-blooded murderers.

In have directed Captain Boone, with his company of dragoons, to remain near Evansville, and to notify all the refugees not to cross into the nation for the purpose of violence; that such a step on their part would forfeit for them the protection they now enjoy. It is not probable that many of these are guilty of any crime against your nation, and I hope you will not delay to furnish me a list of the suspected persons, that all others may return to their homes in safety.

Although the military force in this vicinity is limited, I had hoped that the company sent to the State line would have been sufficient to check these disorders; but from recent acts, it appears that this murderous business is still going on. So certain as this continues, I must not forget the obligation made upon our government by the 6th article of the treaty of 1835, and call for a volunteer force to put an end to this violence and bloodshed, which it appears must be without the shadow of excuse at this time, as all those who have committed crimes punishable by your laws have, no doubt, left your nation before this.

I shall expect to hear from you by the return of the bearer.

I am, sir, very respectfully, your obedient servant,

M. ARBUCKLE,

To GEORGE LOWRY,
Acting Principal Chief, Cherokee nation.

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PART III.—No. 8—E.

TAHELQUAH, CHEROKEE NATION,
November 27, 1815.

Sir: I have to acknowledge the receipt of your two communications dated 15th and 20th instant, and which have been referred to the national council in accordance with your desire. In the meantime, however, I have addressed the United States agent on the subject of your charges and denunciations of the national authorities. Our views and information are so entirely at variance in reference to matters alluded to by you, and the unmerited terms of abuse and threats bestowed upon us, that it is not desirable on our part to enter into a controversial discussion with the military officers of the government.

It would have afforded us some satisfaction to have an opportunity of being heard before deciding upon the course which you have seen proper to take relative to the disturbances in our country; but, from the tone of your communications and very positive condemnation of the authorities of the nation, we shall be content with the only alternative left, and furnish, through the United States agent, such facts as may be necessary for our defence before the government of the United States. The information furnished you is partial and erroneous; and it is much to be regretted that
important questions, so vitally connected with the peace and well-being of our nation, should be so hastily disposed of, to the imminent danger of accomplishing that for which you have expressed a wish. The Cherokees are not insensible of their dependance upon your government, and their duties as a people and as citizens; and in the discharge of the duties devolving upon the Executive, I shall endeavor to the utmost of my ability to maintain the friendly relation subsisting between the United States and Cherokees, and to observe that courtesy towards the officers of your government which has heretofore characterized the conduct of our chiefs.

I am, sir, very respectfully, your obedient servant,

GEORGE LOWRY,
Acting Principal Chief.

Maj. Gen. M. ARBUCKLE,
United States Army, Fort Smith, Arkansas.

PART III.—No. 9—F.

TAHLEQUAH, CHEROKEE NATION,
November 26, 1845.

Sir: I transmit you herewith a copy of a letter addressed by General Arbuckle to me, dated the 15th instant, on the subject of the recent disturbances in this nation, and my reply to the same. Also a copy of the report of Messrs. Hicks, Foreman, Thorn, and Coodey, who visited the disturbed section of our community, under instructions given by direction of the national council.

The information communicated to General Arbuckle must have been entirely ex parte and incorrect, to have authorized the harsh terms in which his letter abounds. There is no wish on our part to enter into a correspondence or controversy with the general on the subject, and we are content to pursue the hitherto usual and long established medium of communication through the United States agent. The object, therefore, of this is to furnish you with such information as may be deemed necessary, in vindication of the authorities of the nation from the unmerited aspersions of General Arbuckle.

The assertion that the killing of Starr and Rider, and wounding of others, resulted from resolutions of the national council, or orders issued in pursuance thereof, is entirely groundless. No "resolutions" or "orders" have emanated from any such source for that purpose, or which have even led indirectly to the act.

The charge against the light-horse company is equally unfounded. There is but one such company in the nation, and the act for their organization was passed on Saturday, the 8th of November, 1845. On Sunday morning, the 9th, Starr and Rider were killed, and others wounded. On Tuesday, the 11th, the captain and lieutenant of the light-horse company were appointed and commissioned, and learning the excited state of feeling in Flint, they repaired thither with some ten or twelve men, hastily

*Note by General Arbuckle.—The meaning of the rest of this sentence is not apparent.
collected, and where they arrived on Wednesday the 12th, three days after Starr and Rider’s death.

The law organizing police companies expired, by limitation, on the 18th day of last October, since which time there has been no such authority in the country. The light-horse have committed no murder; the “police” have committed none, and the homily read to us by General Arbuckle on that hypothesis and “their reckless doings” might well have been reserved for a more fitting occasion.

By reference to the report of the gentlemen before adverted to, you will understand properly the cause for the late disturbances, and the circumstances which resulted in the death of Starr and Rider. However much such occurrences are to be regretted, we cannot shut our eyes to the facts which induced them. They occur in more enlightened communities than ours. There are recent instances in Arkansas, and doubtless every State of your federal union; but who, among intelligent and reflecting minds, would hold the ministers of the law responsible and stigmatize them with infamy under such circumstances?

It is with no view to justify error that allusion is made to the example of our more Christian brethren. There is sufficient moral virtue among the Cherokees to recover from these disturbances, if left to the free exercise of their rightful prerogatives.

In reference to the refugees who have fled into the State, it may be proper to say, they left on their own accord and can return of their own accord. There is no evidence that the danger from which they fled is more than imaginary.

Yours, respectfully,

GEORGE LOWRY,
Acting Principal Chief, Cherokee nation.

Col. Jas. McKissick,
United States Agent.

PART IV.

Argument in support of the claims of the North Carolina Cherokee Indians.

So early as the year 1783, the State of North Carolina, while a sovereign State, with a view of preventing further intrusion upon the lands claimed by the Cherokee Indians within the limits of her charter, granted to them the fee simple title; which grant, contained in the act of 1783, is in the following words:

“And be it further enacted, That the Cherokee Indians shall have and enjoy all that tract of land bounded as follows, to wit: Beginning on the Tennessee, where the southern boundary of this State intersects the same nearest the Chickamawga towns, thence up the middle of the Tennessee and Holstein to the middle of French Broad river to the mouth of Big Pigeon river, thence up the same to the head thereof, thence along the dividing ridge between the waters of Pigeon river and Tuckaseejah river to the southern boundary of this State; and that the lands contained with-
in the aforesaid bounds shall be and are hereby reserved unto the said Cherokee Indians and their nation forever: any thing herein to the contrary notwithstanding.—(See page 2.)

By the 8th article of the treaty of 1817, and the 2d article of the treaty of 1819, a reservation of 640 acres was granted to a Cherokee by the name of Euchella, which was located upon the lands ceded under the last mentioned treaty. The cession contained a part of the land included in the grant made by the State in 1783, as represented by a dotted line on the map annexed. Subsequently the State of North Carolina sold the lands that had been previously granted to Euchella, to Joseph Welch, who took forcible possession. An action was brought in the name of Euchella, for the recovery of the reservation, which was finally decided in his favor by the supreme court of the State. In that decision, which will be found in the 3d volume of Hawk's Reports, page 163, the court say: "By the act of 1783, ch. 185, it is declared that the Indians shall have and enjoy all the tract of land therein described, and that it is reserved to them and their nation forever. The effect of this grant was to vest the land in the nation in fee simple. It conveyed to them a definite and specific right, according to which they could no longer be considered as tenants at sufferance, but as holding under the faith of the State and the guaranty of the declaration of rights.

It is true that no individual had a distinct portion allotted to him, which he might protect from aggressions, and on that account the legislature has made it penal to trespass on the land; but the right of the legislature to make the grant cannot be doubted; and it is not less clear that it must inure to the benefit of the tribe as long as they subsist upon it, and their title is not surrendered by their own consent.

"If this grant required confirmation, it has received it in the most ample manner by the treaty of Hopewell, (1785,) made under the authority of the United States, and by the treaty of Holstein, (1791,) by which the lands not ceded by the Cherokee nation are solemnly guaranteed to them."

It is clear and indisputable, that, by the act of 1783, and the construction which was subsequently given to it by the supreme court of the State, that the fee simple, as well as the usufructuary interest in the lands which are described in the recited grant, vested in the Indians from and after its date. The next inquiry is, how these lands became the exclusive property of that portion of the tribe that resided upon them. At the date of the grant referred to, the Cherokee tribe consisted of seven clans, which most probably were the descendants of the same number of families. These seven clans embraced about fifty towns or settlements, each of which was governed by a chief who was denominated the father of the town, and the union between the chiefs of the different towns extended no further than to objects in which all the tribes or clans were interested, such as declaring war, making peace, and concluding treaties. The Cherokees, in course of time, in consequence of occupying a high country, at and near the terminations of the Smoky mountain and Blue Ridge, and also a low country adjoining thereto in the valley of the Mississippi, became divided into two divisions, (one denominated the upper, and the other the lower towns,) which led to a division of the lands for the separate use of each portion of the nation, by the common consent of the tribe, and the approval of the President of the United States, as is shown by the recital of the transaction in the book of
Indian treaties, page 209. It is there stated: "Whereas, in the autumn of the year one thousand eight hundred and eight, a deputation from the upper and lower Cherokee towns, duly authorized by their nation, went on to the city of Washington, the first-named to declare to the President of the United States their anxious desire to engage in the pursuits of agriculture and civilized life in the country they occupied, and to make known to the President of the United States the impracticability of inducing the nation at large to do this, and to request the establishment of a division line between the upper and lower towns, so as to include all the waters of the Hiwassee river to the upper town..."

"The deputies from the lower towns, to make known their desire to continue the hunter life, and also the scarcity of game where they then lived, and under these circumstances their wish to remove across the Mississippi river on some vacant lands of the United States. And whereas the President of the United States, after maturely considering the petitions of both parties, on the ninth day of January, A. D. one thousand eight hundred and nine, including other subjects, answered these petitioners as follows: The United States, my children, are the friends of both parties, and, as far as can be reasonably asked, they are willing to satisfy the wishes of both. Those who remain may be assured of our patronage, our aid, and good neighborhood. Those who wish to remove are permitted to send an exploring party to reconnoitre the country on the waters of the Arkansas and White rivers."

"Thus, a permanent divisional line was established along the ridge which divided the waters of the Hiwassee river from those of the Hightower. By this allotment the lands included in the grant made by the State of North Carolina, in the year of 1783, were set apart for the exclusive use and permanent residence of the Upper Town, or North Carolina Indians.

The remaining question to be considered is, have the North Carolina Indians conveyed their interest in those lands to the United States? It is true that the State of North Carolina, acting upon a supposition that the lands she granted to the Indians, by the act of 1783, had been conveyed to the United States by the treaty of 1835, surveyed and sold to her citizens most of the valuable lands included in her present limits, for near five hundred thousand dollars. It is also true that the State of Tennessee, acting upon a similar supposition, made sale of that portion of the land contained in the grant of 1783, which was included in her chartered limits; and it is probable that she received a larger sum than those in the State of North Carolina sold for. As the titles of the citizens, in both these States, to lands which they have purchased and improved, must depend upon the title of the United States as derived from the treaty of 1835, it is necessary to examine if the lands in question were, or were not, conveyed to the United States by the cession contained therein.

To determine upon that question, the following inquiries are necessary to be made. Did the Cherokees, who were parties to the treaty, possess any of the attributes of sovereignty, and as a body politic possessing these powers become a party to the treaty? Or did they, as private individuals in a state of duress, sign the treaty for the benefit of themselves and a majority of the tribe who were similarly situated, who, under the circumstances, might come in and partake of its advantages? A majority of the tribe re-
sided at that time in the lower town, within the chartered limits of the State of Georgia, where the treaty was concluded. But prior thereto, that State, by the acts passed by her legislature, had extended her laws over the Cherokees, and not only annihilated their government, but, by the statutes referred to, prohibited them from assembling in council to enact laws, or to attempt to enforce those which had previously been enacted, making the latter a penal offence, punishable on conviction with confinement in the penitentiary. And at the time the treaty was concluded, a part of the Cherokees were in prison for violating those laws, and some of the signers to the treaty had been released from confinement but a short time. Not only were the Cherokees in Georgia, at the time the treaty was concluded, deprived of all their political rights, and subjected to the laws passed by the State, but by those laws their lands had been surveyed, and granted by the State to her citizens, as is shown by the 16th article of the treaty.

While it must be conceded that the Cherokees who were parties to the treaty acted only in the capacity of private individuals, and did not claim to possess any political power, it is equally true that they were the very best men in the nation, and, before their government ceased to exist, held important offices under it, and had as much right to claim to be chiefs as any Cherokees in that part of the nation.

John Ross, and those associated with him, who claimed to be the constituted authorities of the nation, possessed no political power whatever, agreeably to the constitution and laws of the nation, even if they had remained in office; and Ross, and many of those who claimed to be chiefs, were citizens of the United States, having become citizens under the treaty of 1819; and, by promising to remain permanently on the lands ceded to the United States, were given fee-simple titles to reservations which, in value, were much more than their share of the common property of the nation. Subsequently they sold the reservations they had promised to reside permanently on; and moved on the unsold lands of the nation; but, after being made citizens of the United States, they could not expatriate themselves by removing into the nation within the limits of the United States; and, at one time, John Ross, during the existence of the Cherokee government, was both chief of the nation and postmaster, holding the latter office under a commission received from the United States.

The official correspondence furnishes further proofs that the Cherokees who concluded the treaty, admitted that the Cherokee government had prior to its conclusion, ceased to exist, and that the government of the United States had ceased to recognize any government among the Cherokees. In a letter signed by John Ridge and S. Watie, addressed to the commissioner who concluded the treaty on the part of the United States, (Rev. John F. Schennerhorn) they say: "Previous to the extension of the laws of Georgia, Alabama, Tennessee, and North Carolina, over our nation, our government was elective according to a constitution. This government ceased in 1830, and no elections have been held since; and all the members of that government, chiefs, members of committee, and council, became private individuals." (See Sen. Doc. No. 120, p. 529.)

John Ridge was probably as well informed as any man in the nation, and, in his opinion, the chiefs that signed the treaty of 1835 were, from the time the laws of the States were extended over them, private individuals, and void of political power. As a further proof that the chiefs who signed the
treaty, as well as the council that approved it, were at the time destitute of any government of their own, and subject to the laws of Georgia. Major Ridge and John Ridge, who have since fallen by the hands of assassins, in their letter to President Jackson, say: "The Georgia laws, which deny us our oaths, are thrown aside; and notwithstanding the cries of our people, and protestation of our innocence and peace, the lowest classes of the white people are flogging the Cherokees with cowhides, hickories, and clubs. We are not safe in our houses; our people are assailed by day and night by the rabble. Even justices of the peace and constables are concerned in this business. This barbarous treatment is not confined to men, but the women are stripped and whipped without mercy." (See Sen. Doc. No. 120, p. 608.)

In a letter to President Jackson, which bears date December 1, 1835, signed by Major Ridge, Elias Boudinot, (the latter also has since been murdered by assassins,) and ten other Cherokees, they say: "The undersigned chiefs, who are in favor of removing west, would address you as guardian of the Indians. At this crisis of our affairs, when we have ceased to exist in our national capacity, we can look to no one to protect the rights of the poorer class of our people, and save them from the miseries which seem to await them from utter extermination, except our political father—to him we trust we can look with confidence for aid and protection." (See Sen. Doc. 120, p. 490.)

Not only did the Cherokees, who, as private individuals, became a party to the treaty of 1835, regard their government at an end, and that the tribe had ceased to exist in its national capacity; but the President of the United States seems to have entertained the same opinion. The Commissioner of Indian Affairs, in a letter to John John Ross and others, says: "The President has ceased to recognise any existing government among the Cherokees." (See Sen. Doc. No. 120, p. 132.)

Having shown that the Cherokee nation had ceased to exist prior to the conclusion of the treaty, and the Cherokees who were a party to it acted only in the capacity of private individuals, who had become subjects of the State by the extension of her laws, by applying a few of the principles laid down in Vattel's law of nations, it will be seen that the Cherokees of Georgia were incapable of making any treaty or entering into any other contract with the government of the United States whereby they could have conveyed the lands granted to the North Carolina Cherokees by the act of 1783.

Vattel defines a nation to be "a body politic or society of men united together for the purpose of promoting their mutual safety and advantage, by their combined strength." "And that it governs itself by its own laws."

"But a people that has passed under the dominion of another is no longer a State, and can no longer avail itself directly of the law of nations." (See chapter 1, page 2) "The preservation of a nation consists in the duration of the political association by which it is formed. If a period is put to this association, the nation or State no longer subsists, though the individuals that compose it still subsist. In case of real subjugation to a foreign power, the citizens who do not approve this change are not obliged to submit to it; they ought to be permitted to sell their estates and retire elsewhere. For my having entered into a society does not oblige me
to follow its fate, when it dissolves itself, in order to submit to a foreign
dominion. I submitted to the society as it then was, to live in that society
as the member of a sovereign State, and not in another; I am bound to
obey it while it remains a political society; but when it divests itself of
that quality in order to receive its laws of another State, it breaks the bond
of union between its members, and releases them from foreign obligations.” (See section 195, page 94.)

It has been shown in the preceding that the Cherokee Indians, at the time
the treaty was concluded in 1835, had, by passing under the laws of the
States, ceased to exist as a nation, and, agreeably to the laws of nations
were incapable of making any treaty binding upon the individuals of
which the nation had been composed without their consent.

It has never been contended that the Cherokees of North Carolina were
present, or even represented, at the council held by the Cherokees of Geor-
gia, at the time the treaty was concluded. This fact is established by the
report of the commissioner who negotiated it on the part of the United
States. In his report to the Secretary of War, bearing date the 30th of
December, the next day after the treaty was concluded, he says “the
chiefs of the North Carolina Indians did not attend here”—at the place the
treaty was concluded. (See Senate document No. 120, page 495.)

