POLITICAL BACKGROUND OF THE CHEROKEE TREATY OF NEW ECHOTA

By Robert A. Rutland

A cursory glance at the record of events which led to the Treaty of New Echota and the subsequent removal of the Cherokees from the southeastern United States to lands west of the Mississippi shows only that a group of less than 20,000 unfortunates were moved from their homelands—most of them against their will. But the deeper implications of that treaty and Cherokee removal were part-and-parcel of the struggles over nullification and slavery. In short, the South's quest for state rights was opposed by the North's insistence upon a strong central government. The issue of humanitarianism cannot be overlooked, but it appears to have been of secondary importance.**

It is important to note that the question of Cherokee removal became a national issue in the 1820s and 1830s. The bitterness of the struggle between the Indians, the work of missionaries and the northern groups who championed the Cherokee cause, and the contempt of President Jackson, Georgia politicos, and the southern element in general—"weaved a dramatic web which heralded the coming of mightier struggles;" and these came to the very core of the argument: Which was to be stronger, the Union or the State?!

Early English settlers in what is now the southeastern portion of the United States found the Cherokee nation compressed into parts of the present-day states of North Carolina, South Carolina, Tennessee, Georgia and Alabama. From 1721 until 1784 members of the tribe carried on negotiations with British Indian agents, private groups and the various American states, and in each treaty the Cherokee lands were bargained away.

During the American Revolution the Cherokees assisted British troops and were dealt with as defeated enemies at the conclusion of that war. In their first treaty with the new nation, the Cherokees entered into an agreement which laid the foundations for relations...
between the tribe and the United States. These stood until another treaty was signed some 34 years later. This early treaty—the Treaty of Hopewell—was signed on November 28, 1785, at Hopewell, South Carolina. It was a simple document which established the relationship between the Indians and the federal government. It provided for the Cherokees to “acknowledge themselves under the exclusive protection of the United States.” It further called for the United States “to have sole right of regulating trade with the Indians and managing their affairs.”1

It was 55 years, and 12 treaties later, that the full effect of these provisions made an impact on the Cherokee. When the tribe first entered into treaties with the British in 1721, its estimated holdings included slightly less than 80,000,000 acres. By 1817, the tribe held less than 15,000,000 acres of its original tract.2

During the intervening years, the Cherokees were to become divided into Upper and Lower divisions.3 Travelers from the Cherokee region reported that the Upper and Lower tribes spoke different dialects, and the Upper Cherokees by the end of the century had turned from hunting to an agricultural existence. The Lower Cherokees, however, continued to live primarily by their hunting prowess.

Throughout the latter half of the 18th Century a large number of whites settled among the tribe, particularly the Upper branch. The influence of their offsprings became a salient feature of tribal life, and some ethnologists use it as a partial explanation for the high degree of civilization which the Upper Cherokees had attained by 1817, when the Lower elements of the tribe agreed to move from their southeastern hunting grounds to the Arkansas territory and beyond.

While their tribesmen moved westward, the Upper Cherokees progressed toward a civilized status with increasing rapidity. A report to the War department in 1825 indicated a portion of the Upper tribe was on a level with many whites in the area.4 Under the guidance of John Ross, a Scotch half-breed, and other leaders of equal intellect a newspaper, called Cherokee Phoenix, was published at the Cherokee capital New Echota, Georgia.5 The paper was bi-lingual, with half of its reports in English and the other portion in the Cherokee phonetic alphabet. Many Cherokees possessed at least one slave, and large estates were not uncommon. The Cherokee:

1 Royce, C. C., The Cherokee Nation of Indians, (Washington 1883), 133, 134.
2 Ibid., 378.
4 American State Papers, Indian Affairs, Gales and Seaton, (Washington, 1832). II, 200. (Cited later as Indian Affairs).
farmers raised cotton, corn and cattle, and many did much of their trading with merchants in New York, Philadelphia and Charleston.

Across the Cherokee-Georgia boundary line (set by federal authority) the whites did not look upon the Indian progress with favor. Georgia had ceded its western lands to the federal government in 1802 after a compact was made regarding the extinguishment of the Indian claims to Georgia soil. The Georgians wanted the Indians removed—the sooner the better—and the treaty of 1817 was the outgrowth of this insistence. General Andrew Jackson had been sent to the Cherokee country to negotiate such a treaty, along with General David Merriwether and Governor McMinn of Tennessee. The treaty party made no headway with the Upper Cherokees and found little encouragement in the lower country. But despite the reluctance of the Indians to make any concessions, the federal commissioners pressed a treaty which was finally signed by a minority of the chiefs on July 8, 1817. It called for removal of the Lower portion of the tribe, and apparently a majority of the Cherokees were bitterly opposed to the treaty. Nevertheless, it was ratified by the senate after considerable debate and proclaimed on December 26, 1817.

