

THE CHEROKEE TOBACCO CASE

By ROBERT K. HELMANN*

Tobacco, a tidewater product during the colonial era, surged west with America during the nineteenth century. The early 1800's saw the leaf used by Lewis and Clark and by Rocky Mountain traders as a medium of exchange. The same period saw it prized as a cash crop by farmers of the Mississippi Valley, and this led to the rise of large factories in Louisville and St. Louis. Tobacco-taking had been characteristic of Americans since colonial days. Now tobacco-making—either on the farm or in factories—became increasingly prominent as a form of private enterprise.¹

During the 1860's business-minded citizens of the Indian nations (or so-called "Five Civilized Tribes") of the Indian Territory, now Oklahoma, had an incentive to enter this growing, westering market. Tobacco was accepted as a medium of exchange within this region and across the lines in bordering country, especially in the late years of the American Civil War when Confederate money had greatly lowered in value. There was no general system of taxation of the citizens in any of the Indian nations in the production and sale of agricultural and manufactured products within their borders. To regain their own great losses in personal property as well as help their impoverished fellow citizens and their devastated country at the end of the Civil War some of the more aggressive Cherokees and Choctaws set up tobacco factories in their nations not far from the Arkansas line. They interpreted the new Treaties of 1866 with the Federal Government as allowing them to set up such factories as well as granting them exemption from the U.S. excise tax in the sale of their products beyond the borders of the Indian Territory. Their right to do this was denied by the U.S.

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¹ Helmann, *op. cit.*

Supreme Court in the climactic legal test of Indian treaty rights known as the *Cherokee Tobacco Case* of 1871.²

This test was precipitated by the 1868 venture of E. C. Boudinot and Stand Watie, two of the most prominent figures in the Cherokee Nation. Cherokees had achieved a high degree of civilization in Georgia before their removal to what is now Oklahoma in 1838. They were one of the few Indian tribes capable of launching a manufacturing enterprise. The Boudinot and Watie firm and others made sweetened plug tobacco, then the dominant form of leaf consumption—just inside the borders of the Cherokee Nation, adjacent to Arkansas (see map). As citizens of a separate "nation," they believed it their right to manufacture without paying U. S. taxes, and cited the Cherokee Treaty of 1866 to support their belief. But in 1871 the Supreme Court ruled that the 1868 Act of Congress levying the tobacco tax overrode the provisions of the Cherokee Treaty. This decision was seen as pivotal in the history of relations between red Americans and white. It erased any assumption that an American "nation" could be preserved within U.S. borders, isolated legally from the Federal government yet integrated commercially and otherwise with the advancing American society in the West.

The Cherokee Tobacco Case was a many-sided episode. It was bound up closely with the growing importance of tobacco commerce and, indeed, all commerce; with the growing importance of Federal excise taxes; and probably with the after-effects of the War Between the States. Its Cherokee protagonists furnished great drama. Elias Cornelius Boudinot, prime mover of the ill-fated enterprise, was a brilliant Cherokee delegate, a trained lawyer and shrewd promoter. His business associate and uncle, General Stand Watie, was the undisputed leader of the Southern Cherokees, and said to be touched with greatness. Among other distinctions Watie was the last general officer of the Confederacy to surrender to the U.S. Army officers at the close of the Civil War. Also affected was the question of squatters' rights or, treaty rights and the ultimate transformation of Oklahoma from an "Indian Territory" into a state.

TOBACCO MOVES WEST

Much of the poignance of the Cherokee Tobacco Case derives from the fact that tobacco was a "gift of the red man," who tendered it to early white explorers as a peace offering. It was not long after the first English settlement—five years after the 1607 Jamestown landing—that the people in the settlement were growing a superior type of leaf. They tendered this more desirable leaf to the Indians, as payment for furs and as a peace offering when traversing Indian country. As an export and a

² U.S. Sup. Ct. Repts., 11 Wall. 616. "The Cherokee Tobacco."

medium of foreign exchange tobacco had great value, first for the American colonies and, during the Revolution and early 1800's, for the infant Republic of the United States.

With tobacco's value as a cash crop or barter crop in mind, settlers who cleared fields in Ohio, Kentucky, Illinois and Tennessee lost no time in trying to grow it. Those who later reached Oregon and California made the same effort, and early newspapers of those territories carried occasional reports (or claims) of success. Leaf requirements of the Eighteenth Century were not stringent; in fact, chewing tobacco called for a rather coarse, rubbery leaf.

The Burley strain grown west of the Appalachians has little or no sugar content and a great absorptive capacity. This made it eminently suitable for sweetened plug, the "growth item" of the Mid-Eighteenth Century.

The hilly country of northwestern Arkansas adjacent to the Cherokee Nation, as chance would have it, was good tobacco land. Farmers in Benton County discovered this well before the American Civil War, and Arkansas tobacco production went from 148,000 pounds in 1840 to 219,000 in 1850 and 990,000 pounds in 1860. These amounts were not large in themselves, representing .06%, .11% and .22% of the total crop of the United States in the respective years. Nevertheless the increase was sufficient to place Arkansas as No. 16 in the list of tobacco-growing states by 1879. By that year, Benton County alone had 26.5% of Arkansas' tobacco acreage and grew 40% of the state's crop. It is interesting that in addition to the Red Burley grown in the northwestern pocket adjacent to the Cherokee Nation, between 5% and 8% of the crop was "Virginia Golden Leaf" cured with flues or charcoal fires.¹

With a similar climate, neighboring Missouri had made the most of its tobacco land. By 1860 that state was growing more than 25,000,000 pounds of leaf a year, a respectable 6% of the total in the United States and about 25% of the trans-Appalachian crop. Most of Missouri's tobacco found a commercial market; the St. Louis plug factories accounted for nearly a fourth of the nation's chewing tobacco output shortly after the Civil War and would account for 35% before the century ended.