The question therefore resolves itself into this: could the Cherokees
of Georgia, by an agreement entered into while in a state of duress,
acting as private individuals or denizens of the State, convey to the United
States the lands owned and occupied by the Cherokees in North Carolina,
which had been granted to them by the State, and in which they held the
fee simple title, not as derived from their tribe, but, as the supreme court
of the State has decided, under the guaranty of the State, without their
consent, and without even making mention in the conveyance of any intention
to convey the lands which had become the private property of the North
Carolina Indians? The cession of lands, as contained in the treaty of
1835, is in the following words: “Art. 1. The Cherokee nation heretofore
cede, relinquish, and convey to the United States all the lands within
the limits to the Cherokees residing upon them; and supposing that the
only interest the nation had in the lands to be ceded was the usufructuary
interest, made use of the same words as are usually made use of in treaties
with Indian tribes to convey an interest of that description. And if he had
known the nature of the title by which the North Carolina Indians held
their lands, he must have known that the words used in the cession con-
veyed nothing more, even if the Cherokees had possessed the power compe-
tent to treat, than the usufructuary interest owned by the tribe. The treaty
does not purpose to convey any portion of the private property of individ-
ual Cherokees; nor did it ever enter into the minds of the contracting par-
ties to convey any greater interest in the lands than the interest stated—
the right of occupancy—such as the Indian tribes have been admitted to pos-
sess since the discovery and settlement of this country by the nations of Eu-
rope. Anxious to avoid all litigation respecting the rights of the Cherokees re-
mainig in North Carolina to the lands granted to them by the State; know-
Doc. No. 185.

ing that it would be attended with much trouble and expense to them, as well as to the citizens of North Carolina and Tennessee who resided on the lands. During the last ten years, as the records of the War Department prove, every means in my power have been used to obtain a just compensation to be made to the Indians by the government of the United States. That being done, the question of title to the lands contained in the grant made to the North Carolina Indians would be settled. The Cherokee nation, since relieved from a state of duress, have sanctioned the treaty of 1835. The present Cherokee government, (formed since the emigration of the tribe west of the Mississippi river,) authorized their principal chief to receive of the per capita money, provided for under the 15th article of the treaty, $581,346 88; which, out of the appropriation made to carry that provision of the treaty into effect, on the 6th of September, was paid to John Ross; also the nation has been in the receipt of the annuities arising from the investment of $764,000 under the provisions of the treaty, and has received the further sum of $172,346 47, (March 7, 1840,) paid out of the per capita fund to the Cherokees west, while the North Carolina Indians are not allowed to occupy but a very small portion of the lands which were granted to them by the State for a permanent home; nor can they obtain compensation for them. Shortly after the present administration came into power, my application, so often made for the reference of the questions relating to the claims of the North Carolina Indians to the Attorney General, was renewed. The President finally consented to refer the questions raised by me, and on the 11th of June, 1845, submitted them to the Attorney General for his opinion; and on the 19th September, he addressed a communication to the President, in which he says: "On the 11th of June last, you did me the honor to refer to me a report of the Commissioner of Indian Affairs of the 19th of May, and a reply thereto of William H. Thomas, on behalf of certain Cherokee Indians," "on which you desire my opinion in writing."

"1st. Are the Cherokees remaining in the State of North Carolina and Tennessee entitled, under the 8th and 12th articles of the Cherokee treaty of December, 1835, to $53 33 for their claims for removal and subsistence allowance, which have been paid to the Cherokees in Georgia ?

"2d. In the event that the Attorney General should be of opinion that the Cherokees in North Carolina and Tennessee are not entitled to compensation for their claims for removal and subsistence allowance, whether the grant made by the State of North Carolina to the Cherokee Indians, in the year 1783, vested the fee simple title in the Indians while they continued to reside thereon; and whether, under the provisions of the grant, the fee simple title has not vested exclusively in the Cherokee Indians within its limits?

"3d. Whether the treaty of 1835, made with the Cherokee Indians of Georgia, does or does not legally convey to the United States the lands granted to the North Carolina Indians by the act of 1783? Whether the power of the Cherokees as a nation had or had not ceased to exist at the time the treaty of December, 1835, was concluded, in consequence of the tribe having passed under the dominion of the States?

"4th. Whether the relinquishment of interest in the lands which the treaty of 1835 purports to convey is or is not confined to those Cherokees who
have and do receive their due portion of the consideration money; and whether the title of those who receive no part of the compensation has passed to the United States?

"The first of these involves an inquiry whether, under the treaty of New Echota, those Cherokees who had remained in the States of Tennessee and North Carolina are entitled, under the 8th and 12th articles of the treaty, to $53 33 for removal and subsistence allowance?

"This inquiry is embarrassed by the fact that these allowances have been made to Cherokees who have remained in Georgia, by decisions at the War Department, and by the fact of payment being made to others of the tribe who did not emigrate. By the joint resolution of Congress approved June 15, 1844, the interpretation under which the Georgia Indians were paid appears to have been acted on by the War Department but for a short time."

"The circumstances under which payments were directed by the joint resolution are stated in the report of the Commissioner of Indian Affairs. It appears to me that the confirmation of the decision of Messrs. Eaton and Hubley, declared by that resolution, cannot, with all the respect due to Congress, be regarded as settling the construction of the treaty, so as to furnish a guide to the Executive in carrying a treaty, as a law, into effect."*

"In its construction, it is said that 'the language used in treaties with Indians should never be construed to their prejudice.' * * 'How the words of the treaty were understood by this unlettered people, rather than their actual meaning, should form the rule of construction.'

"In the papers accompanying your communication are several statements, furnished by the commissioner who negotiated the treaty on the part of the United States, and by respectable persons who were privy to the negotiation, tending to show that the Indians were assured that those who did not emigrate should have the benefit of this pecuniary allowance. According to well established rules of law, I am of opinion that this evidence is not admissible to establish a construction of the treaty inconsistent with its provisions. Whatever may be done by Congress to fulfill expectations thus created, I am clearly of opinion that the Executive cannot execute the treaty on any such construction."

"The other three questions may be solved into three inquiries, whether the lands in North Carolina belonged to the North Carolina Indians residing upon them. These lands have been sold by the State of North Carolina, and are, I presume, in the possession of the purchasers. As the Executive of the United States would have no power to divest those in possession, and the question is one for the judiciary, I have deemed it unnecessary to embrace my views upon it in this communication. Nor have I deemed it proper to express my opinion on the hard measure which seems to have been dealt out to the North Carolina Indians, whose lands have been sold, while they have received no corresponding benefit. I have examined the question as one of legal construction only, and have no doubt of the correctness of my conclusion in that respect.

"JOHN Y. MASON."

This opinion, on the 2d of October, was approved by the President of the United States, and he made the following endorsement on the papers: "I concur in opinion with the Attorney General." The following conclusions seem to be deducible from it:
1st. That, if the decision had been made upon the question of the fee simple title having vested in the North Carolina Indians to the whole quantity of land granted by the State of North Carolina in the year 1783, and that the title derived from the State, and held by them under her guaranty, was not conveyed to the United States by the treaty of 1835, it would have been in favor of the Indians, and that they were entitled to the possession of the lands. For if he had not believed that the decision, if made, would be as stated, the reason for declining to give it—"that the Executive of the United States did not possess the power to divest those in possession"—did not exist. It is obvious, therefore, that a compliance with his decision, if made, would require the removal of the whites in North Carolina and Tennessee, who had become purchasers under the States of the lands reserved for the use of, and at present owned by, the North Carolina Indians. The opinion, that those lands were not conveyed to the United States under the treaty of 1835, is further proved to have been entertained by the War Department since the ratification of the treaty. The agent of the Cherokees, B. F. Curry, by instructions which emanated from that department on the 28th July, 1836, was authorized to obtain a relinquishment, from the North Carolina Indians, of all their right "to occupancy in, and to the country east of the Mississippi, and a surrender of all their rights in the same." (See Senate doc. No. 120, p. 156.)

The agent, in obedience to his instructions, made propositions to the Indians for a surrender of their title to the lands in North Carolina, but they refused compliance. Since then nothing further has been done by the government of the United States to perfect her title, or to purchase that of the North Carolina Indians.

The Cherokees of North Carolina, notwithstanding they had no political connexion whatever with the Cherokees of the lower town, after they had passed under the laws of the States in which they resided, and were not present or represented at the council of Cherokees, who, in their individual capacity, met at New Echota, Georgia, and negotiated the treaty of December, 1835, have, nevertheless, since that time, on receiving information that a treaty had been concluded with their brethren in Georgia, signified a willingness to assent to the cession of the usufructuary interest which the Cherokees had in the lands east, as provided for under the 1st article, and have also agreed to abandon the lands granted to them by the State of North Carolina, for the benefit of the purchasers, on condition that their proportion of the moneys appropriated by Congress as a consideration for the common property, previously owned by the nation, was paid to them, and they permitted to remain in the State subject to her laws, and "purchase residences for themselves like white persons," as provided under the 12th article of the treaty, removal west being left to their own option.

By the 15th article, the moneys appropriated by the act of 2d July, 1836, and 12th June, 1838, amounting in the aggregate to $6,647,067, were to be apportioned by the United States, as trustee, among all the Cherokees included in the census of the portion of the tribe at that time remaining east, in the following manner: A division of the eastern Cherokees being contemplated, a portion to remain and become citizens of the States under the 12th article, and the remainder to join the portion of the tribe then west of the Mississippi river. As an inducement to unite at some future period the Cherokee people in the country assigned for their permanent residence west, $500,000 were deducted from the price of the lands east, for 800,000
For the purposes of education, was provided under the 10th article of $200,000.
For the orphans of the tribe, under the 10th article, was provided the sum of $50,000.

Also a permanent annuity arising under treaties made with the eastern Cherokees was committed for $214,000, and transferred west for the use of the whole Cherokee people west of the Mississippi, as a national fund.

In addition to this, the school fund, created by sale of lands set apart for that purpose by the eastern Cherokees, was transferred west to be added to the school fund.

The sum, therefore, of $764,000, in which the Cherokees that remained in the States had a common interest, was transferred west. Of that sum only $500,000 were chargeable on the appropriations referred to, which, with the sum paid for lands west, $500,000, make the sum of $1,000,000 to be deducted from the appropriations of $6,664,067, leaving a balance of $5,664,067, which sum is subject to another charge of $60,000 for the national debts, leaving to be apportioned among the Cherokees included in the census referred to in the 15th article and 3d supplemental article, $5,604,067. At the time the emigration closed, in 1838, it was ascertained that at the places the Cherokees were collected for emigration, and when on their journey to the west, about 2,000 died, and thereby diminishing the number, embraced in the census, from 16,737 to 14,737. Of that number about 1,500 remained in the States of Georgia, Alabama, Tennessee, and North Carolina—principally in the latter State—which would leave in the west, when the emigration closed, of those included in the census, besides their slaves that emigrated with them, 13,237. Since that time the portion of the tribe west have diminished in numbers so rapidly that unless the causes can be removed they must become extinct in a few generations; while those that are remaining east, under wholesome laws and regulations, have increased in about the same ratio as the white population. The Cherokees in North Carolina, at the time a census was taken, in 1840, numbered 1,069. Since then no census has been taken of the Cherokees east, except of one town by the name of Qualia, situated on the lands granted by the act of 1783. At the time the former census was taken, in 1840, the total number was 669. Four years afterwards, when the census was again taken, it showed an increase of 113; making the total number 782. The Cherokees of that town probably have increased as fast as any other people; have almost entirely abandoned the use of all intoxicating drinks, under the influence of a temperance society, established by one of the chiefs, and have become cultivators of the soil. Supposing the balance of the North Carolina Indians to have increased in the same proportion, and that the increase has continued to the present time, it would give in that State, including scattering individuals that have removed there from the State of Georgia, 1,489. Their proportion of the funds subject to distribution under the 15th
article and 3d supplemental article of the treaty, supposing the increase east
to be equivalent to the decrease west, and that the present number enti­
tled to per capita allowance is equal to what it was at the close of the
emigration, by including a few who emigrated between 1833 and 1835,
(14,737,) would give, as the equitable proportion to which the North Caro­
lina Indians would be entitled, the sum of $497,881 80, while it is a well­
established fact that they have not received as much from the United States
as was due them for improvements, &c., under the treaties of 1817 and
1819, and what has been received has been paid to a few individuals of the
whole number; and to them payment was not made for their lands, but for
improvements they were forced to abandon for the use of the whites. Res­
ervations were not paid for out of the proceeds of the sales of the Cherokee
lands east, being chargeable to the United States, and payable out of funds
to be appropriated for that purpose.

Having shown what the share of the North Carolina Indians would be
if an equitable distribution of the funds were made, after setting apart
$764,000 for the separate use of the tribe west, I will now proceed to state
upon what conditions they are willing to relinquish their interest in the
lands contained in the grant made to them by the State of North Carolina
in the year 1783, so as to avoid resorting to the mode of adjustment of the
question pointed out in the opinion of the Attorney General of the United
States, which was, to leave it to the decision of the Supreme Court. The
following provisions, construed as the Indians understood them, authorize
the payment of as much money as would satisfy the Indians under exist­
ing circumstances.

By the 12th article of the treaty, it is provided for the Cherokees remain­
ing in the States as follows: "Those individuals and families of the Cherokee
nation, that are averse to a removal to the Cherokee country west of the
Mississippi, and are desirous to become citizens of the States where
they reside, and such as are qualified to take care of themselves and their
property, shall be entitled to receive their due portion of all the personal
benefits of the treaty for their claims, improvements, and per capita, as
soon as an appropriation is made for this treaty."

"Such heads of Cherokee families as are desirous to reside within the
States of North Carolina, Tennessee, and Alabama, subject to the laws of the
same, and who are qualified or calculated to become useful citizens,
shall be entitled, on the certificate of the commissioners, to a pre-emption
right to one hundred and sixty acres of land, or one quarter section, at the
minimum Congress price, so as to include the present buildings or im­
provements of those who now reside there."

The 13th article provides for the payment of the value of reservations
granted under the 8th article of the treaty of 1817, and the 2d article of the
32
1851.

181
to be paid for independently by the United States, as it is only a just fulfillment of former treaty stipulations."

By the 1st supplemental article, it is provided "that all the pre-emption rights and reservations provided for in articles 12 and 13 shall be and are hereby relinquished and declared void," for which compensation is provided by the 3d article for the reservees and pre-emptors in lieu of their rights. "It is therefore agreed that the sum of six hundred thousand dollars shall be, and the same is hereby, allowed to the Cherokee people, to include the expense of their removal, and all claims of every nature and description against the government of the United States, not here-in otherwise expressly provided for, and to be in lieu of the said reservations and pre-emptions."

The 16th article provides that the Cherokees, with the exception of those that chose to remain east under the 12th article, should remove to their new homes "within two years from the ratification of this treaty, and that during such time the United States shall protect and defend them in their possessions and property, and free use and occupation of the same." "And if this is not done, and the people are left unprotected, then the United States shall pay the several Cherokees for their losses and damages sustained by them in consequence thereof."

Under this provision of the treaty it became the duty of the government to protect the Cherokees until the emigration closed, or pay the damages the individuals sustained for want of the protection promised. Either is a compliance with the treaty, and was probably so provided to enable the general government to avoid collisions with the State authorities, by making it optional with the government to protect the property of the Indians, or pay the damages they sustained.

Under the foregoing provisions of the treaty the following claims are provided for, in favor of the Cherokees east.

Under the 12th article of the treaty it is stipulated that those who remain under that provision "shall be entitled to all the personal benefits of the treaty." The term "personal benefits," as here used, signified all benefits of the treaty except the $1,264,000 set apart for the exclusive use of the nation west, and therefore termed national funds. In those personal benefits were comprehended removal and subsistence, or commutation therefor in money, which was limited by the 8th article to $53 33 each: there was due to the North Carolina Indians, (1,489 persons) under that provision of the treaty, which became due at the time they chose to remain east.

Interest on that sum from the time the government under the same provisions of the treaty paid most of the Cherokees remaining in the State of Georgia, 8 years.

The payment of per capita under the same article was to have been made on the 2d of July, 1836, to the Cherokees that remained east; nearly ten years have passed, and not a dollar of it has been paid to them yet, while two payments out of the per capita money have been made west.

On the 6th of September, 1841, there was paid out of the per capita fund to John Ross, on an order from the Cherokee council as agent of the tribe, $581,346 88.

By a decision made by the Secretary of War, bearing date March 9, 1840, there was paid to the Cherokees west, to be charged as per capita, $172,316 47.
The two payments of per capita above referred to amounted in the aggregate to $753,663.35, for which the Cherokees of North Carolina, as an equivalent therefor, are entitled to $79,710.53, and interest on that sum from the 2d of July, 1836, to the 2d of July, 1846, is $47,826.00, making a total of $246,209.08.

The balance of their claims for reservations and pre-emptions relinquished under the supplemental articles of the treaty, and improvement claims provided for under the 2d article of the treaty of 1819, as well as claims for property lost by the Cherokees east, in consequence of the government failing to protect them until the emigration was completed as provided for under the 16th article of the treaty, can only be settled by a board of commissioners. What is here said in reference to the claims of the North Carolina Indians is equally applicable to the claims of those residing in the other States.

Having stated in the preceding remarks the claims of the Cherokees east, and cited the articles of the treaty which provide for them if a construction be established in accordance with the intention and understanding of the parties—and certainly an instrument affecting the rights of absent persons, made without their consent, ought, if they would submit to it, to be construed fully as liberal as those contracting for them intended—I will, in conclusion, adduce some evidence to show the different classes of Cherokees remaining in the State of North Carolina, and the laws passed by the State for their benefit, as well as some evidence of the opinion entertained of them by their white neighbors as to their being peaceable and orderly citizens.

The Hon. T. Hartley Crawford, (former Commissioner of Indian Affairs,) in his report to the Secretary of War, dated 22d February, 1844, says: “There are Cherokee Indians east of the Mississippi river who have variously estimated from 1100 to 1200. They are believed to be in North Carolina, Georgia, and Tennessee, chiefly in the former State; of those in North Carolina, a portion (333,) I have learned, petitioned the commissioners and committee appointed to carry into effect the late treaty concluded at New Echota, December 29, 1835, stating that they were averse to removal to the Cherokee country west of the Mississippi, and desire to continue citizens of and subject to the laws of the State of North Carolina, where they reside.”

“Another portion of them, called Euchella’s band, from the part they took in arresting the murderers of some soldiers, induced the white citizens to request the military commander (Col. Foster) to permit them to remain east, which was granted; and the remainder of those east, or the third class, includes those who were unable from age and infirmity to remove, and their children left to take care of them.”

“Upon looking into the only two volumes of the Laws of North Carolina that are accessible by me, I find that in the year 1783 a certain tract of land, partly in Macon and Haywood counties, North Carolina, and partly in the State of Tennessee, was reserved unto the said Cherokee Indians and their nation forever.”

“I have been able to procure a manuscript copy (certified) of a law of the said State, passed in January, 1837, entitled “An act to prevent frauds on
Cherokee Indians residing in this State," by which it is enacted "That all contracts of every nature and description, made after the eighteenth of May, one thousand eight hundred and thirty eight, with any Cherokee Indian, or any person of Cherokee Indian blood within the second degree, for an amount equal to ten dollars or more, shall be null and void, unless some memorandum thereof be made in writing, and signed by such Indian, or person of Indian blood, or some other person by him authorized, in the presence of two creditable witnesses who shall also subscribe the same."

It will be observed that this law was passed two years before the emigration commenced, giving the assent of the State not only to the educated half-blood Cherokees, but to the full-blood Indians who chose to remain in the land of their fathers, to take protection under theegis of her laws. Having been mostly born in the State, nothing more was necessary to make them citizens but a continued residence within her limits twelve months, agreeably to the laws of the State. The State has not been unmindful of the small remnant of aboriginal inhabitants that, by her consent yet dwell in the land containing the sacred relics of their ancestors. At the session of the legislature in 1844, a law was passed to encourage them in the raising of silk, and authorized them to incorporate themselves into a company capable of purchasing and holding lands in the State, and to exercise other corporate rights and privileges; and the preamble to the law recites—

"Whereas a small portion of the Cherokee tribe of Indians are remaining in this State, who are represented by their white neighbors as conducting themselves in a peaceable and orderly manner, and who, under the influence of temperance and religious societies, are fast improving in the knowledge of the mechanic arts, agriculture, and civilization; and whereas the Cherokees referred to, who belong to the towns of Qualla and Yunsaw, (Cheoih,) have already commenced the culture and manufacture of silk, and for the encouragement thereof—Be it enacted, &c.;" and at the same session, the legislature passed a resolution requesting the Senators and Members in Congress from that State to use their influence to have the just claims of those Indians settled.