The treaty provided for an exchange of lands east of the Mississippi for an equal area in the west. Significantly, article eight of the treaty allowed the Cherokee head of a family living on ceded lands to become a United States citizen. It further allowed Cherokees who elected citizenship to receive 640 acres of land in fee simple east of the Mississippi.

Although the treaty and the subsequent Treaty of 1819, which adjusted the 1817 pact, gave the United States title to nearly five million acres of land east of the Mississippi, the treaty was unpopular with many northern elements, Georgians and the Indians themselves. George R. Gilmer, an eminent Georgia politician, wrote the federal House of Representatives the views of a Georgia committee which investigated the treaty's effects in 1822:

"... The (Georgia) committee cannot but view this attempt on the part of the United States to grant lands in fee simple within the limits of Georgia as a direct violation of the rights of that State. . . . By the same eighth article of the said treaty, all the Cherokee Indians, who may choose to do so, are authorized to become citizens of the United States. The committee are not aware of the existence of a power of conferring the rights of citizenship in any branch of government other than Congress."

It soon became apparent, both in Washington and in Georgia, that the fee simple and citizenship provisions of the treaties would
accomplish the reverse of what many held as a basic tenet of all Indian policy—speedy removal to the west. Aided by the American Board of Commissioners for Foreign Missions, the Cherokees took on an extensive educational program for themselves. The Cherokees in the northwestern corner of Georgia flourished, and a census in 1825 revealed a population of 13,563 Cherokees, 220 whites and 1,277 slaves within the Cherokee Nation borders.10

Bound on the north and west by Tennessee, on the south and west by Alabama, on the south and east by Georgia and North Carolina, the Cherokee Nation in the 1820's embraced 7,882,240 acres in those states.11 Whites in the older sections of those states where the soil had worn thin by crude agricultural methods looked enviously at the Indian holdings. The Cherokee chieftains were not unaware of the situation, particularly in Georgia, but seemed to have had an implicit faith in the protection powers and guarantees of the federal government.

In what might have been a move to strengthen the Cherokee position against Georgia claims, the Indians adopted a tribal constitution on July 26, 1827.12 The reaction in Georgia to this document was immediate and indignant. Governor Forsyth sent a copy of the constitution to President John Quincy Adams and asked what action the federal government would take to squelch "a separate government within the limits of a sovereign state."13

Meanwhile, the Georgia legislature was not silent. In a resolution passed following the Cherokee's constitutional action, they declared "The policy which has been pursued by the United States toward the Cherokee Indians has not been in good faith toward Georgia. . . . all the lands, appropriated and unappropriated, which lie within the conventional limits of Georgia belong to her absolutely . . . . the Indians are tenants at her will."14 Other issues in Georgia politics caused factional strife, but on the Indian question the various parties achieved unity. They held that the Indians must be removed.

Under the Federalists, the United States policy toward the Cherokee Indians had vacillated between hopes for removal voluntarily and a position that "nothing in the compact (1802) compelled the government to remove them against their will."15 The outcome of the national election of 1828 sealed the future of Federalism, and

10 Ibid., 545.
11 Royce, 378.
12 Ibid., 241.
13 Ibid.
15 Dale, E. E., Cherokee Cavaliers, (Norman, 1939), xvi.
also sealed the future of the Cherokee Nation. Jackson defeated Adams by more than a 2-1 majority in the electoral college, and was clearly the champion of the western and southern frontier regions. Georgia looked to Jackson for aid, and found the new president willing to carry their cause. Jackson, as a commissioner seeking treaties with the Cherokees, had been outspoken in his views concerning removal. He held removal as "inevitable" and at the offset took a paternalistic attitude toward the Cherokees. Years later the confidential files of Commissioner of Indian Affairs P. M. Butler alleged that Jackson told General Merriwether to "build fires around them (the Cherokees)."

The Georgia legislature interpreted Jackson's election as a clear mandate to move ahead with its plans to extinguish the Indian claims in their state. The official results of the election had hardly reached Washington when, in December of 1828, the Georgia lawmakers enacted a bill which provided that after June 1, 1830, the Cherokees (and all other Indians residing in Georgia) would be under the jurisdiction of Georgia law. A law passed in 1829 crowded the Cherokees by making all their Indian laws "null and void" on June 1, 1830. These acts declared that the Cherokee tract of some 100 square miles in the northwestern corner of Georgia would be added to Carroll, DeKalb, Gwinnet, Hall and Habersham counties. Another important feature of the bills was a provision which made it illegal for any member of the tribe to attempt to discourage other Cherokees from moving to the area west of the Mississippi.

