

had established his family in a crude log cabin quite unlike the home he and Mary now approached. John Howard Payne visited Ross in 1840 and described that first dwelling as lacking everything except dirt and space. Payne had noted the unfastened doors with the constant passage of Indians to and fro, dressed in "queer, wild, garb; and blanket coats of every hue." At meals there Ross had entertained as many as the table would accommodate, and Payne wondered how the housekeeper could prepare an evening meal, not knowing whether she would have to feed and lodge twenty-five, fifty, or double that number.³⁹

Although the house to which Ross now took Mary was quite different, the spirit was unchanged. Few people who journeyed through the Cherokee Nation during the years before the Civil War could resist the hospitality of the Cherokee chief, and many described the comfortable surroundings of Rose Cottage so unfamiliar to the Indian wilds. The yellow house was situated on a hillside surrounded by abundant native oaks and elms for shade, while numerous fruit trees graced the grounds. Approached by a winding driveway bordered by a variety of roses, it was one of the most notable in all the Indian Territory. Two-storied, it faced north with a pillared porch extending the length of the front. At each end there were large chimneys of native stone. Across the road was a garden of nearly two acres filled with fruits, melons, and grapes. The ample interior included guest rooms, family rooms, a library, and a parlor, all exquisitely furnished with mahogany and rosewood furniture brought from the eastern United States. Delicate china and rich linen graced a table certain to be surrounded by a host of travelers and Indian friends. The noted artist John Mix Stanley visited the Ross mansion shortly after Mary's arrival and wrote glowingly of Ross's unbounded hospitality. Waddy Thompson, a personal friend of the Rosses and sometime counsel during Cherokee-Washington negotiations, left this description of Rose Cottage and its master: "He resides about four miles from Tahlequah, in a very spacious wooden house, furnished with great taste and elegance. I have seen few men who perform the office of host with such a combination of ease, dignity and cordiality. The whole establishment, house, furniture, host and hostess are a perfect pattern of the residence of the country gentleman."⁴⁰

Ross and his bride arrived in Tahlequah in time for the last days of the National Council of 1844. Ross addressed the meeting and presented the correspondence of the delegation with Secretary of War Wilkins. Although his short message largely let the correspondence speak for itself, he did say that it appeared Wilkins's primary mission was to avoid fulfilling the pledge made by President Tyler in 1841. The *Cherokee Advocate* published all Ross's correspondence with Wilkins and also the measures adopted by the dissident factions in Washington. After the National Council had studied the events as reported, it passed an act declaring the "inalienable rights" of the Cherokees as a "separate and distinct Nation" which had formed into one nation under the Act of Union of 1840. The National Council protested the recognition of different elements within the tribe by the federal government and also objected to the commission to be appointed by Wilkins, feeling it would only fan factionalism and open the way to greater disturbances. In view of the disappointing results of previous years, the National Council appointed Ross and eight others to renew negotiations at Washington and gave them full powers to conclude a treaty.⁴¹

Secretary Wilkins appointed his promised committee consisting of Brigadier General Roger Jones, Lieutenant Colonel R. B. Mason, and Cherokee agent Pierce Mason Butler to investigate Cherokee factionalism and the "lengths of oppression, resistance, and violence, to which the excitement of each against the other has severally led the parties." The commissioners arrived on November 15, 1844, and, contrary to the wish of the National Council and over the protests of Chief Ross, met with a group of Old Settlers and treaty party members at Tahlonteeskee some twenty-five miles south of Fort Gibson. There from December 17 to 24 both factions brought complaints before the commission. The complaints of the Old Settlers revolved around the legitimacy of the Act of Union of 1840, which they declared spurious. Adherents of the treaty party denounced the "mockery of a trial by jury" of Jacob and John West and the seizure and investigation of many of their people without explanation.⁴²

Ross, anticipating that "no good could grow out of a meeting so convened," proposed several times that the commission meet at Tahlequah where the people could be assembled easily, including

John Rogers, the major complainant. Since the commissioners were set on meeting with the Old Settlers who would not agree to any coordinated conference with the Ross party, Ross delegated eleven men to attend the commission's inquiry and report the proceedings to the National Council. The delegation spent two days at Fort Gibson, December 17 and 18; they participated as the commissioners questioned the returned General Matthew Arbuckle and attempted to show that a union had been achieved in 1839. Finally they withdrew without questioning the Old Settler complainants.⁴³