Respectfully submitted.

With the highest respect, your obedient servant,

WM. H. THOMAS,
An adopted Cherokee, and Att'y for the E. Cherokees.

Hon. WM. MEDILL,
Commissioner of Indian Affairs.

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PART V.

Extract from a letter from Brigadier General M. Arbuckle, dated

"FORT SMITH, January 3, 1846.

"Since my letter to you of the 20th December, nothing material has occurred in the Cherokee nation, except the killing of Charles Smith, son of Archelaus Smith. For the particulars I refer you to the letter of Major Bonneville and Captain Boone, an extract of which is enclosed, marked A.

"The refugees remain quiet. Stand Watie still occupies Fort Wayne with about fifty men. Lieutenant Johnston, 1st dragoons, whose company is in the immediate neighborhood, advised him to disband his
The Cherokee Advocate of the 25th ultimo, (which must be considered good authority,) refers to the attitude assumed by Stand Watie, and seems to anticipate some action of the Cherokee authorities in reference thereto. I should deprecate any forcible measure on their part in this regard, as much as I do the domiciliary visits and the movements of the mobs and light-horse. An attempt to drive Stand Watie from his position would, undoubtedly, bring on hostilities; besides, they have no right to complain of his conduct, as they set the example by justifying a mob of their own adherents in assembling in numbers for self-defence, (as they asserted.)

I have not deemed it necessary to offer any opinion as to the measures necessary to be taken to restore quiet to the Cherokee people. Those I have already taken were adopted with almost the sole object of inducing the contending parties to remain quiet until the government could have time to interpose effectively—in which endeavor I have in a great measure succeeded. The presence of the troops, although few in number, has doubtless had a most beneficial influence.

The contract for rations will expire the 31st of this month, and I am therefore anxious to learn soon whether the measure is approved, and to be continued any longer. I took the responsibility of its adoption, at a moment of imminent and pressing danger, as one of absolute necessity. Had the Cherokee authorities given any encouragement to the refugees to return, at all adequate to the occasion, (they have given none whatever, that I am aware of,) their numbers might possibly have been much reduced. But they have persisted in an opposite course, suffering mob parties to remain imbodyed; consuming and wasting the property of the refugees; and authorizing the light-horse to patrol the nation in search of, so called, suspected persons.

A—No. 1.

Extract from a communication from Major B. L. E. Bonneville and Captain Nathan Boone, to Brigadier General Arbuckle, dated

"Camp near Evansville, Arkansas, "December 31, 1845.

"This day came John Field, son of John Field, of Stoney creek; also, a younger son of Archelaus Smith, both of the Cherokee nation. They report that, on Saturday evening the 27th inst., Charles, son of Archelaus Smith, was at a frolic at Joe Boling's, on Caney, in the Illinois district. That while there, Little John Brown was boasting he was the one who killed Bean Starr; that Charles, hearing him say that he would kill all the Starrs and Riders, spoke offensively to him; Brown seized the leg of a table and struck him several times with it; Charles drew his knife and stabbed him twice in the arm. They both remained at Boling's that night, and separated next morning. The same evening, Sunday the 28th inst., John Brown (a cousin of Little John Brown) came to the house of Charles' mother, near White Oak springs, in Tahlequah district, dragged Charles from his bed into the yard, where five or six men shot him dead;
two balls into the head, three into the body, and one on the foot. John Brown is the son of Alexander Brown, and is said to be the same I (Major Bonneville) met on the mountains at Downing's, and was at that time lieutenant of the light-horse. He had with him upwards of twenty armed men.

"Also came Elizabeth Field, sister of Charles Smith, and Jane Macintosh, who say they were at the house when Charles was killed. They recognised, 1, John Brown, son of Alexander Brown; 2, James Lowry, son of the chief, George Lowry; 3, Charles Lowry, son of James Lowry; 4 and 5, Ice and Beaver Tail, two brothers living on Caney, near Ursury. Say the party was upwards of twenty strong; that they were so much alarmed they did not notice any others.

"Mary Watts says that as they passed the house of Arly Campbell, they said they were going to kill Charles and all the boys—supposed to mean Governor Houston Smith and John Field."

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No. 2.

Extract from a letter of James McKisick, Cherokee agent, to General Arbuckle, dated

"CHEROKEE AGENCY, December 19, 1845.

"In answer to your inquiry as to whether the Cherokee council took any steps before their adjournment, offering satisfaction and safety to the refugees on their return, I have to state that I am unadvised of any such measure, further than the expression of sentiments in the Cherokee Advocate, which seems to deny the necessity of their fleeing for refuge."

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No. 3.

Extract from a letter from the Cherokee agent to General Arbuckle, dated

"CHEROKEE AGENCY, December 13, 1845.

"I think proper to remark that in this report some observations purporting to be made by me in the course of the interview with the committee on the mountain are misapprehended. First, that I should have stated as a reason that those who had fled across the line would not return because they expected to get a new country; my recollection and belief is, that that motive was strongly intimated by some of the committee, and I probably admitted that they desired a new country, as I understood.

"Secondly. It seems to me, from the language employed in the report, it might be inferred that I knew the person or persons who had desired the military to be ordered to the vicinity of the seat of disturbance, but declined giving their names; and that I might have questioned the propriety of the measure. The fact is, I was not informed as to who made the application desiring the presence of the military, nor did I express the least doubt as to the propriety of their being ordered there. I thought
then, as I still think, that the commanding general understood his duty better than I understood my own, from my short and limited experience in the matters under consideration.

"JAMES Mc KISICK,
Agent of the Cherokee Nation."

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No. 4.

Extract from orders of Brigadier General Arbuckle to Captain Boone, 1st regiment dragoons, near Evansville, Arkansas.

"The general trusts your apprehensions regarding the intentions of a portion of the refugees may prove unfounded; but should he be disappointed, and a hostile movement on their part take place, he directs that you collect your whole strength, and interpose to prevent so rash and unjustifiable a measure, and one fraught with the worst consequences to the nation; in which effort you will use force, if necessary, although the general would fain hope that this may be avoided. The stoppage of rations to the families of all such as may be concerned in any such attempt will follow as a matter of course."

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HEADQUARTERS SECOND MILITARY DEPARTMENT,
Fort Smith, January 6, 1846.

Sir: I wrote to you on the 3d instant, in relation to Cherokee affairs. Yesterday I had the honor to receive your communication of the 3d ult., with two enclosures, conveying the instructions of the President directing me "to employ, if necessary, the force under my command to put down domestic strife among the Cherokees, and protect the weaker party;" and, in the event of such force proving inadequate, authorizing me to call upon the authorities of the adjoining State for a sufficient militia force.

My previous communications will have made you acquainted with the facts, so far as I could gather them, in relation to the recent outrages committed in the Cherokee nation, and the state of affairs consequent thereupon. My information has been derived from the best accessible sources, and I believe it will, in all material points, be found correct. Numberless reports and rumors have reached me, which I have rejected for the want of proof, or confirmation, which, as was asserted in some instances, existed, but was not produced. You are doubtless aware, however, of the difficulty of obtaining entirely correct information in times like the present, when all are laboring under high excitement.

With the exception of the killing of Charles Smith, which I referred to in my last letter, no murders have been committed by the light-horse, or mob, in the Cherokee nation, that I am aware of, since about the 19th or 20th of November. Judging from the information before me, in relation to the last case, it seems of sufficiently serious import. I have written to the agent on the subject, and expect soon to hear any other version that may have been given to the occurrence.

In consequence of this tranquillity, which has resulted, as I believe,
in great measure from the separation of the parties, or the greater portion
of each, I have deemed it advisable to delay, for a few days, taking any
active measures, in pursuance of the President's instructions, expecting to
receive further orders, based on my own reports, by every mail, dates from
Washington as late as the 15th November being now due.

In the meantime, I have written to the agent, Colonel McKisick, re-
commending him to advise the acting principal chief to pursue a concilia-
tory course towards the refugees, to induce them to return to their na-
tion, and indicating to the national authorities certain conditions which I
deem absolutely necessary to restore any degree of confidence. From
past experience, I certainly have little to hope from this appeal; but I de-
sired to receive a definite answer from the chief on the points referred to,
before adopting other measures. I enclose herewith an extract from my
communication to the agent, marked A.

In my letter to you of the 22d November last, I stated that circum-
stances might occur which would induce me to call upon the execu-
tive of the State of Arkansas for a volunteer force to protect the frontier,
&c. I have not found it necessary to ask for these troops. Whether a
militia or other additional force will be required must depend, in my
opinion, entirely, or in a great measure, upon the conduct of the authori-
ties of the Cherokee nation, and of the majority party. Without their
concurrence in, and furtherance of, some such measures of reconciliation
as I have indicated in my letter to the agent of the 5th instant, it were
vain to expect that the great body of the refugees will return to the
nation.

If the Cherokee authorities persist in the course they have been recent-
ly pursuing, I shall be at a loss to suggest any means, short of the most
summary, of bringing the whole Cherokee people again under one gov-
ernment, and I must leave it to the wisdom of the Executive to devise the
necessary measures to meet the case. Anticipating such a result, I request
particular instructions on that point, if they should not have been (as I
expect they have) already issued.

Major Bonneville returned to this place from Evansville on the 4th in-
stant. Ill health prevented his proceeding to Beattie's prairie. He has,
however, in conjunction with Captain Boone, accomplished the chief ob-
ject of his mission. I enclose a copy of their joint report, marked B.

Major Bonneville, while at Evansville, received from one of the refu-
gees a number of affidavits, (ten,) taken before a magistrate whom he
knows, going to show that several of the individuals who, as is under-
stood, are charged by the Cherokee authorities with having been con-
cerned in the burning of Meigs's house, are guiltless of that crime. The
belief that they are so is at least general among that portion of the na-
tion to which they are attached. I enclose the affidavits herewith, papers 1,
2, 3, 4, 5, 6, 7, 8.

I have received intelligence from Lieutenant Johnston, command-
ing at Beattie's prairie, up to the 29th December. The force under Stand
Watie had increased, but it was thought the party would dissolve. In
writing to Lieutenant Johnston, Stand Watie says he has always advised
his friends "to abstain from excesses, and to suffer wrong rather than be
the aggressors." I have sent instructions to Lieutenant Johnston to keep
a close watch upon the party, and urge them at least to remain quiet, if
they do not think proper to disband. Should they attempt any hostile
movement, he is to interpose immediately. In due time I shall take the necessary measures to disperse this force. As they have as yet remained on the defensive, and committed no act of aggression, I prefer suffering them to remain where they are, to forcing them to separate, before the authorities of the nation give some proof of a desire to protect them at their homes.

I have the honor to be, sir, your obedient servant,

M. ARBUCKLE,
Brigadier General U. S. A.

The Adjutant General of the Army,
Washington, D. C.

[Extract.]

"Headquarters 2d Military Department,
"Fort Smith, January 5, 1846.

"Sir: * * * * *
"I have to-day received instructions from the President, under date December 3d, directing me to employ, if necessary, sufficient military force to put down domestic strife among the Cherokees, and to protect the weaker party.

"These instructions are not based on my reports, nor other official information that I am aware of; and I shall, therefore, delay definitive action in the matter for the present, in the expectation of receiving further advice from Washington by every mail.

"In the meantime, I beg leave to recommend as the best means of restoring quiet to the nation, and advancing the interests and welfare of the whole Cherokee people, that you advise the acting principal chief to issue his proclamation setting forth the names of those refugees against whom crimes are alleged by the authorities of the nation, and inviting all others, under guaranty of protection in their persons and property, under the laws of the nation, and freedom from arrest or punishment, unless by civil process executed in due form.

"The chief should be mildly but firmly counselled to disband all the armed parties, whether light-horse or mob, which, there is every reason to believe, are in the habit of patrolling the country, and forbid, under the penalties of the law, their again assembling. The government troops are quite sufficient for the police of the nation, and they are ever ready, at the call of the authorities, to aid the civil power in making arrests or quelling disturbances.

"As a further measure of reconciliation, and one I deem indispensable, an assurance should be given by the authorities, that those persons who were guilty of murder during the recent disturbances will be arrested, if possible, like other offenders, and brought to trial for their crimes.

"As you are aware, I have myself addressed the acting principal chief to the same effect as the foregoing, without receiving any satisfactory answer. My desire now is to obtain a definitive answer from him on the above points, and through a channel of communication to which he cannot raise any possible objection."
"In my judgment these conditions are indispensable to the restoration of quiet to the nation, and to the return of the refugees; and I will therefore thank you to submit the substance of them to the chief, and inform me of his answer at the earliest moment practicable.

"I shall be gratified to learn that your opinions accord with mine on this subject; but, should your views be different, I shall be obliged to you for any suggestion you may think proper to make.

"I am, very respectfully, your obedient servant,

M. ARBUCKLE,
" Col. JAMES McKISICK,
" Brig. Genl. U. S. A.

" Agent of the Cherokees, Fort Gibson."

B.

DRAGOON CAMP, NEAR EVANSVILLE, ARKANSAS,
January 2, 1846.

Sir: In obedience to your instructions of the 19th December, 1845, Major Bonneville proceeded to Evansville, which he reached on the 21st ultimo. Here he found the enclosed letter of the Cherokee agent; finding the agent would not be here, the undersigned commenced their duties as pointed out in your instructions, and have the honor to report:

1st. From the enclosed abstract of issues for the month of December, it will be seen that the small difference of the number drawing rations at the commencement of the month and at its termination has not acted as an inducement for the Cherokees to leave their homes. No one charged with crimes by the Cherokee authorities is known to be receiving rations from the United States. Though idle and worthless individuals might escape the closest examination, yet, so soon as detected, they would at once be dropped from the provision list.

2d. We are of the opinion that few, if any, of the common Indians who have left their homes could find a support there now; from the best information we have, it is supposed most of their stock and grain has been destroyed.

3d. Upon your suggestion, Captain Boone has excluded from his list all slaves, and such as he deems may be able to support themselves; thus reduced, the number to whom provisions will be hereafter issued will be 325 full rations, and 60 half rations.

4th. We are of the opinion that children over five years of age should receive full rations; below that age, half rations.

5th. The refugee Cherokees are living, by permission, in vacant buildings among their friends, scattered over a wide extent of country, without any intention of making a claim for such indulgences.

There are many Cherokee families that have crossed the line about Beattie's prairie; but, from a report of Lieutenant Johnston, it is believed they can support themselves, and no issues will be made in that quarter unless otherwise instructed.

Stand Watie is at old Fort Wayne with about 100 followers; they keep up an understanding with those near this. We do not apprehend any act
of hostility on their part; they appear determined to abide the decision of the President of the United States upon their present situation.

We are, sir, very respectfully, your obedient servants,

B. L. E. BONNEVILLE,
Major 6th Infantry.

NATHAN BOONE,
Captain 1st Regiment Dragoons.

Captain JAMES H. PRENTISS,
Assistant Adjutant General 2d military department,
Fort Smith, Arkansas.

No. 1.

STATE OF ARKANSAS,}
County of Washington.}

Be it remembered, that on this 25th day of December, 1845, personally came Fanny Knob before me, the undersigned, an acting justice of the peace, and, after being duly sworn, deposeseth and saith: That Washington Starr was a near neighbor, and was at my house the greater part of Saturday, the 1st of November, 1845, employed in making a door. I am known to the fact, that Washington Starr was at home on the night of the 1st of November, 1845; and there some days previous. She further states, that Washington Starr came to her house on Sunday morning, the 2d of November, and stated that he was going to Salisaw to get some hogs.

FANNY KNOB, her × mark.

Sworn and subscribed to this day above written.

JACOB CHANDLER, J. P.

Jinny, a Cherokee woman, after being duly sworn, states that she is personally known to the above facts, as set forth in the above affidavit, and that she resides with Mrs. Knob, and was present at the time.

JINNY, her × mark.

Sworn and subscribed to this day above written.

JACOB CHANDLER, J. P.

No. 2.

STATE OF ARKANSAS,}
County of Washington.}

Be it remembered, that on this 25th day of December, 1845, personally came James Rider, a citizen of the United States, before me, the undersigned, an acting justice of the peace in and for said county, and, after being duly sworn, deposeseth and saith: That he went to the residence of John W. West, Washington county, Arkansas, about 2 o’clock, p. m., on Saturday, the 1st day of November, 1845, and found Thomas Starr and Ellis Starr there; they remained there until after dark, when they both left, as they said, for
the residence of Thomas Starr, in the Cherokee nation; and further deponent saith not.

JAMES RIDER.

Sworn and subscribed to the day and year above written.

JACOB CHANDLER, J. P.

No. 3.

STATE OF ARKANSAS, County of Washington,

Be it remembered, that on this 25th day of December, 1845, personally came Charles Rease before me, the undersigned, an acting justice of the peace in and for said county, and, after being duly sworn, deposes and saith: That he was at the residence of Thomas Starr on Saturday night, the 1st of November, the night on which it is said R. J. Meigs's house was burnt, and some time in the early part of the night, before the family had retired to bed, Thomas Starr and Ellis Starr came there and remained during the night.

CHARLES REASE.

Sworn and subscribed to the day and year above written.

JACOB CHANDLER, J. P.

No. 4.

Personally appeared before me, Jacob Chandler, an acting justice of the peace for and in the township of Vineyard, county of Washington, and State of Arkansas, Araminta McCoy; and, after being duly sworn, states: That on Saturday, the 1st of November, 1845, about 12 o'clock, m., she came to the residence of Washington Starr, and remained at his house until Sunday morning, the 2d of November, 1845, and that Washington Starr was at home, and remained there until Sunday morning, the 2d of November, 1845, at 8 o'clock, when he left his residence for Salisaw, to obtain some hogs formerly belonging to his brother, the late Field Starr.

ARAMINTA McCoy.

Sworn and subscribed to this 25th day of December, 1845.

JACOB CHANDLER, J. P.

No. 5.

Personally appeared before me, Jacob Chandler, an acting justice of the peace for and in the township of Vineyard, county of Washington, and State of Arkansas, Sarah McCoy; and, after being duly sworn, states: That, on Saturday, the 1st day of November, 1845, about 12 o'clock, m., she came to the residence of Washington Starr, and remained at his house until Sunday morning, the 2d of November, 1845, and that Washington Starr was at home, and remained there until Sunday morning, the 2d November, 1845, at 8 o'clock, when he left his residence for my place on Salisaw, to get some hogs belonging to his brother, the late Field Starr.

SARAH McCoy, her X mark.

Sworn and subscribed to this 25th day of December, A.D. 1845.