But perhaps the most stinging of all sections of the bills was that which held "That no Indian or descendant of an Indian residing within the Creek or Cherokee nations of Indians, shall be deemed a competent witness in any court of this state to which a white person may be a party."

It is difficult to find conclusive evidence that the question of Indian removal was an outright issue of the 1828 election. But there was no doubt as to where Jackson stood. Shortly after his inaugura-

16 Royce, 297—"In a confidential letter in the office of Commissioner of Indian Affairs, from Hon. P. M. Butler, of South Carolina. . . . Mr. Butler says it is alleged, and claimed to be susceptible of proof, that Mr. Merriweather (sic), of Georgia, in an interview with President Jackson, a considerable time before the treaty (of New Echota) was negotiated, said to the President, 'We want the Cherokee lands in Georgia, but the Cherokees will not consent to cede them,' to which the President emphatically replied, 'You must get clear of them by legislation. Take judicial jurisdiction over their country, build fires around them, and do indirectly what you cannot effect directly.'"
17 Phillips, 72.
18 Ibid.
19 Foreman, Grant, Indian Removal, (Norman, 1932), 229.
20 Ibid., 230.
21 Ibid.

tion in 1829, *Niles Weekly Register* carried a reprinted article from the New Echota *Phoenix* of January 28, 1829, which read: "...There is hope for the Cherokees as long as they continue in their present situation; but disorganize them, either by removing them beyond the Mississippi, or by imposing on them 'heavy burdens,' you cut a vital string in their national existence."22

Less than a month later, Secretary of War John H. Eaton permitted the magazine to publish a letter which he had sent to John Ross and other Cherokees who complained of the Georgia Legislature's overtures. Ross and his supporters hoped for federal aid in case of a "showdown." The letter said "... The arms of this country can never be employed, to stay any state of this union from the exercise of those legitimate powers which attach, and belong to their sovereign character."23

The matter became further complicated in July, 1829, when gold was discovered on the Cherokee lands in Georgia. More than 3,000 whites hastened to the Indian lands, and little attempt was made to protect the rights of the Cherokees as the invaders sought the precious metal.24

The Georgia legislation followed Jackson's message to the opening of the 21st Congress, in which he expressed sympathy with the Indian's position, and as a just solution he again urged them to accept final removal to the so-called "Indian Frontier" beyond the Mississippi.25

Immediately, Jackson's enemies and the humanitarians of the northern and New England states denounced the Georgia legislation—both the spirit and the intent of the laws. One historian writes, "It (Cherokee Removal) became a subject of angry conversation among abolitionist groups and north sewing circles; and led to the widening of the ugly rift of sectionalism, which slavery had already created."26

A great champion of the Cherokee cause appeared in Senator Theodore Freylinghusen, of New Jersey. A deeply religious man who once considered leaving politics to enter the ministry, he represented that portion of the senate which held that protection of the Cherokee lands was a sacred obligation of the United States because of treaty commitments.

Freylinghusen's arguments on behalf of the Cherokees reached their zenith during debates in April of 1830. In a six-hour speech.

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22 *Niles Weekly Register*, (Baltimore, 1812-1849), XXXVI, 41. (Cited later as *Niles*).
23 Ibid., 259.
24 Phillips, 22.
prolonged over three different meetings of the senate, he denounced Georgia's recent legislation and recalled the relations of the Cherokees and Creeks with the federal government from the 18th century. More particularly, Freylinghusen pleaded with the Senate to follow what he considered the binding obligations assented to under Washington, and commended by Jefferson. Moreover, the New Jersey Senator denounced the underhanded methods which the War Department apparently had sanctioned in dealing with the Indians.

These remarks were a clear swing at Jackson's hard-fisted policy toward the Cherokees. Next, Senator Peleg Sprague of Maine joined in condemning Georgia and Jackson, as did Senator Asher Robbins of Rhode Island. All used the same theme: the obligation of the United States to treaties, and the obligation of both the United States and Georgia to human decency.

Georgia's Congressional delegation seemed to feel it was on sure ground. It did not need to make a point-by-point refutation of the opposition's charges. Senator Forsyth of that state worded part of his rebuttal thus: "... I consider it a matter of conscience to .... relieve the senator (Freylinghusen) from any apprehension that it may become necessary to cut white throats in Georgia to preserve inviolate the natural faith, and to perform our treaty obligations to the Indians." Forsyth said Georgia had been much abused in the "partisan press" and by the congressional opposition, and he attributed it to misunderstanding rather than malice. "Peculiarly appropriate to our condition," he said, "is the language of Cassius, who was, 'Hated by those he loved, Braved by his brother, checked like a bondman. ..... '" Forsyth, if he had any doubts, had only to recall Secretary Eaton's letter of 1829 to feel secure in his position. Mr. Wayne, a Georgia representative in the lower house, lacked Forsyth's patience, but shared his fellow-Georgian's contempt of the humanitarian position.

