

Daniel Weston

Hurt's Store
(Ala)

GWY

CHEROKEE PHENIX

J. D. J. U. O. & J.

& INDIANS' ADVOCATE.

VOLUME IV.

NEW ECHOTA, SATURDAY, MARCH 31, 1832.

NUMBER 8.

CHEROKEE PHENIX, Boston,
PRINTED WEEKLY BY

JOHN GANDY,

At \$2.50 if paid in advance, \$3 in six
months, or \$3.50 if paid at the end of the
year.

To subscribers who can read only the
Cherokee language the price will be \$2.00
in advance, or \$2.50 to be paid within the
year.

Every subscription will be considered as
continued unless subscribers give notice to
the contrary before the commencement of a
new year, and all arrearages paid.

Any person procuring six subscribers
and becoming responsible for the payment,
shall receive a seventh gratis.

All letters addressed to the Editor,
Post paid, will receive due attention.

GWY 1830-3 ADAMS F. C. G.
PROTECTOR TAN KTA DIP OMBAI
KRAE KOMA KTA DIP OMBAI
KRAE KOMA KTA DIP OMBAI
TGAZ KOM TGAZ TGAZ KOM
DOKO DOKO DOKO DOKO DOKO
GWY 1830-3 ADAMS F. C. G.
PROTECTOR TAN KTA DIP OMBAI
KRAE KOMA KTA DIP OMBAI
KRAE KOMA KTA DIP OMBAI
TGAZ KOM TGAZ TGAZ KOM
DOKO DOKO DOKO DOKO DOKO

AGENTS.

Mr. William E. Holley, Maryville, E.
Tennessee.

R. G. Williams, Colgate, New York.

INDIANS.

THE CHEROKEE CASE.

OPINION

Of the Supreme Court, delivered by
Mr. Chief Justice Marshall, January Term, 1832.

SAMUEL A. WORCESTER,
VS

THE STATE OF GEORGIA.

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

The defendant is a State, a member
of the Union, which has exercised
the powers of government over a People
who deny its jurisdiction, and are
under the protection of the United
States.

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

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,* so far as it pre-
scribes the mode of proceeding, ap-
pears to have been literally pur-
sued.

In February, 1797, a rule was

made on the subject, in the follow-
ing words:—"It is ordered by the
Court that the Clerk of the Court to
which any writ of error shall be di-
rected, may make return of the same
by transmitting a true copy of the re-
cord, and of all proceedings in the
same, under his hand and the seal of
the Court."

This has been done. But the sig-
nature of the Judge has not been add-
ed to that of the Clerk. The law
does not require it. The rule does
not require it.

In the case of Martin vs. Hunt-
er's lessee, 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 over-
ruled, and the return was deemed
sufficient. In Buel vs. Van Ness,
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 by 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 sanc-
tion of the Court could be necessary
for the establishment of this position,
it has been silently given.

McCulloh vs. the State of Mary-
land,† was a *qui tam* action, brought
to recover a penalty, and the record
was authenticated by the seal of the
Court and the signature of the Clerk,
without that of a Judge. Brown et al.
vs. the State of Maryland, was an
indictment for a fine and forfeiture.—
The record in this case, too, was au-
thenticated 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 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 plain-
tiff in error and others, being white
persons, with the offence of "residing
within the limits of the Cherokee na-
tion without a licence," and "without
having taken the oath to support and
defend the Constitution and laws of
the aforesaid treaties." And this de-
fendant saith, that the several acts
of the several States composing the
Union of the United States; and it is
acknowledged to lie without the juris-
diction of the several States com-

posing the United States; and it is
hereby especially stipulated, that
the citizens of the United States
shall not enter the said territory,
even on visit, without a pass-
port from the Governor of a State
or from some one duly authorized
thereto by the President of the United
States; all which will more fully
and at large appear, by reference to
the aforesaid treaties. And this de-
fendant saith, that the several acts
charged in the bill of indictment
were omitted to be done, if at all,
within the said territory as recognized
as belonging to the said Nation,
and so, as aforesaid, held by them,
under the guaranty of the United
States; that, for these acts, the de-
fendant is not amenable to the laws
of Georgia, nor the jurisdiction of
the Courts of said state; and that the
laws of Georgia, which profess to add
the said territory to the several ad-
jacent counties of the said State, and to
extend the laws of Georgia over
the said territory, and persons inhab-
iting the same; and, in particular,
the act on which this indictment is
based, this defendant is grounded, to wit: "An
act entitled an act to prevent the ex-
ercise of assumed & arbitrary power,
by all persons, under pretext of au-
thority 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 pro-
tection of the gold mines, and to en-
force the laws of the State within
the aforesaid territory," are repug-
nant to the aforesaid treaties, which,
according to the Constitution of the
United States, compose part of the
Supreme law of the land; and that
these laws of Georgia are, therefore,
unconstitutional, and 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 United States
of America, as above recited; also,
that the said laws of Georgia are un-
constitutional and void, because they
interfere with, and attempt to regu-
late and control the intercourse with
the said Cherokee Nation, which, by
the said Constitution, belong exclu-
sively to the Congress of the United
States; and because the said laws are