But despite its good land, and despite its evident tobacco-consciousness, northwest Arkansas had more potential than profit with respect to tobacco. The Census Report of 1880 noted that "not more than half of the crop was marketed"—the rest was used for home consumption. The reasons: "There are no warehouses

¹ J. B. KENNEDY, "Report on the Culture and Curing of Tobacco in the United States," *Tenth Census, 1880*, Vol. III.

for the inspection and sale of tobacco in the district" and "There are no stemmeries in the district, but there are a few establishments where plug is made." Raw material for tobacco manufacturing was available; transportation and a ready market were not. Some years after Boudinot's venture a survey indicated an average price of 4.3 cents per pound for leaf tobacco selling in Benton County, as against an average cost of 2.7 cents. At the same time the cost of shipping a pound of tobacco to St. Louis was 2 cents!

So northwestern Arkansas of the post-bellum years was ready and willing for tobacco manufacture. This must have been appreciated by Cherokees on both sides of the line, who did much of their trading in Siloam Springs and in Cincinnati, Arkansas, just south of Benton County.

THE FEDERAL EXCISE TAX

Enactment of Federal tobacco taxes on July 1, 1862 marked the transition from home-raised, home-consumed leaf or "hillside navy" to the manufactured article. Widespread use of manufactured tobacco was presupposed by such a tax, whose original object was to raise money for the government's military operations. The machinery of tax collection had particular relevance to the Cherokee Case, for it was levied specifically on the manufacturer. A tax on leaf had been first proposed, but collection difficulties would have made this impracticable. Factories were relatively few in number and their output could be more easily policed.

The 1862 excise on plug tobacco was 5 cents per pound. This was raised to 35 cents in 1864 and 40 cents in 1865.⁴ In 1868 the tax was reduced to 32 cents per pound, still a very substantial portion of the selling price, then 75 cents and upward.⁵ Manufactured tobacco, mostly chew, accounted for the major part of U.S. tobacco tax receipts—in the year ended June 30, 1868, \$14.9 million out of \$18.7 million. Since tobacco taxes represented a considerable portion of Federal revenue, any threat to their uniform collection had serious financial implications. Thus, Boudinot's factory operated only a few months after its opening in November, 1868 before Washington authorities instructed the Arkansas Marshal to seize it.

THE AFTERMATH OF APPOMATTOX

In most respects, the defeated Southern Cherokee were not greatly penalized as allies of the Confederacy. Slavery within

⁴ J. R. Dodge, "Statistics of Manufactures of Tobacco and of Its Commercial Distribution, Exportation and Prices," *ibid.*

⁵ That this was indeed a heavy tax was suggested by later reductions, to 20 cents per pound in 1872 and 18 cents in 1878.

the Cherokee Nation was abolished; the "Neutral Lands" in Kansas and the "Cherokee Outlet" in Indian Territory were opened to Indians of other tribes by the Treaty of 1866. But the Cherokee Nation was to remain autonomous, and this feature offered Boudinot an advantage in the form of a tax-free tobacco business.

Terms of the 1866 treaty were importantly influenced by the war record of the so-called "Northern Cherokees," the John Ross faction of the tribe. These had never accepted the 1861 alliance with the Confederate States and eventually were organized within the Federal lines in Kansas, and on the side of the Union. It was the Ross faction which dominated post-bellum treaty negotiations.

Although it is not a matter of "official" record, one cannot ignore the probable attitude of United States government personnel toward non-payment of Federal taxes by recently-surrendered enemies—particularly taxes levied to support war operations, taxes which weighed heavily on Union manufacturers in New York, Louisville and St. Louis. It is difficult to imagine political instinct, let alone human nature, being stretched so far as to forgive payment of such a tax by defeated Southern Cherokees on the ground that they were also Indians. And it is equally difficult to suppose that the hostility born of war was not a factor in the seizure of Boudinot's plant and in the court decisions confirming it.

E. C. BOUDINOT

Principal figure in the Tobacco Case was Elias Cornelius Boudinot. In the perspective of one hundred years, his appears as a brilliant, unloved personality. Son of the famous Elias Boudinot, editor of the *Cherokee Phoenix*, Elias Cornelius studied civil engineering in Manchester, Vermont and law in Arkansas, being admitted to the bar in 1856 at the age of twenty-one. In many ways Boudinot, fourth Cherokee by blood, might today be classed as a "professional Cherokee Indian." Well-educated and for the most part well-fixed in a middle class way, he spent the War Between the States in Richmond as delegate from the Cherokee Nation to the Confederate Congress. His repeated complaints by letter to General Stand Watie that he drew \$200 a month and paid more than that for board read like oblique apologies for his non-belligerent status. Boudinot was acutely aware that his fellow tribesmen, displaced southward from the Tahlequah region to the Choctaw country on Red River, drew nothing a month and got whatever board they could scratch.

Some insight into Boudinot's personality is furnished by his letters to his uncle Stand Watie, military leader of the

Southern Cherokees and their principal chief during the war. Early in the war (October 1861) Cornelius wrote his uncle:⁴

Tom Taylor . . . told me that you had promised to have him appointed Lt. Col. I hope there is some mistake about this for of all men I think him least deserving You told me in Tahlequah if I would go with you you would do a good part by me I venture to ask from you either the Lt. Col. or Major's place. I do not wish the post of Adjutant or any other than one of the two I have named

John Ross and you are rivals, he has appointed his nephew Lt. Col. . . . perhaps my appointment would give dissatisfaction to some . . . but you can't please all You have it in your power now to put me in a position where I can do honor to myself and to you. Will you not give it to me? Send your answer

To this letter Cornelius added a postscript, "Destroy this as soon as you have read it" which his uncle omitted to do.

Boudinot did get a major's commission but soon left military service for the post of delegate to the Confederate Congress at Richmond. His letters to Watie mention repeated attempts to secure a loan of \$100,000 to provide for Cherokee refugees forced to evacuate northeastern Oklahoma. By the time this was done, however, Confederate money was worth little.