"... Sir," Wayne said in the House on May 24, 1830, "it would have been well for gentlemen, before they had chanted their strains of Cherokee virtue, happiness, simplicity and independence, to have acquainted themselves with the true position of that tribe, as fixed by treaties, and with their moral condition as a people. ..... " Wayne concluded, "Sir, so monstrous a concatenation (Cherokee in-
dependence) of construction it is only humane to strangle in its birth; and I trust it lies dead in all its deformity.”

One source of unexpected opposition came from neighboring Tennessee, where the popular David Crockett had been elected to the House of Representatives. Crockett followed Wayne, Lumpkin and Foster—the Georgia delegation—and spoke briefly. He said he had his constituents to settle with, but also had his conscience, and would therefore support the Cherokees.

These debates were faithfully reported in the press and northern elements continued to agitate for a strong stand against Georgia. William Lloyd Garrison, the firebrand editor, called Freylinghuysen "the Christian Statesman" and referred to him as a "patriot and Christian."

The assurances which Georgia needed in her fight to extinguish the Indian claims came at an opportune moment. On June 1, 1830, (the date originally set by the state legislature as the effective one for the laws regulating Indian lands) Gilmer received a letter from Secretary Eaton. It clearly defined the Jacksonian impression of how far Georgia might go. The letter read:

"... The right to regulate the internal policy of a State has not been confided to the General Government, and, of course, on collisions thus arising it cannot interfere. To the extent, however, of executing the provisions of the act of 1802, and restraining intruders and trespassers from the soil and country of the Indians, the President will act ... our Treaties and laws forbid this; and these he will consider it a duty faithfully to execute."

On June 3, 1830, the preceding legislation affecting the Cherokees and their lands was put into effect. Less than a week later, President Jackson gave an executive order which suspended the enrollment and removal to the west of small groups of Cherokees. With this he reiterated his thought that he was powerless to act against the sovereignty of a state. At the same time, Jackson made another order which caused suspension of the annuity payments to the treasurer of the Cherokee Nation. Thereafter, the president ordered, funds were to be disbursed to tribe members on an individual basis.

John Ross was in Washington, where he conferred with the congressmen sympathetic to the Cherokee cause. The outgrowth of these meetings was a suit filed in the Supreme Court on behalf of the tribe against the State of Georgia. The Cherokees employed William Wirt, the former attorney general, as their counsel; then awaited a

33 Ibid., 104.
34 Ibid., 251.
35 Royce, 261.
36 Ibid.
court decision which they expected would stay Georgia's hand. Before actually filing the suit, Wirt had written to Gilmer (then governor) and suggested the Supreme Court test of the Georgia laws. President Jackson's opinion of the court test was not unlike Gilmer's. Guided by Chief Justice John Marshall, the court was Federalistic in character, and had little sympathy with Jacksonian concepts. On August 25, 1830, Jackson wrote to Major William B. Lewis:

"... The course of Wirt has been truly wicked. It (the court test) has been wielded as an engine to prevent the Indians from moving X (across) the Mississippi and will lead to the destruction (sic) of the poor ignorant Indian. It must be so, I have used all the persuasive means in my power. I have exonerated the national character from all imputation, and now leave the poor deluded Creeks and Cherokees to their fate, and their annihilation, which their wicked advisers has induced."

Difficulties with the whites in the Cherokee country became acute during the summer of 1830. Gilmer was finally prompted to make recommendations to the state legislature curbing the whites. Before the year ended, the legislature passed an act forbidding the residence of white men (other than agents of the federal government) in the Cherokee lands.

Officially, the State of Georgia took no notice of the suit pending in the United States Supreme Court. The case (Cherokee Nation vs. State of Georgia) was docketed for the January term of 1831, but before that time a Cherokee named George Tassel became involved in a murder in Hall County, Georgia. Tassel was accused of the slaying, found guilty and sentenced to hang. Wirt seized the opportunity to gain a stay of execution by a writ of error which the Supreme Court at Washington granted.

Governor Gilmer and the Georgia legislature set their first precedent in the Cherokee case by ignoring the legal move. Tassel was executed, to the horror of the Cherokee leaders and their friends in Congress. Judge A. S. Clayton of the Georgia Superior Court had previously announced that he would not accept mandates from the Supreme Court "which might arise before him from an act of Georgia."