repugnant to the Statute of the Uni-
ted 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 the said bill of
indictment, or further to try and pun-
ish this defendant for the said offence
or offences alleged in the said bill
of indictment, or any of them: And
therefore, this defendant prays judg-
ment whether he shall be held bound
to answer further to said indict-
ment."

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

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

The plea avers that residence
charged in the indictment was under
the authority of the President of the
U. S. and with the permission and
apparal of the Cherokee nation.—

The United States and the Cherokees,
acknowledged 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
and the Cherokee nation, which belongs
exclusively to Congress; and, because,
it makes a case which brings the
party within the provisions of the 25th
section of the "Act to establish the
judicial courts of the United States."
The plea avers that residence
charged in the indictment was under
the authority of the President of the
U. S. and with the permission and
apparal of the Cherokee nation.—

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

The 13th section enacts, "that the
said guard, or any member of them,
shall be, and they are hereby, autho-
rized and empowered to arrest any
person legally charged with or de-
fended 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 ev-
ery Legislature being limited in its
action, to its own citizens or subjects,
the very passage of this act is an asser-
tion of jurisdiction over the Cherokee
Nation, and of the rights and pow-
ers consequent on jurisdiction.

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

America, separated from Europe
by a wide ocean, was inhabited by a
few Peoples, divided into separate
nations, independent of each other and
of the rest of the world, and govern-
ing themselves by their own laws. It is

such clause of the said Constitution,
treaty, statute, or commission."

The main question, then, 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, privi-
lege, or exemption, specially set up
and claimed under them." They
also draw in question the validity of
a Statute of the State of Georgia,
on the ground of its being repug-
nant to the Constitution, treaties, and
laws of the United States, and the de-
cision is in favor of its validity."

It is, then, we think, too clear for
controversy, that the act of Congress,
by which this Court is constituted,
has given it the power, and, of course,
imposed on it the duty, of exercising
jurisdiction in this case. This duty,
however unpleasant, cannot be avoided.
Those who fill the judicial de-
partment have no discretion in select-
ing subjects to be brought before them.
We must examine the de-
fense set up in this plea. We must
inquire and decide whether the act
of Georgia, under which the plaintiff
in error has been prosecuted and con-
demned, be consistent with, or repug-
nant to, the Constitution, laws, and
treaties of the United States.

It has been said at the bar, that
the acts of the Legislature of Georgia
to seize on the whole Cherokee country,
parcel it out among the neighbor-
ing counties of the State, extend her
rule over the whole country, abolish
its institutions and its laws, and anni-
hilate 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
Cherokee nation, on the 1st day
of March next, or at any time
thereafter, without a license or per-
mit from his Excellency the Governor,
or from such agent as his Excellency
shall authorize to grant such permit or license, and
who shall not have taken the oath
hereinafter required, shall be guilty
of a high misdemeanor, and upon con-
viction thereof, shall be punished by
confinement in the penitentiary, at
hard labor, for a term not less than
four years."

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

The 13th section enacts, "that the
said guard, or any member of them,
shall be, and they are hereby, autho-
rized and empowered to arrest any
person legally charged with or de-
fended 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 ev-
ery Legislature being limited in its
action, to its own citizens or subjects,
the very passage of this act is an asser-
tion of jurisdiction over the Cherokee
Nation, and of the rights and pow-
ers consequent on jurisdiction.

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

America, separated from Europe
by a wide ocean, was inhabited by a
few Peoples, divided into separate
nations, independent of each other and
of the rest of the world, and govern-
ing themselves by their own laws. It is

[See fourth page.]

* Judicial act, sec. 22, 25, v. 2 p. 64, 65.
† Wh. 312.