In a letter from Richmond in January, 1864, Boudinot mentioned to Watie a plot to replace him as delegate for the Cherokees, adding that "Everything is extravagantly high here. My board costs me \$300 per month, while I get \$230 pay, so you see I am not making a pile being congressman, board at the principal hotels \$20 per day"

The following April Cornelius wrote his uncle that the \$100,000 had started for the Nation in February on the person of Commander Scott, and postscripted his letter: "I pay \$350 per month for board and received \$230 per month salary—So see I am making money."

On May 7, 1864 Boudinot wrote:

I have the pleasure at last to announce definitely your promotion to the rank of Brig. Genl. Your appl. was made yesterday there is no mistake about it this time It will now be necessary to choose a staff for your brigade You should be particularly careful in the selection of an adjutant You should in my opinion select some young man who has served as a Lt. or Capt. of infantry Mr. Scott will soon be in the Indian Country with money for you

⁴ The Watie and Boudinot letters quoted in this article are from Edward Everett Dale and Gaston Litten, *Cherokee Cavaliers*, through the courtesy of the University of Oklahoma Press; Dr. Savile Lottinville, Director, Norman; and from manuscripts in the Division of Manuscripts, The University of Oklahoma, the Head of the Division, Dr. A. M. Gibson.

A few weeks later Cornelius wrote to his brother, W. P. Boudinot: "I was glad to get your letter, but think it hardly becomes you to chide me for not writing when you have been so negligent yourself . . . I procured the appt. of Uncle Stand as Brig. Genl.; but could have got his promotion two months earlier if you had kept me posted."

Cornelius ended the letter by reminding Walter that "I pay \$450 for board per month—my washing and contingencies run the figure over 500 a month without indulgence in whiskey. Board at hotel 30 dollars per day for regular boarders."

Writing from Bonham, Texas in October, 1864, Cornelius told his uncle (referring to the recent Confederate victory at Cabin Creek:

The whole country is alive with the glorious news of your success. I shall take care that due credit is given you across the big river. I send you a hastily written address to the Cherokees . . . Please have my address read to the Cherokees, on dress parade or at some time when they can be got together.

Boudinot retreated from Richmond on March 16, 1865. From Shreveport in May he advised his uncle:

I got a bill through Congress requiring Genl Smith to turn over to the Cherokee . . . cotton . . . I suggested to Genl Smith an arrangement by which the cotton could be taken out of Red River and thus save time and expense, but he anticipates a movement of the enemy up the river soon, which would render such a scheme impracticable. If you see fit to intrust the matter with me I must not be transacted by any superior authority, but must be allowed to carry out my own plans without dictation . . .

The war over, Boudinot continued writing his uncle: "I have been doing all that I could and am still working for what I believe to be the best interest of the Southern Cherokees and all other Southern Indians. I have already expended \$600 on my own account for which I ask and expect no return."

Boudinot's keen eye saw a good chance to make some money in a tobacco factory as the war closed and the 1866 Cherokee Treaty was concluded. His Richmond sojourn had revealed to his active perception the profit potentialities in tobacco-making (then almost synonymous with plug manufacture). It was a fact of war-time Richmond that no man of commerce did so well as the owner of a supply of leaf tobacco. One of the Confederacy's financial pillars was James Thomas, Jr., a prominent and prudent plug man who had laid in a large store of leaf just before Sumter. Thomas did so well that he equipped a full battery of artillery at his own expense. Richmond at that time was the proud capital of the tobacco world as well as the Confederacy; with Danville, Petersburg and Lynchburg, it had refined the

hand-arts of the early country plug factories or "stermeries" to something approaching mass production.

A second aspect of the developing plug industry which doubtless caught Boudinot's attention was the rise of western Burley tobacco as the basis of saleable quid. Even before the War between the States "Missouri manufactured" in one-pound slabs was a standard form of currency west of the Mississippi River. Accounts of fur trading in the 1830's frequently mention exchanges of "a plug for a plew," the latter being the term for a beaver pelt.

Tobacco manufacture as it evolved in the four Virginia cities during the thirty years before the firing on Fort Sumter was based on the naturally sweet tobacco grown in that state. Their product was called "flat goods" to distinguish it from the Burley plug; the latter was called "navy goods" to connote inferiority. But the sales gains achieved by the Burley product caused more than one Richmond tobaccoman to swallow his pride in pure Virginia leaf in the interest of increased business. Thomas' own nephew, R. A. Patterson, "imported" Burley from the West and used it openly in his principal product, the Richmond-made Lucky Strike chewing tobacco. Others were less frank, receiving their brown Burley leaf in unmarked boxes and covering it in the finished product with a wrapper of bright yellow Virginia.

Other aspects of the tobacco business must have made their impression on Boudinot's mind during his years in Richmond as Cherokee delegate. While Confederate currency was being debased in value, tobacco assumed its customary wartime status as a medium of exchange; Southern soldiers, for example, used flat goods to barter for coffee. As the battle for Richmond neared its climax, plans were formulated to burn the city's stocks of leaf tobacco to deny them to the Union forces. (It was the execution of these plans which led to the burning of Richmond, April 3, 1865.) As an official delegate to the Confederate government, Boudinot must have been aware of these plans and of the strategic value of the tobacco itself.

Boudinot returned east late in 1865, this time to Washington for treaty negotiations. Later he claimed to have been responsible for the provision in the Cherokee Treaty of 1866 exempting tobacco making in the Cherokee Nation from internal revenue taxes. This is doubtful, since the Southern Cherokees had little to say about the treaty provisions, tried to get a separate treaty distinguishing them from the Northern Cherokees and finally had to accept the terms agreed to by the Ross faction.

Boudinot may have consulted with Treasury Department officials to get an opinion on tax-free manufacture in the Chero-



(Goshutee Indian Institution, Bur. Amer. Ethnol.)

Delegation of the Southern Cherokees during the negotiations at Washington, D.C., of the Cherokee Treaty in 1868. Standing (left to right): Spaldin Wade (son of Stand Wade) and Elias C. Boudinot; seated (left to right) John Rollin Older, Richard Weeks

kee Nation, which was not geographically within any revenue collection district.

