

in, certain portions of territory

were reserved for the use of the Indians, and the Indians themselves were declared to be under the "protection" of Great Britain; and the lands reserved were also under the "sovereignty, protection and dominion" of that government. Thus it is seen, that the sovereignty of Great Britain over the whole of Georgia was complete and perfect; that the absolute right to the soil was in her; that the Indians were under *protection*; and that their possession was only *permissive*. Things remained in this condition until the revolutionary war; upon the termination of which, by treaty of peace between the United States and the mother country, sovereignty to the full extent as claimed, owned and exercised by Great Britain over all the lands and Indians within the State of Georgia, passed to and vested in the people of this State.—We have shown we trust very clearly, that at the end of the revolutionary war, Georgia possessed, and had a right to exercise absolute control and sovereignty over the whole of the territory lying within her limits; that her claim to *domain* and *empire* was not disputed; that the absolute title to the soil was in her; that the Indians were under *her protection*; and that their possession was by *her permission*, as it had previously been by that of Great Britain. Thus far, we apprehend the premises that have been established, and the conclusions that we have drawn, will not be disputed; for if they are wrong, the very argument that proves them to be so, must defeat the title by which every foot of land in the United States is held; for they all derive title in the same way.

It now remains for us to shew, that since the revolutionary war, Georgia has done no act, and entered into no compact with her sister States, by which she has divested herself of any portion of her sovereignty, affecting her rights now in question. And this proposition will be supported, if we can shew that no such consequence can result from the articles of confederation, the federal constitution, or the articles of agreement and cession of 1802.

To shew that the articles of confederation have divested Georgia of no portion of her sovereignty, it does not appear to us necessary to take any other ground than the very obvious one, that these articles have been abrogated by the Federal Constitution, which was adopted in its place and stead.—But we contend, that even prior to the adoption of that Constitution, they contained no provision when properly construed, affecting the right in question. In the articles of confederation we find this provision: "Each State retains its *sovereignty*, freedom and independence; and every power, *jurisdiction and right*" which is not by the "confederation expressly delegated to the United States," is reserved to the people of the States. We may search in vain in the articles of confederation, for any express delegation of the right of sovereignty or jurisdiction by Georgia to the United States over the territory in controversy. No such express delegation was ever made—the consequence is obvious; it is reserved to the people of the State.—Those who differ with us in opinion, may attempt to sustain themselves by one further provision in the articles of confederation.—We allude to the power given the United States of regulating "trade," and managing all affairs with the Indians, *not members* of any particular State, but by express provision this power is in no instance to be exercised so as to "infringe or violate the *Legislative right* of any State within its own limits." We are by no means satisfied, but that the Indians resident within the limits of Georgia, may fairly be considered "members" of the State; if so, the United States possess not the right to interfere with them even so far as to regulate trade; but whether they be members of the State or not, the United States are expressly prohibited from interfering with them in any way so as to "infringe or violate the *Legislative right* of the State within her own limits." We think, therefore, that the articles of confederation have not affected our title in the least.

We next proceed to the enquiry, whether the State's title to, and right of sovereignty over the lands in controversy, have been affected by the Federal Constitution; and if affected, to what extent? We are not disposed to afford even the feeble aid of our example for frittering away the Constitution by *construction*; we prefer to take that instrument as it is, and not to

take from, or add to its provisions.—We have always believed, and yet do, that all powers not *expressly* granted by that Constitution, or *plainly implied* in, and *necessary and proper* to the execution of the *expressly granted* power, are reserved to the States; and we earnestly insist upon this rule of construction, so far as that instrument applies to the subject under consideration.

