THE LOST CHEROKEE TREATY

By Carolyn Thomas Foreman

A treaty which was made with the Cherokee Indians by Daniel Smith and Return Jonathan Meigs on October 24, 1804, was not proclaimed until May 17, 1824. In some manner this treaty disappeared and nothing was known of it until the matter was brought to the attention of the officers of the United States government by the Indians. A vast amount of correspondence resulted in which Ex-president Thomas Jefferson, President James Monroe, Secretary of War James C. Calhoun, General Henry Dearborn, Thomas L. McKenney, John McKee, Charles Cutts and the Cherokee delegates John Ross, George Lowery, Major Ridge and Elijah Hicks participated.

The Second Session of the Eighteenth Congress issued a document entitled: "Message from the President of the United States Transmitting a Copy of Instructions under which the Articles of a Treaty with the Cherokee Indians were formed, by Daniel Smith and R. J. Meigs, Acting Commissioners of the United States, at Tellico, on the 24th of October, 1804; with copies of all other Correspondence or other Documents relating to that Instrument. December 27, 1824. Referred to the Committee of Ways and Means. Washington: Printed by Gales & Seaton, 1824."

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1 See Appendix for biographical sketch of Daniel Smith.
2 During the Revolutionary War Return J. Meigs marched with Arnold through the forests of Maine and Canada to the attack on Quebec in 1775. He was appointed Cherokee superintendent May 15, 1801.—Charles C. Royce, "The Cherokee Nation of Indians," Fifth Annual Report, 1883-84 (Washington, 1887), note 2, p. 231.

Return J. Meigs was commissioned on June 3, 1802, to superintend a new survey of Cherokee territory. He was also concerned in the controversy about the land that had been given to Chief Doublehead. Meigs served as one of the commissioners to the treaty of September 11, 1807. (Royce, op. cit., 181, 191-2, 194). In 1813 Colonel Meigs was ordered to report to the Cherokees in Arkansas and on his arrival he wrote Governor Clark of the havoc wrought by whites on the game in the country belonging to the Indians.—Grant Foreman, Pioneer Days in the Early Southwest (Cleveland, 1926), p. 23. Meigs died at his post January 28, 1823, after about twenty years in the service as Cherokee agent.—Grant Foreman, Indians and Pioneers (Norman, 1936), p. 35, note 36.
From the War Department on April 4, 1804, Secretary Dearborn wrote to R. J. Meigs and Daniel Smith:

Gentlemen:

The President of the United States having appointed you Commissioners for holding a treaty or conference with such of the Chief men of the Cherokee Nation of Indians, as may be designated by the nation for that purpose, you will please take such measures for opening said conference, and at such time and place, as you shall judge expedient, and when a meeting of the parties shall have been effected, you will pursue such measures as in your opinion are best calculated to obtain such cessions of lands claimed by said nation, within the limits of the state of Tennessee, Kentucky or Georgia, as can be done on reasonable terms, more especially the land situated between East and West Tennessee, and the land near Currahee mountain, including the settlement of Col. Wafford and the other white inhabitants, within his immediate neighborhood.

The commissioners were authorized to pay the Cherokees not exceeding three thousand dollars for cessions in Tennessee and Kentucky, "together with a reasonable annual stipend, not exceeding three thousand dollars. For lands in Col. Wafford's settlement and other white inhabitants not to exceed five thousand dollars, with the annual stipend of not more than one thousand dollars . . . . ."

General Smith addressed a long letter to Secretary Dearborn from Southwest Point on October 31, 1804, in which he wrote that it had been decided it would be best to hold their meetings at Tellico where the Indians were to assemble on October 10, to receive their annuity for that year. Propositions were made to the Indians for cessions of land, but they were only successful in obtaining the lands called Wafford's settlement near Currahee Mountain.

3 Henry Dearborn, fifth secretary of war, was born in New Hampshire February 23, 1751. He became a practicing physician in 1772, but becoming convinced that it was only a matter of a short time before his country must be defended at the point of the sword, he organized a military company and from then his life was devoted to the service of the United States. He became distinguished at the battle of Bunker Hill, followed Arnold on the march against Quebec and fought brilliantly all through the Revolution. He allied himself with the political party of Thomas Jefferson and was appointed by him as secretary of war, which position he held for eight years. He died June 6, 1829.-L. D. Ingersoll, A History of the War Department (Washington, 1880), pp. 432-38. For the military service of General Dearborn see Frances B. Heitman, Historical Register . . . . of the United States Army (Washington, 1903), Vol. I, p. 363.