After the board had completed its examination of the Old Settlers and the treaty party, members went to Tahlequah to receive the testimony of the "Cherokee authorities." The commission presented accusations from the two dissident factions and invited Ross to respond. As to the lack of authenticity of the Act of Union, the Cherokee authorities replied that the complainants were not "legal representatives" of the Old Settlers and that legitimate agents for that group had signed the Act of Union. When presented with names of Old Settlers who had signed the Act of Union and who now denied their authority to have done so, the Ross adherents replied that by June 1840 the western Cherokees had largely joined the dominant faction. The Ross supporters easily documented the fact that the so-called acts of violence and oppression had been committed under legally constituted authority with the intention of lessening strife. As their final reply to these charges, the Ross group presented a breakdown showing a majority of the Cherokee government since 1839 to be made up of members of the treaty party and the Old Settler faction.⁴⁴

Jones, Mason, and Butler gathered at Fort Gibson after hearing the testimonies of the contending parties. In their report, filed January 17, 1845, they took up the major complaints of the discontented parties, noting that of the 900 who assembled to complain of injustices, about 150 were not even Indians. The commissioners also discovered that many dissidents had come with the idea that their presence somehow might aid in the recovery of the per capita money. The commissioners believed the Act of Union to be legitimate, yet qualified this belief by noting many had signed it with assurances that they would later share in financial allotments. The three men also

found the Old Settlers held many offices in the Cherokee government and that their allegation of oppression held little truth.⁴⁵

The commissioners suggested that discord would continue among the Cherokees as long as the "discontented . . . find a ready audience at Washington." The three men advised against a division of the nation. Jones and Mason may have been persuaded on this point by Butler, who had become convinced earlier. They concluded that the "germ of discontent" lay in the nonpayment by the federal government of the per capita funds, and the commissioners favored expanding this fund, as they felt the United States should repay any money taken from the five million fund. In the interest of restoring harmony, they recommended that a new treaty be concluded on the basis of President Tyler's letter of September 1841.⁴⁶

Ross and his colleagues left for Washington on April 2, 1845, feeling that the commission's report would greatly increase their chances of obtaining a new treaty and the alleviation of many outstanding Cherokee difficulties, but the delegation was disappointed by the new administration in Washington. James K. Polk, a protégé of Andrew Jackson, had acceded to the presidency in March 1845 and had named William L. Marcy as secretary of war, while Crawford remained as commissioner of Indian affairs until October. Ross found the Democratic administration little disposed to accept the report of Jones, Mason, and Butler, but quite willing to listen to a treaty party delegation. Throughout the sticky summer months of 1845, Ross received only a cool reception from Washington officials. The one measure of success was the partial payment of the Cherokee annuities, which came only after repeated requests. Because of Polk's growing sympathy for the minority parties, Ross felt it necessary to remain in Washington throughout 1845.⁴⁷

With the general acceptance after 1840 of the Cherokee Constitution of 1839 and the Act of Union of 1840, Ross doubtless envisioned an era of peace. Factional wounds, however, were not so easily healed, and dissidents found a ready ear at Washington. Again federal inconsistencies thwarted the Cherokees' national harmony. In spite of promises by President Tyler that the Cherokees would see a new dawn, internal difficulties made the Whig administration wary of negotiating a new treaty. Dissatisfied Old Settlers like Rog-

ers could easily have been brought into the Cherokee government as had others from their faction, but it seems these men were more intent on disrupting normal political processes than in settling actual grievances. The sometimes indiscriminate use of "police forces" by Ross and his adherents probably jeopardized easy acceptance of the chief's leadership. A careful check on zealous subordinates would have been prudent. When Ross finally appeared justified as the legitimate leader of the Cherokees by the report of Jones, Mason, and Butler, a new administration came into office at Washington and paid little attention to that report. Thus the Cherokees faced another period of bitter animosities before unity became more than merely a dream of their chief.

9

TRAVAIL AND TRANQUILITY

THE years 1845 and 1846 were the bloodiest and most divisive in the history of the Cherokee Nation. Each incident of bloodshed aggravated party vendettas as the treaty party and the Old Settlers aligned themselves against the real and imagined oppression of the Ross party. Violence emanated also from groups of desperadoes who clothed themselves in the sanctity of "party" as they plundered the countryside.