JACOB CHANDLER, J. P.
STATE OF ARKANSAS, }  
County of Washington. {  

Be it remembered, that, on this 1st day of January, 1846, personally appeared before me, the undersigned, an acting justice of the peace in and for said county, John McDonald, and, after being duly sworn, deposeth and saith: That, on Saturday, the 1st of November last, or the night on which it is said that R. J. Meigs’s house was burnt, he came in company with Bluford Rider to the residence of Mr. Woods, his stepfather. He supposes they got there about 8 o’clock at night. Shortly after they got there, Ellis (or Sue!) Rider got up out of his bed, having gone to bed previously, and came to where they were; and, shortly afterwards, he and Ellis laid down together on a pallet, and there remained until morning. He further states that himself and Bluford Rider passed the residence of Thomas Starr the same evening they came to Mr. Woods, shortly after dark, and saw Charles Rease there. They (Rease and Mrs. Starr) stated that Thomas and Ellis Starr had gone to John W. West’s, and that they expected them home that night. Further deponent saith not.

JOHN MCDONALD.

Sworn and subscribed to this day above written.

JACOB CHANDLER, J. P.

No. 8.

STATE OF ARKANSAS, }  
County of Washington. {  

Be it remembered, that on this 1st day of January, 1846, personally came Thomas N. Finley before me, an acting justice of the peace within and for the county aforesaid, and, after being duly sworn, deposeth and saith that he hath been acquainted with James Starr, a native Cheerokee,
ever since the year 1838; lived within three miles of him, and can say that he has supported the character of an honest, peaceable, good citizen; and further deponent saith not.

THOMAS N. FINLEY.

Sworn and subscribed to this day and year above written.

JACOB CHANDLER, J. P.

I do certify that the above deponent is a respectable citizen of the county aforesaid, and entitled to credit.

JACOB CHANDLER, J. P.

No. 9.

I do certify that I have been acquainted with James Starr, a native Cherokee, for a number of years, both in the State of Tennessee and in the Cherokee nation, south and west, and I have always believed him to be an honest, straight, and upright man; and his general character, I believe, when a citizen of the State of Tennessee, was the same.

Given under my hand this 1st day of January, 1846.

ANDW. AGNEW, SENR.

STATE OF ARKANSAS,
County of Washington.

Personally appeared before me, an acting justice of the peace, the above subscriber, And. Agnew, and, being duly sworn, saith the above statement is true. Said Agnew is personally known by me, and I can say he is a respectable citizen of Washington county, and entitled to credit, this 1st day of January, 1846.

JACOB CHANDLER,
Justice of the Peace in the county aforesaid.

No. 10.

STATE OF ARKANSAS,
County of Washington.

Be it remembered, that on this 1st day of January, A. D. 1846, personally appeared before me, an acting justice of the peace in and for said county, Henry Frashour, and, after being duly sworn, deposeth and saith that he has been personally acquainted with the late James Starr, a native Cherokee, ever since the year 1814 up to his death, and has always found him a strictly honest, upright man, and a man whose course of conduct has always gained for himself the respect of his neighbors.

HENRY FRASHOUR.

Sworn and subscribed this day above written.

JACOB CHANDLER, J. P.

HEAD QUARTERS 2D MILITARY DEPARTMENT,
Fort Smith, Arkansas, February 12, 1846.

Sir: I have the honor to enclose to you herewith a copy of a letter addressed to me by the delegation of Cherokees chosen by the treaty party.
to represent their interests at Washington city. They ask my opinion respecting the propriety of separating the opposing parties into which their nation is divided.

The enmities existing between the treaty party and western Cherokees unitedly, and the dominant party, are believed to be reciprocal and deep-rooted; and my opinion is, that no one domestic government could now insure peace and security to that people. A distant separation of the parties, therefore, seems very desirable; if this cannot be accomplished, then a division of the present Cherokee country will become indispensable.

I am, with great respect, your obedient servant,

M. ARBUCKLE, 
Brig. General U. S. A.

Hon. W. L. MARCY, 
Secretary of War.

Extract from a letter from Brigadier General M. Arbuckle, dated Fort Smith, March 13, 1846.

"I have also received information of the murder of a Cherokee named Stand, on the 28th ult., about eight or ten miles from Captain Boone's camp in the nation. In reporting it, the Captain states: 'Circumstances induce me to believe that the murderers went from the vicinity of Evansville. I was told to day that this man, Stand, was present when old James Starr was killed. I must say that this is the first outrage that I have any reason to believe was done by the Starr and Rider connexion, since I have been stationed here.'

"I fear this murder was a retaliatory act committed by some of the restless spirits among the relatives of those who were murdered in November by the dominant party. I have instructed Captain Boone to strike from the rolls of those allowed rations, the names of any who may be justly suspected of being concerned in this murder; (I have no doubt, however, that the act was committed by certain individuals who, for their crimes, actual or alleged, have always been excepted from the list;) and threaten the stoppage of rations from the whole body of refugees near Evansville, unless these outrages cease. It is much to be regretted that all their chief men of any influence are now absent at Washington.

"On the 7th instant, A. B. Daunenberg, a white man, resident in the Cherokee nation, and the contractor for furnishing rations to the refugees, was seized on the bank of the Arkansas, opposite to this place, by a party of light-horse under Martin Benge, captain of Cherokee light-horse, and his horse badly wounded by a pistol shot soon after, and while he was on him, under circumstances altogether suspicious. After keeping him a prisoner two or three days without a trial, or bringing charges against him, he was told he was at liberty to go where he pleased. What adds to this outrage, Daunenberg was at the time bearer of an official letter to me from Captain Boone, of which fact he informed Benge. It should be noted also that the party were well supplied with whiskey, and were drinking and frolicking most of the time Daunenberg was in their hands.

"This proceeding of Benge was a great outrage, and, at the same time, an indignity to the United States authorities, for which I have felt dis-
posed to punish the author, at least by arrest. But in view of the decision of the United States judge for this district, that white men, residing as citizens in the Cherokee nation, are amenable to the Cherokee laws in their full extent, I have determined to pass it by with nothing more than a report of the facts:

"I have to add to this already painful record of murder and outrages, that a wagoner was killed a few days past at the bank of the Illinois river, on the Gibson road, by two Indians, thought to be Creeks, (many of whom live among the Cherokees, particularly in that neighborhood,) and two of his mules taken. The man who accompanied him escaped to tell the tale."

PART VI.

CHEROKEE AGENCY WEST, February 12, 1846.

Sir: At the time I received your letter of instructions, under date 4th December last, (which did not reach this agency until the 14th January,) in which I am directed to proceed to examine witnesses, take testimony, seek out the names of all who have been concerned in the late murders and depredations in the Cherokee nation, and to ascertain the causes which led to them, it was impossible for me to leave the agency, and visit distant and remote parts of the nation, also Fort Smith and Van Buren, to obtain the information directed, on account of my having advertised the public mechanical work of the nation to be let out on a certain day, after the receipt of the communication. So soon, however, as it was in my power, I set out on the business of your instructions, and have been engaged sixteen consecutive days in endeavoring to obtain information as directed. In endeavoring to collect testimony, I found several persons who, from their knowledge of facts connected with the late disturbances in the nation, could have made statements, the purport of which would have been of some importance in shedding light upon some of the springs which operated in those outrages and depredations. They, however, declined, in some instances, making any statements, upon the ground that they were resident citizens of the nation, and the fact of their voluntarily making statements to be reduced to writing, in regard to those matters, would jeopard their peace and safety in the nation.

Previous to my setting out to collect such testimony as I could, I addressed a letter to Major Lowry, the acting principal chief, informing him of the nature of my instructions, and that I would be glad to hear any suggestions he might think proper to make in relation to the matter. I considered that the courtesy and respect due to the acting chief would dictate that course; besides, I thought it probable he might think proper to send some suitable person to accompany me, and be present when I was receiving the testimony. On the day I set out on this business, I went to the council ground, where the acting chief had caused to be assembled several of the council and committee men of the nation for the purpose of appointing an additional delegation to the city of Washington.

In the evening, two of the principal men came to my lodgings, (Judge Foreman, one of the new delegates, and W. P. Ross, editor of the Cherokee Advocate,) and inquired of me what object the government had in
view in ordering depositions to be taken in regard to the late disturbances in the nation? alleging at the same time that it was a usurpation of the rights and privileges of the Cherokee people and Cherokee authorities, and that no practical benefit could result from it, but that very injurious effects might result from such a course to the Cherokee people.

They, therefore, protested against the proceedings. This communication was made, however, in a friendly and respectful manner; and I gave them to understand that I intended to obey my instructions as far as was in my power.

As the disturbances had commenced in the burning of Mr. Meigs's house, and the killing of the two Cherokees, in his neighborhood, of the Ross party, Crawford Fox and Ah-ta-la-hu, I concluded to commence with him in taking the statements on oath. Mr. Meigs, however, objected to making any statement.

On gathering such testimony as I have obtained, I was necessarily compelled to take statements on different days, and at different places, relating to the same facts. I have endeavored to arrange the testimony as well as I could, by placing the different statements in relation to the same fact under a particular letter, and designating the statements having reference to the same fact thus—letter A.—No. 1, 2, 3, &c. It will be seen that some of the testimony has been taken in the State of Arkansas; in all those cases, the oath has been administered by a justice of the peace.

I have delayed mailing the testimony I have taken, with the expectation that General Arbuckle would forward me Colonel Thomas E. Wilson's statement from Fort Smith, which he seemed anxious to do, as I failed to see Colonel Wilson when at that place.

If, however, this testimony should be sent to me within a few days, I will transmit it by the next mail after its receipt.

As Major Armstrong, superintendent, and his clerk, are both absent, I will forward this package direct to the department.

I have the honor to be, very respectfully, your obedient servant,

JAS. McKISICK,
Cherokee Agent west.

Hon. WILLIAM MEDILL,
Commissioner of Indian Affairs, Washington city.

CHEROKEE NATION WEST.

The statements sworn to, marked A, from No. 1 to 3, have been presented to the Cherokee agent with a view to account for the causes which led to the late disturbances; also with a view to endeavor to identify some of the persons alleged to have been concerned in burning Meigs's house and murdering the two Cherokees of the Ross party, which seems to have been the commencement of the late outrages in the nation.

A No. 1.

February 9, 1846.—Be it remembered, that this day personally appeared before me, James McKisick, agent of the Cherokee nation, Oo-nah-cher-sah, and, after being duly qualified, makes the following statement:
On Friday night, before Mr. Meigs's house was burned, David Blackbird, or Rat, and myself were going along the road leading from Nashville towards Colonel W. S. Adair's; we called at my mother's house, and as we went out we heard the sound of horses' feet coming from the direction of Colonel Adair's. We went on a few steps, when two men came riding up, and as they passed the light which shone from the fire in the house, I saw their faces, and I knew the foremost to be Ellis Starr, and the second to be Thomas Starr. After going a few steps further, five others came riding up, but I did not see their faces, and did not know them; it was too dark; one of the five appeared to be a large, tall man, with long legs; the seven appeared to have guns slung by their sides. Thomas Starr had on a reddish-looking fur cap, with something like a tail hanging down his back; they were going along the road leading to Fort Gibson; it was east of the fork that turns to Tah-le-quah. After they had passed I said to David Rat, "those are Tom and Ellis Starr;" he replied, "they are so."

OO-NAH-CHER-SAH, his X mark.

Sworn and subscribed to before me on the day and date above.

A No. 2.

Cherokee Nation.—On this 30th day of January, 1846, personally appeared before me, James McKisick, agent of the Cherokee nation west, David Rat, a Cherokee, who, being sworn in due and legal form, deposes and says:

That he, in company with Oo-nah-cher-sah, or Goback, and others, were returning home from Tah-le-quah, or the council ground, on Friday evening, about the last of October last, and the night before Mr. Meigs's house was burnt in the Cherokee nation; it was late in the evening when they left the council, and they arrived in the neighborhood of home and at home about nine o'clock in the night. After eating supper at the above-named Oo-nah-cher-sah's, they concluded to go a short distance to a neighbor's house, where there was a dance that night; where they ate supper is near to the main road leading from Flint district to the council ground, and into the neighborhood of where Mr. Meigs's house was burnt. Just as they came to the main road, after leaving the house they had eaten supper at, they discovered a company of seven men coming down the road towards Tah-le-quah, or the council ground; the two foremost of the company passed as this deponent and the man in company with him got into the main road; the others of the company were close behind, and all passed on without speaking. They all carried their guns with the muzzles down, and close to their sides. It was a bright, starlight night, and they noticed this company with great particularity. From his knowledge of the size and appearance of Thomas Starr and Ellis Starr, he then believed that they were the two who rode foremost in the company when deponent and the man in company with him met and passed them. As to the other five in company; deponent cannot state with any degree of certainty who they were. Deponent and Oo-nah-cher-sah went on to the house where they set out to go to, where the dance was held; on their arriving there, they both informed the company that they believed they had met Thomas
Starr and Ellis Starr, and others, going down the road towards Tah-le-quah, or the council ground; and they both observed to the company, if they were right as to their opinion that it was the Starr boys, there would be some mischief done, and it would soon be heard of; but if there was no mischief done in the direction these people were going, that perhaps they might be mistaken.

On the next night after deponent met this company, Meigs's house was burnt, and in the neighborhood of where the house was burnt, two young men, Cherokees of the Ross party, were murdered, as he is informed and believes. Mr. Meigs is the son-in-law of John Ross, the principal chief; and deponent is informed, and has no doubt but the fact is so, that the Starr boys, as they are called, are opposed to Mr. Ross personally and politically.

DAVID RAT, his X mark.

Sworn to and subscribed before me the date above.
JAS. McKISICK, Cherokee Agent.

A No. 3.

Cherokee Nation.—Personally appeared before me Col. Walter S. Adair, who, being sworn in due and legal form, makes the following statement, as his opinion or belief which led to or was the cause of the late difficulties and disturbances in the Cherokee nation, and deposes and saith: On Tuesday, after the burning of Meigs's house near Tah-le-quah, he was at Tah-le-quah, and the bodies of two young men were brought into town who had evidently been murdered, and, from circumstances and appearances, had been killed on Saturday before. His opinion and belief is that the murder was perpetrated by the company who was seen going down the road towards Tah-le-quah on Friday previous; and if it had not been for the circumstance of those two young men being murdered, it is his belief that the disturbances which now exist in the Cherokee nation would not have taken place; and it is generally believed that the Starr boys were the perpetrators of those offences before alluded to. And he further states that he believes that James Starr and others would not have been killed at the time had not those two young men been murdered and mangled in the manner they were found. James Starr, who was killed on the 9th of November last, was the father of Tom Starr, and the uncle of Ellis, who, with others, form the banditti, and have been declared outlaws by the Cherokee authorities.

W. S. ADAIR.

Sworn to and subscribed before me, on the 8th February, 1846.
JAS. McKISICK, Cherokee Agent west.

The following statements, marked B Nos. 1 and 2, have been offered to prove that Thomas Starr and Ellis Starr, who are alleged to have been concerned in the burning of Meigs's house on the night of the Ist of November, 1845, and murdering the two Cherokees about the same time, are innocent of the charge:
Cherokee Nation.—Be it remembered, that on this 1st day of February, 1846, personally came James Rider, citizen of the United States, before me, James McKisick, agent for the Cherokee nation, and, after being duly sworn, deposes and saith: That he went to the residence of John W. West, in Washington county, Arkansas, about two o'clock, p. m. on Saturday, the 1st day of November, 1845, and found Thomas Starr and Ellis Starr there. They remained there until after dark, when they both left, as they said, for the residence of Thomas Starr, in the Cherokee nation. And further this deponent saith not.

JAMES RIDER.

Sworn to and subscribed before me the day and year above written.

JAS. MCKISICK,
Cherokee Agent west.

B No. 2.

STATE OF ARKANSAS, county of Washington:

Be it remembered, that on this 25th day of December, 1845, personally came Charles Rease before me, the undersigned, an acting justice of the peace, in and for said county, and, after being duly sworn, deposes and saith: That he was at the residence of Thomas Starr on Saturday night, the 1st of November, the night on which it is said R. J. Meigs's house was burnt, and some time in the early part of the night, before the family had retired to bed, Thomas Starr and Ellis Starr came there and remained there during the night.

CHARLES REASE.

Sworn to and subscribed the day and year above written.

JACOB CHANDLER, J. P.

It will be observed that the foregoing statement made by Charles Rease was taken and sworn to before a justice of the peace in the State of Arkansas, from which I took the foregoing copy.

JAMES McKISICK,
Cherokee Agent.

These statements, made and sworn to, marked C, and numbered 1, 2, and 3, have been offered to show the facts immediately connected with the murder of James Starr, and the wounding of his son Buck, a lad, who died of the wounds:

C No. 1.

Testimony in relation to the murder of James Starr, Cherokee nation, January 31, 1846.

Be it remembered, that on this day personally appeared before me, James McKisick, agent for the Cherokee nation, Oo Looche, the mother-in-law of James Starr, deceased, who, being sworn in due and legal form, deposes and saith: That on Sunday morning, the 9th of November last, a company of men armed with guns rode up to the house of James Starr,
in the Cherokee nation; this company came to the house about sunrise; she is unable to say what number there were in this company; they were mostly Cherokees, deponent noticed one mulatto in the company. Deponent knew but few of the company, though she recognised a young man named Benge, Talusky Tuckquah, John Downing, Bill Sower John, John Tato, Chico Canisky, and Big Stan; when this company rode up, James Starr, the deceased, had just washed his face and was wiping with a towel. Talusky Tuckquah immediately discharged his gun at the deceased, the ball of which penetrated his left arm and passed into his body on the left side; another of the company also shot the deceased immediately after the first gun was discharged. The second ball penetrated his breast, when the deceased sank down and expired immediately.

James Starr, the deceased, had a son called Buck, about fourteen years of age, who had poured water on his father's hands for him to wash; the deceased, about the time they shot at him, told his son Buck to make his escape. The lad laid the gourd he used in pouring the water away, and his mother told him also to run. As he started to make his escape, several of the company shot at him; he was struck with three balls; two penetrated his right arm, which lacerated and broke it very bad; the third entered his hip, of which wound he languished and died. The company said they had come to kill all the male part of the family; there were three small boys about the house, sons of the deceased, the eldest of whom was about eleven years of age; they made several attempts to shoot these boys, but by the interference of the females about the house, by wrapping their garments round them, the small boys were saved. The company, after being prevented from killing the boys as above stated, mounted their horses and set off in great haste to where they murdered Suel Rider, a distance of about a mile and a quarter.

OO LOOCHHEY, her X mark.

Sworn to and subscribed the day and date above written.

JAMES McKISICK,
Cherokee Agent west.

C No. 2.

