OPINION OF THE SUPREME COURT OF THE UNITED STATES, AT JANUARY TERM, 1832,

DELIVERED BY MR. CHIEF JUSTICE MARSHALL.

IN THE CASE OF SAMUEL A. WORCESTER, Plaintiff in Error,

versus

THE STATE OF GEORGIA

With a statement of the case, extracted from the Records of the Supreme Court of the United States.

PRINTED FROM AUTHENTICATED COPIES. WASHINGTON:

PRINTED BY GALES AND SEATON. 1852. OPINION, &c.

Samuel A. Worcester, Plaintiff in Error,

vs.

The State of Georgia.

A writ of error was issued from the Supreme Court of the United States, directed to "the honorable the Judges of the Superior Court for the County of Gwinnett, in the State of Georgia," commanding them to "send to the said Supreme Court of the United States, the record and proceedings in the said Superior Court of the County of Gwinnett, between the State of Georgia, Plaintiff, and Samuel A. Worcester, Defendant, on an indictment in that Court."

This writ of error was returnable on the second Monday of January 1832, and was attested by the Honorable Henry Baldwin, one of the Associate Justices of the Supreme Court of the United States.

A citation was issued, directed to "the State of Georgia," dated October 27, 1831, and signed by the Honorable Henry Baldwin, by which the said State was cited to show cause why the error in the judgment against Samuel A. Worcester, in the writ of error mentioned, if there was any error, should not be arrested, and why speedy justice should not be done to the parties in that behalf.

The citation was served on his Excellency Wilson Lumpkin, Governor of the State of Georgia, on the 24th November, 1831, and on Charles J. Jenkins, Esq. Attorney General of the said State, on the 22d November, 1831.

The writ of error was returned to the Supreme Court of the United States, with the record of the proceedings in the Court for the County of Gwinnett annexed thereto, and with the following certificate, under the seal of the Court:

Georgia, Gwinnett County, ss.

I, John G. Park, Clerk of the Superior Court for the County of Gwinnett, and State aforesaid, do certify that the annexed and foregoing is a full and complete exemplification of the proceedings and judgment

had in said Court, against Samuel A. Worcester, one of the Defendants in the case therein mentioned as of record in the said Superior Court.

Given under my hand, and the seal of the Court, this 28th day of November, 1831.

JOHN G. PARK, Clerk.

The following is a copy of the Record:

"Georgia, Gwinnett county:

The grand jurors, sworn, chosen, and selected for the county of Gwinnett, to wit: John S. Wilson, Isaac Gilbert, James Wells, Jr., Benjamin S. Smith, James W. Moore, Robert Craig, John M. Thompson, Hamilton Garmany, Amos Wellborn, William Green, Buckner Harris, William Rakestraw, Jones Douglass, Wiley Brogdon, B. F. Johnson, Wilson Strickland, Richard J. Watts, and John White—

In the name and behalf of the citizens of Georgia, charge and accuse Elizur Butler, Samuel A. Worcester, James Trott, Samuel Mays, Surry Eaton, Austin Copeland, and Edward D. Losure, white persons of said county, with the offence of 'residing within the limits of the Cherokee nation, without a licence:' For that the said Elizur Butler, Samuel A. Worcester, James Trott, Samuel Mays, Surry Eaton, Austin Copeland, and Edward D. Losure, white persons as aforesaid, on the fifteenth day of July, eighteen hundred and thirty one, did reside in that part of the Cherokee nation attached by the laws of said State to the said county, and in the county aforesaid, without a licence or permit from his Excellency the Governor of said State, or from any agent authorized by his Excellency the Governor aforesaid to grant such permit or licence, and without having taken the oath to support and defend the constitution and laws of the State of Georgia, and uprightly to demean themselves as citizens thereof, contrary to the laws of said State, the good order, peace, and dignity, thereof.

TURNER H. TRIPPE, Sol. Gen'l.

JNO. W. A. SANFORD, Pros'r.

September of 1831.

True bill:—John S. Wilson, Foreman.

Witnesses Sworn.—John W. A. Sanford, Charles H. Nelson, Moses Cantrell, William Wood, Jacob R. Brooks, Jno. F. Cox, William Tippins, Hubbard Barker.

GWINNETT SUPERIOR COURT, September Term, 1831.

State of Georgia,

vs.

Samuel A. Worcester, Elizur Butler, and others. } Indictment for a misdemeanor.

And the said Samuel A. Worcester, in his own proper person, comes and says, that this Court ought not to take further cognizance of the action and prosecution aforesaid, because, he says, that, on the 15th day of July, in the year 1831, he was, and still is, a resident in the Cherokee nation; and that the said supposed crime, or crimes, and each of them, were committed, if committed at all, at the town of New Echota, in the said Cherokee nation, out of the jurisdiction of this court, and not in the county Gwinnett, or elsewhere within the jurisdiction of this Court. And this defendant saith, that he is a citizen of the State of Vermont, one of the United States of America, and that he entered the aforesaid Cherokee nation in the capacity of a duly authorized missionary of the American Board of Commissioners for Foreign Missions, under the authority of the President of the United States, and has not since been required by him to leave it: that he was, at the time of his arrest, engaged in preaching the Gospel to the Cherokee Indians, and in translating the sacred Scriptures into their language, with the permission and approval of the said Cherokee nation, and in accordance with the humane policy of the Government of the United States, for the civilization and improvement of the Indians; and that his residence there, for this purpose, is the residence charged in the aforesaid indictment: and this defendant further saith, that this prosecution the State of Georgia ought not to have or maintain, because, he saith, that several treaties have, from time to time, been entered into between the United States and the Cherokee nation of Indians, to wit: at Hopewell, on the 28th day of November, 1785; at Holston, on the 2d day of July, 1791; at Philadelphia, on the 26th day of June, 1794; at Tellico, on the 2d day of October, 1798; at Tellico, on the 24th day of October, 1804; at Tellico, on the 25th day of October, 1805; at Tellico, on the 27th day of October, 1805; at Washington City, on the 7th day of January, 1805; at Washington City, on the 22d day of March, 1816; at the Chickasaw Council House, on the 14th day of September, 1816; at the Cherokee Agency, on the 8th day of July, 1817, and at Washington City, on the 27th day of February, 1819: all which treaties have been duly ratified by the Senate of the United States of America; and, by which treaties, the United States of America acknowledge the said Cherokee nation to be a sovereign nation, authorized to govern themselves, and all persons who have settled within their territory, free from any right of legislative interference by the several States composing the United States of America, in reference to acts done within their own territory; and, by which treaties, the whole of the territory now occupied by the Cherokee nation, on the East of the Mississippi, has been solemnly guarantied to them; all of which treaties are existing treaties at this day, and in full force. By these treaties, and particularly by the treaties of Hopewell and Holston, the aforesaid territory is acknowledged to lie without the jurisdiction of the several States composing the Union of the United States; and, it is thereby specially stipulated, that the citizens of the United States shall not enter the aforesaid territory, even on a visit, without a passport from the governor of a State, or from sosomeone duly authorized thereto, by the President of the United States: all of which will more fully and at large appear, by reference to the aforesaid treaties. And this defendant saith, that the several acts charged in the bill of indictment, were done, or omitted to be done, if at all, within the said territory so recognized as belonging to the said nation, and so, as aforesaid, held by them, under the guaranty of the United States: that, for those acts, the defendant is not amenable to the laws of Georgia, nor to the jurisdiction of the courts of the said State; and that the laws of the State of Georgia, which profess to add the said territory to the several adjacent counties of the said State, and to extend the laws of Georgia over the said territory, and persons inhabiting the same; and, in particular, the act on which this indictment vs. this defendant is grounded, to wit: "An act entitled an act to prevent the exercise of assumed and arbitrary power, by all