In the third section of the fourth article of the Constitution, we find this provision: "Congress shall have power to dispose of, and make all needful rules and regulations respecting the territory or other property *belonging to the United States*; and nothing in this Constitution shall be so construed, as to prejudice any claims of the United States or of any particular State." We are unable to see what argument can be fairly drawn from this provision, to shew that Georgia has surrendered up to the U States any portion of her rights so as to affect the present question. This provision only gives to the United States the power to control and dispose of the territory or property of the *General Government*; but it vests them with no power whatever to control or dispose of the territory or property of *any State*; on the contrary it is expressly stipulated, that in the exercise of this power, the claims of no particular State shall be *prejudiced*. It will not be contended we apprehend, that since the articles of agreement and cession of 1802, the United States have the smallest shadow of a title to the lands in controversy; and if it were considered necessary, we could easily shew that even before that time, they had no well founded title. There is, therefore, nothing in this part of the Constitution *expressly* or *impliedly* divesting Georgia of the right of sovereignty in question, and from the very fact, that no such right was surrendered up into the hands of the United States, we are warranted in asserting that the right was *retained* by the State.

We understand that the power which the Constitution confers upon the President, by and with the advice and consent of the Senate to make *treaties*, is claimed to have an influence upon the present question; but we are unable to discover any necessary connection between this provision in the Constitution, the question under consideration. This part of the Constitution, we have always understood, applied to *foreign affairs* only. We are apprised however, that the United States have treated with various tribes of Indians at different times, and that those treaties have been submitted to the Senate for ratification; but if we mistake not, since the adoption of the Constitution, Virginia, Ohio, New York, and Kentucky, have exercised the right of treating with the Indians residing within their limits; and their right to do so, has not so far as we know or believe, been disputed. But upon this point we feel no sort of solicitude, for it is sufficient for our purpose, that in the Constitutional provision now under review, there is no *express* or *plainly implied* surrender on the part of Georgia of her right of sovereignty to the territory in question.

If there is any other provision in the Federal Constitution affecting this question, we are not apprised of it.—And we consequently arrive at the conclusion, that the rights and powers of Georgia in and to the lands in question, remain precisely where they stood immediately upon the conclusion of the revolutionary war, with the exception, that Georgia has, in common with all the other States, given up to the General Government a portion of her right of *empire*; but she has surrendered that right no farther in relation to the territory in dispute, than she has in relation to all the rest of her territory. In aid of our opinion upon the question of title, we beg leave to refer to the decision made by the Supreme Court of the United States in the famous case of Fletcher & Peck, which fully establishes the principle, that the "Legislature of Georgia, unless restrained by its *own Constitution*, possesses the power of disposing of the unappropriated lands within her own limits, in such manner as her own judgment may dictate." And the same case establishes the further principle, that "the Indian title is only permissive and temporary, and not at all inconsistent with a *seisin in fee* on the part of Georgia." We need only add, that this decision was made long subsequent to the adoption of the Federal Constitution.

By the articles of agreement and cession of 1802, Georgia parted with and gave up all her claims and rights, both of *domain* and *empire* to the territory thereby ceded to the United States; but these articles contain no *formal* and *express* surrender of any such right to the territory reserved.—We are aware, that such surrender is claimed to be implied from the term "Indians," as there used. But when the subject is properly understood, we contend that this conclusion does not necessarily result from the premises. This term was not intended, and cannot be understood as building up, and vesting in the Indians, any kind of title to the lands in controversy; nor was it intended to add to, or detract from the title which they already had. It was only used as a term descriptive of that title. We have already seen what that title was; that it was a mere possessory one; and that they had no little interest in the soil, that their possession was not inconsistent with a *seisin in fee* on the part of Georgia. But it is contended, that by the articles of agreement and cession, a *consideration* was contemplated to be paid by the United States to the Indians for their relinquishment of this title; and therefore that it was of such a character as was entitled to respect, and as could not be taken from them unless by their consent. We are of a different opinion. We have already seen the fragile tenure by which they held, and do yet hold those lands; but however slender it may have been, yet some act was necessary to be done by the United States or Georgia, in order to oust them of possession. This act must necessarily have been of either a warlike or pacific character. If of a warlike character, no consideration of a pecuniary nature could be necessary; but if of a pacific character, then the object was to be accomplished by negotiation, and a consideration would necessarily be the result. Whenever it has been necessary to accomplish a similar act with the Cherokees, or any other nation of Indians, by either of the means just mentioned, from obvious motives of policy, as well as humanity, the United States have preferred resorting to negotiation and presents. In all such instances the United States were by no means *bound* to resort to such measures; they did so from choice.