Cherokee Nation, February 1, 1846.—Be it remembered, that on this day personally appeared before me, James McKisick, agent as aforesaid, Nelly Starr, the widow of James Starr, deceased, who, being sworn in due and legal form, deposes and says: That on a Sunday morning early in the month of November last, a company of armed men, mostly Cherokees, rode up to the house of her husband, James Starr; they were generally painted, and there were but few of the company whom she recognised; on riding up, some of the company dismounted and some remained on horseback; deponent saw the company approaching before they got to the house, and mentioned to her husband the police or a company of armed men were coming; her husband replied to her to say nothing to them, but let them search the house till they were satisfied, and they would then go off. The deceased then went to the washing place in the piazza, washed his face and hands, and was wiping; part of the company dismounted; Talusky Tuckquah, one of the company, shot her husband, the deceased, James Starr, very soon after he dismounted. The ball
of the first gun fired went through the left arm and penetrated his body; immediately another gun was fired by some one in the company, but by whom deponent does not know; the ball of the second gun entered his breast near the pit of the stomach; on receiving the second ball, her husband sank or fell down and immediately expired. Deponent's son, named Buck, a lad about fourteen years of age, who had been pouring water on his father's deceased, hands, seeing he was shot down, attempted to make his escape, on which several guns were fired at him; he was struck with four balls, two in the right arm, which shivered it badly, one in the hip, and one glanced his breast, of which wounds he died after languishing about six weeks; deponent does not know all of the company who shot at her son; she knows that Lewis Nelm did shoot at him; she has three small sons, one about ten, one about eight, and the other about five years old. Anderson Benge and two others attempted to shoot these boys; this deponent and other females about the house succeeded in preventing them from killing the boys by getting between them and the boys, and wrapping their clothes around them. After they quit attempting to shoot the little boys, those who were on foot mounted their horses, and the whole company started off at a gallop to where they killed Suel Rider, about a mile off, and left deponent's husband, James Starr, lying dead and murdered in the manner above described.

NELLY STARR, her X mark.

Sworn to and subscribed before me the day and date above.

JAMES McKISICK,
Cherokee Agent west.

C No. 3.

Personally appeared before me, James McKisick, agent as aforesaid, on this 1st day of February, 1846, Mary Starr, the daughter of James Starr, deceased, (sixteen years of age,) who, being sworn in due and legal form, deposes and says: That early on a Sunday morning in the month of November last, the precise day of the month deponent does not recollect, a company of armed men rode up to her father's house; deponent knew but few of the company, they were mostly if not all Cherokees, and pale; on coming up to the house, some of the company dismounted, Tales-ca Flick-quah and Lewis Nelm shot at her father, James Starr, who was on the piazza wiping his face and hands; he immediately fell, and died in a short time; her brother, Buck Starr, attempted to run; when they had killed his father, the company fired several guns at him; he was wounded in two or three places, and died of his wounds in about six weeks after receiving them. On seeing her father killed, and her brother wounded, she, this deponent, caught a horse to go and let some of her friends know what had been done; some of the company beat her horse with their guns, and scared and fretted him so she was compelled to dismount.

MARY STARR, her X mark.

Sworn to and subscribed before me the day and date above written.

JAMES McKISICK,
Cherokee Agent west.
These statements, made and sworn to, marked D, and numbers 1, 2, 3, have been offered to show that Suel Rider, who was charged with being concerned in the burning of Meigs's house on the 1st of November, 1845, and the killing of the two Cherokees about the same time, was not guilty of those charges, although murdered on account of them:

D No. 1.

Personally appeared before me, James McKisick, agent of the Cherokee nation west, on this 1st day of February, 1846, John McDaniel, who, being sworn in due and legal form, deposes and says: That on Saturday, the 1st of November last, he met with Suel Rider at his mother's. That he, this deponent, remained at the same house with him at his mother's, and slept with him on the night of the 1st of November last, and remained in his (said Rider's) company until about 11 o'clock in the day of that day; the place where he slept with said Rider at his mother's is about thirty-five miles from where Meigs's house was burnt, and about a mile and a half from Evansville.

JOHN Mc DANIEL.

Sworn to and subscribed before me this day and date above written.

JAMES McKISICK,
Cherokee Agent west.

D No. 2.

STATE OF ARKANSAS, county of Washington.

Be it remembered, that on this 26th day of December, 1845, personally appeared Walter A. Goss before me, the undersigned, an acting justice of the peace, and, after being duly sworn, deposeth and saith: That on Saturday, the 1st of November, 1845, while on my way from Mr. G. W. Adair's to Evansville, I fell in company with Ellis or Suel Rider; as he was going in the same direction, we travelled together for some two miles, until we came to Dr. Sloane's; he here mentioned that he would stop and get his dinner, as he perceived that it was near ready. As well as I recollect, the table was set ready for dinner as I rode past the house. Before we parted he asked me to stop for dinner, and then go with him to Mr. John Bean's; but as business urged me, I made my excuse, and we parted. I further believe that it was 12 or 1 o'clock when we parted.

WALTER A. GOSS.

Sworn to and subscribed to this day and year above written.

JACOB CHANDLER, J. P.

The above statement was made and sworn to by Walter A. Goss, before a justice of the peace in the State of Arkansas. The foregoing is a true copy.

J. McKISICK,
Cherokee Agent west.

D No. 3.

Cherokee Nation, 31st January, 1846. On this day personally appeared before me, James McKisick, agent for the Cherokee nation of Indians west,
Mary Wood, who, being sworn in due and legal form, deposes and says:
That on Sunday morning, the 9th day of November last, about two hours after sun-rise, a company of Cherokees rode up to her house, all armed with guns; Tuck-poah, an elderly Cherokee, seemed to have the command of the company. Deponent and her son, Suel Rider, were in the kitchen at the time the company approached the house; some immediately dismounted, and some of the company remained on horseback. A Cherokee named John Tato walked into the kitchen where her son, Suel Rider, the deceased, was, and led him out into the yard; on getting out into the yard, this John Tato gave the deceased a shove from him and shot him. So soon as he, Tato, fired, five others of the company also shot the deceased. John Tato then took a gun out of another Cherokee's hand, and shot him again, making in all seven times he was shot. Deceased did not still fall, but attempted to run, and ran through the entry between the kitchen and dwelling-house. A large Cherokee man, named Big Stan, pursued him closely with his knife, and stabbed deceased twice before he fell. Deceased lived about an hour after receiving the wounds, but was unable to speak before he died. Deponent further states that the company above described, and who murdered her son as above described, were all of the Ross party, as they are commonly called in the nation. Her son, the deceased, was of the old settler and treaty party, they having emigrated in the year 1832. Deponent further states, that about three weeks after the murder of her son, a police company who professed to be acting under the legal authorities of the nation came to her house, the same place where they had murdered her son, and held a war dance; they took her corn and fed their horses while holding the dance. Deponent further states that her son, Suel Rider, was killed on the same morning that James Starr was killed, in his own house, and his son, Buck Starr, a lad about thirteen or fourteen years of age, wounded, of which wounds the lad has since languished and died. Deponent further states, that after killing Suel Rider, one of the company shot at another son of hers, about sixteen years of age, but missed the lad. The commander of the company, Tuck-poah, ordered the company not to kill the lad, as he believed him to be a white boy.

MARY WOOD, her X mark.
Sometimes called Mary Rider.

Sworn to before me the date above.

JAS. MCKISICK,
Cherokee Agent west.

Statement of Bluford Rider.

Personally appeared before me, James McKisick, agent as aforesaid, on this said 31st of January, 1846, Bluford Rider, (the brother of Suel Rider, deceased,) who, being sworn in due and legal form, deposes and says:
That on the same morning his brother, Suel Rider, was murdered, a part of the same company (sixteen in number) who had murdered his brother Suel, came on to this deponent's house, about two and a half miles distant from where his brother was killed; deponent's mother, Mary Wood, alias Mary Rider, apprehending the company intended to commit violence on deponent, dispatched a negro boy on horseback with all possible haste to inform deponent of the murder of his brother, and that he (this deponent)
might make his escape. Deponent immediately mounted his horse; seeing the company aiming towards his house, he made off at full speed, and the company pursued. After running his horse about a quarter of a mile, his pursuers fired two guns at him, but neither took effect. Deponent forced his horse to jump down a steep cliff of rocks; though his horse bounded down the cliff, he was not materially injured, and he still kept on at full speed until he crossed the line and got over into the State of Arkansas. His pursuers stopped when they came to the cliff of rocks, down which deponent leaped his horse, as he believes, for he did not see them afterwards.

BLUFORD RIDER.

Sworn to and subscribed before me this day and year above written.  
JAMES McKISICK,  
Cherokee Agent west.

This statement, made and sworn to by Washington Starr, (letter G, No. 1,) is offered to show that the company who killed James Starr, his father; attempted to kill him also:

Cherokee Nation, February 7, 1846.—Be it remembered, that on this day personally appeared before me, James McKisick, agent for the Cherokee nation, Washington Starr, a Cherokee, who, being sworn in due and legal form, deposes and says: That on Sunday morning, the 9th of November, being the same morning on which his father, James Starr, was murdered, a company of armed Cherokees came to the house of deponent, he thinks about twelve or thirteen in number. Deponent had gone to a neighbor's house early in the morning, and on his return, getting near home, he found this company in the road before him, and between him and his house. On his first discovering the company he did not anticipate any danger, but walked up within five or six steps of them, and spoke to the company, as he knew some of them personally. The company made no reply when deponent spoke to them, but immediately levelled their guns for the purpose of shooting. Deponent, then, seeing they intended to kill him, made a vigorous effort to get out of their way, and the first jump he made passed before the muzzles of their guns, at which time five of the company fired, but all missed. Deponent stopped suddenly after the first fire for a moment; but seeing some of the company were preparing to shoot again, deponent made another vigorous leap, by which he sprang across and before the muzzles of the second round of guns that were fired at him; the second time there were three guns fired at him, all of which missed, but from one he received a severe wound in the right arm, though the ball missed the bone. The company after firing the second round pursued deponent about two hundred yards to a fence, but were unable to overtake him before he jumped the fence. On leaping the fence, deponent kept on at the top of his speed, and when the company got to the fence they fired three more guns at him, but all missed. Deponent kept on as fast as he could until he crossed the line, and got over into the State of Arkansas, a distance of about one mile and a quarter from where he was wounded. Deponent was bleeding very profusely, and fainted shortly after crossing the line. His pursuers followed some distance on the blood, but stopped be-
before they got to the line. Deponent does not know all who shot at him, but he does know Tuckquah, Tallusca Tuckqua, Lewis Nelms, Cho-chucca, Cheea Conskee, or Otter Lifter; John Downing; (Sam’s son,) and Aaron Wilkinson, did shoot at him.

WASHINGTON STARR, his X mark.

Sworn to and subscribed before me the day and date above written.

JAMES McKISICK,
Cherokee Agent west.

The following statements, made and sworn to, (marked letter H, and numbered 1, 2, 3, and 4,) were offered to prove that Washington Starr was not concerned in the burning of Meigs’s house on the night of the 1st of November, 1845, or in the murder of the two Cherokees, about the same time, in the neighborhood of where the house was burnt. He has offered this proof against the charge.

H No. 1.

Cherokee Nation.—Personally appeared before me, James McKisick, agent for the Cherokee nation west, on this 1st day of February, 1846, Araminta Rider, and, after being duly sworn, states that on Saturday, the 1st of November, 1845, about 12 o’clock meridian, she came to the residence of Washington Starr, and remained at his house until Sunday morning, the 2d November, 1845; that Washington Starr was at home, and remained there until Sunday morning, the 2d November, 1845, at 8 o’clock, when he left his residence for Salisaw, to obtain some hogs formerly belonging to his brother, the late Field Starr.

ARAMINTA McCoy,
(Since married to Bluford McCoy.)

Sworn to and subscribed the date above.

JAS. McKISICK,
Agent Cherokee Nation west.

This statement was sworn to before me on the 1st of February, 1846. Deponent is now married to Bluford Rider; she now assumes the name of Araminta Rider.

JAS. McKISICK,
Cherokee Agent.

H No. 2.

Personally came before me, Jacob Chandler, an acting justice of the peace for and in the township of Vineyard, county of Washington, State of Arkansas, Sarah McCoy, and, after being duly sworn, states that on Saturday, the 1st day of November last, 1845, about 12 o’clock meridian, she came to the residence of Washington Starr, and remained at his house until Sunday morning, the 2d November, 1845, and that Washington Starr was at home and remained there until Sunday morning, the 2d November, 1845, at 8 o’clock, when he left his residence for my place on Salisaw, to get some hogs belonging to his brother, Field Starr.

SARAH McCoy, her X mark.

Sworn to and subscribed to the 25th day of December, 1845.

JACOB CHANDLER, J. P.
H No. 3.

STATE OF ARKANSAS, County of Washington:

Be it remembered, that on this 25th day of December, personally came Fanny Nob before me, the undersigned, an acting justice of the peace, and, after being duly sworn, deposeth and saith: That Washington Starr is a near neighbor, and was at my house the greater part of the Saturday, the 1st of November, 1845, employed in making a door. I am known to the fact, that Washington Starr was at home on the night of the 1st of November, 1845, and then some days previous. She further states that Washington Starr came to her house on Sunday morning, the 2d November, and stated that he was going to Salisaw to get some hogs.

FANNY NOB, her × mark.

Sworn to and subscribed before me the day and date above.

JACOB CHANDLER, J. P.

H No. 4.

Jenny, a Cherokee woman, after being sworn, states that she is personally known to the above facts as set forth in the above affidavit, and that she resides with Fanny Nob, and was present at the time.

JENNY, her × mark.

Sworn and subscribed this day above written.

JACOB CHANDLER, J. P.

It will be observed that the foregoing statements of Sarah McCoy, Fanny Nob, and Jenny, were taken and sworn to before a justice of the peace in Washington county, State of Arkansas.

JAMES MCKISICK,

Cherokee Agent west.

The following statement, made and sworn to by Char-wah-yo-ka, the wife of Thomas B. Watie, was offered, to show the manner in which he was murdered, marked letter I, No. 1:

Cherokee Nation, February 6, 1846.—Be it remembered, that on this day personally appeared before me, James McKisick, agent of the Cherokee nation west, Char-wah-yo-ka Watie, who, being sworn in legal form, deposeth and saith: That, on the Friday night after James Starr was killed, a party of men came to the house of Bear’s Paw, at which place she, deponent, and Thomas B. Watie were staying all night; at that time they had retired to bed in a house some few feet from the one occupied by the family of Bear’s Paw, when she, deponent, discovered the company approaching the house. Just about the time they were near the door, she, deponent, remarked to Watie, (the deceased,) who is that? to which Watie made no reply; but, by this time, the company had reached the bed, and one of them told Watie that he was arrested, to which Watie replied, “Well, let me put on my clothes.” One of the company then struck Watie on the head with a tomahawk, and immediately he was shot by two of the company. Deponent went out of the house, and, after the company had left the house, she returned into the house and found Watie lying on the ground or floor stabbed in some seven or eight places. De
ponent did not know or recognise any of the company. When they left, they went off the same direction they came. She, deponent, supposed them to be the same persons that Watie had told her he had been following him that evening.

CHAR-WAH-YOU-KAH, her X mark.

Sworn and subscribed to before me the day and date above written.

JAMES McKISICK,
Cherokee Agent west.

The following statements, sworn to, and marked E, Nos. 1, 2, 3, 4, and 5, were taken in relation to the murder of Swimmer and Millboy, in Greasy Valley, Cherokee nation. Mrs. Humphries's statement No. 1 mentions also the depredations committed on her property.

E No. 1.

FORT SMITH, February 4, 1846.

Be it remembered, that on this day personally appeared before me, James McKisick, agent for the Cherokee nation, Nancy Humphries, who, after being sworn in due form, deposeth and saith: That she lives or lived at the time Swimmer and Stoane were killed, in the same neighborhood, in Greasy Valley, Cherokee nation; that she lived on the road leading from Downing's (where there was a company of armed Cherokees collected at that time) to the place where Swimmer and Stoane lived, and that on the same night that they were murdered, a company of thirteen armed men passed her house, coming from the direction of Downing's, and going in the direction of Swimmer's and Stoane's; she thinks it was about two hours before day that they passed, and returned by again in about an hour; but whilst they were down in the direction of Swimmer's and Stoane's, deponent heard the report of a gun. She then observed to her husband, who had been asleep, that she heard a gun in the direction that the armed company had gone, and that she expected some person was killed, and if so, they would soon return; and sure enough in a short time they did return, as before stated. Deponent recognised one of the horses that one of the company was riding; it was a little yellow pony that belonged to a man by the name of Batt. The day following, a man by the name of Oos-tel-lee came to her, deponent's house, and told her that her husband would also be killed, and cautioned her not to say anything when the company came to kill him—if she did, she would also be killed; and Oos-tel-lee further stated to deponent, that he was the man who had caused Swimmer and Stoane or Millboy to be killed, by his having gone to Downing's and informed the company there that Swimmer and Stoane belonged to the treaty party, and had talked saucy to the Ross party. Deponent and family then moved away to Fort Smith, in consequence of the information which Oos-tel-lee gave her in regard to her husband's going to be killed. About thirteen days after she had left her house, she returned home for the purpose of getting her hogs which she left in the pen when they moved from the place. On her arrival at her former residence, she found twenty-seven men there, and they had twenty guns. This company had been engaged in killing her hogs that were in the pen. There were eight of her hogs lying dead in the pen, and a man riding off
with one before him. Deponent told him to lay that hog down—that it was hers; at which, a man by the name of Jim Lee ordered the man to go on with the hog—that all such property had become public property. Tar-chu-chee, or Walking Stick, soon arrived at the place, and told the company that a letter had been received from the acting chief, forbidding the people from taking any more property that belonged to those who had left their houses; and then a man by the name of Lowry remarked that the council was to blame, and not them, for what had been done; and if it had not been for the council, there never would have been any disturbance. Deponent further states, that this company, which she found at her house, had all of her sheep divided, and her geese all tied and lying in the yard, and also all of her household furniture was divided; but, after Tar-chu-chee told the company what Lowry had written, they gave her up the eight hogs which they had killed; and also the sheep which were not taken previously, they did not then take.

NANCY HUMPHRIES, her X mark.

Sworn to and subscribed day and date above.

JAMES McKISICK,
Cherokee Agent.

E No. 2.

FORT SMITH, February 3, 1846.

Be it remembered, that on this day personally appeared before me, James McKisick, agent for the Cherokee nation of Indians west, Thomas Pettit, who, being sworn in due and legal form, deposes and says: That on the night on which Swimmer and Millboy were killed in the Cherokee nation in the month of November last, about two hours before day in the morning, a company of men passed by deponent's house; this company or most of them were armed. Deponent lived about two miles from Swimmer, but not so far from Millboy's. About half an hour after the company passed, deponent heard the report of a gun in the direction of where the deceased, Millboy and Swimmer, lived. About an hour after this company passed on, they returned by deponent's house; he thinks there were thirteen in company. It being in the night, he did not recognise any of the company. There were two horses in company, however, which deponent thought he knew, one of which belonged to Tan-ne-nole-Biff Jack, and the other to Fish. Deponent did not know on that night what business this company was on, but learned in the morning that they had murdered said Swimmer and Millboy. He got to the place where they were interred about the time the neighbors finished burying them in the evening.