persons, under pretext of authority from the Cherokee Indians, and their laws, and to prevent white persons from residing within that part of the chartered limits of Georgia, occupied by the Cherokee Indians, and to provide a guard for the protection of the gold mines, and to enforce the laws of the State within the aforesaid territory," are repugnant to the aforesaid treaties; which, according to the constitution of the United States, compose a part of the supreme law of the land; and that these laws of Georgia are, therefore, unconstitutional, void, and of no effect: that the said laws of Georgia are also unconstitutional and void, because they impair the obligation of the various contracts formed by and between the aforesaid Cherokee nation and the said United States of America, as above recited: also, that the said laws of Georgia are unconstitutional and void, because they interfere with, and attempt to regulate and control, the intercourse with the said Cherokee nation, which, by the said constitution, belongs exclusively to the Congress of the United States; and because the said laws are repugnant to the statute of the United States, passed on the —— day of March, 1802, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers:" and that, therefore, this Court has no jurisdiction to cause this defendant to make further or other answer to the said bill of indictment, or further to try and punish this defendant for the said supposed offence or offences alleged in the bill of indictment, or any of them: And, therefore, this defendant prays judgment whether he shall be held bound to answer further to said indictment?

Georgia, Gwinnett county:

Personally appeared in open court, Samuel A. Worcester, and, being sworn, saith, that the several matters and things contained in the above and foregoing plea, are true in substance and in fact.

Sworn to, and subscribed in open court, this 15th September, 1831.

SAMUEL A. WORCESTER.

JOHN G. PARK, Clerk.

September Term, 1831.

Pleas to the jurisdiction, &c. overruled by the court.

Arraigned, and pled not guilty.

Copy bill, and list of witnesses, waived.

T. H. TRIPPE, Sol. Gen.

Jury sworn and empannelled.

1. James H. Gilreath,	2. Benjamin Towers,	3. Joseph Bolton,
4. Thomas Weems,	5. John Moffett,	6. Wade Peavy,
7. John L. Tippens,	8. Thomas Burge,	9. Eli Elkins,

10. Wm. W. Downs, 11. Matthew Brown, 12. Geo. R. Edwards.

Verdict.

We, the jury, find the defendants guilty.

JAMES H. GILREATH, Foreman.

September 15th, 1831.

Sentence.

The State,

vs.

B. F. Thompson, and others. } Indictment for residing in the Cherokee nation without license: Verdict, "Guilty."

The State,

vs.

Elizur Butler, Samuel A. Worcester, and others. } Indictment for residing in the Cherokee nation without license: Verdict, "Guilty."

The defendants, in both of the above cases, shall be kept in close custody, by the sheriff of this county, until they can be transported to the penitentiary of this State, and the keeper thereof is hereby directed to receive them, and each of them, into his custody, and keep them, and each of them, at hard labor in said penitentiary, for and during the term of four years."

The case of Elizur Butler, Plaintiff in Error, versus the State of Georgia, was brought before the Supreme Court in the same manner.

Both cases came on for argument on the 20th of February, 1832, and they were argued by Mr. Sergeant and Mr. Wirt, for the Plaintiffs in Error. There was no appearance for the State of Georgia.

On the 3d day of March, 1832, Mr. Chief Justice Marshall delivered the opinion of the Court.

Samuel A. Worcester,

vs.

The State of Georgia. } Opinion of the Supreme Court of the United States, delivered by Mr. Chief Justice Marshall, at January Term, 1832.

This cause, in every point of view in which it can be placed, is of the deepest interest.

The defendant is a State, a member of the Union, which has exercised the powers of government over a

People who deny its jurisdiction, and are under the protection of the United States.

The plaintiff is a citizen of the State of Vermont, condemned to hard labor for four years in the penitentiary of Georgia, under color of an act which he alleges to be repugnant to the constitution, laws, and treaties, of the United States.

The legislative power of a State, the controlling power of the constitution and laws of the United States, the rights, if they have any, the political existence of a once numerous and powerful People, the personal liberty of a citizen, are all involved in the subject now to be considered.

It behooves this Court, in every case, more especially in this, to examine into its jurisdiction with scrutinizing eyes, before it proceeds to the exercise of a power which is controverted.

The first step in the performance of this duty is the inquiry whether the record is properly before the Court.

It is certified by the clerk of the Court which pronounced the judgment of condemnation under which the plaintiff in error is imprisoned, and is also authenticated by the seal of the Court. It is returned with, and annexed to, a writ of error issued in regular form, the citation being signed by one of the Associate Justices of the Supreme Court, and served on the Governor and Attorney General of the State more than thirty days before the commencement of the term to which the writ of error was returnable.

The Judicial act,1 so far as it prescribes the mode of proceeding, appears to have been literally pursued.

In February, 1797, a rule2 was made on this subject, in the following words: "It is ordered by the Court, that the clerk of the Court to which any writ of error shall be directed, may make return of the same by transmitting a true copy of the record, and of all proceedings in the same, under his hand and the seal of the Court."

This has been done. But the signature of the Judge has not been added to that of the Clerk. The law does not require it. The rule does not require it.

In the case of Martin vs. Hunter's lessee,3 an exception was taken to the return of the refusal of the State Court to enter a prior judgment of reversal by this Court, because it was not made by the Judge of the State Court to which the writ was directed; but the exception was overruled, and the return was held sufficient. In Buel vs. Van Ness,4 also a writ of error to a State Court, the record was authenticated in the same manner. No exception was taken to it. These were civil cases. But it has been truly said at the bar, that, in regard to this process, the law makes no distinction between a criminal and civil case. The same return is required in both. If the sanction of the Court could be necessary for the establishment of this position, it has been silently given.

McCulloch vs. the State of Maryland,5 was a qui tam action, brought to recover a penalty, and the record was authenticated by the seal of the Court and the signature of the Clerk, without that of a Judge. Brown et al. vs. the State of Maryland, was an indictment for a fine and forfeiture. The record in this case, too, was authenticated by the seal of the Court and the certificate of the Clerk. The practice is both ways.

The record, then, according to the Judiciary act, and the rule and the practice of the Court, is regularly before us. The more important inquiry is, does it exhibit a case cognizable by this tribunal?

The indictment charges the plaintiff in error, and others, being white persons, with the offence of "residing within the limits of the Cherokee nation without a licence," and "without having taken the oath to support and defend the constitution and laws of the State of Georgia."