[From the fourth page.]

still more importance, the strong hand of government was interposed to restrain the disorderly and licentious law intrusions into their country, from encroachments of their lands, and from those acts of violence which were of course 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, or dominion over their persons. It merely bound the nation to the British crown as a dependent ally, claiming the protection of a powerful friend and neighbor, and receiving the advantages of that protection, without involving a surrender of their national character.

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

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

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

Is it reasonable to suppose, that the Indians could not write, and most probably could not read, who certainly were not critical judges of our language, should distinguish the word "allotted" from the words "marked out?" The actual subject of contract was the dividing line between the two nations, and their attention may very well be supposed to have been confined to that subject. When, in fact, they were ceding lands to the United States, and describing the extent of their cession, it may very well be supposed that they might not understand the term employed, as indicating that instead of granting they would admit of an other significance.

It is reasonable to suppose, that the Indians could not read, and most probably could not write, who certainly were not critical judges of our language, should distinguish the word "allotted" from the words "marked out." The actual subject of contract was the dividing line between the two nations, and their attention may very well be supposed to have been confined to that subject. When, in fact, they were ceding lands to the United States, and describing the extent of their cession, it may very well be supposed that they might not understand the term employed, as indicating that instead of granting they would admit of an other significance, which is not conceded, its being misinterpreted so apparent, results 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." Having 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 the whole territory was devoted to hunting grounds, or whether an occasional open field, interrupted, and gave some variety to the scene.

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

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

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

The 9th article is in these words: "To the benefit of the prevention of injuries or oppressions on the part of the citizens or Indians, the United States, in Congress assembled, shall have the sole and exclusive right of regulating the trade with the Indians,

and managing all their affairs, as they think proper."

To construe the expression "managing all their affairs," into a surrender of self-government, would be, we think, a perversion of their necessary meaning, and a departure from the construction, which has been uniformly put on them. The great subject of the article is the Indian trade. The influence it gave, made it desirable that Congress should possess it. The Commissioners brought forward the claim, with the profession that their motive was, "the benefit and comfort of the Indians, and the prevention of injuries or oppression."

This may be true, as respects the regulation of their trade, and as respects the regulation of all affairs connected with their trade, but cannot be true, as respects the management of all their affairs. The most important of these, is the cession of their lands, and security against intruders o them. Is it credible, that they could have considered themselves as agreeing 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 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 recognize the right of the Cherokees to declare hostilities, and to make war. It would convert a treaty of peace, convert it into an act, annihilating the political existence of one of the parties. Had such a thing 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 consistent with the practical construction which has always been put upon 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 establishment of a solid peace.

To accommodate the differences still existing between the State of Georgia and the Cherokee nation, the treaty of Holston was negotiated, in July, 1791. The existing Constitution of the United States had been then adopted, and the Government, having more intrinsic capacity to enforce its just claims, was perhaps less mindful of high sounding expressions denoting superiority. We hear no more of giving peace to the Cherokees.—The mutual desire of establishing permanent peace and friend ship, 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 whatsoever.

The meaning of this has already been explained. The Indian nations were, from their situation, necessarily dependent on some foreign power, for the supply of their essential wants, and for their protection from lawless and injurious intrusions into their country. That power was naturally termed their protector. They had been arranged under the protection of Great Britain; but the extinguishment of the British power in their neighborhood and the establishment of that of the United States in its place, led naturally to the declaration on the part of the Cherokees, that they were under the protection of the United States.

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 others of a master.

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

The tenth article declares, that "the boundary between the United States and the Cherokee nation shall be as follows: Beginning," &c. We hear names of "Allotments" or of "hunting grounds." A boundary is described, between nation and nation, by mutual consent. The national character each, the ability of each, to establish this boundary, is acknowledged by the other. To preclude just disputes, it is agreed that it shall be plainly marked by commissioners to be appointed by each party; and in order to extinguish forever all claim of the Cherokees to the ceded lands, an additional consideration is to be paid by the United States.

For this additional consideration the Cherokees release all right to the ceded land, forever.

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

By the sixth article, it is agreed, on the part of the Cherokees, that the United States shall have the sole and exclusive right of regulating their trade. No claim is made to the management of all their affairs.

The 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 guarantee 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 would be made only with a nation admitted to be capable of managing itself.

This treaty, thus explicitly recognizing the national character of the Cherokees, and their right of self-government, thus guaranteeing their lands, assuming the duty of protection, and of course pledging the faith of the United States in 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 those 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 passed acts to regulate the trade and intercourse with the Indians, which treat them as nations, respect their rights, and manifest a firm purpose to afford that protection which treaties stipulate. All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities having territorial boundaries, within which their authority is exclusive, and having a right to all the lands within these boundaries, which is not only acknowledged, but guaranteed by the United States.

