Famous Trials Project

Worcester v. State of Georgia

James Fournier and Ken Ollison

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Introduction

In the early 1800's the basic policy of the United States government regarding native Americans was to remove the Indian population from areas, or potential areas, of white settlement. The most thoroughly documented instance of this policy and its consequences is the removal of the Cherokee Indians from their homelands in the southeastern states of Tennessee, Alabama, North Carolina, and Georgia.

President Thomas Jefferson suggested in 1803, shortly after the purchase of the Louisiana Territory, that treaty arrangements be reached with the Cherokee and the other tribes of the southeast that would provide for removal of the Indians to new lands west of the Mississippi. Unexplored and deemed unsuitable for white settlement, these lands seemed perfectly suited for ridding the new nation of its Indian problem. Two such treaties were eventually negotiated and approximately one-third of the Cherokee population made the migration west by 1820. However, during the administrations of James Monroe and John Quincy Adams, the federal government adopted a more sympathetic policy towards the native tribes of the southeast, encouraging missionary efforts to "civilize" them, and recognizing more extensive rights of Indians over tribal lands. Missionary efforts among the Cherokee were particularly significant. Missions from a variety of Protestant denominations were established. Tribal schools were started as was a tribal newspaper written in both English and Cherokee. Some Cherokee children were brought north to be educated in private schools. And there were several marriages between Cherokee men and the daughters of church leaders. The ties thus established proved a powerful, albeit inadequate, source of political and moral leverage when the national debate over Indian removal reached a climax in the early 1830s.

Substantial conflict with the state government of Georgia developed as the federal government took the Cherokee side against encroachment by white settlers on Indian land. The discovery of gold in northern Georgia in 1828 and pressure for the availability of more land to settle the growing white population contributed to more local agitation for Indian removal. The governor and Georgia congressional delegation actively pressed the case for Indian removal and western expansion. State laws were enacted that effectively destroyed Cherokee self-government. And with the election of Andrew Jackson as President in 1828 the expansionists gained a sympathetic and powerful ear in Washington. Jacksonian Democrats prevailed by a single vote in Congress in 1830 with the passage of the Indian Removal Act and again when President Jackson ignored the Supreme Court decision written by Chief Justice Marshall in the case of *Worchester vs. the State of Georgia* that declared void Georgia's legal rights over the Cherokee. In 1835 the *Treaty of New Echota* was signed by a small party of Cherokee leaders forcing the tribe to cede their lands and remove to the West. Though there were several delays, the removal of the Cherokee from Georgia, Tennessee, North Carolina, and Alabama along what has come to be known as the ***Trail of Tears*** was completed by 1839.

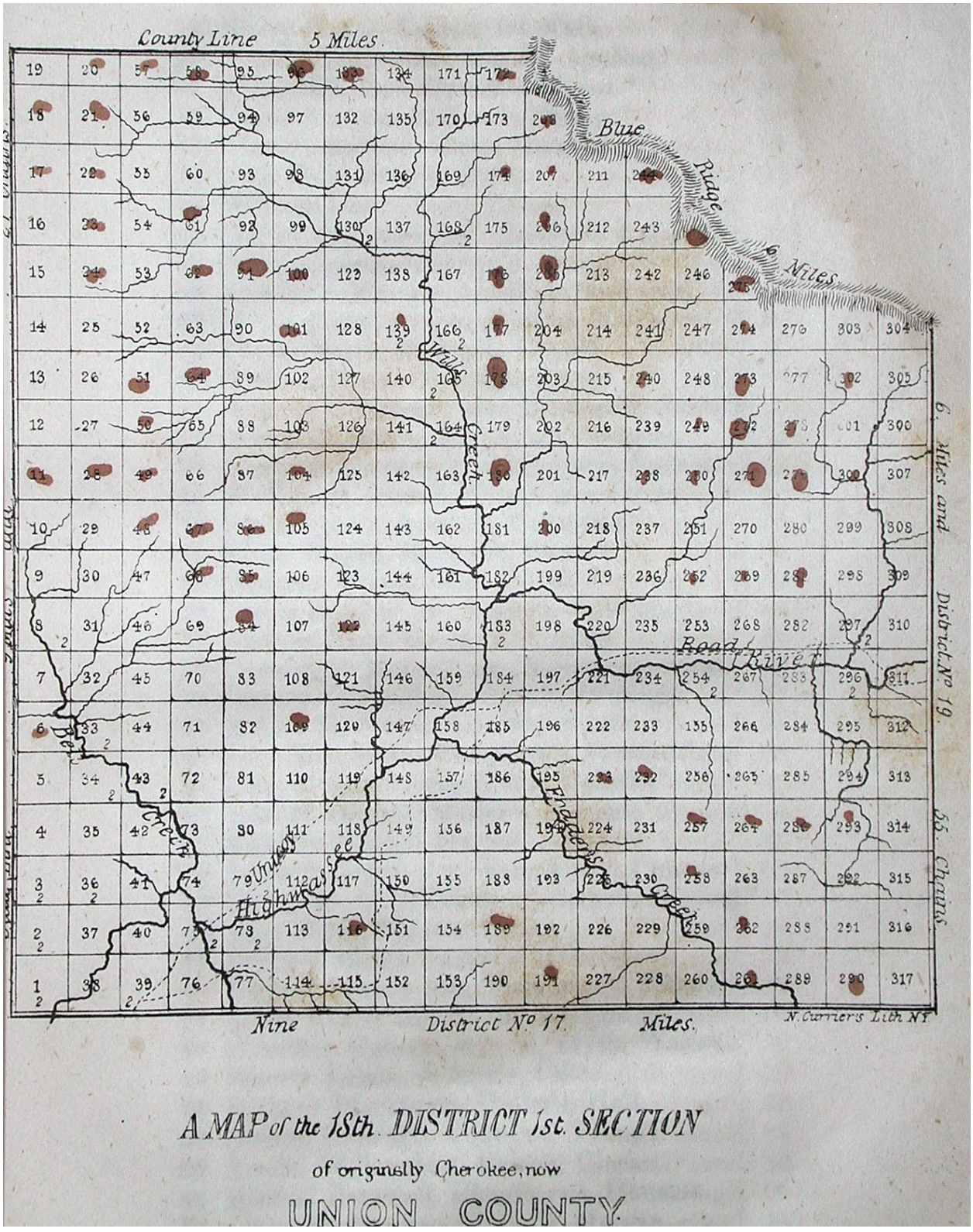
Chronology of Indian Removal

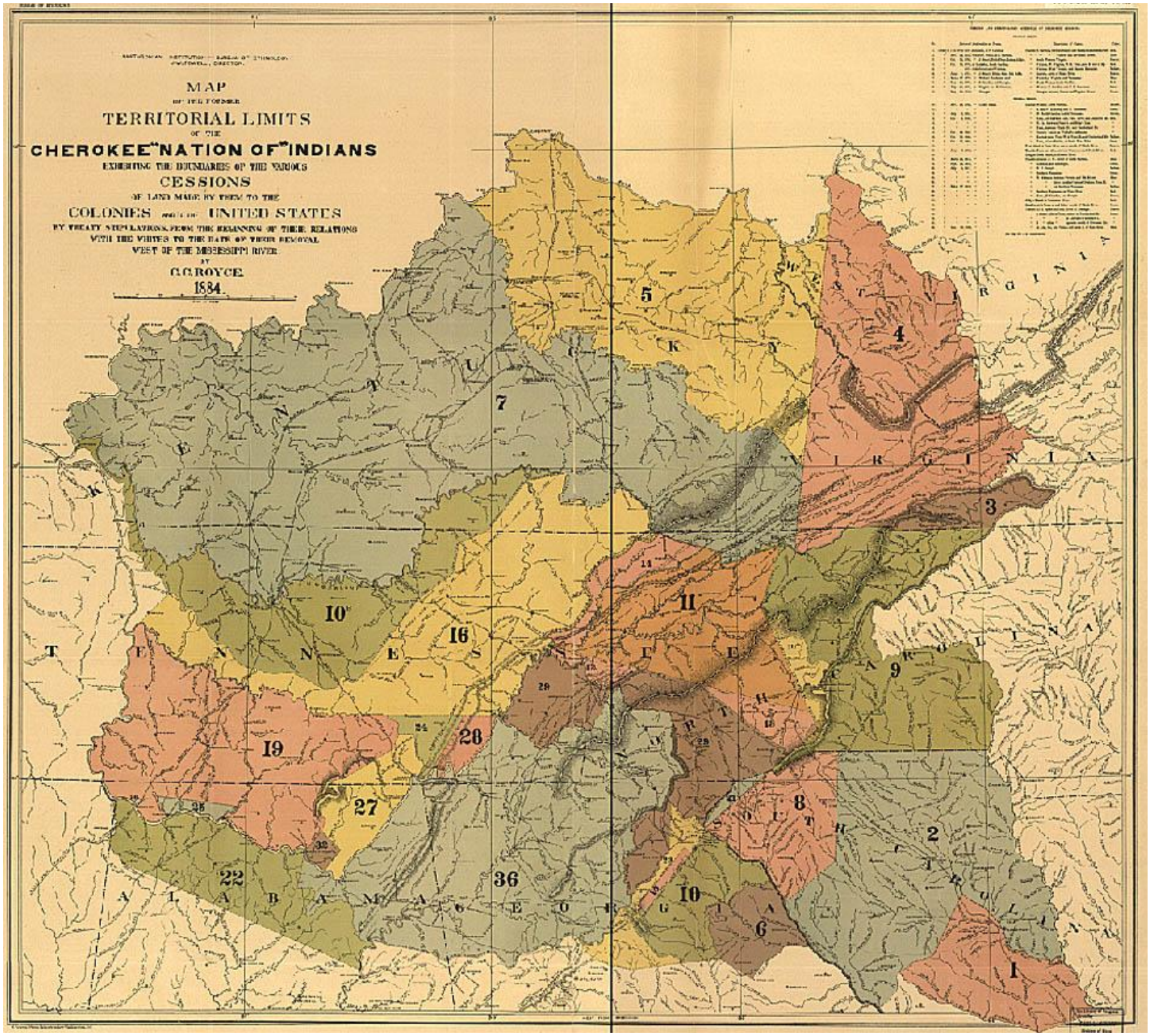
1600s	Spanish, French,English explorers, and traders start to come into Cherokee Territory.
1730	Cherokee leaders visit England.
1754	Nanye hi becomes a Beloved Woman to her people after challenging the Cherokees in a battle against the Creeks.
1756-1763	Cherokees fight in the French and Indian war (against the British.)
1776	Cherokees are again enemies against the British in the American Revolution.
1780-1820	Cherokees sign more treaties leaving their land to the United States.
1821	The Cherokee syllabary is finished by Sequoyah.
1827	Cherokees draft a constitution declaring themselves a nation.
1828	The Cherokee Phoenix is published, Andrew Jackson becomes president of the United States, and John Ross becomes Principal Chief.
1830	The Indian Removal Act is passed.
1835	The Treaty of New Echota is signed declaring all of the Cherokee land east of the Mississippi River to the U.S. government. It was signed by Major Ridge and a small group of Cherokees.
1838	The Trail of Tears started because Cherokees are forced off their land to Indian Territory.
1839	A new capital is established by the Cherokee Nation in what is now known as Oklahoma.
1861	At Park Hill a Treaty is signed between the Confederate government and the Cherokee Nation.
1866-1867	They negotiate peace with the U.S. government. Tribal and land rights treaty is signed. John Ross dies.

http://library.thinkquest.org/J0110325/timeline.htm

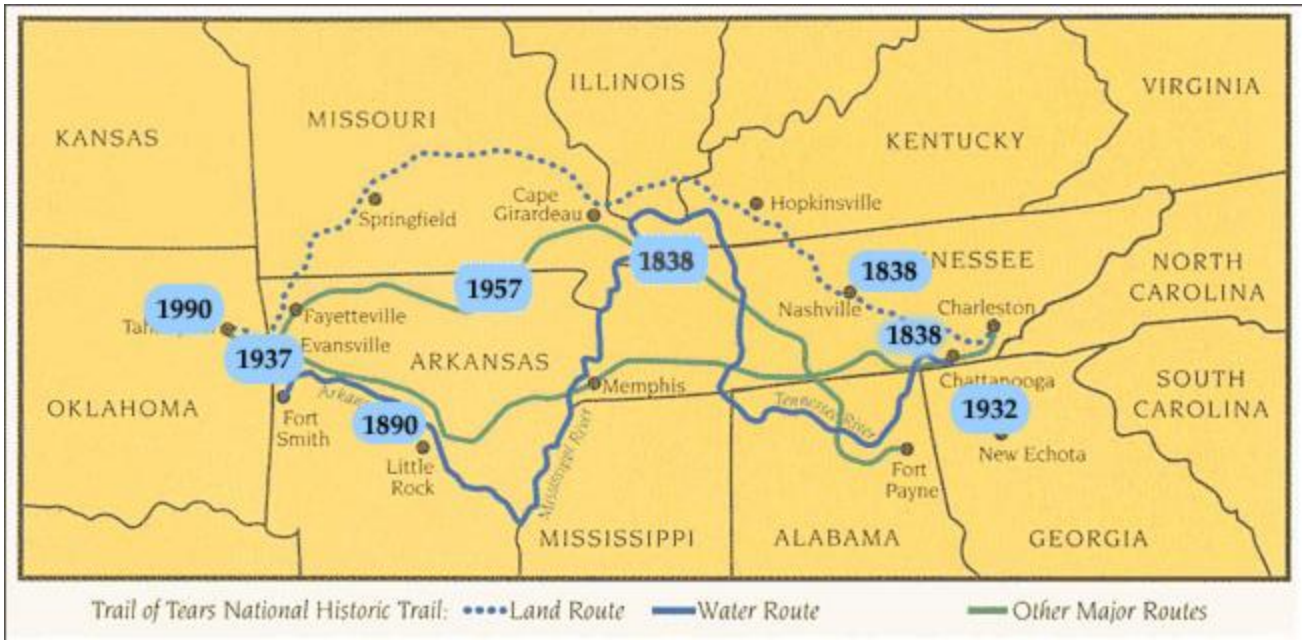
Maps Relating to the Trial of Worcestor v. Georgia

Map of Land Lottery of Cherokee Land Georgia 1838





http://www.intimeandplace.org/cherokee/images/images/roycemap.html


KANSAS
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ALABAMA
GEORGIA
Springfield
Cape Girardeau
Hopkinsville
Nashville
Charleston
Chattanooga
Fayetteville
Evansville
Fort Smith
Little Rock
Memphis
Fort Payne
New Echota
1990
1937
1957
1838
1838
1838
1890
1932
Trail of Tears National Historic Trail:
Land Route
Water Route
Other Major Routes

1827 Constitution of the Cherokee Nation

[added: 1] We the Representatives of the people of the Cherokee Nation , in Convention assembled in order to establish justice ensure tranquility, promote our common welfare, and secure to ourselves and our posterity the blessings of liberty acknowledging with humility and gratitude the goodness of the sovereign ruler of the Universe offording [affording] us an opportunity so favorable to the design and imploring his aid and direction in its accomplishments do ordain and establish this Constitution for the Government of the Cherokee Nation.

Article 1st.

The boundaries of this nation embracing the lands solemnly guaranteed and reserved forever to the Cherokee Nation the treaties concluded with the United States is as follows, and which shall forever hereafter remain unalterably the same; To wit: Beginning on the north bank of Tennessee River at the uper [upper] part of the Chickasaw Old Fields thence along the main Channel of said River [added: including] all the islands therein to the mouth of Highwassee River thence up the main channel of said river including Islands to the first Hill which closes in on said river about two miles above highwassee Old Town thence along the ridge which divides the waters of the highwassee Little Tellico , to the Tennessee river at Tallassee thence along the main channel including Islands to the junction of Cowee & Nonteyalee thence along the ridge in the fork of said river to the top of the blue ridge, thence along the blue ridge to the Unicoy Turnpike road thence a straight line to the nearest main source of the Chestotee ; thence along its main channel, including Islands to the Chatahoochie and thence down the same to the Creek boundary at Buzzard roast , thence along the boundary line which separates this and the Creek Nation , to a point on the Coosa river opposite the mouth of Wills Creek thence down along the South Bank of the same to a point, opposite Fort Strothers thence up the river [added: to] the mouth of Wills Creek, thence up along the east Bank of said Creek to the west branch, thereof and up the same to its source & thence along the ridge which seperates [separates] the Tombigby & Tennessee waters, to a point on the top of said ridge thence a due north Course to Camp Coffee , on Tennessee which is opposite the Chickasaw Island , thence to a place of beginning

Section 2. The sovereignity [sovereignty] & jurisdiction of this Government shall extend over the Country within the boundaries above described, and the lands therein is & shall remain the Common property of the nation; but the improvements made thereon and in possession of the citizens of the nation, are the exclusive & indefeasible property of the citizens respectively who made or may rightly be in possession of them provided that the Citizens of the nation possessing exclusive and indefeasable [indefeasible] rights to their respective improvements, [unclear] expressed in this article, shall possess no right nor power to dispose of their improvements in any manner whatever to the United States individual states, nor to individual Citizens thereof and that whenever any such Citizen or Citizens shall remove with their effects out of the limits of this nation and become Citizens of any Other government all their rights and privoleges [privileges] as Citizens of this nation Cease, Provided nevertheless the legislature shall have power to readmit by law, all the rights of Citizen Ship [Citizenship] to any such person or persons who may at any time desire to return to this nation by memorializing the General Council for such readmission — Moreover, the Legislature Shall have power to adopt such laws & regulations as its wisdom may deem expedient and proper to prevent the citizens from monopolizing improvements with the view of speculation.

Article 2. The powers of this Government shall be divided with three distinct departments, the legislative, Executive, and Judicial. 2nd. No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others; except in cases herein after expressly directed or permitted.

Article 3. The Legislative power shall be vested in two distinct branches, a Committee and a Council each to have a negative on the other, and both to be [unclear: stiled] the General Council of the Cherokee nation, and the styleof their acts and laws shall be Resolved by the Committee and Council in General Council Convened.

Section 2. The Cherokee Nation as laid off into eight Districts, shall remain so.

Section 3. The committee shall consist of two members from each district and the Council shall consist of three members from each district, to be chosen by the qualified electors of their respective districts for two years, and the elections to be held in every district on the first monday in august for the year 1828 and every succeeding two years thereafter. and the Genl [General] Council shall be held once a year to be convened on the second Monday of October in each year at New, echota no person shall be eligible to a seat in the general Council but a free cherokee male citizens, who shall have attained to the age of twenty five [twenty-five] years the descendants of Cherokee men by all free women (except the african race) whose parents may [added: be] or may have been living together as man and wife according to the Customs & laws of this nation & shall be entitled to all the rights and privoleges [priveleges] of this Nation, as well as the posterity of cherokee woman by all free men, no person who is of a negro or mulato [mulatto] parentage either by the father or mother side, shall be eligible to hold any office of profit or honor or trust under this Government The electors and members to the G eneral Council shall in all cases except in those of treason, felony, or breach of the peace be privoledged [privileged] from arrest during their attendance at elections and the General Council, and in going to or returning from the same. In all elections by the people the electors shall vote Vi — Va — Voce. Elections for members to the General Council for 1828 shall be held at the place of holding their several courts & at the other two precincts in each Districts which are designated by the law under which the members of this convention were elected, and that the district Judges shall superintend the elections within the precinct of their respective Court Houses; and the marshalls [marshals] & Sheriffs to superintend the precincts which may be assigned them by the Circuit Judges of their respective District, together with one other person who shall be appointed by the circuit Judges for each precinct within the District of their respective Circuits, and the Circuit Judges shall also appoint a clerk to each precinct, The superintendant [superintendent] & clerks shall on the Wednesday morning preceeding [preceding] the elections assemble at their respective court Houses and proceed to examine and ascertain the true state of the polls and shall Issue to each member duly elected a Certificate and also make an official return of the state of the polls of election to the Principal Chief and it shall be the duty of the Sheriffs to deliver the same to the executive office provided nevertheless the Genl [General] Council shall have power after the elections of 1828 to regulate by law the precincts & superintendants [superintendents] & clerks of election in the several Districts.

Section 4. All free male Citizens (excepting negroes & descendants of white & Indian men by Negro women who may have been set free) who shall have attained to the age of 18 years shall be equally entitled to vote at all public elections, —

Section 5. Each house of the General Council shall judge of the qualifications, elections & returns of its own members

Section 6. Each house of the Genl. [General] Council may determine the rules of its proceedings punish a member for disorderly behaviour [behavior] and with the Concurrence of two thirds expel a member, but not a second time for the same cause.

Section 7. Each House of the Genl. [General] Council when assembled shall choose its own officers, a majority of each House shall constitute a quorum to do business, but a smaller number may adjourn from day to day,

and compel the attendance of absent members, in such manner and under such penalties as each House may prescribe —

Section 8 — The members of the Committee Shall each receive from the public Treasury a compensation for their services — which Shall be, two dollars and fifty cents per day, during their attendance at the general Council, and the Members of the Council, Shall each receive, Two dollars per day for their Services during their attendance at the General Council provided that the same, may be increased or diminished, by law; but no alteration shall take effect, during the period of service of the Members of the General Council, by whom such alterations shall have been made —

Section 9. The General Council, shall regulate by law, by whom, and in what manner, Writs of election Shall be issued, to fill the vacancies which may happen, in either branch thereof

Section 10. Each member of the General Council before he takes his seat, Shall take the following oath or affirmation, to wit — I A.B. do solemnly swear or affirm, as the case may be, that I have not obtained my election by bribery, treats or any undue, and unlawful Means, used by myself or others, by my desire, or approbation for that purpose, that I consider myself Constitutionally qualified as a member of [gap] and that in all questions, and measures which may come, before me, I will give my vote, and So conduct myself, as may in my judgment appear most conducive to the interest and prosperity of this nation, and that I will bear, true faith and allegiance to the same and to the utmost of my ability, and power observe, confirm to Support and defend the Constitution thereof.

Section 11. No person who may be convicted of felony before any Court of this nation, Shall be eligible to any office or appointment, of honor profit or trust, within this nation —

Section 12. The General Council Shall have power to make, all laws and regulations, which they shall deem necessary and proper, for the good of the nation, which shall not be contrary to his Constitution —

Section 13. It shall be the duty of the General Council to pass such laws, as may be necessary and proper, to decide differences, by Arbitrators to be appointed by the parties, who may choose that summary mode of adjustment —

Section 14 — No power of suspending the laws of this nation Shall be excercised [exercised] unless by the Legislature or its authority

Section 15. That no retrospective laws nor any law, impairing the obligation of contracts shall be passed —

Section [gap] The Legislature shall have power to make laws for laying & collecting taxes for the purpose of raising a revenue —

Section [gap] All Bills making appropriations shall originate in the Committee; but the Council may propose amendments or reject the same —

Section 18. All other Bills, may originate in either House, Subject to the concurrence, or rejection of the other —

Section 19. All acknowledged Treaties shall be the Supreme law of the land

Section [gap] The General Council shall have the sole power of deciding on the Construction of all treaty stipulations. the Council Shall have the Sole power of impeaching —

Section [gap] All impeachments shall be tried by the Committee when sitting for that purpose the members shall be upon oath or affirmation no person shall be Convicted without the Concurrence of two thirds of the members present

Section [gap] The principal chief assistant principal Chief and all civil officers under this nation shall be liable to impeachments for any misdemeanor in office, but judgement in such cases, shall not extend for than removal office, and disqualification to hold any office of honor, trust, or profit, under this nation the party whether convicted or acquitted, shall nevertheless be liable to indictment trial judgement & punishment according to law,

Section [gap] The supreme executive power of this nation, shall be vested in a principal chief who shall be chosen by the Genl. [General] Council and shall hold his office four years to be elected as follows the Genl. [General] Council by a joint vote shall at their second annual session after the rising of this convention and at every fourth annual session thereafter on the second day after the two houses shall be organised [organized] and competent to proceed to business elect a principal Chief.

Section [gap] No person except a natural born citizen shall be eligible to the office of principal Chief neither shall any person be eligible to that office who Shall have not attained to the age of thirty five [thirty-five] years.