This custom was well known to the contracting parties to the articles of agreement and cession at the time it was entered into, and the relinquishment of the Indian title was intended to be affected in the same way, and the provision in question was simply intended to make the United States sustain all the expense of negotiation, presents and consideration, which otherwise would have fallen on Georgia, had she proceeded to the accomplishment of the same object by *peaceful* means. But there is nothing in this provision which prevents the United States or Georgia from resorting to *force*; on the contrary, this right seems to be admitted, although the United States would not *bind* themselves to use it. At all events it is evident, that if Georgia possessed this right before entering into those articles, she possesses it yet, for a surrender of it is no where to be found. Before Georgia became a party to the articles of agreement and cession, she could rightfully have possessed herself of those lands, either by *negotiation* with the Indians or by *force*, and she had determined in one of the two ways to do so; but by this contract she made it the duty of the United States to sustain the expense of obtaining for her the possession, provided it could be done upon reasonable terms and by negotiation; but in case it should become necessary to resort to *force*, this contract with the United States makes no provision; the consequence is, that Georgia is left untrammelled and at full liberty to prosecute her rights in that point of view, according to her own discretion, and as though no such contract had been made. Your committee, therefore, arrive at this conclusion: That anterior to the revolutionary war, the lands in question belonged to Great Britain; that the right of sovereignty both as to *domain* and *empire* was complete and perfect in her; that the possession by the Indians was permissive; that they were under the protection of that Government; that their title was temporary; that they were mere tenants at will; and that such tenancy might have been determined at any moment either by negotiation

or force at the pleasure of Great Britain. That upon the termination of the revolutionary war, and by the treaty of peace, Georgia assumed all the rights and powers in relation to the lands and Indians in question, which before belonged to Great Britain.—That since that time, she has not divested herself of any right or power in relation to the lands now in question, further than she has in relation to all the balance of her territory, and that she is now at full liberty, and has the power and right to possess herself by any means she may choose to employ of the lands in dispute, and to extend over them her authority and laws.

Although your committee believe the absolute title to the lands in controversy is in Georgia, and that she may rightfully possess herself of them when and by what means she pleases, yet they would not recommend an exercise of that right till all other means fail. We are aware that the Cherokee Indians talk extravagantly of their devotion to the land of their fathers, and of their attachment to their homes; and that they have gone very far toward convincing the General Government, that negotiation with them in view of procuring their relinquishment of title to the Georgia lands will be "hopeless"—Yet we do confidently believe, that they have been induced to assume this lofty bearing, by the protection and encouragement which has been afforded them by the United States; and that they will speak a totally different language if the General Government will change its policy toward them, and apprise them of the nature and extent of the Georgia title to those lands, and what will be the probable consequence of their remaining refractory.

Your committee would recommend that one other, and the last appeal be made to the General Government, with a view to open a negotiation with the Cherokee Indians upon this subject.—That the United States do instruct their Commissioners to submit this report to the said Indians; and that if no such negotiation is opened, or if it is, and it proves to be unsuccessful, that then the next Legislature is recommended to take into consideration the propriety of using the most efficient measures for taking possession of, and extending our authority and laws over the whole of the lands in controversy. Your Committee in the true spirit of liberality, and for the alone purpose of avoiding any difficulty or misunderstanding with either the General Government or the Cherokee Indians, would recommend to the people of Georgia to accept any treaty which may be made between the United States and those Indians, securing to this State so much of the lands in question, as may remain after making reserves for a term of years, for life, or even in fee simple, to the use of particular Indians, not to exceed in the aggregate one sixth part of the whole territory.—But if all this will not do; if the United States will not redeem her pledged honor; and if the Indians will continue to turn a deaf ear to the voice of reason and of friendship, we now solemnly warn them of the consequence.—The lands in question belong to Georgia—She *must* and she *will* have them.