The defendant in the State Court appeared in proper person, and filed the following plea:

"And the said Samuel A. Worcester, in his own proper person, comes and says, that this court ought not to take further cognizance of the action and prosecution aforesaid, because, he says, that, on the 15th day of July, in the year 1831, he was, and still is, a resident in the Cherokee nation; and that the said supposed crime or crimes, and each of them, were committed, if committed at all, at the town of New Echota, in the said Cherokee nation, out of the jurisdiction of this court, and not in the county Gwinnett, or elsewhere within the jurisdiction of this court: And this defendant saith, that he is a citizen of the State of Vermont, one of the United States of America, and that he entered the aforesaid Cherokee nation in the capacity of a duly authorized missionary of the American Board of Commissioners for Foreign Missions, under the authority of the President of the United States, and has not since been required by him to leave it: that he was, at the time of his arrest, engaged in preaching the Gospel to the Cherokee Indians, and in translating the sacred Scriptures into their language, with the permission and approval of the said Cherokee nation, and in accordance with the humane policy of the Government of the United States for the civilization and improvement of the Indians; and that his residence there, for this purpose, is the residence charged in the aforesaid indictment: and this defendant further saith, that this prosecution the State of Georgia ought not to have or maintain, because, he saith, that several treaties have, from time to time, been entered into between the United States and the Cherokee nation of Indians, to wit: at Hopewell, on the 28th day of November, 1785; at Holston, on the 2d day of July, 1791; at Philadelphia, on the 26th day of June, 1794: at Tellico, on the 2d day of October, 1798; at Tellico, on the 24th day of October, 1804; at Tellico, on the 25th day of October, 1805; at Tellico, on the 27th day of October, 1805; at Washington city, on the 7th day of January, 1805; at Washington city, on the 22d day of March, 1816; at the Chickasaw Council House, on the 14th day of September, 1816; at the Cherokee Agency, on the 8th day of July, 1817; and at Washington city, on the 27th day of February, 1819: all which treaties have been duly ratified by the Senate of the United States of America; and, by which treaties, the United States of America acknowledge the said Cherokee nation to be a sovereign nation, authorized to govern themselves, and all persons who have settled within their territory, free from any right of legislative interference by the several States composing the United States of America, in reference to acts done within their own territory; and, by which treaties, the whole of the territory now occupied by the Cherokee nation, on the east of the Mississippi, has been solemnly guarantied to them; all of which treaties are existing treaties at this day, and in full force. By these treaties, and particularly by the treaties of Hopewell and Holston, the aforesaid territory is acknowledged to lie without the jurisdiction of the several States composing the Union of the United States; and, it is thereby specially stipulated, that the citizens of the United States shall not enter the aforesaid territory, even on a visit, without a passport from the governor of a State, or from some one duly authorized thereto, by the President of the United States: all of which will more fully and at large appear, by reference to the aforesaid treaties. And this

defendant saith, that the several acts charged in the bill of indictment, were done, or omitted to be done, if at all, within the said territory so recognized as belonging to the said nation, and so, as aforesaid, held by them, under the guaranty of the United States: that, for those acts, the defendant is not amenable to the laws of Georgia, nor to the jurisdiction of the courts of the said State; and that the laws of the State of Georgia, which profess to add the said territory to the several adjacent counties of the said State, and to extend the laws of Georgia over the said territory, and persons inhabiting the same; and, in particular, the act on which this indictment vs. this defendant is grounded, to wit: "An act entitled an act to prevent the exercise of assumed and arbitrary power, by all persons, under pretext of authority from the Cherokee Indians, and their laws, and to prevent white persons from residing within that part of the chartered limits of Georgia, occupied by the Cherokee Indians, and to provide a guard for the protection of the gold mines, and to enforce the laws of the State within the aforesaid territory," are repugnant to the aforesaid treaties; which, according to the constitution of the United States, compose a part of the supreme law of the land; and that these laws of Georgia are, therefore, unconstitutional, void, and of no effect; that the said laws of Georgia are also unconstitutional and void, because they impair the obligation of the various contracts formed by and between the aforesaid Cherokee nation and the said United States of America, as above recited: also, that the said laws of Georgia are unconstitutional and void, because they interfere with, and attempt to regulate and control the intercourse with the said Cherokee nation, which, by the said constitution, belongs exclusively to the Congress of the United States; and because the said laws are repugnant to the statute of the United States, passed on the —— day of March, 1802, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers:" and that, therefore, this Court has no jurisdiction to cause this defendant to make further or other answer to the said bill of indictment, or further to try and punish this defendant for the said supposed offence or offences alleged in the bill of indictment, or any of them: And, therefore, this defendant prays judgment whether he shall be held bound to answer further to said indictment."

This plea was overruled by the Court. And the prisoner, being arraigned, pleaded not guilty. The jury found a verdict against him, and the Court sentenced him to hard labor, in the penitentiary, for the term of four years.

By overruling this plea, the Court decided that the matter it contained was not a bar to the action. The plea, therefore, must be examined, for the purpose of determining whether it makes a case which brings the party within the provisions of the 25th section of the "Act to establish the judicial courts of the United States."

The plea avers that the residence, charged in the indictment, was under the authority of the President of the United States, and with the permission and approval of the Cherokee nation. That the treaties, subsisting between the United States and the Cherokees, acknowledge their right as a sovereign nation to govern themselves and all persons who have settled within their territory, free from any right of legislative interference by the several States composing the United States of America. That the act under which the prosecution was instituted is repugnant to the said treaties, and is, therefore, unconstitutional and void. That the said act is, also, unconstitutional; because it interferes with, and attempts to regulate and control, the intercourse with the Cherokee nation, which belongs, exclusively, to Congress; and,

because, also, it is repugnant to the statute of the United States, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers."

Let the averments of this plea be compared with the 25th section of the Judicial act.

That section enumerates the cases in which the final judgment or decree of a State Court may be revised in the Supreme Court of the United States. These are, "where is drawn in question the validity of a treaty, or statute of, or an authority exercised under, the United States, and the decision is against their validity; or where is drawn in question the validity of a statute of, or an authority exercised under, any State, on the ground of their being repugnant to the constitution, treaties, or laws, of the United States, and the decision is in favor of such their validity; or where is drawn in question the construction of any clause of the constitution, or of a treaty, or statute of, or commission held under, the United States, and the decision is against the title, right, privilege, or exemption, specially set up or claimed by either party, under such clause of the said constitution, treaty, statute, or commission."

The indictment and plea, in this case, draw in question, we think, the validity of the treaties made by the United States with the Cherokee Indians: if not so, their construction is certainly drawn in question; and the decision has been, if not against their validity, "against the right, privilege, or exemption, specially set up and claimed under them." They also draw into question the validity of a statute of the State of Georgia, "on the ground of its being repugnant to the constitution, treaties, and laws, of the United States, and the decision is in favor of its validity."

It is, then, we think, too clear for controversy, that the act of Congress, by which this court is constituted, has given it the power, and, of course, imposed on it the duty, of exercising jurisdiction in this case. This duty, however unpleasant, cannot be avoided. Those who fill the Judicial Department have no discretion in selecting the subjects to be brought before them. We must examine the defence set up in this plea. We must inquire and decide whether the act of the Legislature of Georgia, under which the plaintiff in error has been prosecuted and condemned, be consistent with, or repugnant to, the constitution, laws, and treaties, of the United States.