Section [gap] There shall also be chosen at the same time by General Council in the same manner for four years an assistant principal Chief in case of the removal of the principal Chief from office or of his death resignation or inability to discharge the powers and duties of the said office the same shall devolve on the assistant principal Chief until the inability be removed or vacancy filled by the General Council; The General Council may by law provided for the case of removal death resignation or inability both of the principal and assistant principal chiefs declaring what officer shall then act as principal chief until the disability be removed or a principal chief Shall be elected, the principal chief and assistant principal chief shall at stated times receive for their services a compensation which shall neither be increased nor diminished during the period for which they shall have been elected. And they shall not receive within that period any other imolument [emoluments] from the Cherokee nation or any other person.

Section [gap] Before the principal chief enters on the execution of his office he shall take the following oath or affirmation: "I do solemnly swear or (affirm) that I will faithfully execute the office of Principal Chief of the Cherokee Nation and will to the best of my ability preserve, protect & defend the constitution of the Cherokee Nation."

Section [gap] He may on extraordinary occassions [occasions] convene the Genl. [General] Council at the seat of government. He shall from time to time give to the general Council information of the state of the Government and recommend to their consideration such measures as he may think expedient. He shall take care that the laws be faithfully executed. It shall be his duty to visit the different Districts at least once in two years to inform himself of the general Condition of the Country

Section [gap] The assistant principal chief shall by virtue of his office aid & advise the principal chief in the administration of the Government at all times during his continuance in office.

Section [gap] Vacancies that may happen in offices the appointment of which is vested in the general council, shall be filled by the principal Chief during the recess of the General Council by granting commission which shall expire at the end next session.

Section [gap] Every bill which shall have passed both houses of the General council shall before it becomes a law be presented to the principal Chief of the Cherokee Nation if he approves it he shall sign it but if not he shall return it with his objections to that house in which it shall have Originated who shall enter the objections at large on their journals and proceed to reconsider it if after such reconsideration two thirds of that house shall agree to pass the Bill it shall be sent together with the objection to the other House by which it shall likewise be reconsidered and if approved of by two thirds of that house it shall become a law. If any Bill shall not be returned by the principal Chief within five days (sundays excepted) after it shall have been present to him the same shall be a law in like manner as if he had signed it unless the General Council by their adjournments prevents its return in which case it shall be a law unless sent back within three days after their next meeting

Section [gap] Members of the general Council and all officers Executive & Judicial shall be bound by oath to support the Constitution of this Nation and to perform the duties of their respective offices with fidelity

Section [gap] In case of disagreement between the two Houses with respect to the time of adjournment the principal chief shall have power to adjourn the Genl. [General] Council to such a time as he thinks proper Provided it be not to a period beyond the next constitutional meeting of the same

Section [gap] The Principal Chief shall during the sitting of the Genl. [General] Council attend at the seat of government

Section [gap] There shall be a council to consist of three men to be appointed by the joint vote of both Houses to advise the principal Chief in the executive part of the Government whom the principal chief shall have full power at his discretion and to assemble and he together with the assistant principal Chief and Counsellors [Counselors] or a majority of them may from time to time hold and keep a council for ordering and directing the affairs of the nation according to law

Section [gap] The members of the Council shall be chosen annually

Section [gap] The Resolution and advice of the Council shall be recorded in a Register and signed by the members agreeing thereto, which may be called for, by either House of the General Council, and any Councilor may enter his dissent, to the Resolution of the majority —

Section [gap] The Treasurer of the Cherokee Nation shall be chosen by the joint vote of each House of the General Council for the term of two years —

Section [gap] The Treasurer shall before entering on the duties of his office give bond to the nation with Securities to the satisfaction of the Legislature, — for the faithful discharge of his trust

Section [gap] No money shall be drawn from the Treasury but by Warrant from the principal Chief, and in consequence of appropriation made by law

Section [gap] It shall be the duty of the Treasurer to receive all public monies. and to make a regular Statement and account of the receipts and expenditure of all public monies to the annual Session of the General Council

Article 1st.

The Judicial powers shall be vested in a Supreme Court, and such Circuit and inferior Courts as the General Council may from time to time ordain and establish.

Article 2nd.

The Supreme Court, shall consist of three Judges, any two of whom, shall be a quorum —

Art. [Article] 3 — The Judges of each Shall hold their commissions four years, but any of them may be removed, from Office, on the address of two thirds of each House of the General Council, to the principal Chief, for that purpose —

Art [Article] 4 — The Judges of the Supreme and Circuit Courts, Shall at stated times receive a compensation which shall not be diminished during their Continuance in Office but they, Shall receive no fees or perquisites of Office — nor hold any other Office, of profit or trust, under this nation or any other power —

Art [Article] 5 — No person shall be appointed a Judge of any of the Courts, before he shall have attained to the age of thirty years, nor shall any person continue to excercise [exercise] the duties of any of the said offices after he Shall have attained, to the age of seventy years —

Art [Article] 6. The Judges of the Supreme and Circuit Courts, shall be appointed by joint vote of each House, of the General Council —

Art [Article] 7 — There shall be appointed in each district Render the Legislative authority as many Justices of the peace as may be deemed the public good require — and whose powers, duties and duration in office shall be clearly designated

Art [Article] 8 — The Judges of the Supreme Court, and Circuit Courts shall have complete criminal Jurisdiction in such cases, and in such manner, as may be pointed out, by law —

Art [Article] 9 — Each Court shall Choose its own clerks for the term of four years, but such clerks shall not be continued in office unless their qualifications, shall be adjudged and approved of by the Judges — of the Supreme Court, and they shall be removable for breach of good behaviour [behavior], at any time by the Judges of the respective Courts.

Art [Article] 10 — No Judge Shall sit on the trial of any cause, where the parties shall be connected with him by affinity, or consanguinity, except by consent of the parties — In cases all the Judges of the Supreme Court, Shall be intrusted in the event, if any cause, or related to all or either of the parties, the legislature may provide by law for the Selection of three men of good Character, and knowledge for the determination of thereof who shall be specially commissioned by the principal Chief for the case.

Art [Article] 11 — All writs and other process shall run in the name of the Cherokee nation, and bear test [testimony], and be signed by the respective Clerks

Art [Article] 12 — Indictments shall conclude against the peace and dignity of the Cherokee nation —

Art [Article] 13 — The Supreme Court shall hold its Session Annually at the seat of Government to be convened on the second Monday of October in each year

Art [Article] 14 — In all continual prosecutions the accused Shall have the right of being heard of demanding the nature and cause, of the accusation against him, of meeting the witness face to face of having compulsory process for obtaining witnesses in his favor — and in prosecutions by indictments or information, a speedy public trial by an impartial Jury of the vicinage nor shall he be compelled to give evidence against himself —

Art [Article] 15 — That the people shall be secure in their persons houses papers and possessions from unreasonable seizures and searches & that no warrant to search any place or to seize any person or things shall issue without describing them as nearly as may be, nor without good excuse, supported by Oath or affirmation — all prisoners shall be bailable, by Sufficient securities [added: unless] for capital offences, where the proof is evident or presumption great —

Art [Article] 16 — Whereas the Ministers of the Gospel are by their profession dedicated to the service of God "and Care of souls" and ought not to be divested from the great duty of their functions — Therefore no minister of the Gospel, or public preacher of any Religious persuasion, whilst he continues the excercise [exercise] of his pastoral functions, shall be eligible to the Office of Principal Chief or a seat in either House of the general Council —

Art [Article] 17 — No persons who denies the being of God, of future state of rewards and punishments, shall hold any office in the Civil departments of this nation —

Art [Article] 18 — The free excercise [exercise] of religious worship and serving God without destruction, Shall forever be allowed within this nation, provided that this liberty of conscience, Shall not be so construed, as to excuse acts of licentiousness, or Justify practices inconsistent with the peace of safety of this nation —

Art [Article] 19 — Whenever the General Council Shall determine, the expediency of appointing Delegators, or other public agents, for the purpose of transacting business with the government of the United States, the principal Chief shall have powers, to recommend, and by the advice and consent of the committee shall appoint and commission such delegates or public agents accordingly, and on all matters ofinterest touching the rights of the Citizens of this nation, which may require attention of the United States Government, The principal Chief Shall keep a friendly correspondence with government through the medium of the proper officers —

Art [Article] 20 — All commissions shall be the name and by the Authority of the Cherokee nation and be sealed with the Seal of the Nation and be signed by the principal Chief — The principal Chief shall make use of his private Seal until a national seal shall be provided —

Art [Article] 21. A Sheriff shall be elected in each district by the qualified electors thereof who shall hold his office for the term of two years unless sooner removed. — Should a vacancy Occur Subsequent to an election, it shall be filled, by the principal Chief, as in other cases and the person so appointed, Shall continue in Office, until the next General election when such vacancies, shall be filled, by the qualified electors, and the sheriff then elected shall continue in for two years —

Art [Article] 22. There shall be a Marshall appointed by a joint vote of both Houses of the General Council for the term of four years, whose compensation and duty shall be regulated by law, and whose jurisdiction shall extend, over the Cherokee Nation —

Art [Article] 23. No person shall for the same offence be twice put in jeopardy of life or liberty nor shall any persons property be taken or applied to public use, without his consent provided that nothing shall be so construed in this clause as to impair the right and power of the General Council to lay and collect taxes — That

all Courts, shall be open and every person for an injury done him in his property, person, or reputation, shall have remedy by due course of law

Art [Article] 24 — The right of trial by Jury shall remain inviolate.

Religion, Morality, and knowledge being necessary to good government and the preservation of liberty, and the happiness of Mankind Schools and the means of education, shall forever, be encouraged in this nation The appointment of all officers not otherwise directed by this constitution, shall be vested in the legislature All Laws in force in this nation at the passing of this constitution shall so continue until altered or repealed by the Legislature except when they are temporary in which case they shall expire at the times respectively limitted [limited] for their duration if not continued by acts of the Legislature.

The General Council may at any time propose such amendments to this Constitution as two thirds of each House shall deem expedient and the Principal Chief shall issue a proclamation directing all the Civil officers of the several Districts to promulgate the same as extensively as possible within their respective Districts at least nine Months previous to the next general election and if at the first session of the General Council after such general election two thirds of each House shall by yeas and nays ratify such proposed amendments they shall be valid to all intents and purposes as parts of this Constitution provided that such proposed amendments shall be read on three several days in each house as will when the same are proposed as when they are finally ratified

Done in Convention at New Town
Echota this 24th day of July 1827.

Title: The Indian Removal Act of 1830
Author: U.S. Government
Year Published: 1830

(excerpt from Indian Removal Act)

The Indian Removal Act of 1830

CHAP. CXLVIII.--An Act to provide for an exchange of lands with the Indians residing in any of the states or territories, and for their removal west of the river Mississippi.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That it shall and may be lawful for the President of the United States to cause so much of any territory belonging to the United States, west of the river Mississippi, not included in any state or organized territory, and to which the Indian title has been extinguished, as he may judge necessary, to be divided into a suitable number of districts, for the reception of such tribes or nations of Indians as may choose to exchange the lands where they now reside, and remove there; and to cause each of said districts to be so described by natural or artificial marks, as to be easily distinguished from every other.

SEC. 2. And be it further enacted, That it shall and may be lawful for the President to exchange any or all of such districts, so to be laid off and described, with any tribe or nation within the limits of any of the states or territories, and with which the United States have existing treaties, for the whole or any part or portion of the territory claimed and occupied by such tribe or nation, within the bounds of any one or more of the states or territories, where the land claimed and occupied by the Indians, is owned by the United States, or the United States are bound to the state within which it lies to extinguish the Indian claim thereto.

SEC. 3. And be it further enacted, That in the making of any such exchange or exchanges, it shall and may be lawful for the President solemnly to assure the tribe or nation with which the exchange is made, that the United States will forever secure and guaranty to them, and their heirs or successors, the country so exchanged with them; and if they prefer it, that the United States will cause a patent or grant to be made and executed to them for the same: Provided always, That such lands shall revert to the United States, if the Indians become extinct, or abandon the same.

SEC. 4. And be it further enacted, That if, upon any of the lands now occupied by the Indians, and to be exchanged for, there should be such improvements as add value to the land claimed by any individual or individuals of such tribes or nations, it shall and may be lawful for the President to cause such value to be ascertained by appraisement or otherwise, and to cause such ascertained value to be paid to the person or persons rightfully claiming such improvements. And upon the payment of such valuation, the improvements so valued and paid for, shall pass to the United States, and possession shall not afterwards be permitted to any of the same tribe.

SEC. 5. And be it further enacted, That upon the making of any such exchange as is contemplated by this act, it shall and may be lawful for the President to cause such aid and assistance to be furnished to the emigrants as

may be necessary and proper to enable them to remove to, and settle in, the country for which they may have exchanged; and also, to give them such aid and assistance as may be necessary for their support and subsistence for the first year after their removal.

SEC. 6. And be it further enacted, That it shall and may be lawful for the President to cause such tribe or nation to be protected, at their new residence, against all interruption or disturbance from any other tribe or nation of Indians, or from any other person or persons whatever.

SEC. 7. And be it further enacted, That it shall and may be lawful for the President to have the same superintendence and care over any tribe or nation in the country to which they may remove, as contemplated by this act, that he is now authorized to have over them at their present places of residence.

Treaty of New Echota

(U.S. Treaty with unofficial Cherokee delegation)

INDIAN AFFAIRS: LAWS AND TREATIES

Vol. II, Treaties

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TREATY WITH THE CHEROKEE, 1835.

Dec. 29, 1835. | 7 Stat., 478. | Proclamation, May 23, 1836.

Articles of a treaty, concluded at New Echota in the State of Georgia on the 29th day of Decr. 1835 by General William Carroll and John F. Schermerhorn commissioners on the part of the United States and the Chiefs Head Men and People of the Cherokee tribe of Indians.

WHEREAS the Cherokees are anxious to make some arrangements with the Government of the United States whereby the difficulties they have experienced by a residence within the settled parts of the United States under the jurisdiction and laws of the State Governments may be terminated and adjusted; and with a view to reuniting their people in one body and securing a permanent home for themselves and their posterity in the country selected by their forefathers without the territorial limits of the State sovereignties, and where they can establish and enjoy a government of their choice and perpetuate such a state of society as may be most consonant with their views, habits and condition; and as may tend to their individual comfort and their advancement in civilization.

And whereas a delegation of the Cherokee nation composed of Messrs. John Ross Richard Taylor Danl. McCoy Samuel Gunter and William Rogers with full power and authority to conclude a treaty with the United States did on the 28th day of February 1835 stipulate and agree with the Government of the United States to submit to the Senate to fix the amount which should be allowed the Cherokees for their claims and for a cession of their lands east of the Mississippi river, and did agree to abide by the award of the Senate of the United States themselves and to recommend the same to their people for their final determination.

And whereas on such submission the Senate advised “that a sum not exceeding five millions of dollars be paid to the Cherokee Indians for all their lands and possessions east of the Mississippi river.”

And whereas this delegation after said award of the Senate had been made, were called upon to submit propositions as to its disposition to be arranged in a treaty which they refused to do, but insisted that the same “should be referred to their nation and there in general council to deliberate and determine on the subject in order to ensure harmony and good feeling among themselves.”

And whereas a certain other delegation composed of John Ridge Elias Boudinot Archilla Smith S. W. Bell John West Wm. A. Davis and Ezekiel West, who represented that portion of the nation in favor of emigration to the Cherokee country west of the Mississippi entered into propositions for a treaty with John F. Schermerhorn commissioner on the part of the United States which were to be submitted to their nation for their final action and determination:

And whereas the Cherokee people at their last October council at Red Clay, fully authorized and empowered a delegation or committee of twenty persons of their nation to enter into and conclude a treaty with the United States commissioner then present, *at that place or elsewhere* and as the people had good reason to believe that a treaty would

then and there be made or at a subsequent council at New Echota which the commissioners it was well known and understood, were authorized and instructed to convene for said purpose; and since the said delegation have gone on to Washington city, with a view to close negotiations there, as stated by them notwithstanding they were officially informed by the United States commissioner that they would not be received by the President of the United States; and that the Government would transact no business of this nature with them, and that if a treaty was made it must be done here in the nation, where the delegation at Washington last winter *urged that it should be done for the purpose of promoting peace and harmony among the people*; and since these facts have also been corroborated to us by a communication recently received by the commissioner from the Government of the United States and read and explained to the people in open council and therefore believing said delegation can effect nothing and since our difficulties are daily increasing and our situation is rendered more and more precarious uncertain and insecure in consequence of the legislation of the States; and seeing no effectual way of relief, but in accepting the liberal overtures of the United States.

And whereas Genl William Carroll and John F. Schermerhorn were appointed commissioners on the part of the United States, with full power and authority to conclude a treaty with the Cherokees east and were directed by the President to convene the people of the nation in general council at New Echota and to submit said propositions to them with power and authority to vary the same so as to meet the views of the Cherokees in reference to its details.

And whereas the said commissioners did appoint and notify a general council of the nation to convene at New Echota on the 21st day of December 1835; and informed them that the commissioners would be prepared to make a treaty with the Cherokee people who should assemble there and those who did not come they should conclude gave their assent and sanction to whatever should be transacted at this council and the people having met in council according to said notice.

Therefore the following articles of a treaty are agreed upon and concluded between William Carroll and John F. Schermerhorn commissioners on the part of the United States and the chiefs and head men and people of the Cherokee nation in general council assembled this 29th day of Decr 1835.

ARTICLE 1.

The Cherokee nation hereby cede relinquish and convey to the United States all the lands owned claimed or possessed by them east of the Mississippi river, and hereby release all their claims upon the United States for spoliations of every kind for and in consideration of the sum of five millions of dollars to be expended paid and invested in the manner stipulated and agreed upon in the following articles But as a question has arisen between the commissioners and the Cherokees whether the Senate in their resolution by which they advised "that a sum not exceeding five millions of dollars be paid to the Cherokee Indians for all their lands and possessions east of the Mississippi river" have included and made any allowance or consideration for claims for spoliations it is therefore agreed on the part of the United States that this question shall be again submitted to the Senate for their consideration and decision and if no allowance was made for spoliations that then an additional sum of three hundred thousand dollars be allowed for the same.

ARTICLE 2.

Whereas by the treaty of May 6th 1828 and the supplementary treaty thereto of Feb. 14th 1833 with the Cherokees west of the Mississippi the United States guarantied and secured to be conveyed by patent, to the Cherokee nation of Indians the following tract of country "Beginning at a point on the old western territorial line of Arkansas Territory being twenty-five miles north from the point where

the territorial line crosses Arkansas river, thence running from said north point south on the said territorial line where the said territorial line crosses Verdigris river; thence down said Verdigris river to the Arkansas river; thence down said Arkansas to a point where a stone is placed opposite the east or lower bank of Grand river at its junction with the Arkansas; thence running south forty-four degrees west one mile; thence in a straight line to a point four miles northerly, from the mouth of the north fork of the Canadian; thence along the said four mile line to the Canadian; thence down the Canadian to the Arkansas; thence down the Arkansas to that point on the Arkansas where the eastern Choctaw boundary strikes said river and running thence with the western line of Arkansas Territory as now defined, to the southwest corner of Missouri; thence along the western Missouri line to the land assigned the Senecas; thence on the south line of the Senecas to Grand river; thence up said Grand river as far as the south line of the Osage reservation, extended if necessary; thence up and between said south Osage line extended west if necessary, and a line drawn due west from the point of beginning to a certain distance west, at which a line running north and south from said Osage line to said due west line will make seven millions of acres within the whole described boundaries. In addition to the seven millions of acres of land thus provided for and bounded, the United States further guaranty to the Cherokee nation a perpetual outlet west, and a free and unmolested use of all the country west of the western boundary of said seven millions of acres, as far west as the sovereignty of the United States and their right of soil extend:

Provided however That if the saline or salt plain on the western prairie shall fall within said limits prescribed for said outlet, the right is reserved to the United States to permit other tribes of red men to get salt on said plain in common with the Cherokees; And letters patent shall be issued by the United States as soon as practicable for the land hereby guarantied."

And whereas it is apprehended by the Cherokees that in the above cession there is not contained a sufficient quantity of land for the accommodation of the whole nation on their removal west of the Mississippi the United States in consideration of the sum of five hundred thousand dollars therefore hereby covenant and agree to convey to the said Indians, and their descendants by patent, in fee simple the following additional tract of land situated between the west line of the State of Missouri and the Osage reservation beginning at the southeast corner of the same and runs north along the east line of the Osage lands fifty miles to the northeast corner thereof; and thence east to the west line of the State of Missouri; thence with said line south fifty miles; thence west to the place of beginning; estimated to contain eight hundred thousand acres of land; but it is expressly understood that if any of the lands assigned the Quapaws shall fall within the aforesaid bounds the same shall be reserved and excepted out of the lands above granted and a pro rata reduction shall be made in the price to be allowed to the United States for the same by the Cherokees.

ARTICLE 3.

The United States also agree that the lands above ceded by the treaty of Feb. 14 1833, including the outlet, and those ceded by this treaty shall all be included in one patent executed to the Cherokee nation of Indians by the President of the United States according to the provisions of the act of May 28 1830. It is, however, agreed that the military reservation at Fort Gibson shall be held by the United States. But should the United States abandon said post and have no further use for the same it shall revert to the Cherokee nation. The United States shall always have the right to make and establish such post and military roads and forts in any part of the Cherokee country, as they may deem proper for the interest and protection of the same

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and the free use of as much land, timber, fuel and materials of all kinds for the construction and support of the same as may be necessary; provided that if the private rights of individuals are interfered with, a just compensation therefor shall be made.

ARTICLE 4.

The United States also stipulate and agree to extinguish for the benefit of the Cherokees the titles to the reservations within their country made in the Osage treaty of 1825 to certain half-breeds and for this purpose they hereby agree to pay to the persons to whom the same belong or have been assigned or to their agents or guardians whenever they shall execute after the ratification of this treaty a satisfactory conveyance for the same, to the United States, the sum of fifteen thousand dollars according to a schedule accompanying this treaty of the relative value of the several reservations.

And whereas by the several treaties between the United States and the Osage Indians the Union and Harmony Missionary reservations which were established for their benefit are now situated within the country ceded by them to the United States; the former being situated in the Cherokee country and the latter in the State of Missouri. It is therefore agreed that the United States shall pay the American Board of Commissioners for Foreign Missions for the improvements on the same what they shall be appraised at by Capt. Geo. Vashon Cherokee sub-agent Abraham Redfield and A. P. Chouteau or such persons as the President of the United States shall appoint and the money allowed for the same shall be expended in schools among the Osages and improving their condition.

It is understood that the United States are to pay the amount allowed for the reservations in this article and not the Cherokees.

ARTICLE 5.

The United States hereby covenant and agree that the lands ceded to the Cherokee nation in the forgoing article shall, in no future time without their consent, be included within the territorial limits or jurisdiction of any State or Territory. But they shall secure to the Cherokee nation the right by their national councils to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country belonging to their people or such persons as have connected themselves with them: provided always that they shall not be inconsistent with the constitution of the United States and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians; and also, that they stall not be considered as extending to such citizens and army of the United States as may travel or reside in the Indian country by permission according to the laws and regulations established by the Government of the same.

ARTICLE 6.

Perpetual peace and friendship shall exist between the citizens of the United States and the Cherokee Indians. The United States agree to protect the Cherokee nation from domestic strife and foreign enemies and against intestine wars between the several tribes. The Cherokees shall endeavor to preserve and maintain the peace of the country and not make war upon their neighbors they shall also be protected against interruption and intrusion from citizens of the United States, who may attempt to settle in the country without their consent; and all such persons shall be removed from the same by order of the President of the United States. But this is not intended to prevent the residence among them of useful farmers mechanics and teachers for the instruction of Indians according to treaty stipulations.

ARTICLE 7.

The Cherokee nation having already made great progress in civilization and deeming it important that every proper and laudable inducement should be offered to their people to improve their condition as well as to guard and secure in the most effectual manner the rights guarantied to them in this treaty, and with a view to illustrate the liberal and enlarged policy of the Government of the United States towards

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the Indians in their removal beyond the territorial limits of the States, it is stipulated that they shall be entitled to a delegate in the House of Representatives of the United States whenever Congress shall make provision for the same.

ARTICLE 8.