An early hint of Boudinot's inspiration is suggested by a letter from Maysville to his uncle Stand Watie, dated June, 1867:

Dear Uncle,

I wish to purchase what remains of your old mill. Polson wants to get at something and thinks he can do something with the mill.

Neither he nor I have any money. Have a few hundred. I have, and which will be needed in repairs; if you can part with it, make any arrangements with Polson you like. He can tell you the condition of the machinery, etc. . . .

A year later, the sawmill furnished lumber to build the tobacco factory. Shortly after this, Boudinot discussed his tobacco project with Stand Watie, who furnished part of the capital and also lent his name. In January, 1868, the younger man wrote:

My Dear Uncle,

I was so glad to hear from you and know that the arrangements concerning my tobacco business were satisfactory to you. I believe we will be able to make a handsome thing of it this year, and so better and better every year. I calculate all expenses will be paid up in the spring and then we will have clear selling. . . .

I am hard pushed for means for the delegation has not provided for me. Sometimes I get in excessive bad humor, when I think that notwithstanding all the hard work I have done, and am doing, for the Cherokees, they wish to throw me overboard. . . .

But dear Uncle, keep my affairs straight at home and we will make money. . . .

Affly,
Cornelius

GENERAL STAND WATIE

One of a race which produced many memorable leaders, and especially warrior leaders, Stand Watie left to history an image of strength and integrity. Though his romantic wartime cavalry raids in defense of Indian Territory have attracted most attention, he was a respected leader of his people while still in his twenties. With Elias Boudinot, father of Elias Cornelius Boudinot, and Major Ridge, Watie led the group of Eastern Cherokees who negotiated with the U. S. for the removal of their people to Indian Territory from the Georgia-Tennessee homeland. The Treaty of New Echota (1835) was followed in 1838 by the noted "Trail of Tears" journey to Indian Territory. A year later Major Ridge (Watie's uncle), John Ridge (Watie's cousin) and Elias Boudinot (Watie's brother) were murdered, presumably by Cherokees who felt removal and the New Echota Treaty betrayed the tribe's best interests.⁷ These murders left

⁷ Emmet Starr, *History of the Cherokee Indians*, Chapter VI, "The Emigration from Georgia. Coet Detachment. Resolutions of Protest.

Stand Watie at thirty-three the leader of his faction, called the Treaty Party as distinct from the Anti-treaty group led by John Ross. For seven years Watie himself was a hunted man in and around Fort Gibson, but contributed his part to the rebuilding of the Cherokee Nation in the West. Although the factional hatred generated by removal never entirely abated, the Cherokees made progress in re-establishing their farms, mills, newspapers and government in northeastern Indian Territory to replace what they had abandoned in Georgia. When war began in 1861, Principal Chief John Ross remained neutral in the great conflict between the North and the South. With the Confederate victories over the Federal forces near the borders of the Indian Territory, Ross finally abandoned his neutral stand, and like the other Indian nations signed a Cherokee Treaty with the Confederate States government in October, 1861. Pro-southern in his leanings long before the outbreak of the War, Stand Watie was elected Colonel of the Cherokee Mounted Rifle Regiment organized in the preceding July. When the Federal forces returned and invaded the Indian Territory in the winter of 1862-63, Chief Ross was arrested at Tahlequah by Federal Army officers and taken north where he was placed on parole, making his home and headquarters in Philadelphia until the end of the War. Thus Chief Ross repudiated his alliance with the Confederate States. Many of his party in the Nation also went over to the Union side, and were enlisted in the Indian Home Guard Regiment in the Federal Army.

Watie remained the commander of the Cherokee Confederate armed forces in the field, and was elected chief of the Southern Cherokees, most of whom were soon routed from their homes in their country by the invading Federal Army to live out the War as best they could in the Choctaw Nation along Red River and in Texas. During his military campaigns Watie was not only concerned with his command but with his people as refugees to the south existing away from their homes in poverty. They looked to him for relief of every kind—for food, for clothing, for farm animals, even for help in finding slaves for breaking out new land and operating farms. Watie and his Cherokee forces fought well in a losing cause. Their notable success came at the Battle of Cabin Creek in September, 1864, under the command of General Watie when they with General Gano's Texas

Political Differences, Civil War Averted." (Oklahoma City, 1921), pp. 108-119. (Starr here reviews the differences that arose between the Western Cherokees and Eastern Cherokees [newly arrived immigrants under Chief Ross] meeting at Takatoika Council Ground near the Illinois River in June, 1839, and the subsequent assassination of Major Ridge, his son John Ridge and his nephew Elias Boudinot, each in a different part of the Nation, on the morning of June 22, 1839.)—Ed.

Cavalry penetrated the Union-held part of the Indian Territory to capture a Federal commissary train of 500 wagons with 1800 horses and mules. Watie used the supplies to refit his ragged troops but would not take anything for himself nor his own family. Knowing Mrs. Watie and their children in Texas were desperate for subsistence, Watie's soldiers sent a wagonload of food and clothes to her. General Watie's integrity shines from his letters ¹ and from his record.

A businessman, William Levy, wrote him for a permit to sell cotton in Mexico for specie, "the surplus of which, after the deduction of the Capital invested, to be invested in articles needed by the Indians and delivered to them Let me hear from you soon, and whatever it may be, is a business matter between us alone" Watie steadfastly refused to countenance profiteering of this kind.

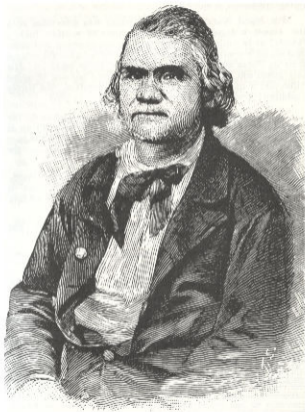
Published correspondence shows that the General was interested in tobacco even during the war. In June, 1864, Sarah Watie wrote to her campaigning husband from Rusk County, Texas ". . . there is tobacco here at 30 dollars a pound." Again in October: ". . . I am so tired of this world I can't write I have not a dime of money I thought I would sow wheat first. If I can make any rise of tobacco I will send them but I can't do any thing for the want of money" Perhaps he had suggested a crop as a means to subsistence.