It has been said at the bar, that the acts of the Legislature of Georgia seize on the whole Cherokee country, parcel it out among the neighboring counties of the State, extend her code over the whole country, abolish its institutions and its laws, and annihilate its political existence.

If this be the general effect of the system, let us inquire into the effect of the particular statute and section on which the indictment is founded.

It enacts that "all white persons, residing within the limits of the Cherokee nation on the first day of March next, or at any time thereafter, without a licence or permit from his Excellency the Governor, or from such agent as his Excellency the Governor shall authorize to grant such permit or licence, and who shall not have taken the oath hereinafter required, shall be guilty of a high misdemeanor, and, upon conviction thereof, shall be punished by confinement to the penitentiary, at hard labor, for a term not less than four years."

The 11th section authorizes the Governor, "should he deem it necessary for the protection of the mines, or the enforcement of the laws in force within the Cherokee Nation, to raise and organize a guard," &c.

The 13th section enacts, "that the said guard or any member of them, shall be, and they are hereby, authorized and empowered to arrest any person legally charged with or detected in a violation of the laws of this State, and to convey, as soon as practicable, the person so arrested, before a Justice of the peace, judge of the superior, justice of inferior court of this State, to be dealt with according to law."

The extra-territorial power of every Legislature being limited in its action, to its own citizens or subjects, the very passage of this act is an assertion of jurisdiction over the Cherokee Nation, and of the rights and powers consequent on jurisdiction.

The first step, then, in the inquiry, which the constitution and laws impose on this Court, is an examination of the rightfulness of this claim.

America, separated from Europe by a wide ocean, was inhabited by a distinct People, divided into separate nations, independent of each other and of the rest of the world, having institutions of their own, and governing themselves by their own laws. It is difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied; or that the discovery of either by the other should give the discoverer, rights in the country discovered, which annulled the pre-existing rights of its ancient possessors.

After lying concealed for a series of ages, the enterprise of Europe, guided by nautical science, conducted some of her adventurous sons into this Western world. They found it in possession of a People who had made small progress in agriculture or manufactures, and whose general employment was war, hunting, and fishing.

Did these adventurers, by sailing along the coast, and occasionally landing on it, acquire for the several Governments to whom they belonged, or by whom they were commissioned, a rightful property in the soil, from the Atlantic to the Pacific; or rightful dominion over the numerous people who occupied it? Or has nature, or the great Creator of all things, conferred these rights over hunters and fishermen, on agriculturists and manufacturers?

But power, war, conquest, give rights, which, after possession, are conceded by the world, and which can never be controverted by those on whom they descend. We proceed, then, to the actual state of things, having glanced at their origin; because holding it in our recollection might shed some light on existing pretensions.

The great maritime Powers of Europe discovered and visited different parts of this continent at nearly the same time. The object was too immense for any one of them to grasp the whole; and the claimants were too powerful to submit to the exclusive or unreasonable pretensions of any single potentate. To avoid bloody conflicts, which might terminate disastrously to all, it was necessary for the nations of Europe to establish some principle which all would acknowledge, and which should decide their

respective rights as between themselves. This principle, suggested by the actual state of things, was, "that discovery gave title to the Government by whose subjects or by whose authority it was made, against all other European Governments, which title might be consummated by possession."6

This principle, acknowledged by all Europeans, because it was the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil and of making settlements on it. It was an exclusive principle, which shut out the right of competition among those who had agreed to it; not one which could annul the previous rights of those who had not agreed to it. It regulated the right given by discovery among the European discoverers; but could not affect the rights of those already in possession, either as aboriginal occupants, or as occupants by virtue of a discovery made before the memory of man. It gave the exclusive right to purchase, but did not found that right on a denial of the right of the possessor to sell.

The relation between the Europeans and the natives was determined in each case by the particular government which asserted and could maintain this pre-emptive privilege in the particular place. The United States succeeded to all the claims of Great Britain, both territorial and political, but no attempt, so far as is known, has been made to enlarge them. So far as they existed merely in theory, or were in their nature only exclusive of the claims of other European nations, they still retain their original character, and remain dormant. So far as they have been practically exerted, they exist in fact, are understood by both parties, are asserted by the one, and admitted by the other.

Soon after Great Britain determined on planting colonies in America, the King granted charters to companies of his subjects, who associated for the purpose of carrying the views of the crown into effect, and of enriching themselves. The first of these charters was made before possession was taken of any part of the country. They purport generally to convey the soil, from the Atlantic to the South Sea. This soil was occupied by numerous and warlike nations, equally willing and able to defend their possessions. The extravagant and absurd idea, that the feeble settlements made on the sea coast, or the companies under whom they were made, acquired legitimate power by them to govern the people, or occupy the lands from sea to sea, did not enter the mind of any man. They were well understood to convey the title which, according to the common law of European sovereigns respecting America, they might rightfully convey, and no more. This was the exclusive right of purchasing such lands as the natives were willing to sell. The crown could not be understood to grant what the crown did not affect to claim, nor was it so understood.

The power of making war is conferred by these charters on the colonies, but defensive war alone seems to have been contemplated. In the first charter to the first and second colonies, they are empowered, "for their several defences, to encounter, expulse, repel, and resist, all persons who shall, without license," attempt to inhabit "within the said precincts and limits of the said several colonies, or that shall enterprise or attempt at any time hereafter the least detriment or annoyance of the said several colonies or plantations."

The charter to Connecticut concludes a general power to make defensive war with these terms: "and upon just causes to invade and destroy the natives or other enemies of the said colony."

The same power, in the same words, is conferred on the government of Rhode Island.

This power to repel invasion, and, upon just cause, to invade and destroy the natives, authorizes offensive as well as defensive war, but only "on just cause." The very terms imply the existence of a country to be invaded, and of an enemy who has given just cause of war.

The charter to William Penn contains the following recital: "and because, in so remote a country, near so many barbarous nations, the incursions, as well of the savages themselves, as of other enemies, pirates, and robbers, may probably be feared, therefore we have given," &c. The instrument then confers the power of war.

These barbarous nations, whose incursions were feared, and to repel whose incursions the power to make war was given, were surely not considered as the subjects of Penn, or occupying his lands during his pleasure.

The same clause is introduced into the charter to Lord Baltimore.

The charter to Georgia professes to be granted for the charitable purpose of enabling poor subjects to gain a comfortable subsistence by cultivating lands in the American provinces, "at present waste and desolate." It recites: "and whereas our provinces in North America have been frequently ravaged by Indian enemies, more especially that of South Carolina, which, in the late war by the neighboring savages, was laid waste by fire and sword, and great numbers of the English inhabitants miserably massacred; and our loving subjects, who now inhabit there, by reason of the smallness of their numbers, will, in case of any new war, be exposed to the like calamities, inasmuch as their whole Southern frontier continueth unsettled, and lieth open to the said savages."

These motives for planting the new colony are incompatible with the lofty ideas of granting the soil and all its inhabitants from sea to sea. They demonstrate the truth, that these grants asserted a title against Europeans only, and were considered as blank paper so far as the rights of the natives were concerned. The power of war is given only for defence, not for conquest.