The United States also agree and stipulate to remove the Cherokees to their new homes and to subsist them one year after their arrival there and that a sufficient number of steamboats and baggage-wagons shall be furnished to remove them comfortably, and so as not to endanger their health, and that a physician well supplied with medicines shall accompany each detachment of emigrants removed by the Government. Such persons

and families as in the opinion of the emigrating agent are capable of subsisting and removing themselves shall be permitted to do so; and they shall be allowed in full for all claims for the same twenty dollars for each member of their family; and in lieu of their one year's rations they shall be paid the sum of thirty-three dollars and thirty-three cents if they prefer it.

Such Cherokees also as reside at present out of the nation and shall remove with them in two years west of the Mississippi shall be entitled to allowance for removal and subsistence as above provided.

ARTICLE 9.

The United States agree to appoint suitable agents who shall make a just and fair valuation of all such improvements now in the possession of the Cherokees as add any value to the lands; and also of the ferries owned by them, according to their net income; and such improvements and ferries from which they have been dispossessed in a lawless manner or under any existing laws of the State where the same may be situated.

The just debts of the Indians shall be paid out of any monies due them for their improvements and claims; and they shall also be furnished at the discretion of the President of the United States with a sufficient sum to enable them to obtain the necessary means to remove themselves to their new homes, and the balance of their dues shall be paid them at the Cherokee agency west of the Mississippi. The missionary establishments shall also be valued and appraised in a like manner and the amount of them paid over by the United States to the treasurers of the respective missionary societies by whom they have been established and improved in order to enable them to erect such buildings and make such improvements among the Cherokees west of the Mississippi as they may deem necessary for their benefit. Such teachers at present among the Cherokees as this council shall select and designate shall be removed west of the Mississippi with the Cherokee nation and on the same terms allowed to them.

ARTICLE 10.

The President of the United States shall invest in some safe and most productive public stocks of the country for the benefit of the whole Cherokee nation who have removed or shall remove to the lands assigned by this treaty to the Cherokee nation west of the Mississippi the following sums as a permanent fund for the purposes hereinafter specified and pay over the net income of the same annually to such person or persons as shall be authorized or appointed by the Cherokee nation to receive the same and their receipt shall be a full discharge for the amount paid to them viz: the sum of two hundred thousand dollars in addition to the present annuities of the nation to constitute a general fund the interest of which shall be applied annually by the council of the nation to such purposes as they may deem best for the general interest of their people. The sum of fifty thousand dollars to constitute an orphans' fund the annual income of which shall be expended towards the support and education of such orphan children as are destitute of the means of subsistence. The sum of one hundred and fifty thousand dollars in addition to the present school fund of the nation shall constitute a permanent school fund, the interest of which shall be applied annually by the council of the nation for the support of

common schools and such a literary institution of a higher order as may be established in the Indian country. And in order to secure as far as possible the true and beneficial application of the orphans' and school fund the council of the Cherokee nation when required by the President of the United States shall make a report of the application of those funds and he shall at all times have the right if the funds have been misapplied to correct any abuses of them and direct the manner of their application for the purposes for which they were intended. The council of the nation may by giving two years' notice of their intention withdraw their funds by and with the consent of the President and Senate of the United States, and invest them in such manner as they may deem most proper for their interest. The United States also agree and stipulate to pay the just debts and claims against the Cherokee nation held by the citizens of the same and also the just claims of citizens of the United States for services rendered to the nation and the sum of sixty thousand dollars is appropriated for this purpose but no claims against individual persons of the nation shall be allowed and paid by the nation. The sum of three hundred thousand dollars is hereby set apart to pay and liquidate the just claims of the Cherokees upon the United States for spoliations of every kind, that have not been already satisfied under former treaties.

ARTICLE 11.

The Cherokee nation of Indians believing it will be for the interest of their people to have all their funds and annuities under their own direction and future disposition hereby agree to commute their permanent annuity of ten thousand dollars for the sum of two hundred and fourteen thousand dollars, the same to be invested by the President of the United States as a part of the general fund of the nation; and their present school fund amounting to about fifty thousand dollars shall constitute a part of the permanent school fund of the nation.

ARTICLE 12.

Those individuals and families of the Cherokee nation that are averse to a removal to the Cherokee country west of the Mississippi and are desirous to become citizens of the States where they reside and such as are qualified to take care of themselves and their property shall be entitled to receive their due portion of all the personal benefits accruing under this treaty for their claims, improvements and *per capita*; as soon as an appropriation is made for this treaty.

Such heads of Cherokee families as are desirous to reside within the States of No. Carolina, Tennessee, and Alabama subject to the laws of the same; and who are qualified or calculated to become useful citizens shall be entitled, on the certificate of the commissioners to a preemption right to one hundred and sixty acres of land or one quarter section at the minimum Congress price; so as to include the present buildings or improvements of those who now reside there and such as do not live there at present shall be permitted to locate within two years any lands not already occupied by persons entitled to pre-emption privilege under this treaty and if two or more families live on the same quarter section and they desire to continue their residence in these States and are qualified as above specified they shall, on receiving their pre-emption certificate be entitled to the right of pre-emption to such lands as they may select not already taken by any person entitled to them under this treaty.

It is stipulated and agreed between the United States and the Cherokee people that John Ross, James Starr, George Hicks, John Gunter, George Chambers, John Ridge, Elias

Boudinot, George Sanders, John Martin , William Rogers, Roman Nose Situwake, and John Timpson shall be a committee on the part of the Cherokees to recommend such persons for the privilege of pre-emption rights as may be deemed entitled to the same under the above articles and to select the missionaries who shall be removed with the nation; and that they be hereby

fully empowered and authorized to transact all business on the part of the Indians which may arise in carrying into effect the provisions of this treaty and settling the same with the United States. If any of the persons above mentioned should decline acting or be removed by death; the vacancies shall be filled by the committee themselves.

It is also understood and agreed that the sum of one hundred thousand dollars shall be expended by the commissioners in such manner as the committee deem best for the benefit of the poorer class of Cherokees as shall remove west or have removed west and are entitled to the benefits of this treaty. The same to be delivered at the Cherokee agency west as soon after the removal of the nation as possible.

ARTICLE 13.

In order to make a final settlement of all the claims of the Cherokees for reservations granted under former treaties to any individuals belonging to the nation by the United States it is therefore hereby stipulated and agreed and expressly understood by the parties to this treaty—that all the Cherokees and their heirs and descendants to whom any reservations have been made under any former treaties with the United States, and who have not sold or conveyed the same by deed or otherwise and who in the opinion of the commissioners have complied with the terms on which the reservations were granted as far as practicable in the several cases; and which reservations have since been sold by the United States shall constitute a just claim against the United States and the original reservee or their heirs or descendants shall be entitled to receive the present value thereof from the United States as unimproved lands. And all such reservations as have not been sold by the United States and where the terms on which the reservations were made in the opinion of the commissioners have been complied with as far as practicable, they or their heirs or descendants shall be entitled to the same. They are hereby granted and confirmed to them—and also all persons who were entitled to reservations under the treaty of 1817 and who as far as practicable in the opinion of the commissioners, have complied with the stipulations of said treaty, although by the treaty of 1819 such reservations were included in the unceded lands belonging to the Cherokee nation are hereby confirmed to them and they shall be entitled to receive a grant for the same. And all such reservees as were obliged by the laws of the States in which their reservations were situated, to abandon the same or purchase them from the States shall be deemed to have a just claim against the United States for the amount by them paid to the States with interest thereon for such reservations and if obliged to abandon the same, to the present value of such reservations as unimproved lands but in all cases where the reservees have sold their reservations or any part thereof and conveyed the same by deed or otherwise and have been paid for the same, they their heirs or descendants or their assigns shall not be considered as having any claims upon the United States under this article of the treaty nor be entitled to receive any compensation for the lands thus disposed of. It is expressly understood by the parties to this treaty that the amount to be allowed for reservations under this article shall not be deducted out of the consideration money allowed to the Cherokees for their claims for spoilations and the cession of their

lands; but the same is to be paid for independently by the United States as it is only a just fulfillment of former treaty stipulations.

ARTICLE 14.

It is also agreed on the part of the United States that such warriors of the Cherokee nation as were engaged on the side of the United States in the late war with Great Britain and the southern tribes of Indians, and who were wounded in such service shall be entitled to such pensions as shall be allowed them by the Congress of the United States to commence from the period of their disability.

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ARTICLE 15.

It is expressly understood and agreed between the parties to this treaty that after deducting the amount which shall be actually expended for the payment for improvements, ferries, claims, for spoliations, removal subsistence and debts and claims upon the Cherokee nation and for the additional quantity of lands and goods for the poorer class of Cherokees and the several sums to be invested for the general national funds; provided for in the several articles of this treaty the balance whatever the same may be shall be equally divided between all the people belonging to the Cherokee nation east according to the census just completed; and such Cherokees as have removed west since June 1833 who are entitled by the terms of their enrollment and removal to all the benefits resulting from the final treaty between the United States and the Cherokees east they shall also be paid for their improvements according to their approved value before their removal where fraud has not already been shown in their valuation.

ARTICLE 16.

It is hereby stipulated and agreed by the Cherokees that they shall remove to their new homes within two years from the ratification of this treaty and that during such time the United States shall protect and defend them in their possessions and property and free use and occupation of the same and such persons as have been dispossessed of their improvements and houses; and for which no grant has actually issued previously to the enactment of the law of the State of Georgia, of December 1835 to regulate Indian occupancy shall be again put in possession and placed in the same situation and condition, in reference to the laws of the State of Georgia, as the Indians that have not been dispossessed; and if this is not done, and the people are left unprotected, then the United States shall pay the several Cherokees for their losses and damages sustained by them in consequence thereof. And it is also stipulated and agreed that the public buildings and improvements on which they are situated at New Echota for which no grant has been actually made previous to the passage of the above recited act if not occupied by the Cherokee people shall be reserved for the public and free use of the United States and the Cherokee Indians for the purpose of settling and closing all the Indian business arising under this treaty between the commissioners of claims and the Indians.

The United States, and the several States interested in the Cherokee lands, shall immediately proceed to survey the lands ceded by this treaty; but it is expressly agreed and understood between the parties that the agency buildings and that tract of land surveyed and laid off for the use of Colonel R. J. Meigs Indian agent or heretofore enjoyed and occupied by his successors in office shall continue subject to the use and

occupancy of the United States, or such agent as may be engaged specially superintending the removal of the tribe.

ARTICLE 17.

All the claims arising under or provided for in the several articles of this treaty, shall be examined and adjudicated by such commissioners as shall be appointed by the President of the United States by and with the advice and consent of the Senate of the United States for that purpose and their decision shall be final and on their certificate of the amount due the several claimants they shall be paid by the United States. All stipulations in former treaties which have not been superseded or annulled by this shall continue in full force and virtue.

ARTICLE 18.

Whereas in consequence of the unsettled affairs of the Cherokee people and the early frosts, their crops are insufficient to support their families and great distress is likely to ensue and whereas the nation will not, until after their removal be able advantageously to expend the income of the permanent funds of the nation it is therefore agreed that the annuities of the nation which may accrue under this

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treaty for two years, the time fixed for their removal shall be expended in provision and clothing for the benefit of the poorer class of the nation and the United States hereby agree to advance the same for that purpose as soon after the ratification of this treaty as an appropriation for the same shall be made. It is however not intended in this article to interfere with that part of the annuities due the Cherokees west by the treaty of 1819.

ARTICLE 19.

This treaty after the same shall be ratified by the President and Senate of the United States shall be obligatory on the contracting parties.

ARTICLE 20.

[Supplemental article. Stricken out by Senate.]

In testimony whereof, the commissioners and the chiefs, head men, and people whose names are hereunto annexed, being duly authorized by the people in general council assembled, have affixed their hands and seals for themselves, and in behalf of the Cherokee nation.
I have examined the foregoing treaty, and although not present when it was made, I approve its provisions generally, and therefore sign it.

Wm. Carroll,

J. F. Schermerhorn.

Major Ridge, his x mark, [L. S.]

James Foster, his x mark, [L. S.]

Tesa-ta-esky, his x mark, [L. S.]

Charles Moore, his x mark, [L. S.]

George Chambers, his x mark, [L. S.]

Tah-yeske, his x mark, [L. S.]

Archilla Smith, his x mark, [L. S.]

Andrew Ross, [L. S.]

William Lassley, [L. S.]

Cae-te-hee, his x mark , [L. S.]

Te-gah-e-ske, his x mark, [L. S.]Robert Rogers, [L. S.]

John Gunter, [L. S.]

John A. Bell, [L. S.]

Charles F. Foreman, [L. S.]

William Rogers, [L. S.]

George W. Adair, [L. S.]

Elias Boudinot, [L. S.]

James Starr, his x mark, [L. S.]

Jesse Half-breed, his x mark, [L. S.]

Signed and sealed in presence of—

Western B. Thomas, secretary.

Ben. F. Currey, special agent.

M. Wolfe Batman, first lieutenant, sixth U. S. infantry, disbursing agent.

Jon. L. Hooper, lieutenant, fourth Infantry.

C. M Hitchcock, M. D., assistant surgeon, U.S.A.

G. W. Currey,

Wm. H. Underwood,

Cornelius D. Terhune,

John W. H. Underwood.

In compliance with instructions of the council at New Echota, we sign this treaty.

Stand Watie,

John Ridge.

March 1, 1836.

Witnesses:

Elbert Herring,

Alexander H. Everett,

John Robb,

D. Kurtz,

Wm.Y. Hansell,

Samuel J. Potts,

Jno. Litle,

S. Rockwell.

Dec. 31, 1835 | 7 Stat., 487.
Whereas the western Cherokees have appointed a delegation to visit the eastern Cherokees to assure them of the friendly disposition of their people and their desire that the nation should again be united as one people and to urge upon them the expediency of accepting the overtures of the Government; and that, on their removal they may be assured of a hearty welcome and an equal participation with them in all the benefits and privileges of the Cherokee country west and the undersigned two of said delegation being the only delegates in the eastern nation from the west at the signing and sealing of the treaty lately concluded at New Echota between their eastern brethren and the United States; and having fully understood the provisions of the same they agree to it in behalf of the western Cherokees. But it is expressly understood that nothing in this treaty shall affect any claims of the western Cherokees on the United States.

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In testimony whereof, we have, this 31st day of December, 1835, hereunto set our hands and seals.

James Rogers,

John Smith.
Delegates from the western Cherokees.

Treaty of Hopewell

(treaty between Confederation Congress and Cherokee 1785)

INDIAN AFFAIRS: LAWS AND TREATIES

Vol. II, Treaties

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TREATY WITH THE CHEROKEE, 1785.

Nov. 28, 1785. | 7 Stat., 18.

Articles concluded at Hopewell, on the Keowee, between Benjamin Hawkins, Andrew Pickens, Joseph Martin, and Lachlan M'Intosh, Commissioners Plenipotentiary of the United States of America, of the one Part, and the Head-Men and Warriors of all the Cherokees of the other.

The Commissioners Plenipotentiary of the United States, in Congress assembled, give peace to all the Cherokees, and receive them into the favor and protection of the United States of America, on the following conditions:

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ARTICLE 1.

The Head-Men and Warriors of all the Cherokees shall restore all the prisoners, citizens of the United States, or subjects of their allies, to their entire liberty: They shall also restore all the Negroes, and all other property taken during the late war from the citizens, to such person, and at such time and place, as the Commissioners shall appoint.

ARTICLE 2.

The Commissioners of the United States in Congress assembled, shall restore all the prisoners taken from the Indians, during the late war, to the Head-Men and Warriors of the Cherokees, as early as is practicable.

ARTICLE 3.

The said Indians for themselves and their respective tribes and towns do acknowledge all the Cherokees to be under the protection of the United States of America, and of no other sovereign whosoever.

ARTICLE 4.

The boundary allotted to the Cherokees for their hunting grounds, between the said Indians and the citizens of the United States, within the limits of the United States of America, is, and shall be the following, viz. Beginning at the mouth of Duck river, on the Tennessee; thence running north-east to the ridge dividing the waters running into Cumberland from those running into the Tennessee; thence eastwardly along the said ridge to a north-east line to be run, which shall strike the river Cumberland forty miles above Nashville; thence along the said line to the river; thence up the said river to the ford where the Kentucky road crosses the river; thence to Campbell's line, near Cumberland gap; thence to the mouth of Claud's creek on Holstein; thence to the Chimney-top mountain; thence to Camp-creek, near the mouth of Big Limestone, on Nolichuckey; thence a southerly course six miles to a mountain; thence south to the North-Carolina line; thence to the South-Carolina Indian boundary, and along the same south-west over the top of the Oconee mountain till it shall strike Tugaloo river; thence a direct line to the top of the Currohee mountain; thence to the head of the south fork of Oconee river.

ARTICLE 5.

If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands westward or southward of the said boundary which are hereby allotted to the Indians for their hunting grounds, or having already settled and will not remove from the same within six months after the ratification of this treaty, such person shall forfeit the protection of the United States, and the Indians may punish him or not as they please: Provided nevertheless, That this article shall not extend to the people settled between the fork of French Broad and Holstein rivers, whose particular situation shall be transmitted to the United States in Congress assembled for their decision thereon, which the Indians agree to abide by.

ARTICLE 6.

If any Indian or Indians, or person residing among them, or who shall take refuge in their nation, shall commit a robbery, or murder, or other capital crime, on any citizen of the United States, or person

under their protection, the nation, or the tribe to which such offender or offenders may belong, shall be bound to deliver him or them up to be punished according to the ordinances of the United States; Provided, that the punishment shall not be greater than if the robbery or murder, or other capital crime had been committed by a citizen on a citizen.

ARTICLE 7.

If any citizen of the United States, or person under their protection, shall commit a robbery or murder, or other capital crime, on any Indian, such offender or offenders shall be punished in the same manner as if the murder or robbery, or other capital crime, had been committed on a citizen of the United States; and the punishment shall be in presence of some of the Cherokees, if any shall attend at the time and place, and that they may have an opportunity so to do, due notice of the time of such intended punishment shall be sent to some one of the tribes.

ARTICLE 8.

It is understood that the punishment of the innocent under the idea of retaliation, is unjust, and shall not be practiced on either side, except where there is a manifest violation of this treaty; and then it shall be preceded first by a demand of justice, and if refused, then by a declaration of hostilities.

ARTICLE 9.

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 in such manner as they think proper.

ARTICLE 10.

Until the pleasure of Congress be known, respecting the ninth article, all traders, citizens of the United States, shall have liberty to go to any of the tribes or towns of the Cherokees to trade with them, and they shall be protected in their persons and property, and kindly treated.

ARTICLE 11.

The said Indians shall give notice to the citizens of the United States, of any designs which they may know or suspect to be formed in any neighboring tribe, or by any person whosoever, against the peace, trade or interest of the United States.

ARTICLE 12.

That the Indians may have full confidence in the justice of the United States, respecting their interests, they shall have the right to send a deputy of their choice, whenever they think fit, to Congress.

ARTICLE 13.

The hatchet shall be forever buried, and the peace given by the United States, and friendship re-established between the said states on the one part, and all the Cherokees on the other, shall be universal;

and the contracting parties shall use their utmost endeavors to maintain the peace given as aforesaid, and friendship re-established.

In witness of all and every thing herein determined, between the United States of America and all the Cherokees, we, their underwritten Commissioners, by virtue of our full powers, have signed this definitive treaty, and have caused our seals to be hereunto affixed. Done at Hopewell, on the Keowee, this twenty-eighth of November, in the year of our Lord one thousand seven hundred and eighty-five.

Benjamin Hawkins, [L. S.]

And'w Pickens, [L. S.]

Jos. Martin, [L. S.]

Lach'n McIntosh Koatohee, or Corn Tassel of Toquo, his x mark, [L. S.]

Scholauetta, or Hanging Man of Chota, his x mark, [L. S.]

Tuskegatahu, or Long Fellow of Chistohoe, his x mark, [L. S.]

Ooskwha, or Abraham of Chilkowa, his x mark, [L. S.]

Kolakusta, or Prince of Noth, his x mark, [L. S.]

Newota, or the Gritzs of Chicamaga, his x mark, [L. S.]

Konatota, or the Rising Fawn of Highwassay, his x mark, [L. S.]

Tuckasee, or Young Terrapin of Allajoy, his x mark, [L. S.]

Toostaka, or the Waker of Oostanawa, his x mark, [L. S.]

Untoola, or Gun Rod of Seteco, his x mark, [L. S.]

Unsuokanail, Buffalo White Calf New Cussee, his x mark, [L. S.]

Kostayeak, or Sharp Fellow Wataga, his x mark, [L. S.]

Chonosta, of Cowe, his x mark, [L. S.]

Chescoonwho, Bird in Close of Tomotlug, his x mark, [L. S.]

Tuckasee, or Terrapin of Hightowa, his x mark, [L. S.]

Chesetoa, or the Rabbit of Tlacoa, his x mark, [L. S.]

Chesecotetona, or Yellow Bird of the Pine Log, his x mark, [L. S.]

Sketaloska, Second Man of Tillico, his x mark, [L. S.]

Chokasatahe, Chickasaw Killer Tasonta, his x mark, [L. S.]

Onanoota, of Koosoate, his x mark, [L. S.]

Ookoseta, or Sower Mush of Kooloque, his x mark, [L. S.]

Umatooetha, the Water Hunter Choikamawga, his x mark, [L. S.]

Wyuka, of Lookout Mountain, his x mark, [L. S.]

Tulco, or Tom of Chatuga, his x mark, [L. S.]

Will, of Akoha, his x mark, [L. S.]

Necatee, of Sawta, his x mark, [L. S.]

Amokontakona, Kutcloa, his x mark, [L. S.]

Kowetatahee, in Frog Town, his x mark, [L. S.]

Keukuck, Talcoa, his x mark, [L. S.]

Tulatiska, of Chaway, his x mark, [L. S.]

Wooaluka, the Waylayer, Chota, his x mark, [L. S.]

Tatliusta, or Porpoise of Tilassi, his x mark, [L. S.]

John, of Little Tallico, his x mark, [L. S.]

Skeleak, his x mark, [L. S.]

Akonoluchta, the Cabin, his x mark, [L. S.]

Cheanoka, of Kawetakac, his x mark, [L. S.]

Yellow Bird, his x mark, [L. S.]

Witness:

Wm. Blount,

Sam'l Taylor, Major.,

John Owen,

Jess. Walton,

Jno. Cowan, capt. comm'd't,

Thos. Gregg,

W. Hazzard.

James Madison,

Arthur Cooley,.

Sworn interpreters

WORCESTER v. STATE OF GA., 31 U.S. 515 (1832)

31 U.S. 515 (Pet.)

SAMUEL A. WORCESTER, PLAINTIFF IN ERROR
v.
THE STATE OF GEORGIA.

January Term, 1832

[31 U.S. 515, 521] THIS was a writ of error to the superior court for the county of Gwinnett, in the state of Georgia.

On the 22d December 1830, the legislature of the state of Georgia passed the following act:

> 'An act of 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.
> 'Be it enacted by the senate and house of representatives of the state of Georgia in general assembly met, and it is hereby enacted by the authority of the same, that, after the 1st day of February 1831, it shall not be lawful for any person or persons, under colour or pretence of authority from said Cherokee tribe, or as headmen, chiefs or warriors of said tribe, to cause or procure by any means the assembling of any council or other pretended legislative body of the said Indians or others living among them, for the purpose of legislating (or for any other purpose whatever). And persons offending against the provisions of this section shall guilty of a high misdemeanour, and subject to indictment therefor, and, on conviction, shall be punished by confinement at hard labour in the penitentiary for the space of four years.
> 'Sec. 2. And be it further enacted by the authority aforesaid, that, after the time aforesaid, it shall not be lawful for any person or persons, under pretext of authority from the Cherokee tribe, or as representatives, chiefs, headmen or warriors of said tribe, to meet or assemble as a council, assembly, [31 U.S. 515, 522] convention, or in any other capacity, for the purpose of making laws, orders or regulations for said tribe. And all persons offending against the provisions of this section, shall be guilty of a high misdemeanour, and subject to an indictment, and on conviction thereof, shall undergo an imprisonment in the penitentiary at hard labour for the space of four years.
> 'Sec. 3. And be it further enacted by the authority aforesaid, that, after the time aforesaid, it shall not be lawful for any person or persons, under colour or by authority of the Cherokee tribe, or any of its laws or regulations, to hold any court or tribunal whatever, for the purpose of hearing and determining causes, either civil or criminal; or to give any judgment in such causes, or to issue, or cause to issue, any process against the person or property of any of said tribe. And all persons offending against the provisions of this section shall be guilty of a high misdemeanour, and subject to indictment, and, on conviction thereof, shall be imprisoned in the penitentiary at hard labour for the space of four years.
> 'Sec. 4. And be it further enacted by the authority aforesaid, that, after the time aforesaid, it shall not be lawful for any person or persons, as a ministerial officer, or in any other capacity, to execute any precept, command or process issued by any court or tribunal in the Cherokee tribe, on the persons or property of any of said tribe. And all persons offending against the provisions of this section, shall be guilty of a trespass, and subject to indictment, and, on conviction thereof, shall be punished by fine and imprisonment in the jail or in the penitentiary, not longer than four years, at the discretion of the court.
> 'Sec. 5. And be it further enacted by the authority aforesaid, that, after the time aforesaid, it shall not be lawful for any person or persons to confiscate, or attempt to confiscate, or otherwise to cause a forfeiture of the property or estate of any Indian of said tribe, in consequence of his enrolling himself and family for emigration, or offering to enrol for emigration, or any other act of said Indian, in furtherance of his intention to emigrate. And persons offending against the provisions of this section shall be guilty of high misdemeanour, and, on conviction, shall undergo an imprisonment in the penitentiary at hard labour for the

space of four years. [31 U.S. 515, 523] 'Sec. 6. And be it further enacted by the authority aforesaid, that none of the provisions of this act shall be so construed as to prevent said tribe, its headmen, chiefs or other representatives, from meeting any agent or commissioner, on the part of this state or the United States, for any purpose whatever.