The end of the war brought Watie his greatest distinction as a soldier. Lee surrendered in Virginia April 12, 1865; Johnston in North Carolina April 26; Kirby Smith in the Trans-Mississippi Department May 26. Watie did not give up until June 23, and was the last Confederate general officer—possibly the last officer—to lay down his arms. He made the long journey to Washington for new treaty talks. Among the delegation were his son Saladin and his nephew, Elias Cornelius Boudinot. The treaty, which covered both Northern and Southern Cherokees, was signed in July 1866.

Watie did not remain through the entire negotiation, returning in May of 1866. He was a poor man, his home and farm destroyed, his slaves gone. Three weeks after the final surrender a member of his command had written.

I have the honor to inform you, that I am still in the land of the living I do hope you will succeed in doing something for the Southern Cherokees for some of them are in great need I see several fellows of your command with more mules than the Law allows them I would like to call on them for about two mules with your permission. . . .

¹ Dale and Litton, *op. cit.*



(Print from Battles and Leaders of the Civil War, 1897)

BRIGADIER-GENERAL STAND WATIE, INDIAN BRIGADE, U.S.A.

This plea was one of many. W. P. Boudinot (brother of Elias C.) wrote from Webbers Falls asking the General's help in securing the return of a borrowed horse: " . . . law business yet." Restoration of farms was the order of the day for the entire Nation, including Watie himself.

For Stand Watie the tobacco venture was something of a last, almost a desperate, fling. Four years of wartime raids—"scouts" as he called them—left him campaign-weary and older than his sixty years, with a family to be resettled after the refugee years in Texas and three teenage children to be educated. His only grown son, Saladin, captain in the First Cherokee Mounted Rifles and a member of the 1866 treaty delegation, had barely established a new home and farm when he died in 1868.

In September of that year J. W. Washbourne wrote to the General: ". . . Polson says you want some tobacco. There is none now at the Factory, being (all) sold or sent off. But in a few days there will be plenty and I will try and have some for you."

At about the same time the old General reminded Washbourne that: ". . . You promised to have some tobacco for me in a few days send word when I can get it if I had it I could hire work for it."

Tobacco for Watie was needed not for personal comfort but as currency.

In November 1868 Cornelius wrote from the new factory at "Boudiville, Cherokee Nation":

. . . As soon as the expenses of removing the new machinery to this point and putting it up are paid under the present arrangement, and the expenses of constructing the buildings and arrears I have yet to pay, you will receive an equal share of the profits with myself. A part of the machinery, 4 loads, arrived yesterday and is now unloading; the balance, some 10 loads, will be here early next month and be up for business; the cost of transportation will be something like \$1,500. The cost of the new buildings with the arrears yet to be paid by me will amount to about 3,500. By the time you make your arrangements to come to your old place or at least by the middle of February these expenses will be paid, in other words your profits in the concern will commence the very day mine does. In the mean time if any delay should occur, you can draw for as much tobacco as you need, for you are a partner of mine, and the firm is known as and all manufactured tobacco, bills, etc. etc. will be marked and branded etc. etc.—"Boudinot & Watie." We shall need a great many hands and must not be embarrassed by any change in the permit system or law which will embarrass us.

. . . tell me . . . whether you are perfectly satisfied with our arrangement. . . .

Your aff. nephew
E. C. Boudinot

Wall apparently had great hopes for the tobacco venture. In January, 1869, his wife Sarah wrote to their son Watic, then at Cane Hill College, Arkansas: "I hope after this that it will not be such a trouble to get money. Your father has a good business now his income will be sufficient to support his family in good style and send his children to school too . . ."

THE BUSINESS AT BOUDVILLE

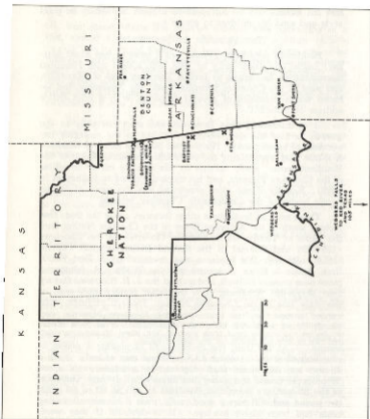
Boudinot's enterprise (Watic was a more or less silent partner) began in earnest early in 1868 with a deal with Hannibal manufacturers to remove to Indian Territory west of Maysville, and west of the Cherokee boundary line. By November, the tobacco works consisted of several buildings with a Post Office address of Boudville.

It is interesting that Boudinot was alert not only to the growth item of the day, Burley plug, but to the emerging importance of brand names. His product bore the name of *Boudinot & Watie* plug, recognizing the potential commercial value of the Boudinot name (made famous by his father's career as editor of the Cherokee Phoenix, and his much-discussed assassination in 1839). Equally if not more renowned was the name of Watie, heroic leader of the Confederate Cherokee brigade.

There were at least three other factories along the line. One factory south of the Arkansas River in the Choctaw Nation bore the name of Tandy Walker, former Governor of the Choctaws (1857-59) and Colonel of the Second Indian Brigade (1864), C.S.A., although this business was operated by a Fort Smith firm, Bostic & Ryan. A second was the William A. Mungrove plant near present Stilwell, and a third the J. R. Simmons factory near Maysville, Arkansas, both the latter factory sites west of the state line in the Cherokee Nation. Tobacco products were carried across the line into Arkansas, Western Missouri and North Texas, and with these the manufacturers of New York, Louisville and St. Louis could not compete.⁹ The economics were simple.¹⁰ At the time, the average cost of making a pound of plug was 43 cents (of which 12.8 cents was cost of leaf). With a 32-cent tax, this meant that plug sold for a minimum of about 75 cents per pound and above that figure as an average. Omission of the 32-cent tax permitted Boudinot to sell at 50 or 60 cents per pound and still turn a good profit, even if his manufacturing costs had been above average. (It is doubtful if they were, since leaf was certainly cheaper in Benton County, Arkansas than in more populous areas, and the same was probably true of factory labor.)