The charters contain passages showing one of their objects to be the civilization of the Indians, and their conversion to Christianity—objects to be accomplished by conciliatory conduct, and good example; not by extermination.

The actual state of things, and the practice of European nations, on so much of the American continent as lies between the Mississippi and the Atlantic, explain their claims and the charters they granted. Their pretensions unavoidably interfered with each other: though the discovery of one was admitted by all to exclude the claim of any other, the extent of that discovery was the subject of unceasing contest. Bloody conflicts arose between them, which gave importance and security to the neighboring nations. Fierce and warlike in their character, they might be formidable enemies, or effective friends. Instead of rousing their resentments, by asserting claims to their lands, or to dominion over their persons, their alliance was sought by flattering professions, and purchased by rich presents. The English, the French, and the Spaniards, were equally competitors for their friendship and their aid. Not well acquainted with the

exact meaning of words, nor supposing it to be material whether they were called the subjects, or the children of their father in Europe; lavish in professions of duty and affection, in return for the rich presents they received; so long as their actual independence was untouched, and their right to self government acknowledged, they were willing to profess dependence on the Power which furnished supplies of which they were in absolute need, and restrained dangerous intruders from entering their country: and this was probably the sense in which the term was understood by them.

Certain it is, that our history furnishes no example, from the first settlement of our country, of any attempt, on the part of the crown, to interfere with the internal affairs of the Indians, farther than to keep out the agents of foreign Powers, who, as traders or otherwise, might seduce them into foreign alliances. The King purchased their lands when they were willing to sell, at a price they were willing to take; but never coerced a surrender of them. He also purchased their alliance and dependence by subsidies; but never intruded into the interior of their affairs, or interfered with their self government, so far as respected themselves only.

The general views of Great Britain, with regard to the Indians, were detailed by Mr. Stuart, superintendent of Indian affairs, in a speech delivered at Mobile, in presence of several persons of distinction, soon after the peace of 1763. Towards the conclusion he says, "lastly, I inform you that it is the King's order to all his Governors and subjects to treat the Indians with justice and humanity, and to forbear all encroachments on the territories allotted to them; accordingly, all individuals are prohibited from purchasing any of your lands; but, as you know that, as your white brethren cannot feed you when you visit them, unless you give them ground to plant, it is expected that you will cede lands to the King for that purpose. But, whenever you shall be pleased to surrender any of your territories to his majesty, it must be done, for the future, at a public meeting of your nation, when the governors of the provinces, or the superintendent shall be present, and obtain the consent of all your people. The boundaries of your hunting grounds will be accurately fixed, and no settlement permitted to be made upon them. As you may be assured that all treaties with you will be faithfully kept, so it is expected that you, also, will be careful strictly to observe them."

The proclamation issued by the King of Great Britain, in 1763, soon after the ratification of the articles of peace, forbids the governors of any of the colonies to grant warrants of survey, or pass patents upon any lands whatever, which, not having been ceded to, or purchased by, us, (the King) as aforesaid, are reserved to the said Indians, or any of them.

The proclamation proceeds: "and we do farther declare it to be our royal will and pleasure, for the present, as aforesaid, to reserve, under our sovereignty, protection, and dominion, for the use of the said Indians, all the lands and territories lying to the westward of the sources of the rivers which fall into the sea, from the west and northwest as aforesaid: and we do hereby strictly forbid, on pain of our displeasure, all our loving subjects from making any purchases or settlements whatever, or taking possession of any of the lands above reserved, without our special leave and licence for that purpose first obtained.

"And we do further strictly enjoin and require all persons whatever, who have, either wilfully or

inadvertently, seated themselves upon any lands within the countries above described, or upon any other lands which, not having been ceded to, or purchased by us, are still reserved to the said Indians, as aforesaid, forthwith to remove themselves from such settlements."

A proclamation, issued by Governor Gage, in 1779, contains the following passage: "Whereas many persons, contrary to the positive orders of the King, upon this subject, have undertaken to make settlements beyond the boundaries fixed by the treaties made with the Indian nations, which boundaries ought to serve as a barrier between the whites and the said nations;" particularly on the Ouabache, the proclamation orders such persons to quit those countries without delay.

Such was the policy of Great Britain towards the Indian nations inhabiting the territory from which she excluded all other Europeans; such her claims, and such her practical exposition of the charters she had granted: she considered them as nations capable of maintaining the relations of peace and war; of governing themselves, under her protection; and she made treaties with them, the obligation of which she acknowledged.

This was the settled state of things when the war of our Revolution commenced. The influence of our enemy was established; her resources enabled her to keep up that influence; and the colonists had much cause for the apprehension that the Indian nations would, as the allies of Great Britain, add their arms to hers. This, as was to be expected, became an object of great solicitude to Congress, Far from advancing a claim to their lands, or asserting any right of dominion over them, Congress resolved "that the securing and preserving the friendship of the Indian nations appears to be a subject of the utmost moment to these colonies."

The early journals of Congress exhibit the most anxious desire to conciliate the Indian nations. Three Indian departments were established; and commissioners appointed in each, "to treat with the Indians in their respective departments, in the name and on behalf of the United Colonies, in order to preserve peace and friendship with the said Indians, and to prevent their taking any part in the present commotions."

The most strenuous exertions were made to procure those supplies on which Indian friendships were supposed to depend, and everything which might excite hostility was avoided.

The first treaty was made with the Delawares, in September, 1778.

The language of equality in which it is drawn, evinces the temper with which the negotiation was undertaken, and the opinion which then prevailed in the United States.

"1st. That all offences or acts of hostilities, by one or either of the contracting parties against the other, be mutually forgiven, and buried in the depth of oblivion, never more to be had in remembrance.

"2d. That a perpetual peace and friendship shall, from henceforth, take place and subsist between the contracting parties aforesaid, through all succeeding generations: and if either of the parties are engaged in a just and necessary war, with any other nation or nations, that then each shall assist the other, in due proportion to their abilities, till their enemies are brought to reasonable terms of accommodation," &c.

3d. The third article stipulates, among other things, a free passage for the American troops through the Delaware nation, and engages that they shall be furnished with provisions and other necessaries at their value.

"4th. For the better security of the peace and friendship now entered into by the contracting parties against all infractions of the same by the citizens of either party, to the prejudice of the other, neither party shall proceed to the infliction of punishments on the citizens of the other, otherwise than by securing the offender or offenders, by imprisonment, or any other competent means, till a fair and impartial trial can be had by judges or juries of both parties, as near as can be to the laws, customs, and usages, of the contracting parties, and natural justice," &c.

5th. The fifth article regulates the trade between the contracting parties, in a manner entirely equal.

6th. The sixth article is entitled to peculiar attention, as it contains a disclaimer of designs which were, at that time, ascribed to the United States, by their enemies, and from the imputation of which Congress was then peculiarly anxious to free the Government. It is in these words: "Whereas the enemies of the United States have endeavored, by every artifice in their power, to possess the Indians in general with an opinion that it is the design of the States aforesaid to extirpate the Indians, and take possession of their country: To obviate such false suggestion the United States do engage to guaranty to the aforesaid nation of Delawares, and their heirs, all their territorial rights, in the fullest and most ample manner, as it hath been bounded by former treaties, as long as the said Delaware nation shall abide by, and hold fast, the chain of friendship now entered into."