'Sec. 7. And be it further enacted by the authority aforesaid, that all white persons residing within the limits of the Cherokee nation, on the 1st day of March next, or at any time thereafter, without a license or permit from his excellency the governor, or from such agent as his excellency the governor shall authorise to grant such permit or license, and who shall not have taken the oath hereinafter required, shall be guilty of a high misdemeanour, and, upon conviction thereof, shall be punished by confinement to the penitentiary at hard labour for a term not less than four years: provided, that the provisions of this section shall not be so construed as to extend to any authorised agent or agents of the government of the United States or of this state, or to any person or persons who may rent any of those improvements which have been abandoned by Indians who have emigrated west of the Mississippi: provided, nothing contained in this section shall be so construed as to extend to white females, and all male children under twenty-one years of age.

'Sec. 8. And be it further enacted by the authority aforesaid, that all white persons, citizens of the state of Georgia, who have procured a license in writing from his excellency the governor, or from such agent as his excellency the governor shall authorise to grant such permit or license, to reside within the limits of the Cherokee nation, and who have taken the following oath, viz. 'I, A. B., do solemnly swear (or affirm, as the case may be) that I will support and defend the constitution and laws of the state of Georgia, and uprightly demean myself as a citizen thereof, so help me God,' shall be, and the same are hereby declared, exempt and free from the operation of the seventh section of this act.

'Sec. 9. And be it further enacted, that his excellency the governor be, and he is hereby, authorized to grant licenses to reside within the limits of the Cherokee nation, according to the provisions of the eighth section of this act.

'Sec. 10. And be it further enacted by the authority aforesaid, [31 U.S. 515, 524] that no person shall collect or claim any toll from any person, for passing any turnpike gate or toll bridge, by authority of any act or law of the Cherokee tribe, or any chief or headman or men of the same.

'Sec. 11. And be it further enacted by the authority aforesaid, that his excellency the governor be, and he is hereby, empowered, should he deem it necessary, either for the protection of the mines, or for the enforcement of the laws of force within the Cherokee nation, to raise and organize a guard, to be employed on foot, or mounted, as occasion may require, which shall not consist of more than sixty persons, which guard shall be under the command of the commissioner or agent appointed by the governor, to protect the mines, with power to dismiss from the service any member of said guard, on paying the wages due for services rendered, for disorderly conduct, and make appointments to fill the vacancies occasioned by such dismissal.

'Sec. 12. And be it further enacted by the authority aforesaid, that each person who may belong to said guard, shall receiver for his compensation at the rate of fifteen dollars per month when on foot, and at the rate of twenty dollars per month when mounted, for every month that such person is engaged in actual service; and, in the event, that the commissioner or agent, herein referred to, should die, resign, or fail to perform the duties herein required of him, his excellency the governor is hereby authorised and required to appoint, in his stead, some other fit and proper person to the command of said guard; and the commissioner or agent, having the command of the guard aforesaid, for the better discipline thereof, shall appoint three sergeants, who shall receive at the rate of twenty dollars per month while serving on foot, and twenty-five dollars per month, when mounted, as compensation whilst in actual service.

'Sec. 13. And be it further enacted by the authority aforesaid, that the said guard, or any member of them, shall be, and they are hereby, authorised 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 or justice of inferior court of this state, to be dealt [31 U.S. 515, 525] with according to law; and the pay and support of said guard be provided out of the fund already appropriated for the protection of the gold mines.'

The legislature of Georgia, on the 19th December 1829, passed the following act:

'An act to add the territory lying within the chartered limits of Georgia, and now in the occupancy of the Cherokee Indians, to the counties of Carroll, De Kalb, Gwinnett, Hall, and Habersham, and to extend the laws of this state over the same, and to annul all laws and ordinances made by the Cherokee nation of Indians, and to provide for the compensation of officers serving legal process in said territory, and to regulate the testimony of Indians, and to repeal the ninth section of the act of 1828 upon this subject.

'Sec. 1. Be it enacted by the senate and house of representatives of the state of Georgia in general assembly met, and it is hereby enacted by the authority of the same, that from and after the passing of this act, all that

part of the unlocated territory within the limits of this state, and which lies between the Alabama line and the old path leading from the Buzzard Roost on the Chattahoochee, to Sally Hughes's, on the Hightower river; thence to Thomas Pelet's, on the old federal road; thence with said road to the Alabama line be, and the same is hereby added to, and shall become a part of, the county of Carroll.

'Sec. 2. And be it further enacted, that all that part of said territory lying and being north of the last mentioned line, and south of the road running from Charles Gait's ferry, on the Chattahoochee river, to Dick Roe's, to where it intersects with the path aforesaid, be, and the same is hereby added to, and shall become a part of, the county of De Kalb.

'Sec. 3. And be it further enacted, that all that part of the said territory lying north of the last mentioned line, and south of a line commencing at the mouth of Baldridge's creek; thence up said creek to its source; from thence to where the federal road crosses the Hightower; thence with said road to the Tennessee line, be, and the same is hereby added to, and shall become part of, the county of Gwinnett.

'Sec. 4. And be it further enacted, that all that part of the said territory lying north of said last mentioned line, and south [31 U.S. 515, 526] of a line to commence on the Chestatee river, at the mouth of Yoholo creek; thence up said creek to the top of the Blue ridge; thence to the head waters of Notley river; thence down said river to the boundary line of Georgia, be, and the same is hereby added to, and shall become a part of, the county of Hall.

'Sec. 5. And be it further enacted, that all that part of said territory lying north of said last mentioned line, within the limits of this state, be, and the same is hereby added to, and shall become a part of, the county of Habersham.

'Sec. 6. And be it further enacted, that all the laws, both civil and criminal, of this state, be, and the same are hereby extended over said portions of territory, respectively; and all persons whatever, residing within the same, shall, after the 1st day of June next, be subject and liable to the operation of said laws, in the same manner as other citizens of this state, or the citizens of said counties, respectively; and all writs and processes whatever, issued by the courts or officers of said courts, shall extend over, and operate on, the portions of territory hereby added to the same, respectively.

'Sec. 7. And be it further enacted, that after the 1st day of June next, all laws, ordinances, orders and regulations, of any kind whatever, made, passed or enacted, by the Cherokee Indians, either in general council or in any other way whatever, or by any authority whatever of said tribe, be, and the same are hereby declared to be, null and void, and of no effect, as if the same had never existed; and in all cases of indictment or civil suits, it shall not be lawful for the defendant to justify under any of said laws, ordinances, orders or regulations; nor shall the courts of this state permit the same to be given in evidence on the trial of any suit whatever.

'Sec. 8. And be it further enacted, that it shall not be lawful for any person or body of persons, by arbitrary power or by virtue of any pretended rule, ordinance, law or custom of said Cherokee nation, to prevent by threats, menaces or other means, or endeavour to prevent, any Indian of said nation, residing within the chartered limits of this state, from enrolling as an emigrant, or actually emigrating or removing from said nation; nor shall it be lawful for any person or body of persons, by arbitrary power or by virtue of any pretended rule, [31 U.S. 515, 527] ordinance, law or custom of said nation, to punish, in any manner, or to molest either the person or property, or to abridge the rights or privileges of any Indian, for enrolling his or her name as an emigrant, or for emigrating or intending to emigrate, from said nation.

'Sec. 9. And be it further enacted, that any person or body of persons offending against the provisions of the foregoing section, shall be guilty of a high misdemeanour, subject to indictment, and on conviction shall be punished by confinement in the common jail of any county of this state, or by confinement at hard labour in the penitentiary, for a term not exceeding four years, at the discretion of the court.

'Sec. 10. And be it further enacted, that it shall not be lawful for any person or body of persons, by arbitrary power, or under colour of any pretended rule, ordinance, law or custom of said nation, to prevent or offer to prevent, or deter any Indian headman, chief or warrior of said nation, residing within the chartered limits of this state, from selling or ceding to the United States, for the use of Georgia, the whole or any part of said territory, or to prevent or offer to prevent, any Indian, headman, chief or warrior of said nation, residing as aforesaid, from meeting in council or treaty any commissioner or commissioners on the part of the United States, for any purpose whatever.

'Sec. 11. And be it further enacted, that any person or body of persons offending against the provisions of the foregoing sections, shall be guilty of a high misdemeanour, subject to indictment, and on conviction shall be confined at hard labour in the penitentiary for not less than four nor longer than six years, at the discretion of the court.

'Sec. 12. And be it further enacted, that it shall not be lawful for any person or body of persons, by arbitrary force, or under colour of any pretended rules, ordinances, law or custom of said nation, to take the life of any Indian residing as aforesaid, for enlisting as an emigrant; attempting to emigrate; ceding, or attempting to cede, as aforesaid, the whole or any part of the said territory; or meeting or attempting to meet, in treaty or

in council, as aforesaid, any commissioner or commissioners aforesaid; and any person or body of persons offending against the provisions of this section, shall be guilty of [31 U.S. 515, 528] murder, subject to indictment, and, on conviction, shall suffer death by hanging.

'Sec. 13. And be it further enacted, that, should any of the foregoing offences be committed under colour of any pretended rules, ordinances, custom or law of said nation, all persons acting therein, either as individuals or as pretended executive, ministerial or judicial officers, shall be deemed and considered as principals, and subject to the pains and penalties hereinbefore described.

'Sec. 14. And be it further enacted, that for all demands which may come within the jurisdiction of a magistrate's court, suit may be brought for the same in the nearest district of the county to which the territory is hereby annexed; and all officers serving any legal process on any person living on any portion of the territory herein named, shall be entitled to recover the sum of five cents for every mile he may ride to serve the same, after crossing the present limits of the said counties, in addition to the fees already allowed by law; and in case any of the said officers should be resisted in the execution of any legal process issued by any court or magistrate, justice of the inferior court, or judge of the superior court of any of said counties, he is hereby authorised to call out a sufficient number of the militia of said counties to aid and protect him in the execution of this duty.

'Sec. 15. And be it further enacted, that no Indian or descendant of any Indian, residing within the Creek or Cherokee nations of Indians, shall be deemed a competent witness in any court of this state to which a white person may be a party, except such white person resides within the said nation.'

In September 1831, the grand jurors for the county of Gwinnett in the state of Georgia, presented to the superior court of the county the following indictment:

'Georgia, Gwinnett county:-The grand jurors, sworn, chosen and selected for the county of Gwinnett, 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 license:' For that the said Elizur Butler, Samuel A. Worcester, [31 U.S. 515, 529] James Trott, Samuel Mays, Surry Eaton, Austin Copeland and Edward D. Losure, white persons, as aforesaid, on the 15th day of July 1831, 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 license or permit from his excellency the governor of said state, or from any agent authorised by his excellency the governor aforesaid to grant such permit or license, 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.'

To this indictment, the plaintiff in error pleaded specially, as follows:

'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 1931, 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 committee 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 authorised 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 [31 U.S. 515, 530] 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, authorised 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 authorised 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 guarantee 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, [31 U.S. 515, 531] and persons inhabiting the same; and, in particular, the act on which this indictment against 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 ____ 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 jurisdiction of the superior court of the county of Gwinnett was sustained by the judgment of the court.

The defendant was then arraigned, and pleaded 'not guilty:' and the case came on for trial on the 15th of September 1831, when the jury found the defendants in the indictment guilty. On the same day the court pronounced sentence on the parties so convicted, as follows:- [31 U.S. 515, 532] 'The State v. B. F. Thompson and others. Indictment for residing in the Cherokee nation without license. Verdict, Guilty.'

'The State v. 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 labour in said penitentiary, for and during the term of four years.'

A writ of error was issued on the application of the plaintiff in error, on the 27th of October 1831, which, with the following proceedings thereon, was returned to this court.

'United States of America, ss.-The president of the United States to the honourable the judges of the superior court for the county of Gwinnett, in the state of Georgia, greeting:
'Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said superior court, for the county of Gwinnett, before you, or some of you, between the state of Georgia, plaintiff, and Samuel A. Worcester, defendant, on an indictment, being the highest court of law in said state in which a

decision could be had in said suit, a manifest error hath happened, to the great damage of the said Samuel A. Worcester, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the supreme court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said supreme court, to be then and there held; that the record and proceedings aforesaid being inspected, the said supreme court may cause further to be done therein, to correct that error, what of right, and according to the laws and custom of the United States, should be done. [31 U.S. 515, 533] 'Witness, the honourable John Marshall, chief justice of the said supreme court, the first Monday of August in the year of our Lord one thousand eight hundred and thirty-one.

WM. THOS. CARROLL,

Clerk of the Supreme Court of the United States.

'Allowed by HENRY BALDWIN.
'United States of America to the state of Georgia, greeting:
'You are hereby cited and admonished to be, and appear at a supreme court of the United States, to be holden at Washington, on the second Monday of January next, pursuant to a writ of error filed in the clerk's office of the superior court for the county of Gwinnett, in the state of Georgia, wherein Samuel A. Worcester is plaintiff in error, and the state of Georgia is defendant in error, to show cause, if any there be, why judgment rendered against the said Samuel A. Worcester, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.
'Witness, the honourable Henry Baldwin, one of the justices of the supreme court of the United States, this 27th day of October, in the year of our Lord one thousand eight hundred and thirty-one.

HENRY BALDWIN.

'State of Georgia, county of Gwinnett, sct:-On this 26th day of November, in the year of our Lord eighteen hundred and thirty-one, William Potter personally appeared before the subscriber, John Mills, a justice of the peace in and for said county, and being duly sworn on the holy evangelists of Almighty God, deposeth and saith, that on the 24th day of November instant, he delivered a true copy of the within citation to his excellency, Wilson Lumpkin, governor of the state of Georgia, and another true copy thereof he delivered, on the 22d day of November, instant, to Charles J. Jenkins, Esq. attorney-general of the state aforesaid, showing to the said governor and attorney-general, respectively, at the times of delivery herein stated, the within citation. WM. POTTER.
'Sworn to and subscribed before me, the day and year above written. JOHN MILLS, J. P.'

This writ of error was returned to the supreme court with [31 U.S. 515, 534] copies of all the proceedings in the supreme court of the county of Gwinnett, as stated, and accompanied with certificates of the clerk of that court in the following terms:

'Georgia, Gwinnett county. I, John G. Park, clerk of the superior court of the county of Gwinnett, and state aforesaid, do certify that the annexed and foregoing is a full and complete exemplification of the proceedings and judgments had in said court against Samuel A. Worcester, one of the defendants in the case therein mentioned, as they remain, of record, in the said superior court.
'Given under my hand, and seal of the court, this 28th day of November 1831.

JOHN G. PARK, Clerk.

'I also certify, that the original bond, of which a copy of annexed (the bond was in the usual form), and also a copy of the annexed writ of error, were duly deposited and filed in the clerk's office of said court, on the 10th day of November in the year of our Lord eighteen hundred and thirty-one.
'Given under my hand and seal aforesaid, the day and date above written.

JOHN G. PARK, Cerk.'

The case of Elizur Butler, plaintiff in error v. The State of Georgia, was brought before the supreme court in the same manner.

The case was argued for the plaintiffs in error by Mr. Sergeant and Mr Wirt, with whom also was Mr Elisha W. Chester.

The following positions were laid down and supported by Mr Sergeant and Mr Wirt.

1. That the court had jurisdiction of the question brought before them by the writ of error; and the jurisdiction extended equally to criminal and to civil cases.

2. That the writ of error was duly issued, and duly returned, so as to bring the question regularly before the court, under the constitution and laws of the United States; and oblige the court to take cognizance of it.

3. That the statute of Georgia under which the plaintiffs in error were indicted and convicted, was unconstitutional and void. Because:- [31 U.S. 515, 535] 1. By the constitution of the United States, the establishment and regulation of intercourse with the Indians belonged, exclusively, to the government of the United States.

2. The power thus given, exclusively, to the government of the United States had been exercised by treaties and by acts of congress, now in force, and applying directly to the case of the Cherokees; and that no state could interfere, without a manifest violation of such treaties and laws, which by the constitution were the supreme law of the land.

3. The statute of Georgia assumed the power to change these regulations and laws; to prohibit that which they permitted; and to make that criminal which they declared innocent or meritorious; and to subject to condemnation and punishment, free citizens of the United States who had committed no offence.

4. That the indictment, conviction, and sentence being founded upon a statute of Georgia, which was unconstitutional and void; were themselves also void and of no effect, and ought to be reversed.

These several positions were supported, enforced and illustrated by argument and authority.

The following authorities were referred to:

2 Laws U. S. 65, sect. 25; Judiciary Act of 1789; Miller v. Nicols, 4 Wheat. 311; Craig v. State of Missouri, 4 Peters, 400, 429; Fisher v. Cockerell, 5 Peters, 248; Ex parte Kearny, 7 Wheat. 38; Cohens v. Virginia, 6 Wheat. 264; Martin v. Hunter, 1 Wheat. 304, 315, 361; 1 Laws U. S. 488, 470, 472, 482, 484, 486, 453; Blunt's Historical Sketch, 106, 107; Treaties with the Cherokees, 28th Nov. 1785, 2d July 1791, 26th July 1794, 2d Oct. 1798; 3 Laws U. S. 27, 125, 284, 303, 344, 460; 12 Journ. Congress, 82; Blunt's Hist. Sketch, 113, 110, 111, 114; Federalist, No. 42; 1 Laws U. S. 454; Holland v. Pack, Peck's Rep. 151; Johnson v. M'Intosh, 8 Wheat. 543; Cherokee Nation v. State of Georgia, 5 Peters, 1, 16, 27, 31, 48; Ware v. Hylton, 3 Dall. 199; Hughes v. Edwards, 9 Wheat. 489; Fisher v. Hamden, 1 Paine, 55; Hamilton v. Eaton, North Carolina Cases, 79; M'Cullough v. State of Maryland, 4 Wheat. 316; 2 Laws U. S. 121; 3 Laws U. S. 460; 6 Laws U. S. 750; Gibbon v. Ogden, 9 Wheat. 1. [31 U.S. 515, 536]

Mr Chief Justice MARSHALL delivered the opinion of the Court.

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 labour for four years in the penitentiary of Georgia; under colour 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 behoves 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 (sec. 22, 25, 2 Laws U. S. 64, 65), so far as it prescribes the mode of proceeding, appears to have been literally pursued.

In February 1797, a rule (6 Wheat. Rules) 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 [31 U.S. 515, 537] 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 v. Hunter's Lessee, 1 Wheat. 304, 361, 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 v. Van Ness, 8 Wheat. 312, 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.

M'Culloch v. The State of Maryland, 4 Wheat. 316, 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. v. 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 license,' 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 [31 U.S. 515, 538] 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 authorised 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, authorised to govern themselves, and all persons who have settled within their territory, free from any right of legislative interference by the several states composing [31 U.S. 515, 539] the United States of America, in reference to acts done within their own territory; and, by which treaties, the whole of the territory now occcupied 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 authorised 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 guarantee 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 against 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, [31 U.S. 515, 540] 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, plead not guilty. The jury found a verdict against him, and the court sentenced him to hard labour, 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 twenty-fifth 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 [31 U.S. 515, 541] 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 twenty-fifth 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 favour 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 favour 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. [31 U.S. 515, 542] 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 neighbouring 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 1st day of March next, or at any time thereafter, without a license or permit from his excellency the governor, or from such agent as his excellency the governor shall authorise to grant such permit or license, and who shall not have taken the oath hereinafter required, shall be guilty of a high misdemeanour, and, upon conviction thereof, shall be punished by confinement to the penitentiary, at hard labour, for a term not less than four years.'

The eleventh section authorises 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 thirteenth section enacts, 'that the said guard or any member of them, shall be, and they are hereby authorised 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, or 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 right-fulness 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 [31 U.S. 515, 543] 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 [31 U.S. 515, 544] governments, which title might be consummated by possession.' 8 Wheat. 573.

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 [31 U.S. 515, 545] 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. [31 U.S. 515, 546] 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 neighbouring 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 neighbouring 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 [31 U.S. 515, 547] 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 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 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 [31 U.S. 515, 548] with your people 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 further 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 license 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 1772, 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 [31 U.S. 515, 549] 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 the 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 every thing 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.

'1. 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.
'2. 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.

3. The third article stipulates, among other things, a free [31 U.S. 515, 550] passage for the American troops through the Delaware nation; and engages that they shall be furnished with provisions and other necessaries at their value.

'4. 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.

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

6. 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 endeavoured, 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. [31 U.S. 515, 551] During the war of the revolution, the Cherokees took part with the British. After 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 favour 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 [31 U.S. 515, 552] 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 neighbour, 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, [31 U.S. 515, 553] 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 misderstood 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 fifth 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 sixth and seventh 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 ninth 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,' [31 U.S. 515, 554] 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, are the cession of their lands, and security against intruders on them. Is it credible, that they should have considered themselves a 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 [31 U.S. 515, 555] 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 acknowledgement, 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 neighbourhood, 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 for ever all disputes, it is agreed [31 U.S. 515, 556] that it shall be plainly marked by commissioners, to be appointed by each party; and, in order to extinguish for ever 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, for ever.

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 acknowledgement 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 pleding 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 [31 U.S. 515, 557] 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 those humane designs of civilizing the neighbouring Indians, which had long been cherished by the executive. It enacts, 'that, for the purpose of providing against the further decline and final 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. [31 U.S. 515, 558] 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 will 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 [31 U.S. 515, 559] 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 Indiana. 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 [31 U.S. 515, 560] 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 [31 U.S. 515, 561] doctrine of the law of nations is, that a 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 are 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 extra-territorial 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 review 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 [31 U.S. 515, 562] 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, any by authority of the president of the United States, is also a violation of the acts which authorise 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 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 which the humane policy adopted by congress had recommended. He was apprehended, tried, and condemned, under colour of a law which has been shown to the 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 not less entitled to the protection of the constitution, laws, and treaties of his country.

This point has been elaborately argued and, after deliberate consideration, decided, in the case of Cohens v. The Commonwealth of Virginia, 6 Wheat. 264.

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 labour, in the penitentiary of the state of Georgia, for four years, was pronounced by that court under colour of a law which is void, as being repugnant to the constitution, treaties, and laws of the [31 U.S. 515, 563] United States, and ought, therefore, to be reversed and annulled.

Mr Justice M'LEAN.

As this case involves principles of the highest importance, and may lead to consequences which shall have an enduring influence on the institutions of this country; and as there are some points in the case on which I wish to state, distinctly, my opinion, I embrace the privilege of doing so.

With the decision, just given, I concur.

The plaintiff in error was indicted under a law of Georgia, 'for residing in that part of the Cherokee nation attached, by the laws of said state, to the county of Gwinnett, without a license or permit from his excellency the governor of the state, or from any agent authorised by his excellency the governor to grant such permit or license, and without having taken the oath to support and defend the constitution and laws of the state of Georgia, and uprightly to demean himself as a citizen thereof.'