⁹ Grant Foreman, *A History of Oklahoma* (University of Oklahoma Press, Norman, 1942).

¹⁰ J. R. Dodge, *op. cit.*



MAP SHOWING LOCATION OF FOUR TOBACCO FACTORIES WEST OF THE AWAKAME LINE IN THE CHEROKEE NATION, 1869-1907.

Though unremembered by the nation at large, the Cherokee tobacco enterprises were still recalled in the northeastern corner of Oklahoma as recently as the 1930's. Oscar Cannon, a Georgia-born Cherokee who moved to Oklahoma at the age of three, said in 1937:¹¹

When the Cannon family first came to Cherokee Nation there were a printing press, a wagon factory and a tobacco factory at the Baptist mission operated by a man named William Musgrove. I think the printing press was operated by a man named John Jones, a preacher, but the wagon and tobacco factories were operated by said Musgrove. . . Siloam Springs was the largest town in this part of the country but most of the trading was done at Cincinnati (Arkansas).

Musgrove's was one of the four tobacco plants just inside the Cherokee line seized by the U.S. for non-payment of Federal excise taxes. Business enterprises of any kind west of the line were virtually non-existent at the time, adding vividness to the memory of Boudinot's plug plant.

Colonel B. Lynch of Tulsa recalled that merchandise for the Lynch store in Maysville, Arkansas was hauled in wagons from Sodalie, Mo., a distance of 225 miles. These goods were sold to Indians and settlers as far west as Locha-poka settlement, now Tulsa: "Just west of Maysville and across the state line was a tobacco factory and since it was in Indian Territory it was not compelled to pay revenue to the government."¹²

In his "Life and Times of Jeff Thompson Parks . . ." Dr. T. L. Ballenger recorded this recollection by the prominent Cherokee judge (1862-1951):¹³

In his boyhood days J. T. visited the tobacco factory built on Wet Prairie in the Indian Territory about four miles south of Maysville by Stand Wattle and Colonel Elias Cornelius Boudinot. He saw them making plugs of tobacco here. They also had a deer park. Boudinot and Wattle put up this factory with the intention of selling their product without having to pay the regular United States revenue but the Federal courts construed the law otherwise and they found it a losing proposition and were soon forced to close the factory. However, the old building remained there for a number of years.

Additional light on the importance of the business is shed by Shorey Ross, a descendant of the noted Ross family, an early-day Cherokee school teacher and writer in his late years of many interesting sketches on the history of the Cherokees, in one of his recollections:¹⁴

¹¹ Indian Archives, Oklahoma Historical Society, "Indian and Pioneer History," Vol. LXY, p. 33.

¹² *Ibid.*, Vol. VI, pp. 335, 336, 337.

¹³ T. L. Ballenger, "Life and Times of Jeff Thompson Parks. . .," *The Chronicles of Oklahoma*, Vol. XXX (Ref., O.H.S., Cumulative Index, 1961).

¹⁴ Shorey Ross, "Tobacco Factory," in "Indian and Pioneer History," *loc. cit.*, Vol. XCVIII, pp. 351-54.—Ed.

Merchants in Indian Territory and elsewhere engaged in selling the tobacco produced at this factory and a satisfactory business was being realized by the proprietor, when U.S. officers visited and confiscated the plant, because of non-compliance with internal revenue laws of the government . . . excellent grades of tobacco had been produced at the Boudinot factory and the various merchants who had engaged in selling the product were greatly disappointed because of the confiscation and closing . . . Upon confiscation . . . those who had considered extensive growing of the tobacco plant, so that the factory might be supplied, turned their attention to other products.

Prospects seemed good to Boudinot. Writing from Fayetteville on August 15, 1869, when he made the first move toward buying out his uncle's share in the business:

I visited my tobacco establishment the other day and found things in a prosperous condition. Owing however to the unprecedented rains in the Winter and Spring and the amount of my liabilities, exclusion of the machinery and buildings, I find I shall not get out of debt so soon as I expected."

I shall go to Ft. Smith this week and return next. After I get back I shall give my personal supervision to my affairs at the factory. In the meantime I think we can agree upon some combination to make money which will suit you better than an interest in the factory in the future. I think we should lose no time after the hot season in securing claims in the nation along the line of the R. R. which will be built.

I am glad to hear from Peny that you have a prospect of a good cotton crop. I hope your profits will relieve you of all your embarrassments.

The delegation treated me very badly, as you may have heard. Love to Aunt Sarah; and all the family.

Always,
Your aff. nephew
E. C. Boudinot

Seizure of all four factories was effected in 1869 by the U.S. Marshal for the Western District of Arkansas, on orders from Washington. Capacity of the plants was said to be 5,000-10,000 pounds of manufactured product daily. This is either greatly exaggerated or reflects great expectations from the omission of taxpayments: Missouri, with a leaf crop ten times larger, had an estimated output of about 20,000 pounds a day at that time. From Boudinot, the Marshal seized a hydraulic press, pumps, scales, molds, 4,500 pounds of leaf tobacco, sugar, licorice and grape juice. The nature of this inventory makes it clear that the principal product was "navy goods"—sweetened Burley plug tobacco similar to the famous "Missouri Manufactured."

Confiscation of Boudinot's assets was followed by criminal charges against him.¹³ A revealing sidelight on this was supplied

¹³ After these charges were dropped in 1872, Boudinot filed for damages of \$98,650 covering his lost assets, including an alleged 40,000

later by Judge J. H. Huckleberry, U. S. Commissioner in Probate for the Northern District, Indian Territory. He recalled as one source of litigation,

... the manufacture of tobacco, especially in Indian Territory. People claimed they had a right to manufacture tobacco without paying revenue on it. Half a dozen or more tobacco factories started up. When they refused to pay the revenue, the tobacco and factory were seized and condemned to be sold.

