

## Sec. 2—Powers, Duties of the President    Cl. 2—Treaties and Appointment of Officers

with foreign nations,<sup>406</sup> that the states were incompetent to interfere with rights created by such treaties,<sup>407</sup> that as long as the United States recognized the national character of a tribe, its members were under the protection of treaties and of the laws of Congress and their property immune from taxation by a state,<sup>408</sup> that a stipulation in an Indian treaty that laws forbidding the introduction, of liquors into Indian territory was operative without legislation, and binding on the courts although the territory was within an organized county of a state,<sup>409</sup> and that an act of Congress contrary to a prior Indian treaty repealed it.<sup>410</sup>

**Present Status of Indian Treaties.**—Today, the subject of Indian treaties is a closed account in the constitutional law ledger. By a rider inserted in the Indian Appropriation Act of March 3, 1871, it was provided “That hereafter no Indian nation or tribe within the territory of the United States shall be acknowledged or recognized as an independent nation, tribe, or power with whom the United States may contract by treaty: Provided, further, that nothing herein contained shall be construed to invalidate or impair the obligation of any treaty heretofore lawfully made and ratified with any such Indian nation or tribe.”<sup>411</sup> Subsequently, the power of Congress to withdraw or modify tribal rights previously granted by treaty has been invariably upheld.<sup>412</sup> Statutes modifying rights of members in tribal lands,<sup>413</sup> granting a right of way for a railroad through lands ceded by treaty to an Indian tribe,<sup>414</sup> or extending the application of revenue laws respecting liquor and tobacco over Indian territories, despite an earlier treaty exemption,<sup>415</sup> have been sustained.

When, on the other hand, definite property rights have been conferred upon individual Native Americans, whether by treaty or under an act of Congress, they are protected by the Constitution to the same extent and in the same way as the private rights of other residents or citizens of the United States. Hence, the Court held that certain Indian allottees, under an agreement according to which, in part consideration of their relinquishment of all their claim to

<sup>406</sup> *Holden v. Joy*, 84 U.S. (17 Wall.) 211, 242 (1872); *United States v. Forty-Three Gallons of Whiskey*, 93 U.S. 188, 192 (1876); *Dick v. United States*, 208 U.S. 340, 355–56 (1908).

<sup>407</sup> *The New York Indians*, 72 U.S. (5 Wall.) 761 (1867).

<sup>408</sup> *The Kansas Indians*, 72 U.S. (5 Wall.) 737, 757 (1867).

<sup>409</sup> *United States v. Forty-Three Gallons of Whiskey*, 93 U.S. 188, 196 (1876).

<sup>410</sup> *The Cherokee Tobacco*, 78 U.S. (11 Wall.) 616 (1871). *See also* *Ward v. Race Horse*, 163 U.S. 504, 511 (1896); *Thomas v. Gay*, 169 U.S. 264, 270 (1898).

<sup>411</sup> 16 Stat. 566; Rev. Stat. § 2079, now contained in 25 U.S.C. § 71.

<sup>412</sup> *Ward v. Race Horse*, 163 U.S. 504 (1896).

<sup>413</sup> *Lone Wolf v. Hitchcock*, 187 U.S. 553 (1903).

<sup>414</sup> *Cherokee Nation v. Southern Kansas Ry.*, 135 U.S. 641 (1890).

<sup>415</sup> *The Cherokee Tobacco*, 78 U.S. (11 Wall.) 616, 621 (1871).