On this indictment the defendant was arrested, and, on being arraigned before the superior court for Gwinnett county, he filed, in substance, the following plea:

He admits that, on the 15th of July 1831, he was, and still continued to be, a resident in the Cherokee nation, and that the crime, if any were committed, was committed at the town of New Echota, in said nation, out of the jurisdiction of the court. That he is a citizen of Vermont, and that he entered the Indian country in the capacity of a duly authorised 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 Cherokee nation, and in accordance with the humane policy of the government of the United States, for the improvement of the Indians.

He then states, as a bar to the prosecution, certain treaties made between the United States and the Cherokee Indians, by [31 U.S. 515, 564] which the possession of the territory they now inhabit was solemnly guarantied to them; and also a certain act of congress, passed in March 1802, entitled 'an act to regulate trade and intercourse with the Indian tribes.' He also alleges, that this subject, by the constitution of the United States, is exclusively vested in congress; and that the law of Georgia, being repugnant to the constitution of the United States, to the treaties referred to, and to the act of congress specified, is void, and cannot be enforced against him.

This plea was overruled by the court, and the defendant pleaded not guilty.

The jury returned a verdict of guilty; and the defendant was sentenced, by the court, to be kept in close custody, by the sheriff of the county, until he could be transported to the penitentiary of the state, and the keeper thereof was directed to receive him into custody, and keep him at hard labour in the penitentiary, during the term of four years.

Another individual was included in the same indictment, and joined in the plea to the jurisdiction of the court, and was also included in the sentence; but his name is not adverted to, because the principles of the case are fully presented in the above statement.

To reverse this judgment, a writ of error was obtained, which, having been returned, with the record of the proceedings, is now before this court.

The first question which it becomes necessary to examine, is, whether the record has been duly certified, so as to bring the proceedings regularly before this tribunal.

A writ of error was allowed, in this case, by one of the justices of this court, and the requisite security taken. A citation was also issued, in the form prescribed, to the state of Georgia, a true copy of which, as appears by the oath of William Patten, was delivered to the governor, on the 24th day of November last; and another true copy was delivered, on the 22d day of the same month, to the attorney-general of the state.

The record was returned by the clerk, under the seal of the court, who certifies that it is a full and complete exemplification of the proceedings and judgment had in the case; and he [31 U.S. 515, 565] further certifies, that the original bond, and a copy of the writ of error, were duly deposited and filed in the clerk's office of said court, on the 10th day of November last.

Is it necessary, in such a case, that the record should be certified by the judge who held the court?

In the case of Martin v. Hunter's Lessee, which was a writ of error to the court of appeals of Virginia, it was objected that the return to the writ of error was defective, because the record was not so certified; but the court, in that case, said, 'the forms of process, and the modes of proceeding in the exercise of jurisdiction, are, with few exceptions, left by the legislature to be regulated and changed as this court may, in its discretion, deem expedient.' By a rule of this court, 'the return of a copy of a record of the proper court, annexed to the writ of error, is declared to be a sufficient compliance with the mandate of the writ. The record, in this case, is duly certified by the clerk of the court of appeals, and annexed to the writ of error. The objection, therefore, which has been urged to the sufficiency of the return, cannot prevail.'-1 Wheat. 304.

In 9 Wheat. 526, in the case of Stewart v. Ingle and others, which was a writ of error to the circuit court for the district of Columbia, a certiorari was issued, upon a suggestion of diminution in the record, which was returned by the clerk with another record; whereupon, a motion was made for a new certiorari, on the ground that the return ought to have been made by the judge of the court below, and not by the clerk. The writ of certiorari, it is known, like the writ of error, is directed to the court.

Mr Justice Washington, after consultation with the judges, stated that, according to the rules and practice of the court, a return made by the clerk was a sufficient return.

To ascertain what has been the general course of practice on this subject, an examination has been made into the manner in which records have been certified from state courts to this court; and it appears that, in the year 1817, six causes were certified, in obedience to writs of error, by the clerk, under the seal of the court. In the year 1819, two were so certified, one of them being the case of M'Cullough v. The State of Maryland. [31 U.S. 515, 566] In the year 1821, three cases were so certified; and in the year 1823, there was one. In 1827, there were five, and in the ensuing year, seven.

In the year 1830, there were eight causes so certified, in five of which, a state was a party on the record. There were three causes thus certified in the year 1831, and five in the present year.

During the above periods, there were only fifteen causes from state courts, where the records were certified by the court or the presiding judge, and one of these was the case of Cohens v. The State of Virginia.

This court adopted the following rule on this subject in 1797:

> 'It is ordered by the court, that the clerk of the court to which any writ of error shall be directed, may make the return of the same, by transmitting a true copy of the record, and of all proceedings in the cause, under his hand, and the seal of the court.'

The power of the court to adopt this rule, cannot be questioned: and it seems to have regulated the practice ever since its adoption. In some cases, the certificate of the court, or the presiding judge, has been affixed to the record; but this court has decided, where the question has been raised, that such certificate is unnecessary.

So far as the authentication of the record is concerned, it is impossible to make a distinction between a civil and a criminal case. What may be sufficient to authenticate the proceedings in a civil case, must be equally so in a criminal one. The verity of the record is of as much importance in the one case as the other.

This is a question of practice; and it would seem that, if any one point in the practice of this court can be considered as settled, this one must be so considered.

In the progress of the investigation, the next inquiry which seems naturally to arise, is whether this is a case in which a writ of error may be issued.

By the twenty-fifth section of the judiciary act of 1789, it is provided, 'that a final judgment or decree in any suit in the highest court of law or equity of a state, in which a decision in the suit could be had, where is drawn in question the [31 U.S. 515, 567] 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 favour 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, may be re-examined, and reversed or affirmed, in the supreme court of the United States.'

Doubts have been expressed whether a writ of error to a state court is not limited to civil cases. These doubts could not have arisen from reading the above section. Is not a criminal case, as much a suit as a civil case. What is a suit, but a prosecution; and can any one suppose that it was the intention of congress, in using the word suit, to make a distinction between a civil prosecution and a criminal one.

It is more important that jurisdiction should be given to this court in criminal than in civil cases, under the twenty-fifth section of the judiciary act. Would it not be inconsistent, both with the spirit and letter of this law, to revise the judgment of a state court, in a matter of controversy respecting damages, where the decision is against a right asserted under the constitution or a law of the United States; but to deny the jurisdiction, in a case where the property, the character, the liberty and life of a citizen may be destroyed, though protected by the solemn guarantees of the constitution?

But this is not an open question; it has long since been settled by the solemn adjudications of this court. The above construction, therefore, is sustained both on principle and authority. The provisions of the section apply as well to criminal as to civil cases, where the constitution, treaties, or laws of the United States come in conflict with the laws of a state; and the latter is sustained by the decision of the court.

It has been said, this this court can have no power to arrest [31 U.S. 515, 568] the proceedings of a state tribunal in the enforcement of the criminal laws of the state. This is undoubtedly true, so long as a state court, in the execution of its penal laws, shall not infringe upon the constitution of the United States, or some treaty or law of the union.

Suppose a state should make it penal for an officer of the United States to discharge his duties within its jurisdiction; as, for instance, a land officer, an officer of the customs, or a postmaster, and punish the offender by confinement in the penitentiary: could not the supreme court of the United States interpose their power, and arrest or reverse the state proceedings? Cases of this kind are so palpable, that they need only to be stated to gain the assent of every judicious mind. And would not this be an interference with the administration of the criminal laws of a state?

This court have repeatedly decided, that they have no appellate jurisdiction in criminal cases from the circuit courts of the United States: writs of error and appeals are given from those courts only in civil cases. But, even in those courts, where the judges are divided on any point, in a criminal case, the point may be brought before this court, under a general provision in cases of division of opinion.

Jurisdiction is taken in the case under consideration exclusively by the provisions of the twenty-fifth section of the law which has been quoted. These provisions, as has been remarked, apply, indiscriminately, to criminal and civil cases, wherever a right is claimed under the constitution, treaties, or laws of the United States, and the decision, by the state court, is against such right. In the present case, the decision was against the right expressly set up by the defendant, and it was made by the highest judicial tribunal of Georgia.

To give jurisdiction in such a case, this court need look no further than to ascertain whether the right, thus asserted, was decided against by the state court. The case is clear of difficulty on this point.

The name of the state of Georgia is used in this case, because such was the designation given to the cause in the state court. No one ever supposed, that the state, in its sovereign capacity, in such a case, is a party to the cause. The form of [31 U.S. 515, 569] the prosecution here must be the same as it was in the state court; but so far as the name of the state is used, it is matter of form. Under a rule of this court, notice was given to the governor and attorney -general of the state, because it is a part of their duty to see that the laws of the state are executed.

In prosecutions for violations of the penal laws of the union, the name of the United States is used in the same manner. Whethet the prosecution be under a federal or state law, the defendant has a right to question the constitutionality of the law.

Can any doubt exist as to the power of congress to pass the law, under which jurisdiction is taken in this case? Since its passage, in 1789, it has been the law of the land; and has been sanctioned by an uninterrupted course of decisions in this court, and acquiesced in by the state tribunals, with perhaps a solitary exception: and whenever the attention of the national legislature has been called to the subject, their sanction has been given to the law by so large a majority as to approach almost to unanimity.

Of the policy of this act there can be as little doubt as of the right of congress to pass it.

The constitution of the United States was formed, not, in my opinion, as some have contended, by the people of the United States, nor, as others, by the states; but by a combined power, exercised by the people, through their delegates, limited in their sanctions, to the respective states.

Had the constitution emanated from the people, and the states had been referred to, merely as convenient districts, by which the public expression could be ascertained, the popular vote throughout the union would have been the only rule for the adoption of the constitution. This course was not pursued; and in this fact, it clearly appears that our fundamental law was not formed, exclusively, by the popular suffrage of the people.

The vote of the people was limited to the respective states in which they resided. So that it appears there was an expression of popular suffrage and state sanction, most happily united, in the adoption of the constitution of the union.

Whatever differences of opinion may exist, as to the means [31 U.S. 515, 570] by which the constitution was adopted, there would seem to be no ground for any difference as to certain powers conferred by it.

Three co-ordinate branches of the government were established; the executive, legislative, and judicial. These branches are essential to the existence of any free government, and that they should possess powers, in their respective spheres, co-extensive with each other.

If the executive have not powers which will enable him to execute the functions of his office, the system is essentially defective; as those duties must, in such case, be discharged by one of the other branches. This would destroy that balance which is admitted to be essential to the existence of free government, by the wisest and most enlightened statesmen of the present day.

It is not less important that the legislative power should be exercised by the appropriate branch of the government, than that the executive duties should devolve upon the proper functionary. And if the judicial power fall short of giving effect to the laws of the union, the existence of the federal government is at an end.

It is in vain, and worse than in vain, that the national legislature enact laws, if those laws are to remain upon the statute book as monuments of the imbecility of the national power. It is in vain that the executive is called to superintend the execution of the laws, if he have no power to aid in their enforcement.

Such weakness and folly are, in no degree, chargeable to the distinguished men through whose instrumentality the constitution was formed. The powers given, it is true, are limited; and no powers, which are not expressly given, can be exercised by the federal government: but, where given, they are supreme. Within the sphere allotted to them, the co- ordinate branches of the general government revolve, unobstructed by any legitimate exercise of power by the state governments. The powers exclusively given to the federal government are limitations upon the state authorities. But, with the exception of these limitations, the states are supreme; and their sovereignty can be no more invaded by the action of the general government, than the action of the state governments in arrest or obstruct

the course of the national power. [31 U.S. 515, 571] It has been asserted that the federal government is foreign to the state governments; and that it must consequently be hostile to them. Such an opinion could not have resulted from a thorough investigation of the great principles which lie at the foundation of our system. The federal government is neither foreign to the state governments, nor is it hostile to them. It proceeds from the same people, and is as much under their control as the state governments.

Where, by the constitution, the power of legislation is exclusively vested in congress, they legislature for the people of the union, and their acts are as binding as are the constitutional enactments of a state legislature on the people of the state. If this were not so, the federal government would exist only in name. Instead of being the proudest mounment of human wisdom and patriotism, it would be the frail memorial of the ignorance and mental imbecility of its framers.

In the discharge of his constitutional duties, the federal executive acts upon the people of the union, the same as a governor of a state, in the performance of his duties, acts upon the people of the state. And the judicial power of the United States acts in the same manner on the people. It rests upon the same basis as the other departments of the government. The powers of each are derived from the same source, and are conferred by the same instrument. They have the same limitations and extent.

The supreme court of a state, when required to give effect to a statute of the state, will examine its constitution, which they are sworn to maintain, to see if the legislative act be repugnant to it; and if a repugnancy exist, the statute must yield to the paramount law.

The same principle governs the supreme tribunal of the union. No one can deny, that the constitution of the United States is the supreme law of the land; and consequently, no act of any state legislature, or of congress, which is repugnant to it, can be of any validity.

Now if an act of a state legislature be repugnant to the constitution of the state, the state court will declare it void; and if such act be repugnant to the constitution of the union, or a law made under that constitution, which is declared to be the supreme law of the land, is it not equally void? And, under [31 U.S. 515, 572] such circumstances, if this court should shrink from a discharge of their duty, in giving effect to the supreme law of the land, would they not violate their oaths, prove traitors to the constitution, and forfeit all just claim to the public confidence?

It is sometimes objected, if the federal judiciary may declare an act of a state legislature void, because it is repugnant to the constitution of the United States, it places the legislation of a state within the power of this court. And might not the same argument be urged with equal force against the exercise of a similar power, by the supreme court of a state. Such an argument must end in the destruction of all constitutions, and the will of the legislature, like the acts of the parliament of Great Britain, must be the supreme, and only law of the land.

It is impossible to guard an investiture of power so that it may not, in some form, be abused: an argument, therefore, against the exercise of power, because it is liable to abuse, would go to the destruction of all governments.

The powers of this court are expressly, not constructively, given by the constitution; and within this delegation of power, this court are the supreme court of the people of the United States, and they are bound to discharge their duties, under the same responsibilities as the supreme court of a state; and are equally, within their powers, the supreme court of the people of each state.

When this court are required to enforce the laws of any state, they are governed by those laws. So closely do they adhere to this rule, that during the present term, a judgment of a circuit court of the United States, made in pursuance of decisions of this court, has been reversed and annulled, because it did not conform to the decisions of the state court, in giving a construction to a local law. But while this court conforms its decisions to those of the state courts, on all questions arising under the statutes and constitutions of the respective states, they are bound to revise and correct those decisions, if they annul, either the constitution of the United States, or the laws made under it.

It appears, then, that on all questions arising under the laws of a state, the decisions of the courts of such state form a rule for the decisions of this court, and that on all questions arising under the laws of the United States, the decisions of this court [31 U.S. 515, 573] form a rule for the decisions of the state courts. Is there any thing unreasonable in this? Have not the federal, as well as the state courts, been constituted by the people? Why then should one tribunal more than the other, be deemed hostile to the interests of the people.

In the second section of the third article of the constitution, it is declared, that 'the judicial power shall extend to all cases, in law and equity, arising under the constitution, the laws of the United States, and treaties made, or which shall be made, under their authority.

Having shown that a writ of error will lie in this case, and that the record has been duly certified, the next inquiry that arises is, what are the acts of the United States which relate to the Cherokee Indians and the acts of Georgia; and were these acts of the United States sanctioned by the federal constitution?

Among the enumerated powers of congress, contained in the eighth section of the first article of the constitution, it is declared 'that congress shall have power to regulate commerce with foreign nations, and among the Indian tribes.' By the articles of confederation, which were adopted on the 9th day of July 1778, it was provided 'that the United States, in congress assembled, shall also have the sole and exclusive right and power of regulating the alloy and value of coin struck, by their own authority, or by that of the respective states; fixing the standard of weight and measures throughout the United States; regulating the trade and management of all affairs with the Indians, not members of any of the states: Provided, that the legislative right of any state, within its own limits, be not infringed or violated.'

As early as June 1775, and before the adoption of the articles of confederation, congress took into their consideration the subject of Indian affairs. The Indian country was divided into three departments, and the superintendence of each was committed to commissioners, who were authorised to hold treaties with the Indians, make disbursements of money for their use, and to discharge various duties, designed to preserve peace and cultivate a friendly feeling with them towards the colonies. No person was permitted to trade with them [31 U.S. 515, 574] without a license from one or more of the commissioners of the respective departments.

In April 1776, it was 'resolved, that the commissioners of Indian affairs in the middle department, or any one of them, be desired to employ, for reasonable salaries, a minister of the gospel, to reside among the Delaware Indians, and instruct them in the Christian religion; a school master, to teach their youth reading, writing, and arithmetic; also, a blacksmith, to do the work of the Indians.' The general intercourse with the Indians continued to be managed under the superintendence of the continental congress.

On the 28th of November 1785, the treaty of Hopewell was formed, which was the first treaty made with the Cherokee Indians. The commissioners of the United States were required to give notice to the executives of Virginia, North Carolina, South Carolina and Georgia, in order that each might appoint one or more persons to attend the treaty, but they seem to have had no power to act on the occasion.

In this treaty it is stipulated, that 'the commissioners plenipotentiary of the United States in congress assembled, give peace to all the Cherokees, and receive them into the favour and protection of the United States of America, on the following conditions:'

1. The Cherokees to restore all prisoners and property taken during the war.

2. The United States to restore to the Cherokees all prisoners.

3. The Cherokees acknowledge themselves to be under the protection of the United States, and of no other sovereign whatsoever.

4. The boundary line between the Cherokees and the citizens of the United States was agreed to as designated.

5. If any person, not being an Indian, intrude upon the land 'allotted' to the Indians, or, being settled on it, shall refuse to remove within six months after the ratification of the treaty, he forfeits the protection of the United States, and the Indians were at liberty to punish him as they might think proper.

6. The Indians are bound to deliver up to the United States any Indian who shall commit robbery, or other capital crime, on a white person living within their protection. [31 U.S. 515, 575] 7. If the same offence be committed on an Indian by a citizen of the United States, he is to be punished.

8. It is understood that the punishment of the innocent, under the idea of retaliation, is unjust, and shall not be practised on either side, except where there is a manifest violation of this treaty; and then it shall be preceded, first, by a demand of justice; and, if refused, then by a declaration of hostilities.

'That the Indians may have full confidence in the justice of the United States respecting their interests, they shall have a right to send a deputy of their choice, whenever they think fit, to congress.'

The treaty of Holston was entered into with the same people, on the 2d day of July 1791.

This was a treaty of peace, in which the Cherokees again placed themselves under the protection of the United States, and engaged to hold no treaty with any foreign power, individual state, or with individuals of any state. Prisoners were agreed to be delivered up on both sides; a new Indian boundary was fixed; and a cession of land made to the United States on the payment of a stipulated consideration.

A free, unmolested road, was agreed to be given through the Indian lands, and the free navigation of the Tennessee river. It was agreed that the United States should have the exclusive right of regulating their trade, and a solemn guarantee of their land, not ceded, was made. A similar provision was made, as to the punishment of offenders, and as to all persons who might enter the Indian territory, as was contained in the treaty of Hopewell. Also, that reprisal or retaliation shall not be committed, until satisfaction shall have been demanded of the aggressor.

On the 7th day of August 1786, an ordinance for the regulation of Indian affairs was adopted, which repealed the former system.

In 1794 another treaty was made with the Cherokees, the object of which was to carry into effect the treaty of Holston. And on the plains of Tellico, on the 2d the October 1798, the Cherokees, in another treaty, agreed to give a right of way, in a certain direction, over their lands. Other engagements were also entered into, which need not be referred to.

Various other treaties were made by the United States with [31 U.S. 515, 576] the Cherokee Indians, by which, among other arrangements, cessions of territory were procured and boundaries agreed on.

In a treaty made in 1817, a distinct wish is expressed by the Cherokees, to assume a more regular form of government, in which they are encouraged by the United States. By a treaty held at Washington, on the 27th day of February 1819, a reservation of land is made by the Cherokees for a school fund, which was to be surveyed and sold by the United States for that purpose. And it was agreed, that all white persons, who had intruded on the Indian lands, should be removed.

To give effect to various treaties with this people, the power of the executive has frequently been exercised; and at one time General Washington expressed a firm determination to resort to military force to remove intruders from the Indian territories.

On the 30th of March 1802, congress passed an act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.

In this act it is provided, that any citizen or resident in the United States, who shall enter into the Indian lands to hunt, or for any other purpose, without a license, shall be subject to a fine and imprisonment. And if any person shall attempt to survey, or actually survey, the Indian lands, he shall be liable to forfeit a sum not exceeding one thousand dollars, and be imprisoned not exceeding twelve months. No person is permitted to reside as a trader within the Indian boundaries, without a license or permit. All persons are prohibited, under a heavy penalty, from purchasing the Indian lands; and all such purchases are declared to be void. And it is made lawful for the military force of the United States to arrest offenders against the provisions of the act.

By the seventeenth section, it is provided, that the act shall not be so construed as to 'prevent any trade or intercourse with Indians living on lands surrounded by settlements of the citizens of the United States, and being within the ordinary jurisdiction of any of the individual states; or the unmolested use of a road, from Washington district to Mero district, or to prevent the citizens of Tennessee from keeping in repair said road.' Nor was the act to be so construed as to prevent persons from travelling from Knoxville to Price's settlement, [31 U.S. 515, 577] provided they shall travel in the tract or path which is usually travelled, and the Indians do not object; but if they object, then all travel on this road to be prohibited, after proclamation by the president, under the penalties provided in the act.

Several acts, having the same object in view, were passed prior to this one; but as they were repealed either before, or by the act of 1802, their provisions need not be specially noticed.

The acts of the state of Georgia, which the plaintiff in error complains of, as being repugnant to the constitution, treaties, and laws of the United States, are found in two statutes.

The first act was passed the 12th of December 1829; and is entitled 'an act to add the territory lying within the chartered limits of Georgia, and now in the occupancy of the Cherokee Indians, to the counties of Carroll, Dekalb, Gwinnett and Habersham; and to extend the laws of the state over the same, and to annul all laws made by the Cherokee nation of Indians, and to provide for the compensation of officers serving legal process in said territory, and to regulate the testimony of Indians, and to repeal the ninth section of the act of 1828 on this subject.'

This act annexes the territory of the Indians, within the limits of Georgia, to the counties named in the title; and extends the jurisdiction of the state over it. It annuls the laws, ordinances, orders and regulations, of any kind, made by the Cherokees, either in council or in any other way, and they are not permitted to be given in evidence in the courts of the state. By this law, no Indian, or the descendant of an Indian, residing within the Creek or Cherokee nation of Indians, shall be deemed a competent witness in any court of the state, to which a white person may be a party, except such white person reside within the nation. Offences under the act are to be punished by confinement in the penitentiary, in some cases not less than four nor more than six years, and in others not exceeding four years.

The second act was passed on the 22d day of December 1830, and is entitled 'an act to prevent the exercise of assumed and arbitrary power, by all persons, on pretext of authority from the Cherokee Indians and their laws; and to prevent white persons from residing within that part of the [31 U.S. 515, 578] 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.'

By the first section of this act, it is made a penitentiary offence, after the 1st day of February 1831, for any person or persons, under colour or pretence of authority from the said Cherokee tribe, or as headmen, chiefs or warriors of said tribe, to cause or procure, by any means, the assembling of any council or other pretended legislative body of the said Indians, for the purpose of legislating, &c.

They are prohibited from making laws, holding courts of justice, or executing process. And all white persons, after the 1st of March 1831, who shall reside within the limits of the Cherokee nation, without a license or permit from his excellency the governor, or from such agent as his excellency the governor shall authorize to grant such permit or license, or who shall not have taken the oath hereinafter required, shall be guilty of a high misdemeanour; and, upon conviction thereof, shall be punished by confinement to the penitentiary at hard labour, for a term not less than four years. From this punishment, agents of the United States are excepted, white females, and male children under twenty-one years of age.

Persons who have obtained license, are required to take the following oath: 'I, A. B., do solemnly swear, that I will support and defend the constitution and laws of the state of Georgia, and uprightly demean myself as a citizen thereof. So help me God.'

The governor is authorized to organize a guard, which shall not consist of more than sixty persons, to protect the mines in the Indian territory, and the guard is authorized to arrest all offenders under the act.

It is apparent that these laws are repugnant to the treaties with the Cherokee Indians which have been referred to, and to the law of 1802. This repugnance is made so clear by an exhibition of the respective acts, that no force of demonstration can make it more palpable.