Influenced by the foregoing considerations, your Committee beg leave to offer the following resolutions:—

Resolved, That the United States in failing to procure the lands in controversy "as early" as the same could be done upon "peaceable" and "reasonable terms," have palpably violated their contract with Georgia, and are now bound at all hazards, and without regard to terms, to procure said lands for the use of Georgia.

Resolved, That the policy which has been pursued by the United States toward the Cherokee Indians, has not been in good faith toward Georgia; and that as all the difficulties which now exist to an extinguishment of the Indian title, have resulted alone from the acts and policy of the United States; it would be unjust and dishonorable in them to take shelter behind those difficulties.

Resolved, That all the lands appropriated and unappropriated, which lie within the conventional limits of Georgia, belong to her absolutely; that the title is in her; that the Indians are tenants at her will, and that she may at any time she pleases, determine that tenancy, by taking possession of the premises.—And that Georgia has the right to extend her authority and

laws over her whole territory, and to coerce obedience to them from all descriptions of people, be them white, red or black, who may reside within her limits.

Resolved, That Georgia entertains for the general government so high a regard, and is so solicitous to do no act that can disturb, or tend to disturb the public tranquility, that she will not attempt to enforce her rights by violence, until all other means of redress fail.

Resolved, That to make a catastrophe which none would more sincerely deplore than ourselves, we make this solemn—this final—this last appeal to the President of the United States, that he take such steps as are usual, and as he may deem expedient and proper for the purpose of, and preparatory to the holding of a treaty with the Cherokee Indians, the object of which shall be, the extinguishment of their title to all or any part of the lands now in their possession, within the limits of Georgia.

Resolved, That if such treaty be held, the President be respectfully requested to instruct the commissioners to lay a copy of this report before the Indians in convention, with such comments as may be considered just and proper upon the nature and extent of the Georgia title to the lands in controversy, and the probable consequences which will result from a continued refusal upon the part of the Indians to part with those lands. And that the commissioners be also instructed to grant, if they find it absolutely necessary, sections of land in favor of individual Indians or inhabitants of the nation, amounting one-sixth part of the territory required, the same to be a future purchase by the General Government for the use of Georgia.

Resolved, That by excellency the Governor, be requested to forward a copy of the foregoing Report & Resolutions to the President of the United States, and one to our Senators and Representatives in Congress, with a request that they use their best exertions to obtain the objects therein expressed.

INDIAN COUNCIL.

Mr. Penn, when he first arrived in Pennsylvania, in the year 1683, and made a treaty with the Indians, the following observations, in a letter he then wrote to his friends in England. "Every king has his council, and that consists of all the old and wise men of his nation, which perhaps are two hundred people. Nothing of moment is undertaken, be it war, peace, selling of land, or traffic, without advising with them. 'Tis admirable to consider how powerful the chiefs are, and yet how they move by the breath of the people. I have had occasion to be in council with them upon treaties for land, and to adjust the terms of trade. Their order is thus; the king sits in the middle of an half moon, and hath his council, the old and the wise on each hand. Behind them, at a little distance, sit the young fry, in the same figure. Having consulted and resolved their business, the king ordered one of them to speak to me. He came to me, and in the name of his king, saluted me. Then took me by the hand, and told me that he was ordered by his king to speak to me; and that now it was not he, but the king who spoke, because what he should say was the king's mind. During the time this person was speaking, not a man of them was observed to whisper or smile. The old were grave—the young reverend in their deportment. They spoke little, but fervently and with elegance. He will deserve the name of *wise*, who out-wits them in any treaty about a thing they understand. At every sentence they shout, and say amen, in their way."