The parties further agree, that other tribes, friendly to the interest of the United States, may be invited to form a State, whereof the Delaware nation shall be the heads, and have a representation in Congress.

This treaty, in its language, and in its provisions, is formed, as near as may be, on the model of treaties between the crowned heads of Europe.

The sixth article shows how Congress then treated the injurious calumny of cherishing designs unfriendly to the political and civil rights of the Indians.

During the war of the Revolution, the Cherokees took part with the British. Alter its termination, the United States, though desirous of peace, did not feel its necessity so strongly as while the war continued. Their political situation being changed, they might very well think it advisable to assume a higher tone, and to impress on the Cherokees the same respect for Congress which was before felt for the King of Great Britain. This may account for the language of the treaty of Hopewell. There is the more reason for supposing that the Cherokee chiefs were not very critical judges of the language, from the fact that every one makes his mark; no chief was capable of signing his name. It is probable the treaty was interpreted to them.

The treaty is introduced with the declaration, that "The commissioners plenipotentiary of the United States give peace to all the Cherokees, and receive them into the favor and protection of the United States of America, on the following conditions."

When the United States gave peace, did they not also receive it? Were not both parties desirous of it? If we consult the history of the day, does it not inform us that the United States were at least as anxious to obtain it as the Cherokees? We may ask, further: Did the Cherokees come to the seat of the American Government to solicit peace; or, did the American commissioners go to them to obtain it? The treaty was made at Hopewell, not at New York. The word "give," then, has no real importance attached to it.

The first and second articles stipulate for the mutual restoration of prisoners, and are of course equal.

The third article acknowledges the Cherokees to be under the protection of the United States of America, and of no other Power.

This stipulation is found in Indian treaties, generally. It was introduced into their treaties with Great Britain; and may probably be found in those with other European Powers. Its origin may be traced to the nature of their connexion with those Powers; and its true meaning is discerned in their relative situation.

The general law of European sovereigns, respecting their claims in America, limited the intercourse of Indians, in a great degree, to the particular potentate, whose ultimate right of domain was acknowledged by the others. This was the general state of things in time of peace. It was sometimes changed in war. The consequence was, that their supplies were derived chiefly from that nation, and their trade confined to it. Goods, indispensable to their comfort, in the shape of presents, were received from the same hand. What was of still more importance, the strong hand of Government was interposed to restrain the disorderly and licentious from intrusions into their country, from encroachments on their lands, and from those acts of violence which were often attended by reciprocal murder. The Indians perceived in this protection, only what was beneficial to themselves—an engagement to punish aggressions on them. It involved practically no claim to their lands, no dominion over their persons. It merely bound the nation to the British crown, as a dependent ally, claiming the protection of a powerful friend and neighbor, and receiving the advantages of that protection, without involving a surrender of their national character.

This is the true meaning of the stipulation, and is undoubtedly the sense in which it was made. Neither the British Government, nor the Cherokees, ever understood it otherwise.

The same stipulation entered into with the United States, is undoubtedly to be construed in the same manner. They receive the Cherokee nation into their favor and protection. The Cherokees acknowledge themselves to be under the protection of the United States, and of no other Power. Protection does not imply the destruction of the protected. The manner in which this stipulation was understood by the American Government, is explained by the language and acts of our first President.

The fourth article draws the boundary between the Indians and the citizens of the United States. But, in describing this boundary, the term "allotted" and the term "hunting ground" are used.

Is it reasonable to suppose, that the Indians, who could not write, and most probably could not read, who certainly were not critical judges of our language, should distinguish the word "allotted" from the words "marked out." The actual subject of contract was the dividing line between the two nations, and

their attention may very well be supposed to have been confined to that subject. When, in fact, they were ceding lands to the United States, and describing the extent of their cession, it may very well be supposed that they might not understand the term employed, as indicating that, instead of granting, they were receiving lands. If the term would admit of no other signification, which is not conceded, its being misunderstood is so apparent, results so necessarily from the whole transaction, that it must, we think, be taken in the sense in which it was most obviously used.

So with respect to the words "hunting grounds." Hunting was at that time the principal occupation of the Indians, and their land was more used for that purpose than for any other. It could not, however, be supposed, that any intention existed of restricting the full use of the lands they reserved.

To the United States, it could be a matter of no concern, whether their whole territory was devoted to hunting grounds, or whether an occasional village, and an occasional corn field, interrupted, and gave some variety to the scene.

These terms had been used in their treaties with Great Britain, and had never been misunderstood. They had never been supposed to imply a right in the British Government to take their lands, or to interfere with their internal Government.

The 5th article withdraws the protection of the United States from any citizen who has settled, or shall settle, on the lands allotted to the Indians, for their hunting grounds; and stipulates that, if he shall not remove within six months, the Indians may punish him.

The 6th and 7th articles stipulate for the punishment of the citizens of either country, who may commit offences on or against the citizens of the other. The only inference to be drawn from them is, that the United States considered the Cherokees as a nation.

The 9th article is in these words: "For the benefit and comfort of the Indians, and for the prevention of injuries or oppressions on the part of the citizens or Indians, the United States, in Congress assembled, shall have the sole and exclusive right of regulating the trade with the Indians, and managing all their affairs, as they think proper."

To construe the expression "managing all their affairs," into a surrender of self government, would be, we think, a perversion of their necessary meaning, and a departure from the construction which has been uniformly put on them. The great subject of the article is the Indian trade. The influence it gave, made it desirable that Congress should possess it. The commissioners brought forward the claim, with the profession that their motive was, "the benefit and comfort of the Indians, and the prevention of injuries or oppressions." This may be true, as respects the regulation of their trade, and as respects the regulation of all affairs connected with their trade, but cannot be true, as respects the management of all their affairs. The most important of these, is the cession of their lands, and security against intruders on them. Is it credible, that they could have considered themselves as surrendering to the United States, the right to dictate their future cessions, and the terms on which they should be made? or to compel their submission to the violence of disorderly and licentious intruders? It is equally inconceivable that they could have supposed themselves, by a phrase thus slipped into an article, on another and most

interesting subject, to have divested themselves of the right of self government on subjects not connected with trade. Such a measure could not be "for their benefit and comfort," or for "the prevention of injuries and oppression." Such a construction would be inconsistent with the spirit of this and of all subsequent treaties; especially of those articles which recognise the right of the Cherokees to declare hostilities, and to make war. It would convert a treaty of peace covertly into an act, annihilating the political existence of one of the parties. Had such a result been intended, it would have been openly avowed.

This treaty contains a few terms capable of being used in a sense which could not have been intended at the time, and which is inconsistent with the practical construction which has always been put on them; but its essential articles treat the Cherokees as a nation capable of maintaining the relations of peace and war; and ascertain the boundaries between them and the United States.