The case went to the Supreme Court and was sustained on a divided opinion, and the owners of the factory were indicted under the Revenue Law and after the civil cases were decided against them and on instruction of Inspector MacDonald, a *nolle-prosequi* was entered in all cases except one, that of Elias Boudinot.

I wrote to the attorney general for authority to dismiss that case, but he declined to authorize me to do so. There had been a personal difference between Inspector MacDonald and Boudinot and the former used his influence to have the latter prosecuted.

In a frantic letter E. C. Boudinot wrote to his uncle from Washington in March, 1870:

Dear uncle—

Henderson writes me that you have drawn on me in his name for \$250. I am surprised at this.

I am in a death struggle; have pawned my watch & rings and now want you to send me the \$30 I let you have at Tahlequah if you have not already disposed of it. I am in a terrible strait; all my business affairs are broken up of course; when I get over this trouble, we can make a combination which will be mutually advantageous. I have written Nathan to send me \$25 I let him have at Tahlequah. I have just \$10 left; have borrowed \$200 and my watch is to redeem; for God's sake help me out! If you can spare the money send it to me; I can't honor any drafts on me.

I am crushed to the Earth. The delegation looks on with delight. By God I will be avenged!

Yours,
E. C. Boudinot

Boudinot lost little time in making a federal case out of his lost venture. On October 3, 1870 he wrote his uncle:

I hurried down to see you, had you come on to Creek agency could have met you yesterday.

I shall be at the factory this week for a few days, shall go from there to Van Buren to get something ready for my trial in Nov. unless I can get a continuance of my case until the Supreme court decides the law. I shall be convicted, I fear. Clem Venn now is willing to help. The council should pass a resolution setting out its information to the nation of the case and close with a request to the N. L. courts that

_____ pounds of manufactured plug. Factory and machinery valued at \$16,700 had been returned to him. In 1883 the Court of Claims finally awarded him \$3,000—a sum which, according to Foreman, was considered a defeat for the plaintiff.

the criminal side of its case be not tried until the law is decided by Supreme Court. That with what I can do will force a continuation.

Don't fail to meet me at factory.

Yours
E. C. Boudinot

The Cherokee National Council was persuaded in December, 1870 to authorize counsel to represent the Boudinot & Watie firm, Albert Pike¹⁴ and Senator Robert W. Johnson being engaged at a cost of \$1,500.

THE 1871 DECISION

The Supreme Court issued its decision against the Cherokee on May 1, 1871.¹⁷ On March 25, before the high court heard final arguments in the case, the *Cherokee Advocate* of Tahlequah carried this intimation of doom:

Col. Adair, of our delegation, writes on the 23rd of March, that on the 21st inst. the Boudinot tobacco case, one of the first importance to our whole people, was heard by the Supreme Court of the United States, and ably argued by attorneys on both sides. The case was postponed two weeks to give Senator Carpenter, one of the attorneys for the Nation, who was sick at the time, an opportunity to do his part in the contest.

In this case the main question is the validity and worth of the Cherokee Treaty of '66. If the 10th Article, which allows Cherokees to manufacture within our national bounds under certain conditions, is not valid to prevent intrusion and interference when those conditions are complied with, the whole treaty is a cypher—the Cherokee Nation dies. If the appeal be decided, and decided in our favor, two very important points will be settled to our advantage. First, that our Treaties with the United States are living instruments and not mere paper.

Second, that in all parallel cases of a violation of rights derived from these treaties, citizens will know how and where to go for a remedy.

As the writer of this editorial implied, there was more to the Case than the right to *manufacture* tobacco taxfree.¹⁸ It is possible this right might never have been challenged if tobacco made by Boudinot-Watie and their counterparts had not found its way across the line in competition with manufacturers obliged to include federal tax in their prices to the trade. (Federal excises were not then and are not now levied on tobacco manufactured in U.S. for sale abroad.) But this distinction between

¹⁴ Pike, as Commissioner of Indian Affairs for the Confederacy, had persuaded John Ross nine years before to ally the Cherokees with the South. Later as General Pike he was Watie's commander.

¹⁷ U.S. Su. Ct. Repts., 11 Wall. 616. "The Cherokee Tobacco."

¹⁸ Probably Walter P. Boudinot, brother of Elias C.

manufacture and sale was not made in the pages of the *Advocate*.¹⁹

The underlying issue, as in most Indian-white disputes, was land use. During the post-bellum years the *Advocate's* pages expressed much alarm about the problem of white squatters in Oklahoma, the "home for the Indians." This problem turned into a controversy over territorializing the region. On March 18, 1871, the *Advocate* noted on page 1 that "Every attempt to territorialize us is an attempt to break down the treaty barriers which keep the speculators and railroad land-grabbers off of our possessions." The editor went on to quote Thomas H. Benton, the famous Missouri Senator:

With the Indians, it was a question of extermination, the time only the debatable point. They were daily warring under contact with the whites, and had before their eyes, the eventual but certain fate of the hundreds of tribes found by the early colonists on the Roanoke, the James River, the Potomac, the Susquehanna, the Delaware, the Connecticut, the Merrimac, the Kennebec and the Penobscot. The removal saved the Southern tribes from that fate: and in giving them new and unmolested homes beyond the verge of the white man's settlement, in a country temperate in climate, fertile in soil, adapted to agriculture and to pasturage, with an outlet for hunting, abounding with salt water and salt springs, it left them to work out in peace, the problem of Indian civilization.

As a statement of the Cherokee position, the Senator's rhetoric was something of an over-simplification. While western whites were invading Indian preserves in defiance of treaty provisions, the Cherokee tobacco factories were invading adjacent commercial markets to the east under conditions which probably would be characterized today as "unfair trade practices." Had this continued, the laws of supply and demand could, in time, have forced a concentration of the nation's tobacco manufacturing industry within the borders of Indian Territory as a means of escaping Federal excises.