In 1819, Congress passed an act for promoting those humane designs of civilizing the neighboring Indians, which had long been cherished by the Executive. It enacts, "that for the purpose of providing against the further decline and final extinction of the Indian tribes adjoining to the frontier settlement 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 instruction and rules as the President

shall direct, and prescribing for the regulation of their conduct in the discharge of their duties."

This act avowably contemplates preservation of the Indian nations as an object sought by the United States, & 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 of civilization," rather encouraged perseverance in the laudable exertions still further to improve their condition. This act furnishes strong additional evidence of the 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 any States; and provide that all intercourse with them shall be carried on exclusively by the Government of the Union.

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

While these States were colonies, this power, in its utmost extent, was admitted to reside in the crown.—When our Revolutionary struggle commenced, Congress was composed of an assemblage of deputies, acting under specific powers granted by the Legislatures, or convention 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 by all the powers of war and peace, and Congress dissolved our connexion with the mother country, & declared these United Colonies to be independent States. Without any written definition of powers, they employed diplomatic agents to represent the United States at the several Courts of Europe; offered to negotiate treaties with them, and did actually negotiate treaties with France. From the same necessity, and on the same principles, Congress assumed the management of Indian affairs; first in the name of these United Colonies, and afterwards in the name of the United States. Early attempts were made at negotiation, and to regulate trade with them. These not proving successful, war was carried on under the direction and with the forces of the United States, and the efforts to make peace by treaty were earnest and incessant. The Confederation found Congress in the exercise of the same powers of peace and war, in our relations with Indian nations, as with those of Europe. Such was the state of things, when the confederation was adopted. That instrument surrendered the powers of peace and war to Congress, and prohibited them to the States, respectively, unless a State be actually invaded, or shall have received certain advice of a resolution being formed by some nation of Indians to invade such a State, and the danger is imminent, as not to admit of delay till the United States in congress assembled can be consulted." This instrument also gave the right of "regulating the trade and managing all the affairs with the Indians, not members of any of the States; *Provided*, That the legislative power of any State within its own limits be not infringed or violated."

The ambiguous phrases which follow the grant of power to the United States, was 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 construction. 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 the Indian tribes. The powers comprehend all that is required for the regulation of our intercourse with the Indians. They are not limited by any restrictions on their free actions. The shackles imposed on this power in the confederation, are discarded. The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by treasonable power, which excludes 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 these European potentates imposed on themselves, as well as on the Indians. The very term "nation," so generally applied to them, means "a People distinct from others." The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted, and sanctioned the previous treaties with the Indian nations, and, consequently, admits their rank among those powers who are capable of making treaties. The words "treaty," and "nation," are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well understood meaning. We have applied them to the Indian nations exactly the same as we do to the other nations upon 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, attending to prove her acquiescence in 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 treaty; 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 those 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 charter granted by the monarch of a distant and distinct region, purelling out a territory in possession of others whom he could not remove, and did not attempt to remove, and the cessions made of his claims by the treaty of peace.

The actual state of things at the time, and all history since, explain these charters; and the King of Great Britain, at the treaty of peace, could cede only what belonged to his crown. These newly asserted titles can derive no aid from the articles so often repeated in Indian treaties, extending to them first the protection of Great Britain, and afterwards that of the United States. These articles are associated with others, recognizing their title to self-government.—The very fact of repeated treaties with them recognizes it; and the settled doctrine of the law of nations is, that 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 its self 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, sovereign and independent authority is left to 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 guaranty and protection of one or more allies.

The Cherokee nation, then, is a distinct & separate, 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 it 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 relation 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 succession of years, which mark out the boundary that separates the Cherokee country from Georgia; guaranty to the latter land within their boundary, all the lands within their boundary, and to judge 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 this nation, with its permission and by authority of the President of the United States, is also a violation of the acts which authorize the Chief Magistrate to exercise this authority.

Will these powerful considerations avail the plaintiff in error? We think they will. He was seized and forcibly carried away while under the guardianship of treaties guaranteeing 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 color of law which has been shown to be repugnant to the constitution, laws, and treaties of the United States. Had a judgment, liable to the same objections, been rendered for property, none would question the jurisdiction of this court. It cannot be less clear when the judgment affects personal liberty, and inflicts disgrace as 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 had affected his property. He is not less under the protection of the constitution, laws, and treaties of his country.