Intense tribal terrorism dated from 1839 when the Cherokee patriarch James Starr had been marked for death with the Ridges and Boudinot. Three of his sons, Tom, Bean, and Ellis, the notorious "Starr boys," in 1843 viciously murdered a Cherokee family near Fort Gibson, ravaged their home, and then set it afire. The Cherokee authorities quickly offered rewards and organized police companies against such outrages, but their hands were tied when the Starr brothers crossed the line into Arkansas. Nor was Ross able to negotiate for the return of such fugitives. Often police companies faced lethargy or open opposition from the minority factions who viewed the police as armed vigilance committees established solely to punish Ross opponents. Stand Watie kept his own armed men at old Fort Wayne prepared for an attack by administration forces, and the treaty party came to praise the Starrs as heroes in this drama, when in quieter times they would have been labeled the criminals they were. Violence finally reached such intensity that the Cherokee agent reported in one ten-month period in 1845-46, a total of thirty-four killings, mainly of a political nature. Certainly the situation was near anarchy.¹

Unable to touch the carefully guarded chief at Rose Cottage, several bandits looted and burned to the ground the home of Ross's

daughter Jane one quiet, cold Sunday evening in November 1845. A force of eight hundred men organized to find the criminals captured and summarily executed the elder Starr and wounded two of his sons in open battle. Watie mustered a force of sixty men and awaited siege by the Ross faction at old Fort Wayne; it never came, but skirmishes and killings remained frequent in the Cherokee Nation. The continued violence and threats of open warfare convinced the weaker factions that the only way to escape Ross's tyranny was to divide the nation politically before it split into two armed camps. Watie joined his comrades of the treaty party, and they set out for Washington to air their grievances, where they linked themselves to the embittered Old Settlers who already were working toward a political split.²

The western Cherokees had retained two able lawyers, Samuel C. Stambaugh and Amos Kendall, who began a series of appeals to Secretary of War William L. Marcy in October 1845. Stambaugh and Kendall vigorously pointed out injustices the Old Settlers had suffered at the hands of "Ross and his foreign horde." Characterizing the history of the Cherokees since 1839 as a period of political usurpation and domestic strife, they depicted Ross as an "extraordinary man" whose "ruling passion is avarice." They dredged up the recurring charge that Ross could not even claim to be a Cherokee because of his slight degree of Indian blood and because his land settlement outside the Cherokee Nation under the Treaty of 1819 had deprived him of Cherokee citizenship. They also reviewed the financial arrangements Ross had made for removal and, not surprisingly, declared he had profited enormously by plundering his people. The thrust of their indictment was to show the western Cherokees as independent, the Act of Union of 1840 as illegal, and Ross as dishonest and tyrannical. The solution, they contended, was to divide the Cherokee Nation.³

When members of the treaty party delegation reached Washington in March 1846, they presented federal officials a series of petitions outlining their grievances developed with the aid of their legal adviser George W. Paschal, an Arkansas lawyer and brother-in-law of the late Major Ridge. Complaining that no member of the treaty party could consider himself safe in the Cherokee Nation, they too emphasized that division was the only possible remedy for Chero-

kee strife. Beyond that, they exhibited an estimate of money due the Cherokees, a part of which they said had already been despotically squandered by Ross. The treaty party delegation determined that a balance of \$2,475,734 was due the tribe on a per capita basis of \$147.86 for each Cherokee. The settlement with Ross of over \$500,000 in 1841 had eaten into the per capita fund considerably, and extensive payments by the government to Cherokee creditors (treaty party members were generally unaware of this reduction) had taken well over \$1,000,000 from the per capita distribution money. The treaty faction delegates protested these large reductions in the fund and demanded the per capita money they felt justly due them.⁴

Ross and his colleagues had appealed to the federal government concerning the favorable report of Jones, Mason, and Butler the previous January. Of course they also referred again to the still unfulfilled promises of former President Tyler. These expressions gained little sympathy and less action. Understanding that the treaty party had met and appointed a delegation, the authorities of the Cherokee Nation circulated a petition among the tribe and forwarded it to Washington. This petition declared that the difficulties in the Cherokee Nation had arisen from the "stealthy incursions of a number of banditti" and not from party strife. The petition further stated that Ross and his colleagues were the only legitimate Cherokee delegates in Washington.⁵