The practical impossibility of a "double standard" as to Federal taxes was not lost on the high court:

... Revenue is indispensable to meet the public necessities. Is it unreasonable that this small portion of it shall rest upon these Indians? The frauds that might otherwise be perpetrated there by others, under the guise of Indian names and simulated Indian ownership, is also a consideration not to be overlooked . . . Crowds, it is believed, would be lured thither by the prospect of illicit gain . . .

¹⁹ Boudinot himself made the distinction, alleging in court that the revenue laws were complied with as to all tobacco sold or offered for sale outside of said Indian country, "if any such there were." However, nothing appears on the record about the resale of such tobacco by wholesalers or retailers outside Indian Territory. Furthermore, it is doubtful if an operation as ambitious as Boudinot's could hope to make money on the sale of plug only to the then-indigent residents of Indian Territory.

It is interesting that E. C. Boudinot himself, spearhead of the commercial "eastering," did not favor a rigorous segregation of his Nation's lands from westering white civilization. He declared, for example, for the granting of railroad rights of way through Oklahoma. And during the "Boomer" agitation of 1875, he made a speech inviting outsiders to settle in the Indian Territory.²⁰ His position in this was consistent with the hope that economic integration of Indian and white would benefit the former as much as the latter. But it was inconsistent with his position that Cherokee tobacco manufacture should enjoy competitive advantage based on treaty exemption from U. S. tax.

For a time it appeared that this was not merely an inconsistency but a crime.²¹ On May 10, 1871 he again appealed to his Uncle Sam for help:

The Supreme Court has decided the tobacco case against me. It is the death knell of the Nation. I am totally ruined if you do not run for the council; for God's sake do not delay to declare yourself a candidate from Canadian dist. the retaining fee—\$1,500 to Pike and Johnson, \$2,500 to Key, \$500 to James Wilcox, and \$500 for printing right to be paid by the Nation.

I must be in Van Buren by next Monday early if they require it, to stand my trial as a criminal.

Write to me a line at Van Buren telling me that you have given notice you are a candidate, I shall then feel easy.

Aff.
Your nephew
Cornelius

The broader significance of the high court's language was immediately apparent to the Cherokee Nation. The Grand Council of June, 1871 issued a memorial warning that the decision:

. . . imperils, we fear, all our rights . . . Our treaties are now dependent wholly upon the forbearance of the government for we are powerless to enforce their fulfillment . . . We ask that your laws upon the subject of Revenue which gave rise to the case under consideration be made to conform to the rights guaranteed to the Cherokee Nation by the 10th Article of their Treaty, concluded August, 1866 with the U.S.

A month later the *Cherokee Advocate* editorialized: "The Indians regard this decision as a confession by the Government that they have been deceived and mocked . . ." The Supreme

²⁰ Angie Debo, *The Road to Disappearance* (University of Oklahoma Press, Norman, 1941).

²¹ In February of the following year, proceedings against Boudinot were dismissed in accordance with a resolution passed by the Senate.

Court said "In all our geographical treaties (not treaties), history and laws the Indian Territory is considered a part of the U.S."

SQUATTER'S RIGHTS

The Tobacco Case decision had immediate consequences for the Indian Territory itself. Under the protection of the 1835 treaty, U. S. troops had been called in by the Cherokees in 1857 to rid the 800,000 acres of "Neutral Lands" in Kansas of unauthorized squatters. But events soon indicated the situation had changed.

On October 21, 1871 the *Advocate* inveighed against the "town of intruders" in the northwest Cherokee country. Led by one Ennis, this settlement (Ennisville) was described as "one of a series of fatal proofs we shall have of the weakness of the hold we have as a nation upon our country."

In this connection the *Advocate* commented on a speech made by Mr. Laughlin in Kansas in defense of squatting upon Indian lands. Laughlin noted that it was "decided by the Supreme Court that the Congress . . . has power to abrogate any treaty with the Indians, and that the revenue laws are of higher authority than Indian treaties. The decision also says that the Cherokee Nation is a part of the territory of the U.S. and subject to be dealt with as the Congress may see proper."

To this quotation the *Advocate* replied bitterly:

Whether [the decision] authorizes squatters to settle on vacant Indian lands or not, there is no question but that according to it Congress may legally authorize them to stay after they have squatted.

* * * * *

Did Ennis & Co. ask the owner of the Cherokee country if they could settle? No indeed. They snap their sovereign fingers at the owner in this case. Why? Because the decision in the Tobacco Case declares Indian lands held in common to be a part of the U.S. the same as any other territory. They have a right to occupy vacant lands in any other territory uncovered by a private title, and they argue that they have a right to occupy vacant lands in this.

The full sequel to the decision: disappearance of the Indian "nations" as territories and their replacement by the State of Oklahoma--required decades to complete. A piquant footnote to the change was recorded on March 1, 1876 when the "*Cherokee Advocate, Tahlequah, Cherokee Nation*" changed its masthead to read "*The Cherokee Advocate, Tahlequah, Cherokee Nation, Indian Territory*". The Nation had ceased to exist as an independent land entity and was now part of a territory. Later came the land runs of 1889, 1892, 1893 and 1895, and in 1906 the *Advocate* ceased publication. Oklahoma's admission to the Union as a state came in 1907.

To all intents, however, these events were foreordained on May 1, 1871 when the Supreme Court ruled that "the Act of Congress must prevail as if the Treaty were not an element to be considered." A final echo of the case itself appeared in the *Advocate's* columns of September 30, 1871, when a new advertiser appeared: "Jacob Yeager, Manufacturer of Tobacco, Maysville, Arkansas, is now ready to accommodate customers with all kinds of best tobacco at the lowest prices for cash."

Yeager's advertisements continued for many months, but neither he nor any other Arkansan was to become a major factor in the tobacco industry.

The same issue of the *Cherokee Advocate* in 1871 carried a brief notice of the death of Stand Watie, "on the 10th inst., at his farm on Honey Creek." It is strange that the General's passing should have been marked in the pages of the *Advocate* itself by no more than a paragraph quoted from the *Fort Smith Herald*. Left in the transplanted paragraph was one short, enigmatic concession to Watie's years of leadership: ". . . General Watie was no ordinary man."