THOMAS PETTIT, his X mark.

Sworn to and subscribed before me day and date above.

JAMES McKISICK,
Agent Cherokee nation.

E No. 3.

Also appeared before me, James McKisick, agent as aforesaid, Charles Pettit, who, being sworn in due and legal form, deposes and says: That on
the night Swimmer and Millboy were murdered in Greasy valley, Cherokee nation, deponent was at the house of his aunt, Nancy Humphries, about two miles from where Swimmer and Millboy were murdered; that on the same night these men were killed, a company of men passed the house where deponent was, about two hours before day; they were going in the direction of where these men were killed. In about an hour, the same company returned; deponent counted them as they returned; there were thirteen in company; deponent counted nine guns in the company. He further states that he heard the report of guns while the company were gone in the direction of where Swimmer and Millboy lived. Early next morning Charles Vann came to the house where deponent was, and informed him and the balance of the family that the company who had passed the night before, had murdered Swimmer and Millboy. Deponent did not know any of the company, though he knew two of the horses in company, one of which belonged to Old Batt, and the other to Crab Grass. Deponent heard Oos-tel-lee tell his aunt, Mrs. Humphries, that this party—meaning the Ross party—intended to kill all the old men of the treaty party and old settler party, that lived in Greasy valley, and that she must not say much, or they would kill her; this man was one of the Ross party.

CHARLES PETTIT, his $ mark.

Sworn to before me the date above written.

JAMES McKISICK,
Cherokee Agent.

E No 4.

FORT SMITH, February 4, 1846.

Be it remembered, that on this day personally appeared before me, James McKisick, agent for the Cherokee nation west, Washington Pettit, who, being sworn in due and legal form, deposes and says: That he, deponent, lives in what is called Greasy valley, in the Cherokee nation. The morning after Swimmer and Millboy had been murdered on the preceding night, the deponent heard the murders and went on to the place where he found them both dead, and learned they had been murdered the night before. Deponent further states, on his return home from where they were killed, he met a Cherokee man by the name of Oos-tel-lee, who informed deponent that he had heard Swimmer and Millboy were to be killed that night; also that threats had been made against the life of Longfoot Ellis; the latter, however, was not killed. Deponent did not see the company or any part of them who killed Swimmer and Millboy. When deponent went to the house where Swimmer was killed, the sister-in-law of Swimmer told deponent that two men of the company came into the house and picked up the deceased, conveyed him out of the house, and, as soon as they got him out of doors, shot six guns at him; he was also stabbed with a knife, and expired immediately.

WASHINGTON PETTIT, his $ mark.

Sworn to and subscribed before me the day and date above written.

JAMES McKISICK,
Cherokee Agent.
FORT SMITH, February 4, 1846.

Be it remembered, that on this day personally appeared before me, James McKisick, agent of the Cherokee nation west, Che-nor-ah-ky, or Long-foot Ellis, who, being sworn in due form, deposes and saith: That he resides in about one-quarter of a mile from where Joseph Swimmer, deceased, lived, and about three-quarters of a mile from where Stoane or Millboy lived, in what is known as Greasy valley, in the Cherokee nation; that on Thursday morning, before day, deponent waked up from sleep and heard the report of guns in the direction of where Swimmer and Stoane or Millboy lived. Deponent got up out of bed and walked out of doors, and heard the voice of a woman crying. Deponent became alarmed, and left his house a short distance, where he remained until day, and then went to his house, but found none of his family at home, as they had all left soon after he had. Deponent then proceeded to the house of Charles Buffalo Fish, and after remaining there until he got warm, he and two other men proceeded to the house of Joseph Swimmer, to ascertain what the firing of guns in the night previous meant. On arriving there, they found Swimmer lying dead, and from appearances had been murdered. While at Swimmer's, Charles Vann's wife came there and informed the company that Stoane or Millboy was also lying at his house, murdered. Deponent and others went to Stoane's and found the information to be correct—the body of Stoane lying near the fireplace. Several of the neighbors collected at these places, and they buried the dead bodies the same evening.

CHE-NOR-AH-KY, his mark.

Sworn to and subscribed before me day and date above.

JAMES McKISICK,
Cherokee Agent.

The following statements, made and sworn to, marked F Nos. 1 and 2, are offered to show the facts in regard to the murder of Charles Smith:

F No. 1.

Cherokee Nation, 29th January, 1846.—Personally appeared before me, James McKisick, Cherokee agent, Aggy Smith, the mother of Charles Smith, deceased, who, being sworn in due and legal form, deposes and says: That on the evening of the next Sunday after last Christmas, a company of armed men, Cherokees, rode up to her house, where her son, Charles Smith, was, who lived with her at the time. When the company rode up to the house, deponent states she was at the branch, or spring, about two hundred yards distant from the house. She did not see the company ride up, but while at the branch, or spring, she heard the report of several guns at the house, which appeared from the report to have been discharged at the same time. In a few seconds after, she heard the report of one gun. She immediately hastened to the house, to learn the cause of those several guns having been discharged. On arriving at the house, this armed company were mounting their horses and in the act of riding off; she discovered that her son, Charles Smith, had been shot down, and was...
lying bleeding in the yard; as she approached, he requested to be raised up, and his sister Elizabeth and Jane McIntosh raised him, but he immediately fell again; he was then taken into the house, and expired in about two hours. He was shot in five places, or penetrated with five balls, three of which entered his body, one his head, and one through his foot. Dependent states that she can identify three of the above company only, to wit: Moses McDaniel, Glory, and George Bark.

AGGY SMITH, her X mark.

Sworn to and subscribed before me the day and date above.

JAS. McKISICK, Cherokee Agent.

Personally appeared also before me, James McKisick, agent as aforesaid, Elizabeth Fields, who is the sister of the said Charles Smith, deceased, and being sworn in due and legal form, deposes and says: That on Sunday evening next succeeding last Christmas, a company of armed men, she thinks twenty or upwards, Cherokees, rode up to her mother's, Aggy Smith's, where this deponent was at the time. She was in the house, and her brother, Charles Smith, was lying on the bed playing on the fiddle. On seeing the company ride up, she told Charles that John Brown and his company had come. Charles laid down his fiddle and covered up in the bed. Brown, who seemed to be the officer, or have command of the company, immediately came into the house and inquired of deponent who that was in bed. She told him who it was. Brown then stepped to the bed and pulled the bed clothes off of Charles, and ordered him to get up. Charles immediately arose out of bed and told Brown he would make ready to go with him. On Charles Smith's rising in the bed, Brown cocked his gun. Deponent then took hold of Brown's gun and requested him not to hurt Charles, but to take him on peaceably. Brown wrested the gun from the hand of deponent, and told her not to get in his way, or before him, or he would injure her. Brown then took hold of Charles and made an attempt to put him out violently. Charles (the deceased) made some resistance, and told Brown not to pull him, he would go peaceably. At that time two others of the company came into the house to assist Brown. On these two men coming in, Charles asked them if they intended to injure or commit any violence on him, then telling them again that he was willing to go with them peaceably. They made no reply to what Smith said, but rushed him violently out of the house. Brown, the officer, made an attempt to shoot, and Charles seeing his design, got so close to him that he could not get his gun in a position to fire with effect, but seemed to try to get a little back, so as to have room to bring his gun to bear on him. Smith still kept so close to him that he could not bring his gun to the proper bearing. Dependent seeing they intended to kill Smith, turned away and walked off. As she walked away she heard Brown order his men to shoot him, and immediately heard the discharge of several guns. Dependent kept on around the house, until she came back to where she left them attempting or preparing to shoot the deceased, and found that he had been shot with five balls. Brown and his company immediately left. Dependent passed on by the deceased to inquire of Brown and his company what was the cause of
their killing her brother, but could not speak, owing to her distress and
alarm. She returned to where the deceased lay, and he then requested
to be raised up. Deponent and Jane McIntosh partially raised him, but
he immediately fell. He (the deceased) was then taken into the house,
and expired in two or three hours. Deponent states that she did not
know all of those who composed this company, but she did know John
Brown, the officer, James Lowry, sen., Charles Lowry, Beaver-Tail, and
Ice.

ELIZABETH FIELDS, her X mark.

Sworn to and subscribed before me day and date above.

JAMES McKISICK,
Cherokee Agent.

It may be proper to state the causes which led to the killing of Charles
Smith, as I got the facts from several witnesses I examined. I took their
statements in writing, but did not deem it necessary to forward copies of
that part of the testimony to the department. The circumstances are sub-
stantially as follows:

Charles Smith, the deceased, and a young man by the name of John
Brown, had met at a dance or frolic the night before Smith was killed.
They were both intoxicated; a quarrel took place between them about the
Starr family; Smith being a friend to the Starrs, and Brown opposed to
them, a fight ensued. Brown struck Smith divers times over the head
with a table leg. Smith had his knife drawn, and finally succeeded in
stabbing Brown; though the witnesses did not consider the stab dangerous.
Smith went to his mother’s that night, and Brown went home next day.
On the next evening after the fight, the light-horse company went to where
Smith was at his mother’s, and he was there killed. The testimony de-
scribes the killing.

JAMES McKISICK,
Cherokee Agent.

FEBRUARY 12, 1846.

Interrogatories propounded by James McKisick, Cherokee agent, to John
F. Wheeler, a white man, intermarried with a Cherokee.

Interrogatory 1st. State where you resided, and where you were imme-
diately and on the ninth day of November, 1845, and for the next few fol-
lowing days, and what were you doing?

To which he answers: I resided near Fairfield mission, on Salisaw, in
the Cherokee nation, where my family then were. I was at Park Hill,
about five miles from Tahlequah, printing for the American board of mis-
sions during the time indicated.

Interrogatory 2d. What Cherokees were you associating with about the
9th of November?

To which he answers: I was boarding at the house of Stephen Fore-
man, one of the supreme judges of the nation; frequently members of the
council, Alexander Foreman, Johnson Foreman, Judge John Thorn, and
Lewis Downing, and others; the Rev. Evan Jones, Baptist missionary,
was also there, writing, as I supposed, for the select committee.
Interrogatory 3d. State when you first heard of the murder of James Starr and Sue Rider, where you heard it, and how you heard it.

To which he answers: I heard of the murders on the 9th of November, about 3 p.m., at the house of Stephen Foreman; I think Foreman or some of the family told it in my presence.

Interrogatory 4th. State the movements and conversations of the persons you have mentioned on the subject.

The only thing I observed worthy of notice immediately before the news came to Park Hill, was in the appearance of W. P. Ross, editor of the Cherokee Advocate, at preaching in the forenoon, at Mr. Worcester’s church. He came into church and took a seat near me; there seemed to be much anxiety in his manner, and something unusual in his appearance. Johnson Foreman, formerly a captain of the police, who was at the time keeping tavern at Tahlequah, came to Stephen Foreman’s house to dinner. I observed that he wore his pistols at church and at the dinner table. I thought this unusual at the time. Immediately before dinner Stephen Foreman called Johnson Foreman out, and they had a private conversation. Johnson left immediately after dinner. As soon as he was gone, Stephen Foreman told me that Johnson Foreman said Anderson Springston (one of the committee, senate) had told him the evening before that the council and committee had passed a law raising a light-horse; that Springston had gone home, and said there would be more trouble in the country. Knowing that Springston was a personal enemy of Stand Watie, this caused me uneasiness. Immediately Johnson Foreman left, I heard of Starr’s death. The news of the murders caused great excitement; there was much running to and fro through the country, and finding places of security for the women and children. Alexander Foreman came from Tahlequah to Stephen Foreman’s that evening armed with a gun. In the course of conversation, I asked him who were the persons killing the Starrs; he said he did not know. In the course of the conversation he remarked that he did not believe that the persons engaged would not stop for the line, and he had no confidence of peace in the nation. Stephen Foreman wrote to William P. Ross to know if they would not furnish a guard. He replied that they had best come there, as there was strength in union. Stephen Foreman frequently made remarks approving the course; saying that it might look bad, but there was no other way but to kill these men by mob law. The excitement continued very great for a few days. I went home the latter part of that week.

Interrogatory 5th. State where you were, or what you knew or heard in regard to the murders of Stoane and Swimmer; when were they killed, and where?

To which he answers: I think they were killed on the 19th or 20th of November at their houses in Greasy valley, about a mile and a half from my house. They were both of the treaty party, and being universally regarded as quiet and peaceable men. This produced great alarm among the treaty party: many persons who theretofore had believed that the Ross party only aimed at the leaders, now said that no one was safe. It was universally understood that they were killed by an armed body of the Ross party, and I never heard them give an apology for it, as they did in the case of Starr and Rider.

Interrogatory 6th. State when Thomas B. Watie was killed, and where, as near as you know.
Answer. I understood he was killed at Lee's creek, in the Cherokee nation, on the 14th November. He was my brother-in-law, and was killed, as I learned, on the same day he left my house. After the murder of the Stairs, Thomas B. Watie was at Park Hill, and it was rumored about that he was accused of being concerned in burning Meigs's house. Stephen Foreman cautioned me that Watie had better keep out of the way of the company who had been killing, or he might be killed. Mr. Candy, a brother-in-law of Watie, went immediately to Tahlequah, at Watie's request, and told Jack Spears, a member of the committee, that Watie was anxious to have an investigation and confront the charge; Spears answered him that there had been a rumor charging Watie with burning Meigs's house, but that a man by the name of Bear Paw had stated that Watie staid the night of the house burning at his house; but that he (Spears) would recommend Watie to keep out of the way of the company in Flint, or they might kill him. Watie, under my advice to leave the nation, left that evening, but was killed two days afterwards on his way to Fort Smith, Arkansas, where he said he was going.

I afterwards saw R. J. Meigs at Jack Ross's, and told him what we had done touching the charge against Watie; he said he would be qualified that Watie was not at his house on the night of the burning, for there was not one of the men who was not much taller than Watie, and that they were all six feet high, or taller. I never heard Meigs say he knew the persons who were engaged in burning the house.

Interrogatory 7th. State when you left the Cherokee country with your family, and why you left.

Answer. I left early in December, because I and my family felt that we were not safe, and that there was no safety for any of the treaty party. After the murders of Stoane and Swimmer, and the public course taken by the Cherokee authorities and the "Cherokee Advocate," I could not see on what we could found a hope for protection. Two of my wife's brothers had now been brutally murdered, and we could not see what could exempt any of the relations.

JOHN F. WHEELER.

Sworn to and subscribed before the undersigned, a justice of the peace, this 5th day of February, 1846.

J. ASH, J. P.

A copy:

J. McKISICK, Cherokee Agent.


Interrogatory 1st. Please state how soon after the ninth of November last, the day on which James Starr was murdered, you visited the Cherokee nation, and what part of it you visited.

Interrogatory 2d. Please state the conversations you heard from the leading men and counsellors of the nation, their remarks of approval or disapproval of the measures, and whatever else tending to show the feelings in regard to the difficulties.

Interrogatory 3d. Please state your opinion as to the extent of the excitement in the country, and the danger to life and peace in the country at the time.
No. 185.

To interrogatory 1st, he answers: I went to Evansville on the 10th of November, where I first learned of the murders of the Starrs and Rider. I saw Washington Starr, who was wounded in the arm. James Starr and Sewel Rider were buried there that day. There were a considerable number of Cherokees coming over into Arkansas. On Tuesday the 11th, I left Evansville with Col. Thomas E. Wilson for Tahlequah; we stopped at George W. Adair's, of the treaty party, and at W. S. Adair's; the men were all from home; the women of both places seemed much alarmed, and made many inquiries about the extent of the murders. We stayed Tuesday night at Lorenzo Delano's, a white man with a Cherokee wife.

To interrogatory 2d, he answers: Lorenzo Delano stated to us that he had learned from an Indian on Sunday morning early, (the day of the murder,) that the Starrs and Rider would be murdered that day before sundown. On Wednesday, Delano accompanied us to Tahlequah, where the council was in session; here we found the committee and counsellors, and many others, in the highest state of excitement. Our first conversation was with Moses Price, formerly interpreter to Governor Butler; he remarked that the murders were not to be regretted, as the only way "was to cut up the roots, and the branches would wither." The counsellors and leading men generally held out the idea and expressed themselves that James Starr was the head and leader of the outlawed party who had committed the two murders immediately preceding and burned Meigs' house; and that the killing of him was the only effectual way of breaking up the gang. Elijah Hicks remarked, that the good work had commenced, and he hoped that it would go on until the matter was decided one way or the other. One of the most prominent members of the committee frequently remarked with much warmth, that the fiat had gone forth, and I hope it will not stop until none were left, or things settled, or so that effect.

These things, and other remarks equally unguarded, excited me a good deal, so that I cannot pretend to give exact conversations; but the remarks generally, left the impression on my mind that all the Ross party approved of the measures, violent as they were.

To the 3d interrogatory, he answers: I certainly felt that from the state of feeling among the Cherokee authorities, as well as the acts already referred to, there was no safety for the prominent men of the treaty party in the nation. From some general remarks, I thought they did not fear the United States authorities; and prominent men frequently remarked, that they greatly blamed the whites for not arresting the Starrs. I should have remarked in the proper place, that those to whose conversations I have referred, took pains to remark that the murders were not directed in the council, but that the common Indians had become so exasperated against the Starrs, that they had come to them and told them they would put a stop to it, and that they had no control of the outrages.

JOHN HENRY.

Sworn to and subscribed before me, a justice of the peace of Crawford County, Arkansas, the 5th of February, 1846.

J. ASH, J. P.

A true copy from the original.

JAMES McKISICK, Cherokee Agent.

CHEROKEE AGENCY, February 10, 1846.
Cherokee Agency west.—I, James McKisick, United States agent for the Cherokee nation of Indians west of the Mississippi, do hereby certify that the foregoing forty written pages contain true copies of the testimony taken by me in virtue of instructions received from the Commissioner of Indian affairs, under date 4th December, 1845, in relation to the late disturbances, murders, and outrages, committed in said nation.

Given under my hand at the agency aforesaid, this 14th day of February, 1846.

JAMES McKISICK,
Cherokee Agent west.

Cherokee Nation,
Cherokee Agency West, February 20, 1846.

Sir: I have the honor to transmit to your excellency the enclosed documents handed to me, containing the proceedings had by the treaty party of Cherokees, at a council held on the 19th and 20th of January ultimo, at the dragoon quarters of Capt. Nathan Boone, of the United States army, in the Cherokee agency.

Document marked A is a letter from George Washington Adair, esq., signed as chief of the treaty party, informing the undersigned of the nature and object of the general council, held at the dates and place above specified.

Document marked B contains an elaborate historical account of the causes and incidents which gave rise to the existing controversy between the treaty and dominant party, familiarly known as the Ross party, who appear now to hold the reins of government of the Cherokee nation; it extends and refers to the acts of aggression which have lately been committed among the Cherokee people, growing out of a long established and most unfortunate animosity existing between the different parties in the nation.