By the latter part of March 1846, the Polk administration was moving toward a decision in accord with the views of the minority faction and refused even to accept a further appeal from Ross. After a brief meeting with Ross on March 25, Polk directed the commissioner of Indian affairs to complete his report. The chief and his comrades then turned to Congress with a memorial, the first since 1838. They declared the Act of Union of 1840 effectively represented the wishes of the majority of the Cherokees and that none of the measures proposed by the minority factions was desired by the great mass of the tribe. Because Congress at that time was embroiled in the Oregon question, the Cherokee petition gained slight attention.⁶

The new commissioner of Indian affairs, William Medill, submitted his conclusions to President Polk after examining the several petitions of the three factions. Medill recommended that Ross and his associates not be recognized as authorized delegates but only as rep-

representatives of their particular faction. On other points Medill also sided with the treaty party and the Old Settlers. Disregarding the report of Jones, Mason, and Butler, the commissioner embraced many arguments the three investigators had deemed untenable and concluded that a "separation, both of the old settlers and the treaty party, from the Ross party is imperatively required." Enclosing Medill's recommendation and the mass of documents and petitions to illustrate the government's case, President Polk submitted a message to Congress in April 1846, announcing his determination to divide the Cherokees politically and geographically. Congress seemed amenable and in June reported on its acceptance; all seemed in readiness for a political division of the Cherokee Nation.⁷

At this point Ross worked feverishly to forestall what appeared inevitable. Fortunately for the Ross faction, Indian Superintendent William Armstrong had arrived from the western frontier and suggested to Commissioner Medill that a committee be appointed to make a last attempt to mediate factional differences. President Polk then appointed Armstrong, Commissioner of the Patent Office Edmund Burke, and Second Comptroller of the Treasury Albion K. Parris for the task; during the month of July they hammered out an agreement suitable to all factions. The ominous threat of division doubtless made Ross more conciliatory, and measures were offered the dissatisfied groups to gain their support. President Polk presented the document to the Senate on August 7, the day after its completion, and it was approved by a majority of one vote with only minor changes. On August 13 when the three delegations gathered in Polk's office to sign the treaty as approved by Congress, twenty Cherokees affixed their names to the treaty, clasped hands, and renounced animosities. Undoubtedly, there was tension in the hands of those old foes as Ross and Watie pressed palms and pledged good faith. When Polk exhorted the men to forget the past, Ross replied that all were satisfied and could now live in harmony.⁸

The principal goals of the Treaty of 1846 were unity and the end of violence in the Cherokee Nation. It provided general amnesty for all offenses, the safe return of all fugitives, and an end to police or military organizations. The Old Settlers gave up claim to exclusive ownership of the Cherokee domain and received the right to share in the per capita payments. The treaty party received a special indemnity

of \$115,000; of this money \$5,000 was to be paid to each set of heirs of the two Ridges and Boudinot. The remaining would pay the expenses of the delegation and settle claims of individual treaty party members. The Cherokees were assured title to the lands they occupied, hardly the unimpaired guarantee Ross desired but the only stipulation he could obtain. The Ross party received \$2,000 for the old *Cherokee Phoenix* printing press, \$5,000 for arms taken by Major General Winfield Scott prior to the Cherokee roundup in 1838, and \$20,000 for other miscellaneous national claims. Finally, the United States agreed to reimburse the Cherokees for money "unjustly" deducted from the five million fund and to make a final settlement of all money due under the per capita stipulation.⁹

The Treaty of 1846 heralded a new and pacific era in Cherokee politics and more than a dozen years of uninterrupted tranquility. The settlement was not entirely smooth, however. The Cherokees were prepared to achieve not only peace but also financial stability, anticipating as they were a lucrative per capita payment.

But the federal government was slow to reimburse them for unjust deductions from the five million fund. Within a year of the signing of the Treaty of 1846, the Senate Committee on Indian Affairs reported on its understanding of the various moneys due the Cherokees. The committee determined that the cost of subsistence and removal should not have been charged to the five million fund, but, in spite of Ross's efforts, no action appears to have been taken on the report. After an extensive examination of accounts and vouchers, United States Treasury auditors determined that \$627,603.95 was due the Cherokees for a per capita distribution. Congress made two additional appropriations in September 1850 and in February 1851, which brought the total amount for distribution to \$914,026.13. As the Cherokees remaining in North Carolina also were included in the distribution, the sums finally allotted, which included another addition of nearly \$600,000, amounted to \$92.79 for each Cherokee, hardly the largess expected.¹⁰

The per capita payments were made in two allotments. The first was made to the Old Settlers by Southern Indian Superintendent John Drennen at Fort Gibson in September and October 1851. Drennen was so well satisfied with the Fort Gibson location that he suggested it as an appropriate spot to pay the emigrant Cherokees.