By the treaties and laws of the United States, rights are guarantied to the Cherokees, both as it respects their territory and internal polity. By the laws of Georgia these rights are [31 U.S. 515, 579] abolished; and not only abolished, but an ignominious punishment is inflicted on the Indians and others; for the exercise of them. The important question then arises, which shall stand, the laws of the United States, or the laws of Georgia? No rule of construction, or subtlety of argument, can evade an answer to this question. The response must be, so far as the punishment of the plaintiff in error is concerned, in favour of the one or the other.

Not to feel the full weight of this momentous subject, would evidence an ignorance of that high responsibility which is devolved upon this tribunal, and upon its humblest member, in giving a decision in this case.

Are the treaties and law which have been cited, in force? and what, if any, obligations, do they impose on the federal government within the limits of Georgia?

A reference has been made to the policy of the United States on the subject of Indian affairs, before the adoption of the constitution, with the view of ascertaining in what light the Indians have been considered by the first official acts, in relation to them, by the United States. For this object, it might not be improper to notice how they were considered by the European inhabitants, who first formed settlements in this part of the continent of America.

The abstract right of every section of the human race to a reasonable portion of the soil, by which to acquire the means of subsistence, cannot be controverted. And it is equally clear, that the range of nations or tribes, who exist in the hunter state, may be restricted within reasonable limits. They shall not be permitted to roam, in the pursuit of game, over an extensive and rich country, whilst in other parts, human beings are crowded so closely together, as to render the means of subsistence precarious. The law of nature, which is paramount to all other laws, gives the right to every nation, to the enjoyment of a reasonable extent of country, so as to derive the means of subsistence from the soil.

In this view perhaps, our ancestors, when they first migrated to this country, might have taken possession of a limited extent of the domain, had they been sufficiently powerful, without negotiation or purchase from the native Indians. But this course is believed to have been nowhere taken. A more [31 U.S. 515, 580] conciliatory mode was preferred, and one which was better calculated to impress the Indians, who were then powerful, with a sense of the justice of their white neighbours. The occupancy of their lands was never assumed, except upon the basis of contract, and on the payment of a valuable consideration.

This policy has obtained from the earliest white settlements in this country, down to the present time. Some cessions of territory may have been made by the Indians, in compliance with the terms on which peace was offered by the whites; but the soil, thus taken, was taken by the laws of conquest, and always as an indemnity for the expenses of the war, commenced by the Indians.

At no time has the sovereignty of the country been recognized as existing in the Indians, but they have been always admitted to possess many of the attributes of sovereignty. All the rights which belong to self government have been recognized as vested in them. Their right of occupancy has never been questioned, but the fee in the soil has been considered in the government. This may be called the right to the ultimate domain, but the Indians have a present right of possession.

In some of the old states, Massachusetts, Connecticut, Rhode Island and others, where small remnants of tribes remain, surrounded by white population, and who, by their reduced numbers, had lost the power of self government, the laws of the state have been extended over them, for the protection of their persons and property.

Before the adoption of the constitution, the mode of treating with the Indians was various. After the formation of the confederacy, this subject was placed under the special superintendence of the United Colonies; though, subsequent to that time, treaties may have been occasionally entered into between a state and the Indians in its neighbourhood. It is not considered to be at all important to go into a minute inquiry on this subject.

By the constitution, the regulation of commerce among the Indian tribes is given to congress. This power must be considered as exclusively vested in congress, as the power to regulate commerce with foreign nations, to coin money, to [31 U.S. 515, 581] establish post offices, and to declare war. It is enumerated in the same section, and belongs to the same class of powers.

This investiture of power has been exercised in the regulation of commerce with the Indians, sometimes by treaty, and, at other times, by enactments of congress. In this respect they have been placed by the federal authority, with but few exceptions, on the same footing as foreign nations.

It is said that these treaties are nothing more than compacts, which cannot be considered as obligatory on the United States, from a want of power in the Indians to enter into them.

What is a treaty? The answer is, it is a compact formed between two nations or communities, having the right of self government.

Is it essential that each party shall possess the same attributes of sovereignty, to give force to the treaty? This will not be pretended: for, on this ground, very few valid treaties could be formed. The only requisite is, that each of the contracting parties shall possess the right of self government, and the power to perform the stipulations of the treaty.

Under the constitution, no state can enter into any treaty; and it is believed that, since its adoption, no state, under its own authority, has held a treaty with the Indians.

It must be admitted, that the Indians sustain a peculiar relation to the United States. They do not constitute, as was decided at the last term, a foreign state, so as to claim the right to sue in the supreme court of the United States: and yet, having the right of self government, they, in some sense, form a state. In the management of their internal concerns, they are dependent on no power. They punish offences under their own laws, and, in doing so, they are responsible to no earthly tribunal. They make war, and form treaties of peace. The exercise of these and other powers, gives to them a distinct character as a people, and constitutes them, in some respects, a state, although they may not be admitted to possess the right of soil.

By various treaties, the Cherokees have placed themselves under the protection of the United States: they have agreed to trade with no other people, nor to invoke the protection of any other sovereignty. But such engagements do not divest [31 U.S. 515, 582] them of the right of self government, nor destroy their capacity to enter into treaties or compacts.

Every state is more or less dependent on those which surround it; but, unless this dependence shall extend so far as to merge the political existence of the protected people into that of their protectors, they may still constitute a state. They may exercise the powers not relinquished, and bind themselves as a distinct and separate community.

The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. To contend that the word 'allotted,' in reference to the land guarantied to the Indians in certain treaties, indicates a favour conferred, rather than a right acknowledged, would, it would seem to me, do injustice to the understanding of the parties. How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction.

The question may be asked, is no distinction to be made between a divilized and savage people? Are our Indians to be placed upon a footing with the nations of Europe, with whom we have made treaties?

The inquiry is not, what station shall now be given to the Indian tribes in our country? but, what relation have they sustained to us, since the commencement of our government?

We have made treaties with them; and are those treaties to be disregarded on our part, because they were entered into with an uncivilized people? Does this lessen the obligation of such treaties? By entering into them, have we not admitted the power of this people to bind themselves, and to impose obligations on us?

The president and senate, except under the treaty-making power, cannot enter into compacts with the Indians, or with foreign nations. This power has been uniformly exercised in forming treaties with the Indians.

Nations differ from each other in condition, and that of the same nation may change by the revolutions of time, but the [31 U.S. 515, 583] principles of justice are the same. They rest upon a base which will remain beyond the endurance of time.

After a lapse of more than forty years since treaties with the Indians have been solemnly ratified by the general government, it is too late to deny their binding force. Have the numerous treaties which have been formed with them, and the ratifications by the president and senate, been nothing more than an idle pageantry?

By numerous treaties with the Indian tribes, we have acquired accessions of territory, of incalculable value to the union. Except by compact, we have not even claimed a right of way through the Indian lands. We have recognised in

them the right to make war. No one has ever supposed that the Indians could commit treason against the United States. We have punished them for their violation of treaties; but we have inflicted the punishment on them as a nation, and not on individual offenders among them as traitors.

In the executive, legislative, and judicial branches of our government, we have admitted, by the most solemn sanctions, the existence of the Indians as a separate and distinct people, and as being vested with rights which constitute them a state, or separate community-not a foreign, but a domestic community-not as belonging to the confederacy, but as existing within it, and, of necessity, bearing to it a peculiar relation.

But, can the treaties which have been referred to, and the law of 1802, be considered in force within the limits of the state of Georgia?

In the act of cession, made by Georgia to the United States, in 1802, of all lands claimed by her west of the line designated, one of the conditions was, 'that the United States should, at their own expense, extinguish, for the use of Georgia, as early as the same can be peaceably obtained, on reasonable terms, the Indian title to lands within the state of Georgia.'

One of the counsel, in the argument, endeavoured to show, that no part of the country now inhabited by the Cherokee Indians, is within what is called the chartered limits of Georgia.

It appears that the charter of Georgia was surrendered [31 U.S. 515, 584] by the trustees, and that, like the state of South Carolina, she became a regal colony. The effect of this change was, to authorise the crown to alter the boundaries, in the exercise of its discretion. Certain alterations, it seems, were subsequently made: but I do not conceive it can be of any importance to enter into a minute consideration of them. Under its charter, it may be observed, that Georgia derived a right to the soil, subject to the Indian title, by occupancy. By the act of cession, Georgia designated a certain line as the limit of that cession, and this line, unless subsequently altered, with the assent of the parties interested, must be considered as the boundary of the state of Georgia. This line having been thus recognized, cannot be contested on any question which may incidentally arise for judicial decision.

It is important, on this part of the case, to ascertain in what light Georgia has considered the Indian title to lands, generally, and particularly, within her own boundaries; and also, as to the right of the Indians to self-government.

In the first place, she was a party to all the treaties entered into between the United States and the Indians, since the adoption of the constitution. And prior to that period, she was represented in making them, and was bound by their provisions, although it is alleged that she remonstrated against the treaty of Hopewell. In the passage of the intercourse law of 1802, as one of the constituent parts of the union, she was also a party.

The stipulation made in her act of cession, that the United States should extinguish the Indian title to lands within the state, was a distinct recognition of the right in the federal government, to make the extinguishment; and also, that, until it should be made, the right of occupancy would remain in the Indians.

In a law of the state of Georgia, 'for opening the land office and for other purposes,' passed in 1783, it is declared that surveys made on Indian lands were null and void; a fine was inflicted on the person making the survey, which, if not paid by the offender, he was punished by imprisonment. By a subsequent act, a line was fixed for the Indians, which was a boundary between them and the whites. A similar provision is found in other laws of Georgia, passed before the adoption [31 U.S. 515, 585] of the constitution. By an act of 1787, severe corporeal punishment was inflicted on those who made or attempted to make surveys, 'beyond the temporary line designating the Indian hunting ground.'

On the 19th of November 1814, the following resolutions were adopted by the Georgia legislature.

> 'Whereas, many of the citizens of this state, without regard to existing treaties between the friendly Indians and the United States, and contrary to the interest and good policy of this state, have gone, and are frequently going over, and settling and cultivating the lands allotted to the friendly Indians for their hunting ground, by which means the state is not only deprived of their services in the army, but considerable feuds are engendered between us and our friendly neighbouring Indians:
> 'Resolved, therefore, by the senate and house of representatives of the state of Georgia in general assembly met, that his excellency, the governor, be, and is hereby requested to take the necessary means to have all intruders removed off the Indian lands, and that proper steps be taken to prevent future aggressions.'

In 1817, the legislature refused to take any steps to dispose of lands acquired by treaty with the Indians, until the treaty had been ratified by the senate; and, by a resolution, the governor was directed to have the line run between the state of Georgia and the Indians, according to the late treaty. The same thing was again done in the year 1819, under a recent treaty.

In a memorial to the president of the United States, by the legislature of Georgia, in 1819, they say, 'it has long been the desire of Georgia, that her settlements should be extended to her ultimate limits.' 'That the soil within her boundaries should be subjected to her control; and, that her police organization and government should be fixed and permanent.' 'That the state of Georgia claims a right to be jurisdiction and soil of the territory within her limits.' 'She admits, however, that the right is inchoate-remaining to be perfected by the United States, in the extinction of the Indian title; the United States pro hac vice as their agents.'

The Indian title was also distinctly acknowledged by the act [31 U.S. 515, 586] of 1796, repealing the Yazoo act. It is there declared, in reference to certain lands, that 'they are the sole property of the state, subject only to the right of the treaty of the United States, to enable the state to purchase, under its pre-emption right, the Indian title to the same;' and also, that the land is vested in the 'state, to whom the right of pre- emption to the same belongs, subject only to the controlling power of the United State, to authorise any treaties for, and to superintend the same.' This language, it will be observed, was used long before the act of cession.

On the 25th of March 1825, the governor of Georgia issued the following proclamation:

> 'Whereas it is provided in said treaty, that the United States shall protect the Indians against the incroachments, hostilities, and impositions of the whites, so that they suffer no imposition, molestation, or injury in their persons, goods, effects, their dwellings, or the lands they occupy, until their removal shall have been acomplished, according to the terms of the treaty,' which had been recently made with the Indians. 'I have therefore thought proper to issue this my proclamation, warning all persons, citizens of Georgia or others, against trespassing or intruding upon lands occupied by the Indians, within the limits of Georgia, either for the purpose of settlement or otherwise, as every such act will be in direct violation of the provisions of the treaty aforesaid, and will expose the aggressors to the most certain and summary punishment, by the authorities of the state, and the United States.' 'All good citizens, therefore, pursuing the discates of good faith, will unite in enforcing the obligations of the treaty, as the supreme law,' &c.

Many other references might be made to the public acts of the state of Georgia, to show that she admitted the obligation of Indian treaties, but the above are believed to be sufficient. These acts do honour to the character of that highly respectable state.

Under the act of cession, the United States were bound, in good faith, to extinguish the Indian title to lands within the limits of Georgia, so soon as it could be done peaceably and on reasonable terms. [31 U.S. 515, 587] The state of Georgia has repeatedly remonstrated to the president on this subject, and called upon the government to take the necessary steps to fulfil its engagement. She complained that, whilst the Indian title to immense tracts of country had been extinguished elsewhere, within the limits of Georgia but little progress had been made; and this was attributed, either to a want of effort on the part of the federal government, or to the effect of its policy towards the Indians. In one or more of the treaties, titles in fee simple were given to the Indians, to certain reservations of land; and this was complained of, by Georgia, as a direct infraction of the condition of the cession. It has also been asserted, that the policy of the government, in advancing the cause of civilization among the Cherokees, and inducing them to assume the forms of a regular government and of civilized life, was calculated to increase their attachment to the soil they inhabit, and to render the purchase of their title more difficult, if not impracticable.

A full investigation of this subject may not be considered as strictly within the scope of the judicial inquiry which belongs to the present case. But, to some extent, it has a direct bearing on the question before the court; as it tends to show how the rights and powers of Georgia were construed by her public functionaries.

By the first president of the United States, and by every succeeding one, a strong solicitude has been expressed for the civilization of the Indians. Through the agency of the government, they have been partially induced, in some parts of the union, to change the hunter state for that of the agriculturist and herdsman.

In a letter addressed by Mr Jefferson to the Cherokees, dated the 9th of January 1809, he recommends them to adopt a regular government, that crimes might be punished and property protected. He points out the mode by

which a council should be chosen, who should have power to enact laws; and he also recommended the appointment of judicial and executive agents, through whom the law might be enforced. The agent of the government, who resided among them, was recommended to be associated with their council, that he might give the necessary advice on all subjects relating to their government. [31 U.S. 515, 588] In the treaty of 1817, the Cherokees are encouraged to adopt a regular form of government.

Since that time, a law has been passed making an annual appropriation of the sum of ten thousand dollars, as a school fund, for the education of Indian youths, which has been distributed among the different tribes where schools had been established. Missionary labours among the Indians have also been sanctioned by the government, by granting permits, to those who were disposed to engage in such a work, to reside in the Indian country.

That the means adopted by the general government to reclaim the savage from his erratic life, and induce him to assume the forms of civilization, have had a tendency to increase the attachment of the Cherokees to the country they now inhabit, is extremely probable; and that it increased the difficulty of purchasing their lands, as by act of cession the general government agreed to do, is equally probable.

Neither Georgia, nor the United States, when the cession was made, contemplated that force should be used in the extinguishment of the Indian title; nor that it should be procured on terms that are not reasonable. But, may it not be said, with equal truth, that it was not contemplated by either party that any obstructions to the fulfilment of the compact should be allowed, much less sanctioned, by the United States?

The humane policy of the government towards these children of the wilderness must afford pleasure to every benevolent feeling; and if the efforts made have not proved as successful as was anticipated, still much has been done. Whether the advantages of this policy should not have been held out by the government to the Cherokees within the limits of Georgia, as an inducement for them to change their residence and fix it elsewhere, rather than by such means to increase their attachment to their present home, as has been insisted on, is a question which may be considered by another branch of the government. Such a course might, perhaps, have secured to the Cherokee Indians all the advantages they have realized from the paternal superintendence of the government; and have enabled it, on peaceable and reasonable terms, to comply with the act of cession.

Does the intercourse law of 1802 apply to the Indians who [31 U.S. 515, 589] live within the limits of Georgia? The nineteenth section of that act provides, 'that it shall not be construed to prevent any trade or intercourse with Indians living on lands surrounded by settlements of the citizens of the United States, and being within the ordinary jurisdiction of any of the individual states? This provision, it has been supposed, excepts from the operation of the law the Indian lands which lie within any state. A moment's reflection will show that this construction is most clearly erroneous.

To constitute an exception to the provisions of this act, the Indian settlement, at the time of its passage, must have been surrounded by settlements of the citizens of the United States, and within the ordinary jurisdiction of a state; not only within the limits of a state, but within the common exercise of its jurisdiction.

No one will pretend that this was the situation of the Cherokees who lived within the state of Georgia in 1802; or, indeed, that such is their present situation. If, then, they are not embraced by the exception, all the provisions of the act of 1802 apply to them.

In the very section which contains the exception, it is provided, that the use of the road from Washington district to Mero district should be enjoyed, and that the citizens of Tennessee, under the orders of the governor, might keep the road in repair. And in the same section, the navigation of the Tennessee river is reserved, and a right to travel from Knoxville to Price's settlement, provided the Indians should not object.

Now, all these provisions relate to the Cherokee country; and can it be supposed, by any one, that such provisions would have been made in the act, if congress had not considered it as applying to the Cherokee country, whether in the state of Georgia, or in the state of Tennessee?

The exception applied, exclusively, to those fragments of tribes which are found in several of the states, and which came literally within the description used.

Much has been said against the existence of an independent power within a sovereign state; and the conclusion has been drawn, that the Indians, as a matter of right, cannot enforce their own laws within the territorial limits of a state. The refutation of this argument is found in our past history. [31 U.S. 515, 590] That fragments of tribes, having lost the power of self-government, and who lived within the ordinary jurisdiction of a state, have been taken under the protection of the laws, has already been admitted. But there has been no instance, where the state laws have been generally extended over a numerous tribe of Indians, living within the state, and exercising the right of self-government, until recently.

Has Georgia ever, before her late laws, attempted to regulate the Indian communities within her limits? It is true, New York extended her criminal laws over the remains of the tribes within that state, more for their protection than for any other purpose. These tribes were few in number, and were surrounded by a white population. But, even the state of New York has never asserted the power, it is believed, to regulate their concerns beyond the suppression of crime.

Might not the same objection to this interior independent power, by Georgia, have been urged, with as much force as at present, ever since the adoption of the constitution? Her chartered limits, to the extent claimed, embraced a great number of different nations of Indians, all of whom were governed by their own laws, and were amenable only to them. Has not this been the condition of the Indians within Tennessee, Ohio, and other states?

The exercise of this independent power surely does not become more objectionable, as it assumes the basis of justice and the forms of civilization. Would it not be a singular argument to admit, that, so long as the Indians govern by the rifle and the tomahawk, their government may be tolerated; but, that it must be suppressed, so soon as it shall be administered upon the enlightened principles of reason and justice?

Are not those nations of Indians who have made some advances in civilization, better neighbours than those who are still in a savage state? And is not the principle, as to their self government, within the jurisdiction of a state, the same?

When Georgia sanctioned the constitution, and conferred on the national legislature the exclusive right to regulate commerce or intercourse with the Indians, did she reserve the right to regulate intercourse with the Indians within her limits? This will not be pretended. If such had been the construction of her own powers, would they not have been exercised? [31 U.S. 515, 591] Did her senators object to the numerous treaties which have been formed with the different tribes, who lived within her acknowledged boundaries? Why did she apply to the executive of the union, repeatedly, to have the Indian title extinguished; to establish a line between the Indians and the state, and to procure a right of way through the Indian lands?

The residence of Indians, governed by their own laws, within the limits of a state, has never been deemed incompatible with state sovereignty, until recently. And yet, this has been the condition of many distinct tribes of Indians, since the foundation of the federal government.

How is the question varied by the residence of the Indians in a territory of the United States? Are not the United States sovereign within their territories? And has it ever been conceived, by any one, that the Indian governments, which exist in the territories, are incompatible with the sovereignty of the union?

A state claims the right of sovereignty, commensurate with her territory; as the United States claim it, in their proper sphere, to the extent of the federal limits. This right or power, in some cases, may be exercised, but not in others. Should a hostile force invade the country, at its most remote boundary, it would become the duty of the general government to expel the invaders. But it would violate the solemn compacts with the Indians, without cause, to dispossess them of rights which they possess by nature, and have been uniformly acknowledged by the federal government.

Is it incompatible with state sovereignty to grant exclusive jurisdiction to the federal government over a number of acres of land, for military purposes? Our forts and arsenals, though situated in the different states, are not within their jurisdiction.

Does not the constitution give to the United States as exclusive jurisdiction in regulating intercourse with the Indians, as has been given to them over any other subjects? Is there any doubt as to this investiture of power? Has it

not been exercised by the federal government, ever since its formation, not only without objection, but under the express sanction of all the states?

The power to dispose of the public domain is an attribute [31 U.S. 515, 592] of sovereignty. Can the new states dispose of the lands within their limits, which are owned by the federal government? The power to tax is also an attribute of sovereignty; but, can the new states tax the lands of the United States? Have they not bound themselves, by compact, not to tax the public lands, nor until five years after they shall have been sold? May they violate this compact, at discretion?

Why may not these powers be exercised by the respective states? The answer is, because they have parted with them, expressly for the general good. Why may not a state coin money, issue bills of credit, enter into a treaty of alliance or confederation, or regulate commerce with foreign nations? Because these powers have been expressly and exclusively given to the federal government.

Has not the power been as expressly conferred on the federal government, to regulate intercourse with the Indians; and is it not as exclusively given, as any of the powers above enumerated? There being no exception to the exercise of this power, it must operate on all communities of Indians, exercising the right of self-government; and consequently, include those who reside within the limits of a state, as well as others. Such has been the uniform construction of this power by the federal government, and of every state government, until the question was raised by the state of Georgia.

Under this clause of the constitution, no political jurisdiction over the Indians, has been claimed or exercised. The restrictions imposed by the law of 1802, come strictly within the power to regulate trade; not as an incident, but as a part of the principal power. It is the same power, and is conferred in the same words, that has often been exercised in regulating trade with foreign countries. Embargoes have been imposed, laws of non-intercourse have been passed, and numerous acts, restrictive of trade, under the power to regulate commerce with foreign nations.

In the regulation of commerce with the Indians, congress have exercised a more limited power than has been exercised in reference to foreign countries. The law acts upon our own citizens, and not upon the Indians, the same as the laws referred to act upon our own citizens in their foreign commercial intercourse. [31 U.S. 515, 593] It will scarcely be doubted by any one, that, so far as the Indians, as distinct communities, have formed a connexion with the federal government, by treaties; that such connexion is political, and is equally binding on both parties. This cannot be questioned, except upon the ground, that in making these treaties, the federal government has transcended the treaty-making power. Such an objection, it is true, has been stated, but it is one of modern invention, which arises out of local circumstances; and is not only opposed to the uniform practice of the government, but also to the letter and spirit of the constitution.

But the inquiry may be made, is there no end to the exercise of this power over Indians within the limits of a state, by the general government? The answer is, that, in its nature, it must be limited by circumstances.

If a tribe of Indians shall become so degraded or reduced in numbers, as to lose the power of self-government, the protection of the local law, of necessity, must be extended over them. The point at which this exercise of power by a state would be proper, need not now be considered: if indeed it be a judicial question. Such a question does not seem to arise in this case. So long as treaties and laws remain in full force, and apply to Indian nations, exercising the right of self-government, within the limits of a state, the judicial power can exercise no discretion in refusing to give effect to those laws, when questions arise under them, unless they shall be deemed unconstitutional.

The exercise of the power of self-government by the Indians, within a state, is undoubtedly contemplated to be temporary. This is shown by the settled policy of the government, in the extinguishment of their title, and especially by the compact with the state of Georgia. It is a question, not of abstract right, but of public policy. I do not mean to say, that the same moral rule which should regulate the affairs of private life, should not be regarded by communities or nations. But, a sound national policy does require that the Indian tribes within our states should exchange their territories, upon equitable principles, or, eventually, consent to become amalgamated in our political communities.