Despite Eaton's letter written in June, Gilmer wrote to President Jackson on October 29, 1830, and asked that federal troops be

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37 Phillips, 75.
38 Richardson, IV, 177.
40 Phillips, 75.
41 Ibid., 74.
withdrawn from the Cherokee lands, since he considered the lands as being a part of Georgia. Jackson acted immediately to effect the federal troops' withdrawal.42

By September, 1830, the Office of Indian Affairs was hopeful that a treaty could be negotiated with the Cherokees which would provide the desired removal. Colonel John Lowry was appointed a special commissioner in that month. His unsuccessful offer to the Indians contained approximately what they were granted by the Treaty of New Echota.43

Lowry failed, but Jackson was not discouraged. Other successes had been achieved in the Old Northwest, and in his annual message to Congress in December, 1830, the President said:44

"... Toward the aborigines of the country no one can indulge a more friendly feeling than myself. ... For the justice of the laws passed by the States within the scope of their reserved powers, they are not responsible to this government. As individuals, we may entertain and express our opinion of their acts; but, as a government, we have as little right to control them as we have to prescribe the laws of foreign nations. ... Can it be cruel in this government, when by events which it cannot control, the Indian is made discontented in his ancient home, to purchase his lands, to give him a new and extensive territory, to pay the expense of his removal, and support him a year in his new abode?"

The Cherokees marked time until March 5, 1831, when the Supreme Court delivered its opinion. Georgia was not represented by counsel, but as the majority opinion was read, it became apparent that counsel would have been unnecessary. The injunction was denied.

The Supreme Court did not have jurisdiction, it claimed, because the Cherokees were not a foreign state. Moreover, the decision defined the legal status of the Indians in clear terms:45

"... Though the Indians are acknowledged to have an unquestionable and, heretofore, unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to our government; yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. ... They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile they are in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian."

The high court was well aware of the grievances of the Cherokees, but remained firm in its strict interpretation of Section 2, Article III, of the federal constitution: "If it be true that the Cherokee nation have rights, this is not the tribunal in which those

42 Royce, 261.
43 Ibid.
44 Richardson, II, 118, 119.
45 Peters, R., ed., United States Supreme Court Reports, (Washington, 1832), V, 17.
rights are to be asserted. If it be true that wrongs have been inflicted, and that still greater are to be apprehended, this is not the tribunal which can redress the past or prevent the future."

It is conceivable that Georgia’s state government was taken aback by this surprising decision in their favor. Their recovery was rapid, however, for a survey of the Indian lands was ordered in 1831. (In the following year, the lands were laid out into 10 new counties; and in 1833 these lands were passed out under a lottery system.) Faced with the hostility of the president and mortified by the Supreme Court decision, the Cherokees were held temporarily in check, although Freylinghusen continued his verbal battle on their behalf in the senate.

What appeared to be a major turning point in the entire situation arose in July, 1831. The Georgia legislature had passed an act which went into effect in February of that year which provided, among other things, that all whites which resided in the Cherokee country should take an oath of allegiance to the state. Among those who refused to obey this law were Samuel Worcester, the postmaster at New Echota, and 10 others associated with the American Board of Commissioners for Foreign Missions.

Governor Gilmer heard of this group’s refusal to take the oath, but was temporarily thwarted by Worcester’s federal status as a postmaster. He requested President Jackson to withdraw Worcester’s appointment, and this was done. Worcester and the others were arrested during the summer, and tried in September in a Georgia court. Worcester and the Reverend Elizur Butler were the only members of the group which refused to take the oath. They were convicted and sentenced to four years at hard labor.

The case rapidly gained national prominence. Worcester and Butler became martyrs in the columns of many northern newspapers. To the Cherokees and their friends, it presented a fresh opportunity for a court test of Georgia laws.

Wirt again took charge of the case and represented Worcester. The situation remained comparatively static while the court decision was pending. Jackson, in his annual message to Congress in December, 1831, did mention the Cherokees, but only briefly. "... Those (Cherokees) who prefer remaining at their present homes will hereafter ... cease to be the objects of peculiar care on the part of the General Government," he said.