The treaty of Hopewell seems not to have established a solid peace. To accommodate the differences still existing between the State of Georgia and the Cherokee nation, the treaty of Holston was negotiated, in July, 1791. The existing constitution of the United States had been then adopted, and the Government, having more intrinsic capacity to enforce its just claims, was perhaps less mindful of high sounding expressions, denoting superiority. We hear no more of giving peace to the Cherokees. The mutual desire of establishing permanent peace and friendship, and of removing all causes of war, is honestly avowed, and, in pursuance of this desire, the first article declares, that there shall be perpetual peace and friendship between all the citizens of the United States of America and all the individuals composing the Cherokee nation.

The second article repeats the important acknowledgment, that the Cherokee nation is under the protection of the United States of America, and of no other sovereign whosoever.

The meaning of this has been already explained. The Indian nations were, from their situation, necessarily dependent on some foreign potentate for the supply of their essential wants, and for their protection from lawless and injurious intrusions into their country. That Power was naturally termed their protector. They had been arranged under the protection of Great Britain: but the extinguishment of the British power in their neighborhood, and the establishment of that of the United States, in its place, led naturally to the declaration, on the part of the Cherokees, that they were under the protection of the United States, and of no other Power. They assumed the relation with the United States which had before subsisted with Great Britain.

This relation was that of a nation claiming and receiving the protection of one more powerful: not that of individuals abandoning their national character, and submitting as subjects to the laws of a master.

The third article contains a perfectly equal stipulation for the surrender of prisoners.

The fourth article declares, that "the boundary between the United States and the Cherokee nation shall be as follows: Beginning," &c. We hear no more of "allotments" or of "hunting grounds." A boundary is described, between nation and nation, by mutual consent. The national character of each, the ability of each to establish this boundary, is acknowledged by the other. To preclude forever all disputes, it is

agreed that it shall be plainly marked by commissioners, to be appointed by each party; and, in order to extinguish forever, all claim of the Cherokees to the ceded lands, an additional consideration is to be paid by the United States. For this additional consideration the Cherokees release all right to the ceded land, forever.

By the fifth article, the Cherokees allow the United States a road through their country, and the navigation of the Tennessee river. The acceptance of these cessions is an acknowledgment of the right of the Cherokees to make or withhold them.

By the sixth article it is agreed, on the part of the Cherokees, that the United States shall have the sole and exclusive right of regulating their trade. No claim is made to the management of all their affairs. This stipulation has already been explained. The observation may be repeated, that the stipulation is itself an admission of their right to make or refuse it.

By the seventh article the United States solemnly guaranty to the Cherokee nation all their lands not hereby ceded.

The eighth article relinquishes to the Cherokees any citizens of the United States who may settle on their lands; and the ninth forbids any citizen of the United States to hunt on their lands, or to enter their country without a passport.

The remaining articles are equal, and contain stipulations which could be made only with a nation admitted to be capable of governing itself.

This treaty, thus explicitly recognizing the national character of the Cherokees, and their right of self government; thus guarantying their lands; assuming the duty of protection, and of course pledging the faith of the United States for that protection; has been frequently renewed, and is now in full force.

To the general pledge of protection have been added several specific pledges, deemed valuable by the Indians. Some of these restrain the citizens of the United States from encroachments on the Cherokee country, and provide for the punishment of intruders.

From the commencement of our Government, Congress has passed acts to regulate trade and intercourse with the Indians, which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities, having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guarantied by the United States.

In 1819, Congress passed an act for promoting these humane designs of civilizing the neighboring Indians, which had long been cherished by the Executive. It enacts, "that, for the purpose of providing against the further decline and filial extinction of the Indian tribes adjoining to the frontier settlements of the United States, and for introducing among them the habits and arts of civilization, the President of the United States shall be, and he is hereby, authorized, in every case where he shall judge improvement in the habits and condition of such Indians practicable, and that the means of instruction can be

introduced, with their own consent, to employ capable persons, of good moral character, to instruct them in the mode of agriculture suited to their situation; and for teaching their children in reading, writing, and arithmetic; and for performing such other duties as may be enjoined, according to such instructions and rules as the President may give and prescribe for the regulation of their conduct in the discharge of their duties."

This act avowedly contemplates the preservation of the Indian nations as an object sought by the United States, and proposes to effect this object by civilizing and converting them from hunters into agriculturists. Though the Cherokees had already made considerable progress in this improvement, it cannot be doubted that the general words of the act comprehend them. Their advance in the "habits and arts of civilization." rather encouraged perseverance in the laudable exertions still farther to meliorate their condition. This act furnishes strong additional evidence of a settled purpose to fix the Indians in their country by giving them security at home.

The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the States; and provide that all intercourse with them shall be carried on exclusively by the Government of the Union.

Is this the rightful exercise of power, or is it usurpation?

While these States were colonies, this power, in its utmost extent, was admitted to reside in the crown. When our Revolutionary struggle commenced, Congress was composed of an assemblage of deputies acting under specific powers granted by the Legislatures, or conventions of the several colonies. It was a great popular movement, not perfectly organized, nor were the respective powers of those who were entrusted with the management of affairs accurately defined. The necessities of our situation produced a general conviction that those measures which concerned all, must be transacted by a body in which the representatives of all were assembled, and which could command the confidence of all; Congress, therefore, was considered as invested with all the powers of war and peace, and Congress dissolved our connexion with the mother country, and declared these United Colonies to be independent States. Without any written definition of powers, they employed diplomatic agents to represent the United States at the several Courts of Europe; offered to negotiate treaties with them; and did actually negotiate treaties with France. From the same necessity, and on the same principles, Congress assumed the management of Indian affairs; first in the name of these United Colonies, and afterwards in the name of the United States. Early attempts were made at negotiation, and to regulate trade with them. These not proving successful, war was carried on under the direction, and with the forces of the United States, and the efforts to make peace, by treaty, were earnest and incessant. The Confederation found Congress in the exercise of the same powers of peace and war, in our relations with Indian nations, as with those of Europe. Such was the state of things when the Confederation was adopted. That instrument surrendered the powers of peace and war to Congress, and prohibited them to the States, respectively, unless a State be actually invaded, "or shall have received certain advice of a resolution being formed by some nation of Indians to invade such State, and the danger is so imminent as not to admit of delay till the United States, in Congress assembled, can be consulted." This instrument also gave the United States in Congress assembled the sole and exclusive right of "regulating the trade, and managing all the affairs

with the Indians, not members of any of the States: Provided, That the legislative power of any State within its own limits be not infringed or violated."

The ambiguous phrases which follow the grant of power to the United States, were so construed by the States of North Carolina and Georgia as to annul the power itself. The discontents and confusion resulting from these conflicting claims, produced representations to Congress, which were referred to a committee, who made their report in 1787. The report does not assent to the construction of the two States, but recommends an accommodation, by liberal cessions of territory, or by an admission, on their part, of the powers claimed by Congress. The correct exposition of this article is rendered unnecessary by the adoption of our existing constitution. That instrument confers on Congress the powers of war and peace; of making treaties, and of regulating commerce with foreign nations, and among the several States, and with the Indian tribes. These powers comprehend all that is required for the regulation of our intercourse with the Indians. They are not limited by any restrictions on their free actions. The shackles imposed on this power, in the Confederation, are discarded.