The eastern Cherokees disagreed, and the National Council in November 1851 directed Ross to ask that the payment be made at Tahlequah because of its central location. When Ross asked Drennen, the superintendent told him that he feared disorder at any other location and that he was determined to stay at Fort Gibson. Ross noted not only the inconvenience to the eastern Cherokees but also the health hazards of a convergence on Fort Gibson. More important, Fort Gibson was a place of corruption where card sharks and grog shops were sure to take the Indians' money or where ranging criminals might rob them as they returned to their homes. Drennen had considered Tahlequah but, finding a force of fifty soldiers unavailable, had decided on Fort Gibson, a decision "approved by a majority of the most intelligent men in the nation, the chief and a few others about Tahlequah excepted," he noted. The per capita money was paid out to the emigrant Cherokees in April and May 1852 and, contrary to Drennen's observations, the Cherokees suffered all the problems anticipated.¹¹

In his annual address following the per capita allotments, Ross referred to the payment as "partial." Indeed, the National Council protested that the payments were not nearly as large as they should have been under the treaty provisions. As Congress had decided that the subsistence item was not properly charged to the five million fund, the Cherokees felt that the additional charges for removal under Ross were not proper either. Ross had questioned this apparent inconsistency a number of times, and it had been the basis for treaty party complaints in 1846, but the protest received little attention during Ross's lifetime. Nearly half a century later United States auditors concluded that the Cherokee claim was just and recommended a payment of over one million dollars due the tribe from the Treaty of 1835.¹²

During the postremoval period Ross had been so engrossed in Cherokee political affairs that his personal financial interests deteriorated. In the tranquil days after the Treaty of 1846 he could turn again to his own business affairs. Ross's wealth came partly from his extensive land improvements and partly from his business enterprises. His salary as chief was meager; it was hardly five hundred dollars a year at this time. In 1849 Ross took over the mercantile business of his son-in-law Return J. Meigs, who had caught the

California gold rush fever. Ross opened the store under the care of his favorite nephews William P. and Daniel H. Ross. The store opened in September on the northeast corner of the public square in Tahlequah, and the first advertisement appeared in the *Cherokee Advocate* on October 8, 1849, under the title, "John Ross & Co.," with the heading "Call at the Brick Store." The short-lived association was dissolved in November of 1850, but William and Daniel independently reopened the business a short time later. Ross soon entered business with Mary's elder brother John W. Stapler. Stapler opened a firm just across the street from the office of the *Cherokee Advocate* in July 1851. In time Ross was brought in as a partner, and the firm was named "Ross & Stapler." These enterprises seem to have been moderately successful. Ross had outstanding accounts of nearly three thousand dollars owed him from the first business. Whether he ever collected on these is uncertain, and some of the largest debts were made by relatives. He was able to draw nearly six hundred dollars from the Ross & Stapler store in one quarterly period. When the firm was dissolved in January 1860, Ross received over thirteen hundred dollars for his share, a large part of which was a mortgage on property in Wilmington, Delaware.¹³

As was typical of southern gentlemen of the antebellum period, Ross maintained a good share of his wealth in land improvements and in slaves. Cherokee lands, held in the same manner in the West as in the old Cherokee Nation, were common property, but improvements belonged to the individual. Besides the extensive farm lands and orchards surrounding Rose Cottage, Ross occasionally bought the improvements of nearby Park Hill neighbors, whether for personal use or for speculation is uncertain; nor is the amount of the lands he tended determinable. He also seemed to own considerable stock. One visitor counted 93 sheep "all very fine and large" and also noted other livestock. Before removal to the West, Ross had owned fewer than twenty blacks, but by the time of the Civil War he had over fifty. He seems to have been benevolent toward his slaves. When absent, he requested reports on their health with a concern more than an interest in costly property, and after the Civil War he wrote of visits with them, and they appeared pleased to see him.¹⁴

As one of the more substantial members of Cherokee society, Ross felt keenly his social obligation. The artist John Mix Stanley,