46 Ibid., 20.
47 Coulter, 235.
48 Royce, 264.
50 Phillips, 77.
51 Richardson, II, 352.
The Supreme Court decision, delivered on March 3, 1832, declared that the United States had assumed the treaty relationships which Great Britain had set up before 1784. Those relations were those "... of a nation claiming and receiving the protection of a more powerful (nation) ..." 52

Worcester was entitled to go free, the high court ruled. The judgment of the Georgia superior court was reversed and annulled. "The Cherokee nation, then," the opinion read, "is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force. ..." 53

Rejoicing followed the decision in the Cherokee quarters. A letter from New Echota dated March 24, 1832, was printed in Niles Weekly Register. "... The arrival of this decision has been to the Cherokees like a shower of rain on the thirsty vegetation upon the earth. All are easy, content, and merry; yet aware that immediate relief does not follow the consequence. ... Every Indian knows now that he stands upon a solid foundation." 54

The Indian's conception of the importance of the decision was due for a rude shock. John Ridge, a prominent Cherokee, saw the court test and its enforcement as "the greatest (question) that has ever presented itself to the consideration of the American People." 55 In a letter to another leading Cherokee, Stand Watie, Ridge wrote on April 6, 1832, from Washington, "... But Sir, the Chicken Snake General Jackson has time to crawl and hide in the luxuriant grass of his nefarious hypocrisy until his responsibility is fastened upon by an execution of the supreme court at their next session. Then we shall see how strong the links are to the chain that connects the states to the Federal Union. ..." 56

Jackson was faced with a dilemma. The Supreme Court declared the constitution had been violated by Georgia. Furthermore, 1832 was an election year, and a bitter contest with the Whig forces loomed. He was undoubtedly mindful of his party's greatest strength, for in the 1828 election he had received the electoral votes of every southern state. The South was aligned with Georgia. And in 1828, Georgia's electoral ticket had not even recognized his opponent, John Quincy Adams. 57

Faced, possibly, with the need for an application of practical politics, Jackson chose the course of least resistance. George N. Briggs, a member of Congress from Massachusetts when the decision

52 Worcester, 16.
53 Ibid., 19.
54 Niles, XLII, 201.
55 Dale, 8.
56 Ibid.
57 Greeley, Horace, The American Conflict, (Chicago, 1864), 104.
was rendered, quoted Jackson as saying—"Well: John Marshall has made his decision: Now let him enforce it!"\(^{58}\)

Wirt sought in vain to have the judgment enforced. (Worcester and Butler remained in the Georgia penitentiary until January, 1833, when they decided they had "suffered long enough" and received a pardon from Governor Lumpkin after announcing their decision.)\(^{59}\)

Unquestionably, the failure of the executive branch to aid in the enforcement of the court decision was a mortal blow to the Cherokee cause.

Wirt, as the defender of the Cherokees, was hailed as a hero in the North and became the Anti-Masonry party candidate for the presidency. Clay was nominated by the Whigs, and his views on the Cherokee matter were well known: He stood on the Indian's side.

As the country prepared for the national campaign, another attempt by the War department to gain a treaty of removal failed. E. W. Chester was sent on a futile mission to negotiate the treaty, and his offer also approximated what the Cherokees actually accepted later. But, at the insistence of the Secretary of War, Chester did discourage an idea gaining ground with some Cherokees—agreement to removal if granted a portion of the territory around the Columbia River.\(^{60}\)

Early in November, 1832, it became obvious that Jackson had been reelected. The Washington Globe, in an issue of November 23, 1832, carried a reprint from the New York Evening Post, "To What Does the President Owe His Reelection?" Included in the analysis was this remark:

"... In the controversy between Georgia and the Supreme court, Mr. Clay had distinctly avowed that were it in his power, he would support the Judiciary, right or wrong. This doctrine the people were not prepared to discuss... they readily adopted the leading idea that the independence of the Indians within the limits of Georgia was impracticable, and they willingly concede to her the same rights which they had themselves exercised."

The bitter business of nullification had plagued the Jackson administration during this period. The Georgia attitude was interpreted in some quarters as an act of nullification. Governor Lumpkin finally answered these charges in November, 1832, before the state legislature, when he said, "... We are at present, very improperly charged with nullifying the intercourse law and Indian Treaties of the United States, when in fact, these laws and treaties were set aside and had become measurably obsolete, by the acts and assumptions of the Cherokee Indians themselves.\(^{61}\)

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\(^{58}\) Ibid., 106.
\(^{59}\) Phillips, 77.
\(^{60}\) Royce, 264.
\(^{61}\) Washington Globe, November 15, 1832.
Thus, Georgia allied herself with Jackson in the nullification struggle and at the same time excused her acts of the preceding five or six years.

The election had been won, but all was not peace and harmony. For South Carolina continued to turn on Jackson. In its reply to Jackson’s proclamation on nullification on December 20, 1832, that state “... Resolved, that the proclamation of the President is more than extraordinary, that he has silently, and as it is supposed, with entire approbation, witnessed our sister state of Georgia avow, act upon, and carry into effect, even to the taking of life, principles identical with those now denounced by him in South Carolina.”