At best they can enjoy a very limited independence within [31 U.S. 515, 594] the boundaries of a state, and such a residence must always subject them to encroachments from the settlements around them; and their existence within a state, as a separate and independent community, may seriously embarrass or obstruct the operation of the state

laws. If, therefore, it would be inconsistent with the political welfare of the states, and the social advance of their citizens, that an independent and permanent power should exist within their limits, this power must give way to the greater power which surrounds it, or seek its exercise beyond the sphere of state authority.

This state of things can only be produced by a co-operation of the state and federal governments. The latter has the exclusive regulation of intercourse with the Indians; and, so long as this power shall be exercised, it cannot be obstructed by the state. It is a power given by the constitution, and sanctioned by the most solemn acts of both the federal and state governments: consequently, it cannot be abrogated at the will of a state. It is one of the powers parted with by the states, and vested in the federal government. But, if a contingency shall occur, which shall render the Indians who reside in a state, incapable of self- government, either by moral degradation or a reduction of their numbers, it would undoubtedly be in the power of a state government to extend to them the aegis of its laws. Under such circumstances, the agency of the general government, of necessity, must cease.

But, if it shall be the policy of the government to withdraw its protection from the Indians who reside within the limits of the respective states, and who not only claim the right of self government, but have uniformly exercised it; the laws and treaties which impose duties and obligations on the general government should be abrogated by the powers competent to do so. So long as those laws and treaties exist, having been formed within the sphere of the federal powers, they must be respected and enforced by the appropriate organs of the federal government.

The plaintiff who prosecutes this writ of error, entered the Cherokee country, as it appears, with the express permission of the president, and under the protection of the treaties of the United States, and the law of 1802. He entered, not to corrupt the morals of this people, nor to profit by their substance; but to [31 U.S. 515, 595] teach them, by precept and example, the Christian religion. If he be unworthy of this sacred office; if he had any other object than the one professed; if he sought, by his influence, to counteract the humane policy of the federal government towards the Indians, and to embarrass its efforts to comply with its solemn engagement with Georgia; though his sufferings be illegal, he is not a proper object of public sympathy.

It has been shown, that the treaties and laws referred to come within the due exercise of the constitutional powers of the federal government; that they remain in full force, and consequently must be considered as the supreme laws of the land. These laws throw a shield over the Cherokee Indians. They guarantied to them their rights of occupancy, of self- government, and the full enjoyment of those blessings which might be attained in their humble condition. But, by the enactments of the state of Georgia, this shield is broken in pieces-the infant institutions of the Cherokees are abolished, and their laws annulled. Infamous punishment is denounced against them, for the exercise of those rights which have been most solemnly guarantied to them by the national faith.

Of these enactments, however, the plaintiff in error has no right to complain, nor can he question their validity, except in so far as they affect his interests. In this view and in this view only, has it become necessary, in the present case, to consider the repugnancy of the laws of Georgia to those of the union.

Of the justice or policy of these laws, it is not my province to speak: such considerations belonging to the legislature by whom they were passed. They have, no doubt, been enacted under a conviction of right, by a sovereign and independent state, and their policy may have been recommended, by a sense of wrong under the compact. Thirty years have elapsed since the federal government engaged to extinguish the Indian title, within the limits of Georgia. That she has strong ground of complaint arising from this delay, must be admitted; but such considerations are not involved in the present case; they belong to another branch of the government. We can look only to the law, which defines our power, and marks out the path of our duty.

Under the administration of the laws of Georgia, a citizen of [31 U.S. 515, 596] the United States has been deprived of his liberty; and, claiming protection under the treaties and laws of the United States, he makes the question, as he has a right to make it, whether the laws of Georgia, under which he is now suffering an ignominious punishment, are not repugnant to the constitution of the United States, and the treaties and laws made under it. This repugnancy has been shown; and it remains only to say, what has before been often said by this tribunal of the local laws of many of the states in this union, that, being repugnant to the constitution of the United States, and to the laws made under it, they can have no force to divest the plaintiff in error of his property or liberty.

Mr Justice BALDWIN dissented: stating that in his opinion, the record was not properly returned upon the writ of error; and ought to have been returned by the state court, and not by the clerk of that court. As to the merits, he said

his opinion remained the same as was expressed by him in the case of the Cherokee Nation v. The State of Georgia, at the last term.

The opinion of Mr Justice Baldwin was not delibered to the reporter.

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 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 defence 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 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 [31 U.S. 515, 597] the premises, by the said superior court of Georgia, upon the verdict upon the plea of Not guilty afterwards pleaded by the said Samuel A. Worcester, whereby the said Samuel A. Worcester is sentenced to hard labour 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 for ever 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 do go from this court, to the said superior court, to carry this judgment into execution.

In the case of Butler, Plaintiff in Error v. The State of Georgia, the same judgment was given by the court, and a special mandate was ordered from the court to the superior court of Gwinnett county, to carry the judgment into execution.

http://caselaw.lp.findlaw.com/scripts/getcase.pl?court=US&vol=31&invol=515

from A letter on the Condition of the Cherokee People

Samuel A. Worcester

Samuel Worchester was a Methodist missionary living among the Cherokee in NewEchota. His arrest and trial under contested Georgia laws claiming jurisdiction over Cherokee territory led to the U. S. Supreme Court decision in the case of ***Worchester v. State of Georgia*** *in which the court ruled against Georgia's claim; a decision that President Jackson refused to enforce.*

The following letter appeared in the ***Cherokee Phoenix*** *two months after the a copy of the editorial by Reverend Ely was printed and is Worchester's response and assessment of Cherokee civilization.*

New Echota, Cher. Nation
March 15, 1830
Mr. Wm. S. Coodey
Washington City.

Dear Sir:

I cheerfully comply with your request, that I would forward to you a statement respecting the progress of improvement among your people, the Cherokees.

... It may not be amiss to state, briefly, what opportunities I have enjoyed of forming a judgment respecting the state of the Cherokee people. It was four years last October, since I came into the nation, during which time I have made it my home, having resided two years at Brainerd, and the remainder of the time at this place. Though I have not spent very much of the time in travelling, yet I have visited almost every part of the nation, except a section on the Northeast. Two annual sessions of the General Council have passed while I have been residing at the Seat of Government, at which times a great number of the people of all classes and from all parts are to be seen.

... The printed constitution and laws of your nation, also, you doubtless have. They show your progress in civil polity. As far as my knowledge extends, they are executed with a good degree of efficiency, and their execution meets with not the least hinderance from anything like a spirit of insubordination among the people. Oaths are constantly administered in the courts of justice, and I believe I have never heard of an instance of perjury.

It has been well observed by others, that the progress of a people in civilizations is to be determined by comparing the present with the past. I can only compare what I see with what I am told has been.

The principal chief is about forty years of age. When he was a boy, his father procured him a good suit of clothes, in the fashion of the sons of civilized people; but he was so ridiculed by his mates as a white boy that he took off his new suit, and refused to wear it. The editor of the Cherokee Phoenix is twenty-seven years old. He well remembers that he felt awkward and ashamed of his singularity, when he began to wear the dress of a white boy. Now every boy is proud of a civilized suit, and those feel awkward and ashamed of their singularity who are destitute of it. At the last session of the General Council, I scarcely recollect having seen any members who were not clothed in the same manner as the white inhabitants of the neighboring States; and these very few, (I am informed that the precise number was four) who were partially clothed in Indian style, were, nevertheless, very

decently attired. The dress of civilized people is general throughout the nation. I have seen, I believe, only one Cherokee woman, and she an aged woman, away from her home, who was not clothed in at least a decent long gown. At home only one, a very aged woman, who appeared willing to be seen in original native dress; three or four, only, who had at their own houses dressed themselves in Indian style, but hid themselves with shame at the approach of a stranger. I am thus particular, because particularity gives more accurate ideas than general statements. Among the elderly men there is yet a considerable portion, I dare not say whether a majority or a minority, who retain the Indian dress in part. The younger men almost all dress like the whites around them, except that the greater number wear a turban instead of a hat, and in cold weather a blanket frequently serves for a cloak. Cloaks, however, are becoming common. There yet remains room for improvement in dress, but that improvement is making with surprising rapidity.

The arts of spinning and weaving, the Cherokee women generally, put in practice. Most of their garments are of their own spinning and weaving, from cotton the produce of their own fields; though considerable northern domestic, and much calico, is worn, nor is silk uncommon. Numbers of the men wear imported cloths, broadcloths (sic), &c. and many wear mixed cotton and wool, the manufacture of their wives; but the greater part are clothed principally in cotton.

Except in the arts of spinning and weaving, but little progress has been made in manufactures. A few Cherokees, however are mechanics.

Agriculture is the principal employment and support of the people. It is the dependence of almost every family. As to the wandering part of the people, who live by the chase, if they are to be found in the nation, I certainly have not found them, nor even heard of them, except from the floor of Congress, and other distant sources of information. I do not know of a single family who depend, in any considerable degree, on game for support. It is true that deer and turkies (sic) are frequently killed, but not in sufficient numbers to form any dependence as the means of subsistence. The land is cultivated with very different degrees of industry; but I believe that few fail of an adequate supply of food. The ground is uniformly cultivated by means of the plough, and not as formerly, by the hoe only.

The houses of the Cherokees are of all sorts; from an elegant painted or brick mansion, down to a very mean log cabin. If we speak, however, of the mass of the people, they live in comfortable log houses, generally one story high, but frequently two; sometimes of hewn logs, and sometimes unhewn; commonly with a wooden chimney, and a floor of puncheons, or what a New England man would call slabs. Their houses are not generally well furnished, many have scarcely any furniture, though a few are furnished even elegantly, and many decently. Improvement in the furniture of their houses appears to follow after improvement in dress, but at present is making rapid progress.

As to education, the number who can read and write English is considerable, though it bears but a moderate proportion to the whole population. Among such, the degree of improvement and intelligence is various. The Cherokee language, as far as I can judge, is read and written by a large majority of those between childhood and middle age. Only a few who are much beyond middle age have learned.

In regard to the progress of religion, I cannot, I suppose, do better than to state, as nearly as I am able, the number of members in the churches of the several denominations. The whole number of native members of the Presbyterian churches is not far from 180. In the churches of the United Brethren are about 54. In the Baptist churches I do not know the number; probably as many as 50. The Methodists, I believe reckon in society, more than 800; of whom I suppose the greater part are natives. Many of the heathenish customs of the people have gone entirely, or almost entirely, into disuse, and others are fast following their steps. I believe the greater part of the people acknowledge

the Christian religion to be the true religion, although many who make this acknowledgment know very little of that religion, and many others do no feel its power. Through the blessing of our God, however, religion is steadily, gaining ground.

But, it will be asked, is the improvement which has been described, general among the people, and are the full-blooded Indians civilized, or only the half-breeds? I answer that, in the description which I have given, I have spoken of the mass of the people, with out distinction. If it be asked however, what class are most advanced- I answer, as a general thing- those of mixed blood. They have taken the lead, although some of full blood are as refined as any. But, though those of mixed blood are generally in the van, as might naturally be expected, yet the whole mass of the people is on the march....

Your sincere friend,

SAMUEL A. WORCESTER.

The Cherokee Indians Speak to the U.S. Government

Letter

Background Notes

Excerpt from a letter from a Cherokee delegation to John C. Calhoun, Sec. of War, during Pres. James Monroe's Administration.

Transcription of Primary Source

City of Washington, February 11, 1824

SIR: We have received your letter of the 30th ultimo, containing the answer which the President directed you to communicate to us, in reply to a particular subject embraced in the letter which we had the honor of laying before him on the 19th ultimo.

In this answer we discover new propositions for the extinguishment of Cherokee titles to lands for the benefit of Georgia. We beg leave to say to the President, through you, the Cherokee nation are sensible that the United States are bound, by their compact with Georgia, to extinguish, for the use of that State, the Indian title to lands within the limits claimed by the State, "as soon as it can be done peaceably and on reasonable conditions;" and are also sensible that this compact is no more than a conditional one, and, without the free and voluntary consent of the Cherokee nation, can never be complied with on the part of the United States. And, having been duly authorized to make known to the Government of the United States the true sentiments and disposition of the nation on the subject, the President has been informed that the Cherokees have come to a decisive and unalterable conclusion never to cede away any more lands. And as the extinguishment of the Cherokee title to lands can never be obtained on conditions which will accord with the import of the compact between the United States and Georgia, it is desirable that the Government should adopt some other mans to satisfy Georgia, than to remain any longer under anticipation of being enabled to accomplish the object of purchasing the Cherokee title. The United States now possess an extensive territory in the Floridas; why not extend the limits of Georgia in that section of country, if her present bounds be considered too small? The Cherokee nation have never promised to surrender at any future period, to the United States, for Georgia, their title to lands; but, on the contrary the United States have, by treaties, solemnly guarantied to secure to the Cherokees forever their title to lands which have been reserved by them: therefore, the State of Georgia can have no reasonable plea against the Cherokees for refusing to yield their little all to the United States, so that her own aggrandizement may be raised upon their ruins.

You express a wish "to have a free communication with us on this subject, and to appeal to the good sense and to the interest of the nation, as pointed out by their own experience, and by that of their ancestors, for near two centuries back." In accordance with your wishes, we will speak frankly, and with all the good sense we may possess, and, keeping strictly in view the interest of our nation, look back to circumstances which have transpired, and endeavor to trace the causes which produced them; and also to observe the present state of things, and look forward to such objects as may be practically attainable for the best interest of the Cherokee people.

By tracing the situation of our ancestors for two hundred years back, we see nothing desirable, but much to deplore. The happiness which the Indians once enjoyed, by a quiet and undisturbed ease, in

their primitive situation, before the face of the white man was seen on this continent, was now poisoned by the bad fruits of the civilized tree which was planted around them. Tumultuous wars arose, and the mountains and plains were covered with carnage, and the Elysian valleys drenched with blood; and many noble tribes, whose unfortunate doom it was to have been overshadowed by the expanded branches of this tree, drooped, withered, and are no more. Such are the scenes brought to our view by looking back to the situation of our ancestors at the period to which you have called attention. Let us now, for a moment, seriously reflect on the true causes which have universally produced the extinction of Indian tribes, when they became merged into the white population; and we doubt not that it will be admitted at once that, by ambition, pride, and avariciousness of the civilized man, the untutored sons of nature became a prey. Defrauded out of their lands; treated as inferior beings, on account of their poverty and ignorance, they became associated with the lowest grade of society, from whom the habits of intemperance, debauchery, and all the vices of degradation peculiar to that class, were by them soon imbibed. Their lands having been swept from under their feet by the ingenuity of the white man and being left destitute of a home, ignorant the arts and sciences, and possessing no experience in the employment of a laborious and industrious life to obtain a living, they became straggling wanderers among strangers; and, by oppressions, their spirits were depressed, and considering themselves degraded, they were induced to hurry away their troublesome existence by inhaling the noxious vapors of intemperance (a fatal remedy) to settle their doom of extinction. Such have been the circumstances and causes which have swept into oblivion the names of many tribes of Indians that once possessed and inhabited the soil of these United States; and such must be the fate of those tribes now in existence, should they be merged into the white population before they become completely civilized and shall have learned the arts and sciences; and such would be the fate of a large portion of the Cherokee nation, were they to cede away all their lands, and now become incorporated with the whites.

You say that “we must be sensible that it will be impossible for us to remain, for any length of time, in our present situation, as a distinct society or nation, within the limits of Georgia, or of any other State; and that such a community is incompatible with your system, and must yield to it; and that we must either cease to be a distinct community, and become, at no distant period, a part of the State within whose limits we are, or remove without the limits of any State;” and that “it remains for the Cherokee nation to decide for itself, whether it will contribute most to their own welfare and happiness for them to retain their present title to their lands, and remain where they are exposed to the discontent of Georgia and the pressure of her citizens; or to cede it to the United States, for Georgia, at a fair price, to be paid either in other lands beyond the Mississippi, or in money.” Sir, to these remarks we beg leave to observe, and to remind you, that the Cherokees are not foreigners, but original inhabitants of America; and that they now inhabit and stand on the soil of their own territory; and that the limits of their territory are defined by the treaties which they have made with the Government of the United States; and that the States by which they are now surrounded have been created out of lands which were once theirs; and that they cannot recognise the sovereignty of any State within the limits of their territory. Confiding in the good faith of the United States to respect their treaty stipulations with the Cherokee nation, we have no hesitation in saying that the true interest, prosperity, and happiness of our nation demand their permanency where they are, and to retain their present title to their lands. In doing so, we cannot see, in the spirit of liberality, honor, magnanimity, equity, and justice, how they can be exposed to the discontent of Georgia or the pressure of her citizens. An extent of territory twice as large, west of the Mississippi, as the one now occupied by the Cherokees east of that river, or all the money now in the coffers of your treasure would be no inducement for the nation to

exchange or to sell their country. It rests with the interest, the disposition, and the free consent of the nation to remain as a separate community, or to enter into a treaty with the United States for admission as citizens, under the form of a Territorial or State Government; and we can only say, that the situation of the nation is not sufficiently improved in the arts of civilized life to warrant any change at present: therefore, the subject must be left for our posterity to determine for themselves, whenever the whole nation shall have been completely and fully civilized, and shall have possessed the arts and sciences.

With considerations of high respect and esteem, we have the honor to be, sir, your very obedient, humble servants,

JOHN ROSS,
GEORGE LOWREY,
MAJOR RIDGE, his X mark.
ELIJAH HICKS.

Excerpt from North Carolina Digital History on Chief John Ridge's Reason for Change of Mind

In December 1835, the U.S. resubmitted the treaty to a meeting of 300 to 500 Cherokees at New Echota. Older now, Major Ridge spoke of his reasons for supporting the treaty:

"I am one of the native sons of these wild woods. I have hunted the deer and turkey here, more than fifty years. I have fought your battles, have defended your truth and honesty, and fair trading. The Georgians have shown a grasping spirit lately; they have extended their laws, to which we are unaccustomed, which harass our braves and make the children suffer and cry. I know the Indians have an older title than theirs. We obtained the land from the living God above. They got their title from the British. Yet they are strong and we are weak. We are few, they are many. We cannot remain here in safety and comfort. I know we love the graves of our fathers. We can never forget these homes, but an unbending, iron necessity tells us we must leave them. I would willingly die to preserve them, but any forcible effort to keep them will cost us our lands, our lives and the lives of our children. There is but one path of safety, one road to future existence as a Nation. That path is open before you. Make a treaty of cession. Give up these lands and go over beyond the great Father of Waters."[8]

Twenty men, none of them elected officials of the tribe, signed the treaty, ceding all Cherokee territory east of the Mississippi to the U.S. in exchange for $5 million and new homelands in Indian Territory. Major Ridge is reported to have said that he was signing his own death warrant.

The Treaty of New Echota was widely protested by Cherokees and by whites. The tribal members who opposed relocation considered Major Ridge and the others who signed the treaty traitors. After an intense debate, the U.S. Senate approved the Treaty of New Echota on May 17, 1836, by a margin of one vote. It was signed into law on May 23. As John Ross worked to negotiate a better treaty, the Cherokees tried to sustain some sort of normal life — even as white settlers carved up their lands and drove them from their homes. Removal had become inevitable. It was simply a matter now of how it would be accomplished.

"To the Cherokee Tribe of Indians" from Jackson

Newspaper Article

Background Notes

One of the strategies developed to deal with the conflict between white American settlers and Native American lands was to negotiate treaties which voluntarily exchanged the lands of Indian tribes in the east for lands west of the Mississippi. Five assimilated tribes, the Cherokee, Creek, Choctaw, Chickasaw and Seminoles, known as the "Five Civilized Tribes" negotiated approximately thirty treaties with the United States between 1789 and 1825. In 1824, President Monroe announced to Congress that he thought all Indians should be relocated west of the Mississippi. Monroe was pressured by the state of Georgia to make his statement because gold had been discovered on Cherokee land in Northwest Georgia and the state of Georgia wanted to claim it. The Cherokees resisted and sought to maintain their land. They had adopted a formal constitution, declared an independent Cherokee nation, and elected John Ross as their Chief in 1828. As expected, the Georgia legislature annulled the Cherokee constitution and ordered seizure of their lands. The Cherokees again resisted and took their claim of sovereignty to the United States Supreme court. In their second case, *Worcester v. Georgia* (1832), Supreme Court Chief Justice John Marshall ruled that the Cherokee Nation was entitled to federal protection over those of the state laws of Georgia. The Court ruled "the Indian nation was a "distinct community in which the laws of Georgia can have no force" and into which Georgians could not enter without the permission of the Cherokees themselves or in conformity with treaties.

Transcription of Primary Source

To the Cherokee Tribe of Indians East of the Mississippi river.

MY FRIENDS: I have long viewed your condition with great interest. For many years I have been acquainted with your people, and under all variety of circumstances, in peace and war. Your fathers were well known to me, and the regard which I cherished for them has caused me to feel great solicitude for your situation. To these feelings, growing out of former recollections, have been added the sanction of official duty, and the relation in which, by the Constitution and laws, I am placed towards you. Listen to me, therefore, as your fathers have listened, while I communicate to you my sentiments on the critical state of your affairs.

You are now placed in the midst of a white population. Your peculiar customs, which regulated your intercourse with one another, have been abrogated by the great political community among which you live; and you are now subject to the same laws which govern the other citizens of Georgia and Alabama. You are liable to prosecutions for offences, and to civil actions for a breach of any of your contracts.-Most of your people are uneducated, and are liable to be brought into collision at all times with their white neighbors. Your young men are acquiring habits of intoxication. With strong passions, and without those habits of restraint, which our laws inculcate and render necessary, they are frequently driven to excesses which must eventually terminate in their ruin. The game has disappeared among you, and you must depend upon agriculture and the mechanic arts for support. And, yet, a large portion of your people have acquired little or no property in the soil itself, or in any article of personal property which can be useful to them. How, under these circumstances can you live in the country you now occupy? Your condition must become worse & worse, and you will ultimately disappear, as so many tribes have done before you.

Of all this I warned your people, when I met them in council eighteen years ago. I then advised them to sell out their possessions East of the Mississippi and to remove to the country west of that river. This advice I have continued to give you at various times from that period down to the present day, and can you now look back and doubt the wisdom of this council? Had you then removed, you would have gone with all the means necessary to establish yourselves in a fertile country, sufficiently extensive for your subsistence, and beyond the reach of the moral evils which are hastening your destruction. Instead of being a divided people as you now are, arrayed into parties bitterly opposed to each other, you would have been a prosperous and a united community. Your farms would have been open and cultivated, comfortable houses would have been erected, the means of subsistence abundant and you would have been governed by your own customs and laws, and removed from the effects of a white population. Where you now are, you are encompassed by evils, moral and physical, & these are fearfully increasing.

Look even at the experience of the last few years. What have you gained by adhering to the pernicious counsels which have led you to reject the liberal offers made for your removal? They promised you an improvement in your condition. But instead of that, every year has brought increasing difficulties. How, then, can you place confidence in the advice of men who are misleading you for their own purposes, and whose assurances have proved, from the experience of every year, to be utterly unfounded?

I have no motive, my friends, to deceive you. I am sincerely desirous to promote your welfare. Listen to me, therefore, while I tell you that you cannot remain where you now are. Circumstances that cannot be controlled, and which are beyond the reach of human laws, render it impossible that you can flourish in the midst of a civilized community. You have but one remedy within your reach. And that is, to remove to the west and join your countrymen, who are already established there. And the sooner you do this, the sooner you can commence your career of improvement and prosperity.

A number of your brethren, who have been delegated by that portion of your people favorable to emigration, have repared to this place, in the hope of being able to make some arrangement, which would be acceptable to the government of the United States, and which would meet your approbation. They do not claim the right of making any arrangement which would be binding upon you; but have expressly stated, that whatever they did would be utterly void, unless submitted to and approved by you.

The whole subject has been taken into consideration, and an arrangement has been made, which ought to be, and I trust will be, entirely satisfactory to you. The Senate of the United States have given their opinion of the value of your possessions; and the value is ensured to you in the arrangement that has been prepared. Mr. John Ross, & the party who were with him, expressed their determination to accept, so far as they were concerned, such a sum as the Senate might consider just, and promised to recommend and support the same in your general council.-The stipulations contained in this instrument are designed to afford due protection to private rights, to make adequate provision for the poorer class of your people, to provide for the removal of all, and to lay the foundation of such social and political establishments in your new country as will render you a happy and prosperous people. Why, then, should any honest man among you object to removal? The United States have assigned to you a fertile and extensive country, with a very fine climate adapted to your habits, and with all the other natural advantages which you ought to desire or expect.