Mr. Smith, in his history of New Jersey, confirms this general statement. "They are grave even to sadness, upon any occasion, and move upon serious occasions—observing, that in company, and respectful to the aged—of temper cool and deliberate—never has a man to speak, but wait, for a moment, that the person who spoke before them, had finished all he had to say. They seemed to hold European civility in contempt, because they found such as came among them, apt to interrupt each other, and frequently speak altogether.—Their behaviour in public councils was strictly decent and instructive. Every one in his turn, was heard, according to rank of years, or wisdom, or services to his country. Not a

EDWARD ADAIR,
March 6, 1928.—3-4f.

POETRY.

HUMAN LIFE.—By BERNARD BARTON Esq.

"In the morning it flourisheth, and groweth up; in the evening it is cut down, and withereth."—*Psalm xc. 6.*

I walked the fields at morning's prime,
The grass was ripe for mowing,
The sky-lark sang his matin chime,
And all was brightly glowing.

"And thus," I cried, "the ardent boy,
His pulse with rapture beating,
Deems Life's inheritance is joy—
The future proudly greeting."

I wandered forth at noon:—alas!
On earth's maternal bosom
The sythe had left the withering grass,
And stretch'd the fading blossom.

And thus, I thought with many a sigh,
The hopes we fondly cherish,
Like flowers which blossom but to die,
Seem only born to perish.

Once more, at eve, abroad I stray'd,
Through lonely hayfields musing;
While every breeze that round me play'd
Rich fragrance was diffusing.

The perfumed air, the hush of eve,
To purer hopes appealing,
O'er tho'ts perchance too prone to grieve,
Scatter'd the balm of healing.

For thus "the actions of the just,"
When Memory hath inscribed them,
E'en from the dark and silent dust,
Their odour leave behind them.

FROM THE NATIONAL GAZETTE.

Of when the glowing tints of Autumn's

Have o'er the west their golden radiance

Soft as that hallowed light that burst from

Heaven,

When seraph minstrels to the shepherds

When not a cloud has on the horizon hung;

When stillness has her peaceful mantle

spread,

And calm'd e'en whispering zephyr into

rest—

Hushed each discordant note, and gently

shed

Her holy, happy influence o'er the breast;

Thus have I thought the righteous seek

repose,

Thus shine refulgent ere their labours close.

But dearer far to me the evening hour,

When, from the earth in massive columns

roll'd

High up the blue empyrean, vapours low-

er,

And leave behind a glorious space of gold;

For thus I've hop'd, though clogg'd with

earthly mould,

Tho' Sin her cloudy veil around me cast,—

When all my little hour of life is told,

And all my errands and repentings past—

Thus have I hop'd shall Faith disperse the

gloom,

And thus with peaceful promise gild the

tomb.

C. DELWYNNE.

SCRIPTURE TRANSLATION.

The Parable of the Prodigal Son, Luke

15: 11—31; with Remarks.

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MISCELLANEOUS.

TRAITS OF INDIAN CHARACTER.

The following beautiful remarks are

from the pen of WASHINGTON IRVING,

originally published in the ANEC-

DOTIC MAGAZINE.

"In the present times, when popu-

lar feeling is gradually becoming har-

dened by war, and selfish by the fre-

quent jeopardy of life or property, it

is certainly an insipid moment

to speak in behalf of a race of beings,

whose very existence has been pro-

nounced detrimental to public securi-

ty. But it is good at all times to raise

the voice of truth, however feeble; to

endeavor if possible to mitigate the

fury of passion and prejudice, and to

turn aside the bloody hand of violence.

Little interest, however, can proba-

bly be awakened at present, in favor

of the misguided tribes of Indians that

have been drawn into the present war.

The rights of the savage have seldom

been deeply appreciated by the white

man—in peace he is the dupe of mer-

cenary rapacity; in war he is regar-

ded as a ferocious animal, whose death

is a question of mere precaution and

convenience. Man is cruelly waste-

ful of life when his own safety is en-

dangered and he is sheltered by impu-

nity—and little mercy is to be expect-

ed from him who feels the sting of the

reptile, and is conscious of the power

to destroy.