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

ATKINS & CO., Sept 1832.
T. J. C. T. J. C. T. J. C.

1832. 1832. 1832. 1832. 1832. 1832. 1832. 1832.

ATKINS & CO., Sept 1832.
T. J. C. T. J. C. T. J. C. T. J. C.

27. If you do not hear reason, she will surely rap your knuckles.

28. He that hath a trade hath an estate; and he that hath a calling in a place of profit and honor. A ploughman on his legs is higher than a gentleman on his knees.

From the Journal of Humanity.

METAPHYSICS.

Specimen of a Collegiate Examination.

PROFESSOR. What's a salt box?

STUDENT. It is a box made to contain salt.

P. How is it divided?

S. Into a salt box, and a box of salt.

P. Very well, show me the distinction.

S. A salt box may be where there is no salt, but salt is absolutely necessary to the existence of a box of salt.

P. Are not salt boxes otherwise divided?

S. Yes, by a partition.

P. What is the use of this division?

S. To separate the coarse salt from the fine.

P. How? think a little.

S. To separate the fine salt from the coarse.

P. To be sure, to separate the fine from the coarse; but are not salt boxes otherwise distinguished?

S. Yes, into possible, positive, and probable.

P. Define these several kinds of salt boxes.

S. A possible salt box is a salt box yet unjoined, in the joiner's hands.

A. Why so?

S. Because it hath not become a salt box having never had any salt in it; and it may probably be applied to some other use.

P. very true; for a salt box which never had, hath not now, and perhaps never may have, any salt in it, can only be termed a possible salt box.—What is a probable salt box?

S. It is a salt box in the hand of one going to a shop to buy salt, and who hath a two pence in his pocket to pay the shop keeper; and a positive salt box is one which hath actually and bona fide got salt in it.

P. Very good; what other division of salt boxes do you recollect?

S. They are divided into suspensive and pendent. A suspensive salt box is that which stands by itself on the table or dresser, and the pendent is that which hangs by a nail against the wall.

P. What is the idea of a salt box?

S. It is that image which the mind conceives of a salt box when no salt is present.

P. What is the abstract idea of a salt box?

S. It is the idea of a salt box abstracted from the idea of a box; or of salt, or of a salt box; or of a box of salt.

P. Very right by this means you agree a most perfect knowledge of a salt box; but tell me, is the idea of a salt box a salt idea?

S. Not unless the ideal box hath the idea of salt contained in it.

P. True; and therefore an abstract idea cannot be either salt or fresh, round or square, long or short; and this shows the difference between a salt idea and an idea of salt.—Is an apple to hold salt accidental or an accidental property of a salt box?

S. It is an accident; but if there should be a crack in the bottom of the box, the aptitude to spill salt would be termed an accidental property of that salt box.

P. Very well, very well, indeed—What is the salt called with respect to the box?

S. It is called its contents.

P. And why so?

S. Because the cook is content, quoad hoc, to find plenty of salt in the box.

P. You are very right.

From Peacock's Adventures in Abyssinia.

The day before Chalcut, a woman had brought in chains a poor miserable object whom she accused of having killed her husband; the witness also arrived from the small village of Gibba to which they belonged.—When the Ras had heard the whole story and examined the witness, he found the man guilty of murder though apparently without malice, and told the woman agreeably to the law to do as she pleased with him. She replied, "I have none but myself; I have no relatives, neither have I any spear or knife." The Ras