The year 1833 presented an impasse. Cherokee leaders, notably John Ross, continued to protest the encroachment of whites. After a long stay in Washington, Ross and the delegation returned to the Cherokee lands. Several months after their return, in keeping with an agreement with the federal government, the delegation presented the tribal council with the government offer of $2,500,000 in cash equivalent for their lands. The offer was refused.

By December, 1833, Jackson, was no doubt aware of his long tenure in the White House, and his inability to handle the Cherokee question satisfactorily. In his annual message to Congress in that month, he dropped the amenity of his previous remarks prepared for that body.

“That those tribes can not exist surrounded by our citizens is certain,” he said, “They have neither the intelligence, the industry, the moral habits, nor the desire to improvement which are essential to any favorable change in their condition.”

However, a certain quality of patience attached itself to the entire affair. To be sure, Georgia wanted the Indians moved. But the final removal appeared to be not too far distant. To the Georgians, the real battles had already been won. To them, for all practicable purposes, the Cherokee title was extinguished de facto.

As an example of this patience, the Cherokees moved another John Ross-led delegation into Washington early in 1834. This group even went as far as to suggest that a portion of their territory might be ceded to Georgia, in return for certain guarantees and citizenship. Jackson’s indirect reply intimated that such a proposal was unsound; and advocated removal as the only solution to the problem.

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63 Royce, 273.
64 Richardson, II, 541.
At this point, a definite schism appeared in the tribe. Ross and his followers stood against removal, but it became evident that a band of intelligent Cherokees were beginning to favor removal as the lone method to extricate themselves from an uncomfortable position.

Less than a month later, the removal faction negotiated a treaty on June 19, 1834, which called for removal to the west. The treaty was presented to the senate (despite protests from the John Ross party) but was not ratified because of the opposition led by Senator H. L. White of Tennessee, a former friend of Jackson's, who had broken with his one-time leader.

Tribal dissention now headed the issue toward a showdown.

Late in January, 1835, John Ross and his followers dispatched a letter to Jackson. "The Crisis of the fate of the Cherokee people, seems to be rapidly approaching, and the time has come, when they must be relieved of their sufferings," the letter read, "they having fully determined against removal to Arkansas. . . ." In February, 1835, both John Ross and John Ridge led their delegations into Washington. Sensing an agreement between Ridge and federal authorities, Ross' group made a proposal to the government which called for removal on the basis of a $20,000,000 allowance for the Georgia lands. The offer was scarcely considered, $20,000,000 then being regarded as a stupendous sum of money; and a counter offer of $5,000,000 was mentioned to Ross.

Federal authorities were in touch with the Ridge faction and appointed the Rev. John F. Schermerhorn to act as government negotiator. Schermerhorn was an experienced agent who had negotiated a treaty with the western Cherokees in 1833.

The Ridge group became embittered against John Ross. The Ross proposal of $20,000,000 was interpreted as a personal attempt to grab wealth. Elias Boudinot wrote Stand Watie, on February 28, "... His (John Ross) intention is to get the money and hunt out a country for himself." After John Ridge and his friends had completed a preliminary draft of a final treaty in March, John Ridge wrote, "... It is a very liberal in its terms—an equal measure is given to all. The poor Indian enjoys the same rights as the rich—there is no distinction. . . ."

This treaty called for payment of $4,500,000 to the Indians, plus $150,000 for depreciation. Western lands allotted to the Cherokees were to reach 13,800,000 acres. A stipulation was that the treaty would not be binding until submitted to the Cherokee tribal council for their approval.

65 Richardson, V, 319-320.
66 Abel, 403.
67 Dale, 10.
68 Ibid., 12.
During the following month, Jackson appointed Schermerhorn and General William Carroll as commissioners to complete the Ridge treaty. Carroll became ill and was unable to accompany Schermerhorn to the Cherokee country, but the latter was unsuccessful during the summer months.

All the evidence seems to point to the uncompromising opposition of John Ross to removal. Governor Wilson Lumpkin blamed Ross' attitude on the Cherokee leader's desire for personal gain. "Ross and his friends would be perfectly satisfied with the proposed treaty, provided they could be entrusted with the disbursement of the consideration of money..."

In September, Schermerhorn became so discouraged that he finally advocated either bribery or "divide and conquer" methods as the only means which would procure removal.