4 Indian raids were continuing in the autumn of 1792 and Governor Blount ordered out the militia under General John Sevier who made his headquarters at the mouth of Clinch River; he erected a blockhouse and stockade and called it Southwest Point.—J. P. Brown, Old Frontiers (Kingsport, Tennessee, 1938), p. 372.
The United States’ Factor, Mr. Hooker, at Tellico, for goods to the amount of $3640.33; the balance, $1539.66, Mr. James Vann assumed to pay which was very satisfactory to the Cherokees. Vann was to be reimbursed within sixty days. Two persons with two Cherokee Chiefs were empowered to run the lines, and report with a plat and remarks concerning the ceded land.

The Cherokees were next urged to make cessions of the lands lying between East and West Tennessee and Smith wrote: “The best informed among them, and who are in favor of their advancement in useful improvements, are in favor of the cession, as, by lessening the quantity of their wild lands, they will gradually be drawn from the hunting life.” The young chiefs were opposed to selling land and the principal chiefs had apparently agreed, “as they say, to let the young men know, and see, that they are not competent to conduct business without them . . . . .”

Colonel Return J. Meigs wrote the Secretary of War from Highawassee Garrison August 25, 1812, that the citizens of Georgia were continuing to intrude on the Indian lands, in fact they had reached the margin of the Chattahachee River:

Within the tract now intruded on, lies the tract known by the name of Wafford’s Settlement, once laid out four miles wide, and a little less than twenty-four miles long; but the settlers there having complained that Wafford’s settlement ought to have been extended so far southwest along the line of the state as to cover a plantation early made by a man named Vickory, the Cherokees, in order to remove this complaint, of their motion, extended the boundary line ten miles the same width, so as to cover the plantation of Vickory, making Wafford’s settlement now thirty-four miles long, by four in width.

On January 19, 1824, the members of the Cherokee delegation addressed a letter to the President of the United States in which they wrote:

Father: Permit us to add and call your attention to a treaty, which was entered into between the Cherokee Nation and Daniel Smith and Return J. Meigs, commissioners duly authorized by the then President (Mr. Jefferson) of the United States, on the 24th October, 1804, for a tract of land in the state of Georgia, known by the name of Wafford’s Settlement, for which cession the nation was to receive one thousand dollars annually. For reasons not fairly known to us, this treaty was not ratified, but the United States kept possession of the land, thereby depriving the nation from receiving the equivalent for which it was sold; as this treaty was duly authorized and solemnly entered into, and the United States received.

James Vann was a wealthy halfbreed Scot-Cherokee. His handsome home on Chicamauga Creek in North Georgia is still standing. In 1801 he gave a home to the Moravian missionaries Abraham Steiner and Gottlieb Byhan while they were building the mission at Spring Place. The Georgia legislature has recently appropriated $30,000 to restore the Vann house near Dalton, Georgia, as a historical site. Considering that the Cherokees were driven from their homes at the point of the bayonet; that they were appropriated by whites who had no claim to them, it appears ironical that the State of Georgia, at this late date, should wish to preserve this house as a monument to a man whom they made an outcast.
the land which they had treated for, we conceive it but just, that the Cherokees should now receive the equivalent for which they sold the land. Therefore, we hope our present Father, the President, and the Senate of the United States, will reconsider the subject, and ratify the aforesaid treaty.

Secretary of War John C. Calhoun replied to the Cherokee delegation on February 6, 1824:

The records of this department have been examined, and no information can be found in relation to the treaty, to which you have called the attention of the President. Among the treaties with the Cherokee nation, there are two negotiated at Tellico, on the 25th and 27th October, 1805, by Co. Meigs and Daniel Smith, as the Commissioners of the United States, both of which were ratified during the succeeding session of Congress.

The treaty of October 27, 1805, between the United States and the Cherokees was made up of four articles in which the Indians ceded more land and granted free use of a road through their country for the carriage of the mail. The Cherokees were to be paid the sum of sixteen hundred dollars, or merchandise, at their option, within ninety days.

On February 13, 1824, the Cherokee delegates in the city of Washington wrote to Secretary of War Calhoun they regretted that no information had been found in relation to the treaty to which they had called the attention of the President:

6 A note appended to the above letter states: "Sometime after this letter was written, a copy of the treaty referred to by the Cherokee delegation, with a copy of the communication from Daniel Smith, one of the Commissioners by whom it was concluded, (which is among the papers herewith, marked C.) was accidently found in a bundle of old miscellaneous papers."