I shall, in the course of a short time, appoint commissioners for the purpose of meeting the whole body of your people in council. They will explain to you, more fully, my views, and the nature of the stipulations which are offered to you.

These stipulations provide:
1st. For an addition to the country already assigned to you west of the Mississippi, and for the conveyance of the whole of it, by patent, in fee simple. And also for the security of the necessary political rights, and for preventing white persons from trespassing upon you.
2d. For the payment of the full value to each individual, of his possession in Georgia, Alabama, North Carolina and Tennessee.
3d. For the removal, at the expense of the United States, of your whole people; for their subsistence for a year after their arrival in their new country, and for a gratuity of one hundred and fifty dollars to each person.
4th. For the usual supply of rifles, blankets, and kettles.
5th. For the investment of the sum of four hundred thousand dollars, in order to secure a permanent annuity.
6th. For adequate provision for schools, agricultural instruments, domestic animals, missionary establishments, the support of orphans, &c.
7th. For the payment of claims.
8th. For granting pensions to such of your people as have been disabled in the service of the United States.

These are the general provisions contained in the arrangement. But there are many other details favorable to you which I do not stop here to enumerate, as they will be placed before you in the arrangement itself. Their total amount is four millions five hundred thousand dollars, which added to the sum of five hundred thousand dollars, estimated as the value of the additional land granted you, makes five millions of dollars. A sum, which if equally divided among all your people east of the Mississippi, estimating them at ten thousand, which I believe is their full number, would give five hundred dollars to every man, woman, and child in your nation. There are few separate communities, whose property, if divided, would give to the persons composing them, such an amount. It is enough to establish you all in the most comfortable manner; and it is to be observed, that besides this, there are thirteen millions of acres conveyed to the western Cherokees and yourselves by former treaties, and which are destined for your and their permanent residence. So that your whole country, west of the Mississippi, will contain not less than thirteen millions eight hundred thousand acres.

The choice now is before you. May the Great Spirit teach you how to choose. The fate of your women and children, the fate of your people to the remotest generation, depend upon the issue. Deceive yourselves no longer. Do not cherish the belief that you can ever resume your former political situation, while you continue in your present residence. As certain as the sun shines to guide you in your path, so certain is it that you cannot drive back the laws of Georgia from among you. Every year will increase your difficulties. Look at the condition of the Creeks. See the collisions which are taking place with them. See how their young men are committing depredations upon the property of our citizens, and are shedding their blood. This cannot and will not be allowed. Punishment will follow, and all who are engaged in these offences must suffer. Your young men will commit the same acts, and the same consequences must ensue.

Think then of all these things. Shut your ears to bad consels. Look at your condition as it now is, and then consider what it will be if you follow the advice I give you.

Your friend,
Signed, ANDREW JACKSON.
Washington, March 16th, 1835.

John G. Burnett's Story of the Removal of the Cherokees
Birthday Story of Private John G. Burnett, Captain Abraham McClellan's Company, 2nd Regiment, 2nd Brigade, Mounted Infantry, Cherokee Indian Removal, 1838-39.

Children:

This is my birthday, December 11, 1890, I am eighty years old today. I was born at Kings Iron Works in Sulllivan County, Tennessee, December the 11th, 1810. I grew into manhood fishing in Beaver Creek and roaming through the forest hunting the deer and the wild boar and the timber wolf. Often spending weeks at a time in the solitary wilderness with no companions but my rifle, hunting knife, and a small hatchet that I carried in my belt in all of my wilderness wanderings.
On these long hunting trips I met and became acquainted with many of the Cherokee Indians, hunting with them by day and sleeping around their camp fires by night. I learned to speak their language, and they taught me the arts of trailing and building traps and snares. On one of my long hunts in the fall of 1829, I found a young Cherokee who had been shot by a roving band of hunters and who had eluded his pursuers and concealed himself under a shelving rock. Weak from loss of blood, the poor creature was unable to walk and almost famished for water. I carried him to a spring, bathed and bandaged the bullet wound, and built a shelter out of bark peeled from a dead chestnut tree. I nursed and protected him feeding him on chestnuts and toasted deer meat. When he was able to travel I accompanied him to the home of his people and remained so long that I was given up for lost. By this time I had become an expert rifleman and fairly good archer and a good trapper and spent most of my time in the forest in quest of game.

The removal of Cherokee Indians from their life long homes in the year of 1838 found me a young man in the prime of life and a Private soldier in the American Army. Being acquainted with many of the Indians and able to fluently speak their language, I was sent as interpreter into the Smoky Mountain Country in May, 1838, and witnessed the execution of the most brutal order in the History of American Warfare. I saw the helpless Cherokees arrested and dragged from their homes, and driven at the bayonet point into the stockades. And in the chill of a drizzling rain on an October morning I saw them loaded like cattle or sheep into six hundred and forty-five wagons and started toward the west.

One can never forget the sadness and solemnity of that morning. Chief John Ross led in prayer and when the bugle sounded and the wagons started rolling many of the children rose to their feet and waved their little hands good-by to their mountain homes, knowing they were leaving them forever. Many of these helpless people did not have blankets and many of them had been driven from home barefooted.

On the morning of November the 17th we encountered a terrific sleet and snow storm with freezing temperatures and from that day until we reached the end of the fateful journey on March the 26th, 1839, the sufferings of the Cherokees were awful. The trail of the exiles was a trail of death. They had to sleep in the wagons and on the ground without fire. And I have known as many as twenty-two of them to die in one night of pneumonia due to ill treatment, cold, and exposure. Among this number was the beautiful Christian wife of Chief John Ross. This noble hearted woman died a martyr to childhood, giving her only blanket for the protection of a sick child. She rode thinly clad through a blinding sleet and snow storm, developed pneumonia and died in the still hours of a bleak winter night, with her head resting on Lieutenant Greggs saddle blanket.

I made the long journey to the west with the Cherokees and did all that a Private soldier could do to alleviate their sufferings. When on guard duty at night I have many times walked my beat in my blouse in order that some sick child might have the warmth of my overcoat. I was on guard duty the night Mrs. Ross died. When relieved at midnight I did not retire, but remained around the wagon out of sympathy for Chief Ross, and at

daylight was detailed by Captain McClellan to assist in the burial like the other unfortunates who died on the way. Her unconfined body was buried in a shallow grave by the roadside far from her native home, and the sorrowing Cavalcade moved on.

Being a young man, I mingled freely with the young women and girls. I have spent many pleasant hours with them when I was supposed to be under my blanket, and they have many times sung their mountain songs for me, this being all that they could do to repay my kindness. And with all my association with Indian girls from October 1829 to March 26th 1839, I did not meet one who was a moral prostitute. They are kind and tender hearted and many of them are beautiful.

The only trouble that I had with anybody on the entire journey to the west was a brutal teamster by the name of Ben McDonal, who was using his whip on an old feeble Cherokee to hasten him into the wagon. The sight of that old and nearly blind creature quivering under the lashes of a bull whip was too much for me. I attempted to stop McDonal and it ended in a personal encounter. He lashed me across the face, the wire tip on his whip cutting a bad gash in my cheek. The little hatchet that I had carried in my hunting days was in my belt and McDonal was carried unconscious from the scene.

I was placed under guard but Ensign Henry Bullock and Private Elkanah Millard had both witnessed the encounter. They gave Captain McClellan the facts and I was never brought to trial. Years later I met 2nd Lieutenant Riley and Ensign Bullock at Bristol at John Roberson's show, and Bullock jokingly reminded me that there was a case still pending against me before a court martial and wanted to know how much longer I was going to have the trial put off?

McDonal finally recovered, and in the year 1851, was running a boat out of Memphis, Tennessee.

The long painful journey to the west ended March 26th, 1839, with four-thousand silent graves reaching from the foothills of the Smoky Mountains to what is known as Indian territory in the West. And covetousness on the part of the white race was the cause of all that the Cherokees had to suffer. Ever since Ferdinand DeSoto made his journey through the Indian country in the year 1540, there had been a tradition of a rich gold mine somewhere in the Smoky Mountain Country, and I think the tradition was true. At a festival at Echota on Christmas night 1829, I danced and played with Indian girls who were wearing ornaments around their neck that looked like gold.

In the year 1828, a little Indian boy living on Ward creek had sold a gold nugget to a white trader, and that nugget sealed the doom of the Cherokees. In a short time the country was overrun with armed brigands claiming to be government agents, who paid no attention to the rights of the Indians who were the legal possessors of the country. Crimes were committed that were a disgrace to civilization. Men were shot in cold blood, lands were confiscated. Homes were burned and the inhabitants driven out by the gold-hungry brigands.

Chief Junaluska was personally acquainted with President Andrew Jackson. Junaluska had taken 500 of the flower of his Cherokee scouts and helped Jackson to win the battle of the Horse Shoe, leaving 33 of them dead on the field. And in that battle Junaluska had drove his tomahawk through the skull of a Creek warrior, when the Creek had Jackson at his mercy.

Chief John Ross sent Junaluska as an envoy to plead with President Jackson for protection for his people, but Jackson's manner was cold and indifferent toward the rugged son of the forest who had saved his life. He met Junaluska, heard his plea but curtly said, "Sir, your audience is ended. There is nothing I can do for you." The doom of the Cherokee was sealed. Washington, D.C., had decreed that they must be driven West and their

lands given to the white man, and in May 1838, an army of 4000 regulars, and 3000 volunteer soldiers under command of General Winfield Scott, marched into the Indian country and wrote the blackest chapter on the pages of American history.

Men working in the fields were arrested and driven to the stockades. Women were dragged from their homes by soldiers whose language they could not understand. Children were often separated from their parents and driven into the stockades with the sky for a blanket and the earth for a pillow. And often the old and infirm were prodded with bayonets to hasten them to the stockades.

In one home death had come during the night. A little sad-faced child had died and was lying on a bear skin couch and some women were preparing the little body for burial. All were arrested and driven out leaving the child in the cabin. I don't know who buried the body.

In another home was a frail mother, apparently a widow and three small children, one just a baby. When told that she must go, the mother gathered the children at her feet, prayed a humble prayer in her native tongue, patted the old family dog on the head, told the faithful creature good-by, with a baby strapped on her back and leading a child with each hand started on her exile. But the task was too great for that frail mother. A stroke of heart failure relieved her sufferings. She sunk and died with her baby on her back, and her other two children clinging to her hands.

Chief Junaluska who had saved President Jackson's life at the battle of Horse Shoe witnessed this scene, the tears gushing down his cheeks and lifting his cap he turned his face toward the heavens and said, "Oh my God, if I had known at the battle of the Horse Shoe what I know now, American history would have been differently written."

At this time, 1890, we are too near the removal of the Cherokees for our young people to fully understand the enormity of the crime that was committed against a helpless race. Truth is, the facts are being concealed from the young people of today. School children of today do not know that we are living on lands that were taken from a helpless race at the bayonet point to satisfy the white man's greed.

Future generations will read and condemn the act and I do hope posterity will remember that private soldiers like myself, and like the four Cherokees who were forced by General Scott to shoot an Indian Chief and his children, had to execute the orders of our superiors. We had no choice in the matter.

Twenty-five years after the removal it was my privilege to meet a large company of the Cherokees in uniform of the Confederate Army under command of Colonel Thomas. They were encamped at Zollicoffer and I went to see them. Most of them were just boys at the time of the removal but they instantly recognized me as "the soldier that was good to us". Being able to talk to them in their native language I had an enjoyable day with them. From them I learned that Chief John Ross was still ruler in the nation in 1863. And I wonder if he is still living? He was a noble-hearted fellow and suffered a lot for his race.

At one time, he was arrested and thrown into a dirty jail in an effort to break his spirit, but he remained true to his people and led them in prayer when they started on their exile. And his Christian wife sacrificed her life for a little girl who had pneumonia. The Anglo-Saxon race would build a towering monument to perpetuate her noble act in giving her only blanket for comfort of a sick child. Incidentally the child recovered, but Mrs. Ross is sleeping in a unmarked grave far from her native Smoky Mountain home.

When Scott invaded the Indian country some of the Cherokees fled to caves and dens in the mountains and were never captured and they are there today. I have long intended going there and trying to find them but I

have put off going from year to year and now I am too feeble to ride that far. The fleeing years have come and gone and old age has overtaken me. I can truthfully say that neither my rifle nor my knife were stained with Cherokee blood.

I can truthfully say that I did my best for them when they certainly did need a friend. Twenty-five years after the removal I still lived in their memory as "the soldier that was good to us".

However, murder is murder whether committed by the villain skulking in the dark or by uniformed men stepping to the strains of martial music.

Murder is murder, and somebody must answer. Somebody must explain the streams of blood that flowed in the Indian country in the summer of 1838. Somebody must explain the 4000 silent graves that mark the trail of the Cherokees to their exile. I wish I could forget it all, but the picture of 645 wagons lumbering over the frozen ground with their cargo of suffering humanity still lingers in my memory.

Let the historian of a future day tell the sad story with its sighs, its tears and dying groans. Let the great Judge of all the earth weigh our actions and reward us according to our work.

Children - Thus ends my promised birthday story. This December the 11th 1890.

Post-Trial Events

"You cannot remain where you now are...."

Chief John Ross led the Cherokee opposition to removal. Portrait by Charles Bird King from *History of the Indian Tribes of North America* (McKenney and Hall, c. 1843). About the painting

The Cherokees might have been able to hold out against renegade settlers for a long time. But two circumstances combined to severely limit the possibility of staying put. In 1828 Andrew Jackson became president of the United States. In 1830 — the same year the Indian Removal Act was passed — gold was found on Cherokee lands. There was no holding back the tide of Georgians, Carolinians, Virginians, and Alabamians seeking instant wealth. Georgia held lotteries to give Cherokee land and gold rights to whites. The state had already declared all laws of the Cherokee Nation null and void after June 1, 1830, and also prohibited Cherokees from conducting tribal business, contracting, testifying against whites in court, or mining for gold. Cherokee leaders successfully challenged Georgia in the U.S. Supreme Count, but President Jackson refused to enforce the Court's decision.

Most Cherokees wanted to stay on their land. Chief Womankiller, an old man, summed up their views:

My sun of existence is now fast approaching to its setting, and my aged bones will soon be laid underground, and I wish them laid in the bosom of this earth we have received from our fathers who had it from the Great Being above.[6]

Yet some Cherokees felt that it was futile to fight any longer. By 1832, Major Ridge, his son John, and nephews Elias Boudinot and Stand Watie had concluded that incursions on Cherokee lands had become so severe, and abandonment by the federal government so certain, that moving was the only way to survive as a nation. A new treaty accepting removal would at least compensate the Cherokees for their land before they lost everything.

These men organized themselves into a Treaty Party within the Cherokee community. They presented a resolution to discuss such a treaty to the Cherokee National Council in October 1832. It was defeated. John Ross, now Principal Chief, was the voice of the majority opposing any further cessions of land. The two men who had worked so closely together were now bitterly divided.

The U.S. government submitted a new treaty to the Cherokee National Council in 1835. President Jackson sent a letter outlining the treaty terms and urging its approval:

My Friends: I have long viewed your condition with great interest. For many years I have been acquainted with your people, and under all variety of circumstances in peace and war. You are now placed in the midst of a white population. Your peculiar customs, which regulated your intercourse with one another, have been abrogated by the great political community among which you live; and you are now subject to the same laws which govern the other citizens of Georgia and Alabama.

I have no motive, my friends, to deceive you. I am sincerely desirous to promote your welfare. Listen to me, therefore, while I tell you that you cannot remain where you now are. Circumstances that cannot be controlled, and which are beyond the reach of human laws, render it impossible that you can flourish in the midst of a civilized community. You have but one remedy within your reach. And that is, to remove to the West and join your countrymen, who are already established there. And the sooner you do this the sooner you will commence your career of improvement and prosperity.[7]

John Ross persuaded the council not to approve the treaty. He continued to negotiate with the federal government, trying to strike a better bargain for the Cherokee people. Each side — the Treaty Party and Ross's supporters — accused the other of working for personal financial gain. Ross, however, had clearly won the passionate support of the majority of the Cherokee nation, and Cherokee resistance to removal continued.

In December 1835, the U.S. resubmitted the treaty to a meeting of 300 to 500 Cherokees at New Echota. Older now, Major Ridge spoke of his reasons for supporting the treaty:

I am one of the native sons of these wild woods. I have hunted the deer and turkey here, more than fifty years. I have fought your battles, have defended your truth and honesty, and fair trading. The Georgians have shown a grasping spirit lately; they have extended their laws, to which we are unaccustomed, which harass our braves and make the children suffer and cry. I know the Indians have an older title than theirs. We obtained the land from the living God above. They got their title from the British. Yet they are strong and we are weak. We are few, they are many. We cannot remain here in safety and comfort. I know we love the graves of our fathers. We can never forget these homes, but an unbending, iron necessity tells us we must leave them. I would willingly die to preserve them, but any forcible effort to keep them will cost us our lands, our lives and the lives of our children. There is but one path of safety, one road to future existence as a Nation. That path is open before you. Make a treaty of cession. Give up these lands and go over beyond the great Father of Waters.[8]

Twenty men, none of them elected officials of the tribe, signed the treaty, ceding all Cherokee territory east of the Mississippi to the U.S. in exchange for $5 million and new homelands in Indian Territory. Major Ridge is reported to have said that he was signing his own death warrant.

The Treaty of New Echota was widely protested by Cherokees and by whites. The tribal members who opposed relocation considered Major Ridge and the others who signed the treaty traitors. After an intense debate, the U.S. Senate approved the Treaty of New Echota on May 17, 1836, by a margin of one vote. It was signed into law on May 23. As John Ross worked to negotiate a better treaty, the Cherokees tried to sustain some sort of normal life — even as white settlers carved up their lands and drove them from their homes. Removal had become inevitable. It was simply a matter now of how it would be accomplished.

"Every Cherokee man, woman or child must be in motion…"

For two years after the Treaty of New Echota, John Ross and the Cherokees continued to seek concessions from the federal government, which remained disorganized in its plans for removal. Only the eager settlers with their eyes on the Cherokee lands moved with determination. At the end of December 1837, the government warned the Cherokee that the clause in the Treaty of New Echota requiring that they should "remove to their new homes within two years from the ratification of the treaty" would be enforced.[9] In May, President Van Buren sent Gen. Winfield Scott to get the job done. On May 10, 1838, General Scott issued the following proclamation:

Cherokees! The President of the United States has sent me, with a powerful army, to cause you, in obedience to the Treaty of 1835, to join that part of your people who are already established in prosperity, on the other side of the Mississippi. . . . The full moon of May is already on the wane, and before another shall have passed away, every Cherokee man, woman and child . . . must be in motion to join their brethren in the far West.[10]

Federal troops and state militias began to move the Cherokees into stockades. In spite of warnings to troops to treat them kindly, the roundup proved harrowing. A missionary described what he found at one of the collection camps in June:

The Cherokees are nearly all prisoners. They have been dragged from their houses, and encamped at the forts and military posts, all over the nation. In Georgia, especially, multitudes were allowed no time to take any thing with them except the clothes they had on. Well-furnished houses were left prey to plunderers, who, like hungry wolves, follow in the trail of the captors. These wretches rifle the houses and strip the helpless, unoffending owners of all they have on earth.[11]

Three groups left in the summer, traveling from present-day Chattanooga by rail, boat, and wagon, primarily on the water route, but as many as 15,000 people still awaited removal. Sanitation was deplorable. Food, medicine, clothing, even coffins for the dead, were in short supply. Water was scarce and often contaminated. Diseases raged through the camps. Many died.

Those travelling over land were prevented from leaving in August due to a summer drought. The first detachments set forth only to find no water in the springs and they returned back to their camps. The remaining Cherokees asked to postpone removal until the fall. The delay was granted, provided they remain in the camps until travel resumed. The Army also granted John Ross's request that the Cherokees manage their own removal. The government provided wagons, horses, and oxen; Ross made arrangements for food and other necessities. In October and November, 12 detachments of 1,000 men, women, children, including more than 100 slaves, set off on an 800 mile-journey overland to the west. Five thousand horses, and 654 wagons, each drawn by 6 horses or mules, went along. Each group was led by a respected Cherokee leader and accompanied by a doctor, and sometimes a missionary. Those riding in the wagons were usually only the sick, the aged, children, and nursing mothers with infants.

The northern route, chosen because of dependable ferries over the Ohio and Mississippi Rivers and a well-travelled road between the two rivers, turned out to be the more difficult. Heavy autumn rains and hundreds of wagons on the muddy route made roads nearly impassable; little grazing and game could be found to supplement meager rations. Two-thirds of the Cherokees were trapped between the ice-bound Ohio and Mississippi rivers during January. A traveler from Maine happened upon one of the caravans in Kentucky:

We found the road literally filled with the procession for about three miles in length. The sick and feeble were carried in waggons . . . a great many ride horseback and multitudes go on foot—even aged females, apparently nearly ready to drop into the grave, were traveling with heavy burdens attached to the back—on the sometimes frozen ground, and sometimes muddy streets, with no covering for the feet except what nature had given them.[12]

A Cherokee survivor later recalled:

Long time we travel on way to new land. People feel bad when they leave Old Nation. Women cry and made sad wails. Children cry and many men cry, and all look sad like when friends die, but they say nothing and just put heads down and keep on go towards West. Many days pass and people die very much.[13]

In 1972, Robert K. Thomas, a professor of anthropology from the University of Chicago and an elder in the Cherokee tribe, told the following story to a few friends:

Let me tell you this. My grandmother was a little girl in Georgia when the soldiers came to her house to take her family away. . . . The soldiers were pushing her family away from their land as fast as they could. She ran back into the house before a soldier could catch her and grabbed her [pet] goose and hid it in her apron. Her parents knew she had the goose and let her keep it. When she had bread, she would dip a little in water and slip it to the goose in her apron.

Well, they walked a long time, you know. A long time. Some of my relatives didn't make it. It was a bad winter and it got really cold in Illinois. But my grandmother kept her goose alive.

One day they walked down a deep icy gulch and my grandmother could see down below her a long white road. No one wanted to go over the road, but the soldiers made them go, so they headed across. When my grandmother and her parents were in the middle of the road, a great black snake started hissing down the river, roaring toward the Cherokees. The road rose up in front of her in a thunder and came down again, and when it came down all of the people in front of her were gone, including her parents.

My grandmother said she didn't remember getting to camp that night, but she was with her aunt and uncle. Out on the white road she had been so terrified, she squeezed her goose hard and suffocated it in her apron, but her aunt and uncle let her keep it until she fell asleep. During the night they took it out of her apron.[14]

On March 24, 1839, the last detachments arrived in the west. Some of them had left their homeland on September 20, 1838. No one knows exactly how many died during the journey. Missionary doctor Elizur Butler, who accompanied one of the detachments, estimated that nearly one fifth of the Cherokee population died. The trip was especially hard on infants, children, and the elderly. An unknown number of slaves also died on the Trail of Tears. The U.S. government never paid the $5 million promised to the Cherokees in the Treaty of New Echota.

http://www.learnnc.org/lp/editions/nchist-newnation/4548#noteref10

ON THIS DAY IN HISTORY (the fate of Major John Ridge)

JUNE 22:

June 22, 1839: Elias Boudinot, first editor of the Cherokee Phoenix, Chief Major Ridge (Kahnungdaclageh) and his son, John Ridge (Skahtlelohskee) are members of the Cherokee "Treaty Party". They have generated many enemies by their stand agreeing to the removal of the Cherokees from their lands east of the Mississippi river. They signed the peace treaty which gave away Cherokee lands east of the Mississippi River. They moved to Indian Territory (Oklahoma) with the rest of the Cherokee Nation. Today, early in the morning, John Ridge will be dragged from his bed, and stabbed to death. Chief Major Ridge will be shot and killed at 10:00 am in another part of the reservation. Later that day, Elias Boudinot will also be stabbed and hacked to death. These murders were committed by Cherokees for what they felt was their treasonous betrayal of the nation. A Cherokee law, which Chief Ridge helped to make, gave the death penalty to any Cherokee which sold or gave away Cherokee lands without the majority of the tribe's permission. These deaths were considered the execution of that law. Chief Stand Watie, brother to Elias, and nephew to Major Ridge, managed to avoid the warriors who planned to kill him today.

http://nativenewsonline.org/history/hist0622.html