The tribal council met at Red Clay, in the Cherokee Nation, in October, and followed John Ross' advice by rejecting the Ridge treaty. Ridge and Ross had apparently reached some understanding on the matter. The council approved Ross' plan to return to Washington and press for a different type of treaty. Before he could leave the Cherokee country, however, Ross was arrested by Georgia troops, under the authority of a state law which made it illegal for a white man to reside in the Indian tract. The arresting officers claimed Ross was white. However, he was soon released.

Before the council at Red Clay adjourned, Schermerhorn served notice that a similar meeting would be held at New Echota in December to reopen the treaty issue. He ordered news of the meeting distributed throughout the Cherokee country, and added that all Cherokees not in attendance would be assumed as favorable to any treaty which might be negotiated there.

Less than 500 Indians attended the council sessions. A committee was chosen to negotiate with Schermerhorn on December 23.

A conditional treaty was signed by Schermerhorn, Major Ridge, James Foster, Andrew Ross, Elias Boudinot, Robert Rogers, James Starr, Charles E. Foreman and some lesser personages of the tribe on December 29, 1835, at New Echota. The completed document called for a grant of $5,000,000 for the ceded lands (with an additional $300,000 for spoilation claims, subject to senate approval), a guarantee of a 7,000,000 acre western territory for the Cherokees.

69 Richardson, V, 350.
70 Royce, 280.
71 Abel, 404.
and some 19 other conditions—all pointed toward removal. That removal was to be effected within two years after the treaty was ratified by the senate.

John Ross denounced the treaty and returned to Washington to protest its provisions and to fight against its ratification. He came to the capital with a protest signed by 12,714 Cherokees, but Jackson curtly let it be known that the federal government would no longer recognize any existing government among the Cherokees.

A supplementary treaty was concluded during March which called for an additional $700,000 grant to the Cherokees to adjust various pre-emption claims and aid the Indian poor. But the main treaty was submitted to the senate on March 5, 1836, for ratification. Debate on the treaty actually began on March 7. For the following two months it constituted one of the major issues before that body.

The second reading of the treaty on May 16, 1836, set the stage for the test of pro-Jackson strength. Two days later, Clay—backed by Webster and Calhoun—introduced a resolution which had as its intent a categorical rejection of the treaty. It provided that the first word of the treaty be stricken. In its place he proposed to substitute words which declared the Treaty of New Echota was "not made and concluded by authority on the part of the Cherokee tribe competent to bind it, and therefore. . . . the Senate cannot consent to and advise the ratification thereof as a valid binding treaty upon the Cherokee tribe or nation."72

The senate then contained 48 members. Forty-four were present for a vote on this resolution. The measure was defeated, 29 votes to 15. The four absentee senators, according to Senator Thomas Hart Benton, were either Jackson men, or not inclined to vote on the issue.73

Clay, Calhoun and Webster had found ammunition in their fight on the treaty. The memorials of John Ross which they passed on to the senate had not been effective enough. But rumors drifting back from the Cherokee country had been spread over Washington. It was known that Major William M. Davis, an army officer sent to enroll the Cherokees and appraise their improvements, had written to the secretary of war on March 5, 1836 that "... that paper . . . called a treaty is no treaty at all, because not sanctioned by the great body of the Cherokees and made without their participation or assent. I solemnly declare to you that upon its reference to the Cherokee people it would be instantly rejected by 9/10 of them and I believe 19/20 of them."74 Davis even went on to "warn" the secretary that

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73 Benton, Thomas Hart, Thirty Years' View, 1820-1850, (2 V., New York, 1854-1856), I, 625.
74 Royce, 284.
ratification of the treaty would bring headaches to all concerned.

The western and southern senators scoffed at a rejection of the treaty, but the close vote on the 16th made a muster of their forces necessary. Indeed, Benton saw the treaty as one which would convert 'Indian soil to slave soil.'

When the final vote was taken on May 18 all but two of the senators were present for the roll call. The vote was 31 yeas, 15 nays. The treaty was ratified—with one vote to spare. The Treaty of New Echota was a reality.

There was rejoicing in the Jackson camp. "Old Hickory's" promise on Indian removal was to be realized. But the outcome transcended fulfilled campaign promises. Benton placed his vote for slavery, and admitted it freely when he reviewed his career many years later. "It (the treaty) was saved by the free State vote—by the 14 free state affirmative votes," he later recalled, "which precisely balanced and neutralized the seven slave state negatives, or even been absent at the vote, the treaty would have been lost; and thus the south is indebted to the north for this most important treaty which completed the relief of the southern states. . . ."

With the ratification and final proclamation by Jackson on May 23, 1836, the Cherokee question had reached its political denouement. The problem then became one which military men charged with actual removal would have to solve.

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75 Benton, op. cit., 626.
76 Journal, IV, 546.
77 Benton, op. cit., 625.