7 Tellico, the name of several Cherokee settlements at different periods, viz: Great Tellico, at Tellico Plains, on the Tellico River, Monroe County, Tennessee; Little Tellico, on Tellico Creek about ten miles below Franklin, in Macon County, North Carolina; a town on Valley River, about five miles above Murphy, Cherokee County, North Carolina; and Tahlequah which became the capital of the Cherokee Nation in the Indian Territory in 1839.—Frederick Webb Hodge, *Handbook of American Indians* (Washington, 1912), Pt. 2, p. 726; Brown, op. cit., states it was probably a town of refuge, or peace town, p. 545.

8 The treaty made October 25, 1805, consisted of five articles in which cessions of land were made by the Cherokees for which they were paid "Three thousand dollars in valuable merchandise, and eleven thousand dollars within ninety days after the ratification of the treaty, and also an annuity of three thousand dollars. . . But so much of the said eleven thousand dollars, as the said Cherokees may agree to accept in useful articles of, and machines for, agriculture and manufactures, shall be paid in those articles, at their option." This treaty was proclaimed April 24, 1806.

9 Charles J. Kappler, *Indian Affairs, Laws and Treaties* (Washington, 1903), Vol. 2, pp. 60, 61; John P. Brown, op. cit., p. 451. The commissioners of the United States were R. J. Meigs, James Robertson and Daniel Smith. James Robertson was among the first settlers at Watauga. When he was a young man he became dissatisfied with the political conditions in North Carolina and wishing for better conditions for himself and his family he removed to Watauga early in 1796. By his bravery and frankness with the Indians he became a marked man between both the whites and Indians. After the treaty of Long Island in 1777, he was sent as agent to the Cherokees. He was a representative in the North Carolina General Assembly from the Cumberland settlement. For interesting accounts of James Robertson consult "Indian Affairs", *American State Papers*, Vol. 1 to 3; Theodore Roosevelt, *Winning of the West* (New York, 1906).
We would therefore beg leave to lay before the President, through you, the treaty; and the accompanying documents will show, that, previous to the cession of this tract of land, by this treaty, that many white families had intruded on it, and, in consequence thereof orders for their removal had been issued by the Government and, the officers to whom the orders were given, interposed in behalf of the intruders, so far as to appeal to the liberality and humanity of the Cherokees, to suspend their removal, until they should have secured their crops, and the agent in like manner introducing similar recommendations, the Cherokees hesitated not to grant the privilege . . . such was the course pursued, time after time, for the indulgence of those intruders, until the negotiations which was brought about for the purchase of that tract of country effected by the treaty of 1804, which is herewith submitted.

We have full assurance for the justness of our application, that there will be no hesitation in the Honorable body composing the Senate and the Executive chair in the ratification of the treaty. Colonel John McKee, one of the witnesses to this treaty, is now a Representative in Congress from Alabama, who no doubt can testify to its authenticity; you will moreover discover from the extract of Colonel Meigs' letter to Mr. William Eustis, (the Secretary of War) that the Cherokees, in the spirit of reconciliation, and in order to appease the minds of the intruders, actually permitted more lands to be surveyed than was included under the cession of this treaty; so that their homes and farms might be covered . . . .

Such are the facts in relation to this treaty . . . .

With respect, &c.

John Ross,
George Lowery,
Major Ridge
Elijah Hicks.

Thomas L. McKenney wrote "To the Hon. Secretary of War" on April 15, 1824, as follows:

Sir: I have the honor, in obedience to your order . . . to lay before you the facts and circumstances, connected with the treaty of Tellico . . . .

It appears that a commission was issued to Daniel Smith and R. J. Meigs, bearing date of April 4th, 1804, empowering them to treat with such of the chief men of the Cherokee nation of Indians as should be designated by the nation for that purpose; and to pursue such measures as, in their opinion, were best calculated to obtain such cession of lands, claimed by said nation, within the limits of the state of Tennessee, Kentucky, or Georgia, as could be done on reasonable terms; more especially, the land situated between East and West Tennessee, and the land near Currahee Mountain, including the settlement of Col. Wafford; and for such cession as they could obtain from said nation within the limits of Georgia, in the vicinity of Currahee Mountain, including Col. Wafford's settlement.