Document C is signed by the treaty delegation appointed to go on to the city of Washington. This document is directed to the undersigned as Cherokee agent; but as it is essentially connected with the object of the delegation, and has reference to document B, it is believed to be proper to retain a copy, and forward the original to your excellency.

It will be seen that document C has reference to the lawless depredations committed by the dominant party on the property and means of subsistence rightfully belonging to some of those who left the nation and fled across the line into the State of Arkansas and elsewhere for refuge. In regard to this matter, the undersigned is requested by the delegation to institute an inquiry as to the extent of those depredations, and I presume it is desired that the results of this inquiry should be reported to the Executive. On this point it may be proper to remark, that I have been for several days expecting to receive a statement in detail of those depredations on property, though it has not yet been furnished.

In document C the undersigned has been called upon by the delegation to report the most satisfactory account in his power of the sufferings of the treaty party, and to suggest such remedy as he may believe would relieve all parties; and he is furthermore particularly requested to submit his views as to the division of the territory comprising the Cherokee nation between the parties, or such other mode of separation as might appear most condu-
icie to the satisfaction of all. This he understands to be the substance of
the call.

In regard to the sufferings and privations of the treaty party, occasioned
by their fleeing out of the nation for refuge, it is quite certain that those
who left comfortable homes and plenty of means of subsistence must have
experienced great inconvenience; besides, the fact of the weather being un-
usually cold must have added considerably to their discomfiture and suf-
ferings, and was doubtless a material injury.

In reference to the division of the country between the parties, or assum-
ing that the government of the United States will provide a separate and
distinct country for the occupation of the treaty party, seems to the under-
signed to present very grave considerations, and involves questions of ex-
pediency and policy, about which great diversity of opinion will probably
prevail.

It is believed that the present bounds of the Cherokee nation is amply
sufficient to support and maintain the whole Cherokee people for a long
time yet to come, it being estimated at seven millions of acres; besides the
outlet west, much of this affords soil of an excellent quality; some, to be sure,
may be classed as second and third rate land, but, on the whole, it is believed
there is a fair proportion well worth cultivation.

If the Cherokee people or the leading men of the different parties were
to meet on friendly and conciliating ground, agree to bury all existing ani-
mosities in lasting oblivion, and mutually pledge themselves to each other
to live in peace and friendship, and live strictly up to that pledge, they
might be a happy and prosperous nation. Whether any effort will be made
by the delegations of the different parties when they all meet at Washing-
ton to effect the object above suggested, yet remains in great uncertainty.

It must be admitted on all hands, that the present situation of the
Cherokee people is most deplorable, owing to the deadly hostility which
exists among them; and if tranquillity cannot be restored in the nation,
which the undersigned is induced to believe will be the result, why, then,
it would seem that a separation is the only alternative; and in that event,
how is it to be made?

To divide the country by an artificial marked line, it is believed, would
not have the desired effect in preventing the recurrence of frequent colli-
sions and perhaps deadly strife. It is believed that a stream of sufficient
or even moderate size would be greatly preferable to an artificial line.
Grand river or Neosho, on the bank of which Fort Gibson is built, runs, it
is said, nearly through the centre of the nation. This stream is navigable
for steamboats when the waters are flush for twenty-five or thirty miles,
perhaps more: the country east and north of it is better timbered than that
which lies south and west. The greater portion of the country south and
west of Grand river is prairie land, though on the watercourses there is
good timber and excellent soil. It is believed by persons who are inti-
mately acquainted with the country, that there are about three millions of
acres belonging to the Cherokee nation south and west of this river, be-
sides the outlet west; guarantied to the Cherokee nation by treaty.

In addition to the boundary above specified, there are 800,000 acres of
land adjoining the southwestern corner of Missouri, commonly called the
neutral land, over which the Cherokee authorities have not as yet as-
sumed absolute jurisdiction, but which was conveyed to the Cherokee
nation by the treaty of 1835. This section of country is fifty miles long,
and twenty-five broad, and, from its local position, could with convenience be assigned to either party, as justice and equity might seem to dictate. If it should be deemed advisable to divide the Cherokee nation between the opposing parties, the undersigned is of the opinion the above mentioned stream would afford a better natural boundary than any other which could be fixed on.

The foregoing suggestions are made with great deference, and even with reluctance; but as the treaty delegation have pressed the undersigned to submit his views in regard to the several points herein referred to, touching the affairs of the Cherokee nation, they are respectfully offered.

I have the honor to be, with sentiments of the highest respect, your obedient servant,

JAMES McKISICK,
U. S. Agent for the Cherokee Nation west.

His Excellence James K. Polk,
President of the United States.

A.
FLINT DISTRICT, CHEROKEE NATION,
February 1, 1846.

Dear Sir: I herewith transmit to you a copy of the proceedings had at a general council of the treaty party of Cherokees, convened at the dragoon camps, in the Cherokee nation, on the 19th and 20th of January, 1846.

The principal object of this council was to respond to a call of the President of the United States for a deputation of the treaty party at Washington city, for the purpose of laying before the American people the grievances and wishes of said party.

This matter, you will perceive, has been attended to, and a delegation appointed to proceed immediately to Washington city, for the purposes stated. You will, also, see in the accompanying document a brief statement of our wrongs by a select committee of our council, all of which we would ask of you most respectfully to transmit to the President of the United States.

In conclusion, sir, suffer me to ask you, in the name and behalf of the treaty party and the old settlers, that they be protected against the further violence of the Ross or dominant party; and that they be permitted to remove their property and subsistence from their farms and premises that they have been forced to abandon, by the lawless acts and threats of the Ross party.

I am, sir, with due respect, your humble servant,

GEORGE W. ADAIR, Chief of T. P.

Cherokee agent, Cherokee agency.

A true copy from the original letter on file in the office of the Cherokee agency.

JAMES McKISICK,
United States agent for the Cherokee Indians west
The following resolution was offered by John Duncan, and unanimously adopted:

Resolved, That a committee of five persons be appointed to report upon the present condition and wants of the treaty party of Cherokees, and to recommend such measures as they shall deem proper for the consideration of the general council of the treaty party.

Accordingly, the chairman appointed John Duncan, Stand Watie, Brice Martin, Joseph M. Lynch, and William L. Holt, to constitute said committee.

On motion, the general council adjourned until to-morrow morning, 9 o'clock, (Tuesday, January 20th, 1846,) at which time said committee was ordered to report.

TUESDAY, January 20, 1846.

The general council met pursuant to adjournment.

The committee to whom was referred the resolution to inquire into the present condition and wants of the treaty party, made the following report through their chairman, John Duncan, which report being read and interpreted, was unanimously adopted:

The history of the treaty party dates its commencement from the time when the eastern Cherokees were overwhelmed with the most dire calamities, caused by an extension of the laws of the States. A portion of the most intelligent of the sufferers having become sensible of the utter folly of longer appealing to the government of the United States to expel the white population from among them, became the advocates of the treaty and of removal to a new home west of the States. It is not necessary that we should now enter into a minute history of events as they occurred successively; that will be the business of our delegation who are now called for at Washington. Let it suffice to say that the treaty of 1835 was a treaty forced upon them by pressing necessity, and not adopted from choice. That treaty nevertheless contained many salutary provisions, which, if faithfully fulfilled, we have every reason to believe, would have caused the distinction of the treaty and anti-treaty parties to have been ere now well-nigh obliterated. But owing to the gross perversion, as we conceive, of many of its articles, the treaty party now number among them many who were conscientiously opposed to the treaty of 1835. The treaty party may now therefore properly be designated as all those of the Cherokees who contend for a strict fulfilment of the treaty of 1835, according to its letter and intention, and who are opposed to the violence and oppression of the dominant or Ross party now in power. Our particular objections to the manner of fulfilling that treaty have been fully made known in sundry memorials adopted by councils of our people in 1843, '4, and in the correspondence of our delegation in 1844, '5. These documents have all been laid before the President of the United States. It therefore becomes unnecessary that we should here travel over the whole ground. Our complaints are,

1st. That the per capita money guarantied to each head of family by the treaty of 1835, amounting, as we confidently believe, to about the sum of one hundred and fifty dollars per each member of our families, has never been paid.
2d. That there are some claims still due individuals under that treaty, which have never been adjudicated and paid. But these are complaints of the withholding of the moneys of right due to our people, and are not to be compared to other grievances affecting our personal security, of which we complain. The history of that treaty, and the treaty itself, as well as the construction since put upon it by the United States, incontestably prove that the treaty party, and each and every of its members, are entitled to be protected against the oppressions of the majority party, to whom, by becoming advocates of the treaty, they made themselves obnoxious. But how has this obligation been fulfilled? Let the murder of the Ridges and Boudinot, of West, of James Starr, Rider, Thomas B. Waite, Swimmer, Stoane, Smith, and others, answer the question. The particulars of all these tragical events form a part of the history of the United States. Their recollection will survive in the memory of our people to the latest generations. Our enemies may devise many falsehoods, and invent many excuses, but the candid must everywhere agree that they were cold-blooded, cruel assassinations, countenanced if not directed by the leaders of the dominant party, and intended, in their own significant language, "to tear up the roots of the accursed treaty party, in order that the branches might perish!" Our condition as a party, resulting from this state of things, is that each and every member of the Cherokee nation, attached to that party, feel themselves personally insecure. It would be the veriest madness to feel otherwise. Fully convinced of their imminent danger to the lives of all after the assassinations in November and December last, but one or two alternatives were left to our people—either to engage in a civil war with our brethren in blood, or to flee from the Cherokee nation, and appeal to the United States to protect the living, and avenge the murders of the dead.

The latter course was adopted by a large portion of our people, and a strong appeal was prepared and sent to the President of the United States, through General Arbuckle, in November last. Since that time, many who have sought the protection of the United States, and have left their homes and property and taken refuge in the State of Arkansas, have received subsistence from General Arbuckle; others, for the purpose of mutual protection, immediately after the 9th of November—the fatal day on which James Starr and Sewel Rider fell—armed and embodied themselves at Beattie's prairie, in the Cherokee nation, resolved to stand on the defensive, and await the result of the appeal made to the President of the United States. These measures have not insured entire safety, as Joseph Swimmer, Stoane, Charles Smith, Thomas B. Waite, and one or two others, have been inhumanly murdered since their adoption, notwithstanding the active and threatening measures adopted by General Arbuckle. No means have been taken by the Cherokee authorities to punish the murderers of the fallen; but on the contrary, if we understand the published language of these worthies, they justify and approve the tragical deeds, and they assign the most groundless and palpable false excuses for their perpetration. The provocation charged upon James Starr and Sewel Rider, we take this occasion to say, is impudently false; and were the charges against the relations of the deceased all true, none but the most untaught savages would urge them as an apology for blood. Without, therefore, at this time stopping to inquire whether or not some of our young men may or may not, at different times, have violated the laws of the Cherokee nation, no matter how established, let it suffice to say that the wanton and
cruel murders recently perpetrated with impunity, incontestably prove that there is no longer a possibility of the treaty party remaining under the same government with the dominant or Ross party. Upon the heads of the leaders do we charge all the cruel murders—the instruments, as we confidently believe, only doing the work of their masters. The murders themselves are only a part of the system of creating "police," or "light-horse," or by whatever other name the "authorities" may choose to designate their armed banditti. Apart from the many acts of lawless violence perpetrated by this police for years, let it now suffice to say, that their very establishment is inconsistent with every principle of civil liberty; and the expenses incurred consume all the annuities and school funds, and have involved the common country in an inextricable debt.

The course pursued by our party in fleeing from the Cherokee country, and in protecting themselves, has not been taken without heavy expense and sacrifice of private property—property in some cases wantonly destroyed by our lawless oppressors. The condition of the treaty party may, therefore, be said to be that of an oppressed minority, driven from their homes and every comfort of life, and appealing to the United States for the payment of their just dues, according to treaty stipulations; for a separate and peaceful home from their oppressors, and for some remuneration for their many inevitable losses consequent upon the many revolutions through which they have had to pass. Our wants are, generally, first, remuneration and justice for the past, and, second, a separate district and security for the future.

Whether that district be a partition line of the present Cherokee domain, or by removal to another country, to be provided by the United States, is a question hard to be determined. The former, if practicable, would be most just; the latter seems to be practicable, and is infinitely to be preferred to any attempted reconciliation with the Ross party. Such reconciliation we regard as impossible. At the same time, justice to the old settlers, or western Cherokees, as well as to the treaty party, seems to demand that if one party are to be expelled from the country, they should be those whose course has been productive of so much mischief. The controversy between the old settlers and Ross party for supremacy was one which we could never have foreseen, nor was it the business of the treaty party to investigate the question of title to the country to which we were sent. And yet true it is, in these controversies the treaty party have been made the actual victims, having been held up as the instruments of the United States, who have produced the troubles of the other two parties.

Surrounded as our people are by this thraldom, your committee recommend the adoption of the following resolutions:

\textbf{Be it, therefore, resolved,} That this general council approves of the proceedings of the several meetings of portions of our people, held in November and December, 1843; and of the memorials there adopted by them, and repeatedly urged by the delegations and committees and attorneys of the treaty party before the various officers of the United States in 1844-5; and that all the complaints and grievances so set forth in said memorials and documents are, in the opinion of this general council, true and ought to be remedied.

\textbf{Resolved,} That the present condition of the treaty party is intolerable,
and that their peaceable residence among the Ross party is impossible; and we therefore demand a separation from them.

Resolved, That we deeply sympathize with the western Cherokees, their cause being in some measure our cause, and their sufferings in many respects of a kindred nature to our sufferings; they received us with open arms, and but for the prostration of their peaceful government, we should never have endured the many evils which have overwhelmed us.

Resolved, That a district of country, set apart for our future home, in the region recently explored by our exploring committee, be our first choice; but, as some separation is imperiously demanded, we would consent to a partition line of the present Cherokee domain, and a separation of the treaty party and western Cherokees from the Ross party, in preference to a longer residence under the oppressive rule of the Cherokee authorities, at the head of which is John Ross.

Resolved, That in response to the invitation of the President for a delegation of six of our party to visit Washington city, as made known to Captain William Armstrong; for the purpose of adjusting our difficulties, this general council will appoint by election six delegates, whose duty it shall be to visit Washington city; and make known our grievances, and enter into any practicable arrangement for their adjustment.

Resolved, That the respective members of the treaty party will approve of any arrangement made with said delegation by the United States.

Resolved, That we consider the services of our attorney and faithful advocate, George W. Paschal, necessary to a clear elucidation of our just rights; and that our delegation be instructed to request him to accompany them, and aid in the prosecution of our claims.

Resolved, That it be the duty of our delegation to act as far as possible in conjunction with the delegation of the western Cherokees.

Resolved, That we have the fullest confidence in the agent for the Cherokees, Colonel James McKisick, and in General M. Arbuckle and Captain William Armstrong; as well as in the justice and integrity of the United States; and that as long as there is hope of redress, we will look to the United States for justice and a redress of our wrongs.

Resolved, That until the return of our delegation, George W. Adair be unanimously chosen as the chief or leader of the treaty party, and it shall be his duty to correspond with the delegation and with the officers of the United States, and keep them constantly advised of every material fact affecting our interest, and that the members of the treaty party will at any time assemble at his call.

JOHN DUNCAN,
Chairman of Committee.

Dragoon Barracks,
Cherokee Nation, January 20, 1846.

A true copy from the original: by

W. A. GOSS, Secretary.

C.

Van Buren, Arkansas, February 4, 1846.

Sir: The undersigned, the delegation appointed to represent the treaty party of Cherokees, beg leave to call your attention to the proceedings of
our general council, already furnished you; and further, to state as an additional grievance, from which our people daily suffer, that their private property is often wantonly sacrificed by the opposite party out of feelings of mean revenge.

We have not time to enumerate every particular, but among them we may mention that Ezekiel Starr, Ellis Starr, senior, (not the outlaw,) Jesse Mayfield, Joseph M. Starr, Bluford Rider, James Humphries, and many others, who have been compelled to leave the nation, have had their stock, hogs, cattle, and other valuable property, taken by the armed parties in the Cherokee nation. If you will have the goodness to institute an inquiry into the facts, among the citizens of Flint district, abundant evidence will be furnished of this and other outrages of a like character.

We would respectfully ask that you would cause an investigation into these facts, and report the result to your government, with a view to future action.

These, and other outrages of which we have previously complained, are perpetrated by the irresponsible party, who shot down our friends in open day, and whose acts have been countenanced by the Cherokee authorities. These people, we have been informed, have resolved upon the greatest violence against all who dare retreat into the State. In fact, the country approaches daily nearer and nearer to a state of anarchy, and acts of provocation, which would have driven any other people to desperation, have already been perpetrated against our people. We are now going in person to appeal to your government, but, in the meantime, we beg of you to report the most satisfactory account, in your power, of our sufferings, and to suggest such remedy as you believe would relieve all parties, and particularly your views as to a division of the country or other separation of the contending parties. Your position as agent, and your long residence on the frontier, will, of course, command for your opinions great influence with the President.

Owing to indisposition, George W. Adair is chosen one of the delegates in the place of Daniel McCoy.

We have the honor to remain your obedient servants,

J. A. BELI,
GEORGE W. ADAIR;
J. M. LYNCH,
EZEKIEL STARR,
BRICE MARTIN.

To Col. James McKisick,
Agent of the United States for the Cherokees.
War Department,
Office Indian Affairs, April 18, 1846.

Sir: I have the honor to transmit herewith a copy of a report from the agent for the Cherokees, received since the transmission of the President's recent message to Congress; and copies of some letters from Generals Gaines and Arbuckle, containing further information in relation to the difficulties among those Indians. As the intelligence contained in these papers is of some importance, I would respectfully suggest that they be presented to the House of Representatives, with the view of their being printed, in connexion with the other papers accompanying the President's message on the same subject.

Very respectfully, your most obedient servant,

W. Medill.

Hon. Jacob Thompson,
Chairman of the Committee on Indian Affairs,
House of Representatives U. S.


Sir: Fresh excitement and additional aggressions have sprung up in the Cherokee nation within the last two or three weeks.

The occurrence which appears to have produced the greatest sensation, is the murder of a pretty prominent man of the administration or Ross party, named Stand, or Ta-kah-tah-kah.

I would have made a communication to the department in regard to this occurrence, and others in the nation, at an earlier day, but under the existing state of affairs it is extremely difficult, if not impossible, to obtain a correct statement of facts, from the rumors of the country in relation to any occurrence calculated to produce or rather keep up the prevailing excitement. It may be proper to remark that Stand, the deceased, was one of the company who murdered James Starr and others, when those Cherokee violences broke forth early in November last.

The history of this affair seems to be substantially as follows: Shortly after the killing of Stand, suspicion attached to a Cherokee named Wheeler Faught, as being accessory to the murder, who was neither a treaty nor Ross man, but rather neutral in regard to Cherokee politics. He was, however, in the confidence of, and in habits of intimacy with, Stand, the deceased, and was equally so with the "Starr boys." The deep animosity which existed between the "Starr boys" and the party to which Stand adhered, is believed to be well known to the department. Each party knowing the intimacy of Faught with the other, they both made overtures to him: Stand to inveigle the Starr boys into his power, and they to operate on Stand in the same way. It seems both parties made liberal offers to effect their respective objects, though Faught closed with the propositions of the "Starr boys."