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed: and this was a restriction which those European potentates imposed on themselves, as well as on the Indians. The very term, "nation," so generally applied to them, means "a People distinct from others." The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and, consequently, admits their rank among those Powers who are capable of making treaties. The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense.

Georgia, herself, has furnished conclusive evidence that her former opinions on this subject concurred with those entertained by her sister States, and by the Government of the United States. Various acts of her Legislature have been cited in the argument, including the contract of cession made in the year 1802, all tending to prove her acquiescence in the universal conviction that the Indian nations possessed a full right to the lands they occupied, until that right should be extinguished by the United States, with their consent; that their territory was separated from that of any State within whose chartered limits they might reside, by a boundary line, established by treaties; that, within their boundary, they possessed rights with which no State could interfere; and that the whole power of regulating the intercourse with them, was vested in the United States. A review of these acts, on the part of Georgia, would occupy too much time, and is the less necessary, because they have been accurately detailed in the argument at the bar. Her new series of laws, manifesting her abandonment of these opinions, appears to have commenced in December, 1828.

In opposition to this original right, possessed by the undisputed occupants of every country, to this recognition of that right, which is evidenced by our history in every change through which we have

passed, is placed the charters granted by the monarch of a distant and distinct region, parcelling out a territory in possession of others, whom he could not remove, and did not attempt to remove, and the cession made of his claims, by the treaty of peace.

The actual state of things at the time, and all history since, explain these charters; and the King of Great Britain, at the treaty of peace, could cede only what belonged to his crown. These newly asserted titles can derive no aid from the articles so often repeated in Indian treaties, extending to them, first, the protection of Great Britain, and afterwards, that of the United States. These articles are associated with others, recognizing their title to self government. The very fact of repeated treaties with them recognizes it; and the settled doctrine of the law of nations is, that the weaker power does not surrender its independence—its right to self government—by associating with a stronger, and taking its protection. A weak State, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government, and ceasing to be a State. Examples of this kind are not wanting in Europe. "Tributary and feudatory States," says Vattel, "do not thereby cease to be sovereign and independent States, so long as self government and sovereign and independent authority is left in the administration of the State." At the present day, more than one State may be considered as holding its right of self government under the guarantee and protection of one or more allies.

The Cherokee nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties, and with the acts of Congress. The whole intercourse between the United States and this nation, is, by our constitution and laws, vested in the Government of the United States.

The act of the State of Georgia, under which the plaintiff in error was prosecuted, is consequently void, and the judgment a nullity. Can this Court revise and reverse it?

If the objection to the system of legislation, lately adopted by the Legislature of Georgia, in relation to the Cherokee nation, was confined to its extraterritorial operation, the objection, though complete, so far as respected mere right, would give this Court no power over the subject. But it goes much further. If the view which has been taken be correct, and we think it is, the acts of Georgia are repugnant to the constitution, laws, and treaties, of the United States.

They interfere forcibly with the relations established between the United States and the Cherokee nation, the regulation of which, according to the settled principles of our constitution, are committed exclusively to the Government of the Union.

They are in direct hostility with treaties, repeated in a succession of years, which mark out the boundary that separates the Cherokee country from Georgia; guaranty to them all the land within their boundary; solemnly pledge the faith of the United States to restrain their citizens from trespassing on it; and recognize the pre-existing power of the nation to govern itself.

They are in equal hostility with the acts of Congress for regulating this intercourse and giving effect to the treaties.

The forcible seizure and abduction of the plaintiff in error, who was residing in the nation, with its permission, and by the authority of the President of the United States, is also a violation of the acts which authorize the Chief Magistrate to exercise this authority.

Will these powerful considerations avail the plaintiff in error? We think they will. He was seized and forcibly carried away, while under the guardianship of treaties guarantying the country in which he resided, and taking it under the protection of the United States. He was seized while performing, under the sanction of the Chief Magistrate of the Union, those duties that the humane policy adopted by Congress had recommended. He was apprehended, tried, and condemned, under the color of a law that has been shown to be repugnant to the constitution, laws, and treaties, of the United States. Had a judgment, liable to the same objections, been rendered for property, none would question the jurisdiction of this Court. It cannot be less clear when the judgment affects personal liberty and inflicts disgraceful punishment if punishment could disgrace when inflicted on innocence. The plaintiff in error is not less interested in the operation of this unconstitutional law than if it affected his property. He is no less entitled to the protection of the constitution, laws, and treaties, of his country.

It is the opinion of this Court that the judgment of the Superior Court for the county of Gwinnett, in the State of Georgia, condemning Samuel A. Worcester to hard labor, in the penitentiary of the State of Georgia, for four years, was pronounced by that Court under color of a law which is void, as being repugnant to the constitution, treaties, and laws of the United States, and ought, therefore, to be reversed and annulled.

MANDATE OF THE COURT.

Supreme Court of the United States, January Term, 1832.

Samuel A. Worcester,

The plaintiff in error,

vs.

The State of Georgia. } In Error to the Superior Court for the County of Gwinnett, in the State of Georgia.

This cause came on to be heard on the transcript of the record from the Superior Court for the County of Gwinnett, in the State of Georgia, and was argued by counsel: on consideration whereof, it is the opinion of this Court, that the act of the Legislature of the State of Georgia, upon which the indictment, in this case, is founded, is contrary to the constitution, treaties, and laws, of the United States; and, that the special plea, in the bar, pleaded by the said Samuel A. Worcester, in manner aforesaid, and relying upon the constitution, treaties, and laws, of the United States, aforesaid, is a good bar and defense to the said indictment, by the said Samuel A. Worcester; and, as such, ought to have been allowed and admitted by the said Superior Court for the County of Gwinnett, in the State of Georgia, before which the said indictment was pending and tried; and that there was an error in the said Superior Court of the State of Georgia, in overruling the plea so pleaded, as aforesaid. It is, therefore, ordered and adjudged, that the

judgment rendered in the premises, by the said Superior Court of Georgia, upon the verdict upon the plea of Not Guilty, afterward pleaded by the said Samuel A. Worcester, whereby the said Samuel A. Worcester is sentenced to hard labor in the penitentiary of the State of Georgia, ought to be reversed and annulled. And this Court, proceeding to render such judgment as the said Superior Court of the State of Georgia should have rendered, it is further ordered and adjudged, that the said judgment of the said Superior Court be, and hereby is, reversed and annulled; and that judgment be, and hereby is, awarded, that the special plea in bar, so as aforesaid pleaded, is a good and sufficient plea in bar, in law, to the indictment aforesaid, and that all proceedings on the said indictment do forever surcease, and that the said Samuel A. Worcester be, and hereby is, henceforth dismissed therefrom, and that he go thereof quit without day. And that a special mandate does go from this Court to the said Superior Court, to carry this judgment into execution.

March 5, 1832.

Footnotes

1 Judicial act, sec. 22, 25, v. 2. pp. 64, 65.

2 6 Wh. Rules.

3 1st Wh. 304, 361.

4 8th Wh. 312.

5 4th Wh. 316.

6 8th Wh. 573.