It further appears, that a treaty was accordingly held by the commissioners aforesaid, and concluded by them on the part of the United States, and certain Cherokee chiefs . . . bearing date of October 24, 1804, in which, in consideration of the relinquishment and cession, as expressed in the first article of said treaty, it was agreed by the commissioners, to deliver to the Cherokees useful goods, wares, and merchandise, to the amount of five thousand dollars, or that sum of money . . . and, in addition to this sum, an annual payment thereafter, of one thousand dollars, in goods, or money, at the option of the Cherokees.

It moreover appears, that the stipulation for the payment of five thousand dollars was fulfilled . . . but the annual payment of one thousand, does not appear to have been made.
The genuineness of the treaty is attested by Col. John M'Kee, of the United States Congress. The Cherokee delegation, now at Washington, have called the attention of the Government to this subject, in their letter of 13th February last. They ask for a ratification of the treaty, and a fulfillment of its stipulations.

The following communication from the House of Representatives was written by the Hon. John McKee on April 15, 1824:

Sir: The enclosed treaty concluded with the Cherokees, on the 24th October 1804, has been transmitted to me, with the request that I would make such remarks as I may think proper, embracing its genuineness, and the reasons, if any, why it was never ratified by the Senate. I can state confidently, as well as from an intimate knowledge of the hand writing of many of the signers of this instrument, as from a perfect recollection of the negotiating and signing of the treaty, that it is genuine. I have never heard of many reasons assigned why it has not been ratified.

Calhoun, with extreme reluctance, submitted the papers regarding the lost Cherokee treaty to the “Late President of the United States” Thomas Jefferson on April 19, 1824, hoping that he might be able to furnish information concerning it:

The Cherokee Indians have claimed any annuity of $1,000, under a treaty which appears to have been negotiated in the year 1804, but of which there is no record in this, or the State Department.

They have furnished a duplicate, which, with other papers connected with it, I herewith enclose, accompanied by a paper marked G, containing a statement of the case from Colonel (Thomas L.) M'Kenney, who has charge of the Indian Bureau: to which it may be proper to add, that the land ceded under the treaty, is in possession of the citizens of Georgia.

The President is desirous to know, whether the treaty was disapproved by the Executive, and on that account not submitted for the ratification of the Senate: or whether its not having been submitted for ratification

10 Governor Blount sent John McKee in 1792 to get information from Chief John Watts, a half-breed. He plied the Indian with liquor until he was intoxicated, but he received no information except that he was still his friend. In 1793 Blount again sent McKee on an errand into the nation to try to learn the result of a council which Watts had promised him would be held in twenty-one days. In several other meetings with Cherokee chiefs McKee was unsuccessful. Governor Blount built a blockhouse on the Little Tennessee opposite the mouth of Tellico River. The small Federal garrison was commanded by Colonel Abijah Thomas and McKee was stationed there as deputy agent to the Cherokees. John P. Brown, Old Frontiers (Kingsport, Tennessee, 1938), p. 332, note 13; pp. 379-80, 418, 434-5. According to Royce, op. cit., p. 188, McKee was a subscriber to the treaty of October 24, 1804. John McKee was a representative in Congress from Tuscaloosa, Alabama, in the Eighteenth, Nineteenth and Twentieth congresses. He served from December 1, 1823 to March 3, 1829. A Biographical Congressional Dictionary (Washington, 1903), pp. 84, 89, 94, 572.

11 From the office of the Secretary of the Senate, April 13, 1824, Charles Cutts replied to the Secretary of War, in answer to his letter of the previous day respecting the lost treaty: “. . . I have caused the Executive Journals to be examined, and find that no treaty with the Cherokees of the date of October 24th, 1804, has ever been submitted to the Senate . . . .”
was accidental. If you have it in your power to furnish the above, or any other information in relation to it, I shall be happy to receive it in order that it may be laid before the President.

After acknowledging receipt of Calhoun’s letter Ex-President Jefferson stated:

. . . . Recurring to memory alone, I can affirm, that the treaty enclosed to me, and now returned, is genuine. It is well remembered, because no case of intruders ever occurred, which excited more anxiety or commiseration with us than that of Wafford’s settlement which is covered.

On the complaint of the Cherokees, we endeavored to purchase the lands from them but on their refusal, we assured them the intruders should be removed and orders were accordingly given; but the officers to whom they were given interceded with the Indians to let the settlers remain until they had gathered their crops; and this indulgence was, I believe repeated, until at length they agreed to sell the lands.

Recurring to my papers, I find the following passage in a letter to General Dearborn, of April 8, 1804, written from this place, where I was on a short visit at the time: 'I think before I left Washington, we had decided to take immediate measures for endeavoring to purchase of the Cherokees all their lands in Tennessee, or such, the most interesting to that state, as they would be willing to sell, and the names of Meigs and Daniel Smith, Commissioners.'