A dance was held on the night Stand was killed, which was pretty numerously attended. Among others, Stand and Faught attended. Some time after night Faught invited Stand to go out with him and take a drink of whiskey out of a jug he had hid out. Stand accordingly went, and while they were at the jug five guns were fired at Stand. Two balls took effect. He was stabbed eleven times and scalped. Faught returned to the
dance, but said nothing about Stand being killed, nor was the fact known by the company till morning, when he was found in the situation above described. Under this state of facts, Faught was prosecuted and condemned as accessory to the murder, and is sentenced to be hung on the 26th instant. There appears to be no evidence as to who killed and scalped Stand, though from the above facts it is charged against the "Starr boys" and their friends.

For the purpose of arriving at the facts of the case, I sent my interpreter to attend the trial of Faught, and the foregoing is the purport of his statement.

There appear to be no evidence as to who killed and scalped Stand, though from the above facts it is charged against the "Starr boys" and their friends.

For the purpose of arriving at the facts of the case, I sent my interpreter to attend the trial of Faught, and the foregoing is the purport of his statement.

There are also two other Cherokee men now under arrest and confinement, on a charge of being indirectly (as I understand) concerned in the above murder. What course may be ultimately taken with them I am unable to say.

There have also been three other murders lately committed in the nation. Two of the victims were Cherokees, and one a white man, citizen of the United States.

Martin Culsooee, a Cherokee, was found dead and supposed to have been murdered near Fort Gibson. Two Cherokees were charged with the offence, and tried, but acquitted. This appears to have been the result of dissipation, and unconnected with the politics of the nation, therefore little excitement was produced.

The other Cherokee, Samuel Martin, was murdered at Maysville, a little village on the Cherokee line. I understand the deceased was drunk at the time he was killed, and those charged with the murder were in the same situation. The Cherokees charged with this offence are now under arrest awaiting their trial. Their names are Squirrel, Muskrat, and Wicket. This affair appears also to be unconnected with party politics.

In the case of the white man who was murdered on the night of the 10th instant, the circumstances are as follows: Two wagoners, Reynolds and Weldon, who were travelling with their teams from Fort Gibson to Fort Smith, on the public military road, took up camp about equidistant between those forts. Shortly after dark, two Indians of the Uchee band, who live in the Creek nation, came to the camp and obtained something to eat. They remained but a short time and walked off. They went but a small distance into the dark, when both attempted to fire at the wagoners, who were standing by their camp fire. One of the guns discharged and killed Reynolds dead. The other gun refused fire, and Weldon made his escape. They robbed Reynolds of a small amount of money found about his person; stole two mules out of the teams, and made their way into the Creek nation.

I informed Col. Logan, agent for the Creek nation, of the occurrence, upon which Gen. McIntosh, the Creek chief, had them arrested, after which they confessed the whole matter. One of them, however, has since made his escape, though the Creeks are in pursuit of him, and it is believed he will be retaken. The other is in possession of the military at Fort Gibson, and will be sent on to Little Rock for trial in the district court of the United States.

There is also another case which has resulted in the death of a Cherokee, within a few days past. This case seems to partake of the character of a family quarrel. Crossland, the deceased, a Cherokee, and Brown, a white man, who killed him, were brothers-in law; both having Cherokee women for wives. A quarrel took place, and a fight ensued between the women in
the presence of their husbands. This drew the men into a combat also, in which Crossland, the Cherokee, was killed. It is said that Brown was justifiable under the circumstances. He has voluntarily surrendered himself to the civil authority of the United States for trial.

I herewith enclose you the copy of a deposition made by John Williams, a white man living in the Cherokee nation, having a Cherokee woman for his wife, setting forth the conversation held with, and the threats made by, Anderson Springston, a member of the national committee.

It will be observed, from the foregoing statements, that the Cherokee nation is far from being in a state of tranquillity.

I have the honor to be, very respectfully, your obedient servant,

WILLIAM MEDILL, Esq.,
Commissioner of Indian Affairs, Washington, D. C.

JAS. McKISICK,
Cherokee Agent west.

P. S.—I have just heard, from the United States deputy marshal, that Brown, who killed Crossland, has fled, and that he never did surrender himself for trial.

J. McK., C. A. W.

Appeared before me in Delaware district, Cherokee nation west, John Williams, a white man with a Cherokee family, on the 10th day of March, 1846, and made the following statement, to wit:

On the night of the 1st of March, 1846, about 8 o'clock, Anderson Springston, and another Cherokee by the name of Pigeon, both armed with guns, came to my house, and Springston called me to the door, and asked me to come and show them the way, as they were lost. I rather refused, and asked my wife to light a candle. Springston commenced swearing that he was not afraid of any man, and swore that he had come to kill me, and that a great many more had to die soon, to wit: Lynch, Thompson, Bell, Watie, and numerous others. He continued in that strain of conversation for about an hour, repeating frequently that he had come to kill me. I sent my negro boy with the candle to put them in the way. They were gone about an hour, and returned again. When the boy started to show them the road, Springston made the boy hold the candle for him to examine the cap on his gun. He sprang the trigger, and came rapidly back to the door with his gun presented. My wife put her hand on the muzzle of his gun, and told him not to shoot her. He said if he killed one he would kill all. Pigeon asked Springston to let him shoot me two or three times. Springston said no; wait awhile. He frequently asked Springston to make haste, and do what he came to do. He said no; he could not; he must get some person else to do it. After being absent about an hour, they again returned, and asked my negro boy where I was. He told them I was asleep; that he had better go in the other room and go to bed. He replied that he would if the boy would put their horses up, which he accordingly did. In the morning of the second of March they stayed until after breakfast, during which time Springston again repeated all he had said the night previous; that there would be a great deal of blood shed soon; that he intended to come back some dreary night and kill me, and for me not to
come out unless I knew his voice; and that if I shot, to make a sure shot, as it would be the last. He stated that others might come under his name and deceive me. Said Anderson Springston is, and was at the last national council, one of the members of the committee. When in conversation with me he said that he knew that Jim Starr was to be killed, but did not know the day it was to be done or would be done. He also swore that they intended to destroy Watie and his company; that Lieutenant Johnston’s 45 dragoons could not prevent it.

JOHN WILLIAMS.

The above statement sworn to and subscribed before me this 10th March, 1846.

HEADQUARTERS WESTERN DIVISION,
New Orleans, December 3, 1845.

SIR: Having carefully examined the documents numbered 1 to 5, inclusively, accompanied by Brigadier General Arbuckle’s letter of the 19th ultimo to the Adjutant General of the army, in relation to the official murders in the Cherokee nation, I think myself in duty bound to address you, empowered as you are by law to protect the interests of the Indians, as secured to them by treaties and other laws of the United States, and express to you my cordial approbation of the prompt and judicious measures taken by that meritorious officer to arrest the progress of those scenes of outrage which strike at the root of that beautiful tree of civilization, planted by the hands of Washington and nurtured by his successors in office for near half a century past, and which may soon tend to blight its fruits amongst the whole of our red neighbors, and endanger the peace of our frontier inhabitants.

If the spirit of party which divided the Cherokee people ten years past had been guided by a moderate share of honesty, with a few grains of patriotism, surely no reasonable man can doubt but that the treaty-making party would at this time constitute more than nine tenths of the whole nation. The country at present owned by the Cherokee nation, lying west of the State of Arkansas, is deemed to be worth much more than that ceded by the treaty party to the United States, lying east of the Mississippi river; and when to this fact is added the known truth of the rapid advances which most of the Cherokee people have made in all the substantial elements of civilization, and the obvious growing wealth and prosperity of all but the harassed and persecuted members of the treaty-making party, it cannot but be matter of amazement to perceive that this unexampled prosperity, pervading, probably, nine-tenths of the whole Cherokee people, is enjoyed mainly by the anti-treaty-making party; not by the devoted friends of the United States at the time the treaty was made, but by that party, many of whom were
known, ten years past, to be ready and willing to resume the tomahawk, and fight and die upon their lands east of the Mississippi, rather than exchange or sell them for anything like their estimated value. And what is now the condition of these devoted friends of the enlightened policy of removing the Indians westward, and thereby rescuing them from inevitable ruin? These patriotic men, who had the moral courage to make the exchange so essential to the existence of their people as a nation, and so much desired by the government and people of the United States—what is their present condition? Can it be believed that this philanthropic band—this ill-fated treaty-making party—have constantly been for ten years past, and still are, treated as traitors to their nation; their favorite chiefs and warriors, and of late their little children, shot down and murdered without the color of law, and without a crime! while their and our enemies of the years 1835 to 1837—the anti-treaty-making party—are unblushingly appropriating to themselves all the rich fruits of the treaty so violently opposed by them from its first inception to its final conclusion, regardless of the solemn provisions embraced in the treaty, and obligatory on all the Cherokees as upon the United States, guaranteeing the protection of the treaty-making party against the intriguing and infuriated chiefs and savages opposed to the treaty; a guaranty which every sound principle of natural law sustains, under the circumstances of the case, where the contracting parties were not independent nations, but an independent civilized nation acting as the natural guardian of, and treating with a dependent savage tribe, or at least a nation just then rising from the darkness of barbarism to the divine light of civilization. Such was the condition of the Cherokee nation at the time the treaty was made; and the master-spirits of that treaty were the brightest ornaments among the leaders of that glorious movement. The murdered Ridges and Boudinot will be remembered with gratitude, as the master-spirits of this great movement, when their enemies will be recollected only as their cold-blooded murderers, actuated alone by a thirst for money and power.

I have the honor to be, very respectfully, your obedient servant,

EDMUND P. GAINES,

Major General U. S. army, commanding the western division.

Hon. WM. L. MARCY, Secretary of War.

[Extracts.]

HEADQUARTERS 2D MILITARY DEPARTMENT,
Fort Smith, January 13, 1846.

SIR: I have to inform you that, since the date of my last letter, (January 6,) the greater portion of the Cherokee "exploring party," composed of treaty men and old settlers, have returned from Texas.

I conversed with the principal men among them as they passed by this place, and was gratified to find that, although highly incensed at the conduct of the dominant party in their nation, they were determined to pursue a peaceable line of conduct, and leave the adjustment of their difficulties to the government. They at the same time expressed great solicitude that the measure of relief might be adopted as soon as practicable, as numbers of their people are destitute of the means of supporting themselves, and cannot, as they firmly believe, return with safety to their homes.
In two months these people ought to be in a situation to commence preparations for making a crop; and I, therefore, cannot too strongly urge their case upon the early consideration of government.

From Beattie's prairie I learn that Stand Watie's party remains quiet, and that he has again declared that his only object in occupying Fort Wayne is self-defence. Lieutenant Johnston had heard that a large number of the Ross party were assembling on the "Briney," (probably near Grand Saline,) about thirty miles from Fort Wayne; and Captain Boone reports that another body had arrived at Downing's, on the mountain near Evansville, the evening he wrote, (the 11th instant,) but he had not had time to ascertain their object.

These assemblages, together with the movements of the light-horse in this vicinity, are probably measures of precaution against an attack from the refugees, which the Ross party has perhaps apprehended would be made on the return of the exploring party, but which, I have every reason to believe, is not meditated. I have taken means to have the authorities of the nation informed that they have no cause to fear an attack; and I therefore hope these parties will soon disperse and return to their homes.

I have the honor to be, sir, your obedient servant,

M. ARBUCKLE,
Brig. General U. S. Army.

The Adjutant General of the Army,
Washington, D. C.

Extract from a letter of Brigadier General Arbuckle, U. S. A., to the Adjutant General of the army, dated

HEADQUARTERS 2D MILITARY DEPARTMENT,
Fort Smith, January 17, 1846.

You inform me, "you (I) will perceive by my (your) letter of the 3d instant, (December,) that the Secretary of War has been particularly anxious to obtain speedy information upon the subject of the recent murders by the dominant party of the Cherokees, as well as the murders committed by or ascribed to the other party, during the present year."

I have not interpreted your letter of the 3d December as calling for information respecting all the murders committed during the past year by any party in the Cherokee nation; but I will now proceed to give you such information as I possess on the subject, first premising that I have received no official, or even written communications, touching any such matter, until the outrages were committed on the 9th November last.

About a year ago, two Ross men were killed in Evansville, Arkansas, by McDaniel, (old settler,) and one of the Wests (not John) of the treaty party. Motive attributed—revenge for injuries received from the dominant party.

About the same time, Bean Starr (treaty party) was shot near Fort Washita, by a party of Ross men, who went from the nation in pursuit of him. Reason assigned—that he was guilty of high crimes committed in the nation.
Last spring, Thornton, an old settler who had joined the dominant party, was murdered at his house; supposed to have been done by some of the Starrs or their relatives, in consequence of his agency in the killing of Bean Starr.

I have heard that between the time Thornton was killed, and the commencement of the recent disturbances, four or five murders were committed on persons belonging to different parties; but I have not understood that they have been attributed by any one to any other cause than drunkenness.

On the 4th November last, the bodies of two Cherokees (Ross men) were found in the woods, near "Meiggs'" house; they had been murdered. This crime has been ascribed to the same individuals who are charged by the dominant party with burning that house on the 1st November, viz: several of the treaty and old settler parties. No doubt the motive for these murders was, to prevent the detection of the individuals concerned in the house burning. (As connected with this subject, see affidavits enclosed with my letter of the 6th instant.)

Then follow the murders, on the 9th November, of James Starr and Suel Rider, and the wounding of Washington Starr and Buck Starr, (the latter has since died of his wounds.) Next, the murders of Thomas Watie, about the 14th November, and Swimmer and Stoain, or Mill Boy, on the 19th or 20th November, and on the 27th of December that of Charles Smith. These were treaty men, with the exception of Rider, an old settler, and they were killed, or wounded, by mobs consisting of the dominant party, or by the light-horse of the nation; at least, such is the information I have received.

On Christmas, one Duncan killed John Ward, in Maysville, Arkansas, in a dispute which arose between them. Neither of them of the dominant party.

On the 9th instant, at Maysville, Braxton Nicholson killed Granville Rogers, a son of John Rogers, now at Washington. "The affair is said to have grown out of a private quarrel; perhaps an old grudge." I have not heard that the act is ascribed to party feeling.

It is probable a few other murders have taken place among the Cherokees, during the past year, which I have not heard of, or, if I have been informed of them, the facts have escaped my memory.

Nothing has occurred in relation to Cherokee affairs worthy of notice since my last letter to you on the subject, dated January 13.

I have not yet received the acting chief's answer to the suggestions contained in my letter to the agent of the 5th instant.

Extract from a letter from Brigadier General M. Arbuckle, dated

"Headquarters 2d Military Department,
Fort Smith, January 21, 1846.

"In my letter of the 6th inst. I informed you that I had not had occasion to call upon the authorities of Arkansas for a militia force. The state of affairs is still unchanged. No more outrages have been committed, that I am aware of, and tranquillity apparently prevails in the Cherokee nation, and will probably so continue while the weaker party preserve their pres-
The refugees, both treaty party and old settlers, whose numbers remain about the same, or are perhaps slightly increased, are quiet. Captain Boone writes on the 20th inst.: "I conversed with a number of influential men (refugees) on the subject of returning to their homes, but they all decline doing so; and I must say that I could not with propriety urge them to do so, as it is well known that there are armed parties of the dominant party still roaming through the nation and watching the roads." In this opinion I entirely concur. In view of the conduct of the authorities of the nation, I do not think it can be expected that the refugees will return. I am convinced that, under existing circumstances, they could not do so with safety. The authorities have done nothing, and seem determined not to do anything to encourage them to return. I am still without an answer to the suggestions which I addressed, through the agent, to the acting principal chief on this subject.

HEADQUARTERS 2d MILITARY DEPARTMENT,  
Fort Smith, February 21, 1846.

Sir: I herewith transmit, for the information of the government, a copy of the deposition of Beauford Alberty, a Cherokee lad of seventeen or eighteen years of age, which has been furnished me by the Cherokee agent, relative to another act of violence committed by the dominant party in the Cherokee nation.

This outrage was doubtless committed by a body of light-horse; and goes to show that the authorities of the nation have not changed their policy towards the weaker party, but are ready and willing at all times to shoot them down wherever found, on mere suspicion of acts which the dominant party allege to be criminal; which suspicion may be very conveniently made to attach to any person or persons whom they may think proper to put out of the way.

This state of things is to be deplored, and calls for some corrective measure. It is with the government to decide what that shall be.

I have the honor to be, sir, your obedient servant,

M. ARBUCKLE,
Brigadier General U. S. A.

ADJUTANT GENERAL OF THE ARMY,
Washington, D. C.

CHEROKEE AGENCY, February 16, 1846.

Personally appeared before me, James McKisick, agent for the Cherokee nation west, Beauford Alberty, who states: That, on last Thursday morning, about thirty-five armed men, headed by John Brown, came to the house of Mrs. Nancy West, at which place he lives. They passed the house some little distance and stopped. He, Alberty, went down to the stable and caught a horse, and was leading him along, when six of the company whooped and charged at him. He became alarmed, and mounted the horse to make his escape. The company pursued him some distance, and shot at him three times. The last time they shot at him was at or near the mouth of Spring creek. The bullet struck the water just before the horse
MAP OF THE LANDS, GRANTED

to the CHEROKEE INDIANS, by the STATE of NORTH CAROLINA,
under the Act of 1783,
to accompany Doc. House of Rep. No 185, 1st Session, 29th Congress

by E. Weller & Co., Baltimore
he was on. The horse turned round short, and threwed him off. He then ran on foot some distance, and was overtaken by Nick Sanders. He drew his knife; and, while parleying with Sanders, another man ran up and flashed his gun at him. He then gave up his knife to Sanders; and then Sanders struck him on the head with his gun, and knocked him to his knees. Sanders then drew the knife, and told him he had a notion to stab him. The company then took him a little distance and tied him, and consulted whether or not to whip him; but finally concluded not to whip him, but told him he ought not to run—that they had nothing against him; but thought it was William Alberty—that if it had been him, he could not have got off alive. He then asked them what they had against William Alberty, to which they replied that the talk was that they harbored the Starrs and Ellis West. They further told him, when they discharged him, not to go off and tell any tale about it; if he did, they would give him a hundred lashes. An old man, by the name of Chee-wa-loo-kee, was in the company, and rather interceded in his behalf—told the company that he had known him for a long time, and that he had always been a good boy—that he had never even voted at any of the elections, &c. One of the bullets that was shot at him passed through his hunting shirt. Nick Sanders was the man that shot the last gun at him. He does not know who shot the other two.

BEAUFORD ALBERTY.

Sworn to and subscribed before me the day and date above written.  
JAS. McKISICK,  
Cherokee Agent west.

A true copy from the original, on file in the agency office.  
JAS. McKISICK,  
Cherokee Agent west.

FEBRUARY 17, 1846.