To this General Dearborn answered, by the letter of April 14, which I now enclose you, informing me that Smith and Meigs had accordingly been authorized to hold the treaty. This is the last trace of the transaction which I find in my papers. I have for forty years back, kept a list of every letter or communication I wrote or received. A diligent examination of this list assures me, that I never received this treaty. I have preserved press or polygraph copies of every message I ever sent to either house of Congress. A like examination of these proves, I never laid this treaty before the Senate. Yet, that the treaty was entered into, is proved by the duplicate copy produced by the Indians, equally authentic with our own, by its actual execution by the delivery of the lands on their part, and of the price on ours, and, by the testimony of Mr. M’Kee and others. How has it happened, that this has been done without ratification by the Senate? I do not know; two conjectures occur. Either the treaty may have been lost by the way, or, if received by the War Office it may have been mislaid there accidently, and escaped subsequent recollection.

In this case, it may still be in some unexpected bundle, where nobody will ever think of looking for it . . . . I take to myself my share in this omission, and can only say 'homo sum.' The treaty had all my approbation. It is some consolation, that the blot may be covered, if all parties are agreed. The Indians will, doubtless, consent that their duplicate shall be laid before the Senate, which, being equally an original with that which should have been laid before their predecessors, can receive their ratification, uno pro uno . . . . . In this way may be repaired a slip of the Executive functionaries, unwittingly committed, and full justice be done to the other party.

With my regrets, that an involuntary failure of recollection in myself, among other officers of the government participating in it, should have produced the present embarrassment, be pleased to accept the assurance of my high respect and consideration.
The Lost Cherokee Treaty

The House of Representatives passed a resolution on December 15, 1824, asking the President to lay before the House, a copy of the instructions under which the articles of a treaty with the Cherokee Indians, were formed, by Daniel Smith and R. J. Meigs, acting as commissioners for the United States, at Tellico, on October 24, 1804; with copies of all correspondence or other documents relating to the matter, with a statement of the causes which prevented an earlier decision upon it.

President Monroe, on December 23, 1824, transmitted the report of the Secretary of War, with the documents relating to it, to the House of Representatives. Through the ignorance or carelessness of some clerk the treaty of 1804 was lost for twenty years and was only found after a great amount of correspondence among various high officials, including two presidents.

APPENDIX

Daniel Smith, born in Fauquier County, Virginia, about 1740, was one of the earliest settlers in Tennessee. On January 7, 1790, he was appointed by President Washington, secretary of the territory south of the Ohio River; he was a major general of the militia and when Andrew Jackson resigned as senator from Tennessee, Smith was appointed to fill his place. He served from December 3, 1798, to March 3, 1799. He was elected senator from his state and served from December 2, 1805 to 1809, when he resigned; he died in Sumner County, Tennessee, July 16, 1818. Smith was a member of the third session of the Fifth Congress and of the Ninth, Tenth and Eleventh sessions of the United States Senate. A Biographical Congressional Dictionary (Washington, 1903), pp. 804, 34, 51, 56.

Smith was one of the most prominent of the early settlers, “a man of education and wealth and his home in Sumner County was the seat of wide hospitality. . . . The General has a beautiful plantation cultivated in Indian wheat and cotton. He has also a neat distillery for peach brandy, which he sells at five shillings per gallon. In his leisure hours he busies himself in chemistry . . . . In his house are English translations of the works of Lavoisier and Fourcroy.”—Reuben Gold Thwaites (ed), “F. A. Michaux’s Travels,” Early Western Travels, Vol. 3, note 54, pp. 255-6.

Daniel Smith was a member of the boundary commission to settle the Virginia-North Carolina line. When Governor William Blount left for Philadelphia in 1793 he left his secretary, Daniel Smith, in charge. Captain John Beard, disobeyed his explicit orders and crossed the Little Tennessee River, opposite from Coyatee, the village of Chief Hanging Maw, and fell upon the town. The Chief his wife, and a daughter of Nancy Ward were wounded. Hanging Maw had always been a friend of the United States and the attack by Beard was unjustifiable. Secretary Smith, governor pro tem, ordered Beard before a court martial and directed him to give up his command, but the officer disregarded it and the matter came to naught. Smith wrote an apology to the chief who replied from Coyatee, June 16, 1793, telling him that he was “neither headman nor warrior.”—John P. Brown, op. cit., p. 229 note 7 , pp. 387-8.