said, "then you must hang him."—She again replied, "how can I do that myself? I have got a muscham (a leather rope) it is true, but I can not hang him alone." The Ras then ordered some of the grown boys about the house to assist her in hanging the man to the darow tree on the green before the house "God preserve you a thousand years," said the woman, adding in an under tone, "his relations are all here, and they will not have far to carry his body, as he belongs to the church period." Marion Gudewitt Tack, one of the Ras' stable groom, and some other of the slaves, had the management of the affair. When they came to the darow tree which is easily climbed as a ladder, they helped the woman up with one end of the muscham in her hand, showing her which was the best branch to tie it to. Tack, notwithstanding, the woman had promised to give him plenty of bitter for his trouble, now put the poor object's two hands within the muscham while they would lift him from off the large stone they had made him stand upon. Accordingly she did this, and made it well fast, and then came down to behold him hanging, at the same time exclaiming "blessed be Maria, the mother of God, who has given me revenge for my husband! Bad as he was, I have stood true to him." After he had hung for some time, the crowd that stood by to look on, cried often to her "why woman he has been dead long ago?" —"Thank God for that!" said she, "that they shall not have my muscham to bury with him." Accordingly she with the help of Tack took it from his neck. The relation immediately came to take up the body. When they were allowed to do, but before they had got ten yards the dead man set off, without being carried, and ran to the Trinity church-yard, where he was safe, even though he had killed one thousand persons. The woman seeing this was enraged, and ran to the Ras' gateway, crying, "Abatis! Abatis! She obtained admittance, and told the Ras that the man had not hung long enough. The Ras, who had already heard the story, laughed and said to the woman, "Would you wish to kill the man that God will not permit to die? He hung long enough to have killed a cat." She answered, "Let me have the man again, and I will pull his legs till I break his neck." "You foolish woman," replies the Ras, "would you oppose the will of God?" Seeing the old Ras look grave when he said this, she believed that it was God's that the man should not die, and her spirit failed her, as she said in a very low and sorrowful tone, "though he is such an ill-formed creature, I have seen in doings that no body else could do. The locust never touched the little corn he had behind the house; and though he used to make fire to smoke them away, we could not save ours as he did." She immediately went to the church, and begged his forgiveness, and they afterwards lived good neighbors as usual; and said, I heard subsequently that he became her husband.

Indian Cure for Rheumatism.

—The Indian first broke a hole in the ice sufficiently large to admit us both, upon which he made a signal that all was ready. Enveloped in a large buffalo robe, I proceeded to the spot, and throwing off my covering, we both jumped into the frigid water together. He immediately commenced rubbing my shoulders, back and joints, my hair in the mean time, becoming disengaged with incles; and while the lower joints were undergoing their friction, my face, neck, and shoulders were massed in a thin covering of ice. In getting released, I rolled a blanket about me, and ran back to the bed room, in which I had previously ordered a good fire, and in a few minutes I experienced a warm glow all over my body. Chilling and disagreeable as these matinal ablutions were yet, as I found them so beneficial, I continued them for twenty-five days, at the expiration of which my physician was pleased to say that no more were necessary, and that I had done my duty like a wise man. I was never after troubled with a rheumatic pain.—*Cox's Travels on Columbia River.*

THE NATIONAL JOURNAL.

THE Proprietors of the National Journal of Washington City, offer for sale, on accomodating terms, that

valuable establishment. Its location at the Seat of Government, its extensive subscription list, its complete printing apparatus, and its approved support from its origin to the present time of principles held by the opponents of the present Administration, present to any advocate of those principles advantages in purchasing it, of the most attractive character. Persons disposed to purchase are invited to make application to WILLIAM PRENTISS, Washington City, who will give any further information on the subject that may be desired.

REFORMED MEDICAL JOURNAL.

In offering to the public a Prospectus of a new paper, candor requires form the Editors, a fair statement of their object, and of the principles by which they will be governed.

The discoveries & improvements which have been made of late years, in the arts and sciences, generally, have brought them to a great state of perfection. Unfortunately, for mankind, the science of medicine has shared a very different fate. Theories, it is true, have been multiplied almost without number; but remedies, of the art of curing disease, have been almost entirely neglected; and a system of practice pursued, which is very injurious and often fatal to the lives of mankind. In proof of this, we need but advert to the frequent cases of mortality which daily occur, produced either by *Mercury, the Lance, or the Knife*; those agents, which in this day, are so universally employed, both in Europe and America, for the restoration of health.

Therefore, when we reflect on the vast number of persons annually swept away, many of whom, it is to be feared, fall victims to the ignorance, or the presumption of practitioners, no apology appears necessary for the introduction of a work designed to effect a change or reformation on the science of medicine. Many individuals have already noticed these talents, organized Societies, and established Institutions to improve the healing art, by disseminating a reformed or vegetable system of practice.

Further to promote so laudable and important an object, it is now proposed to establish the Journal of medical papers, in which the prevailing principles and practice of Physic and Surgery shall be freely and fearlessly discussed, examined and illustrated; their deleterious efforts pointed out, and contrasted with the beauty and utility of that system of medicine which has been found, by long observation and experience, to be altogether superior.

In order that the work may be generally interesting and useful, the following course will be pursued;

1. The language shall be such, as the general reader can understand, diversified, as possible, of technicalities and professional terms.

2. Titles will be given for the prevention of disease, and the preservation of health—for diet and exercise, and likewise for the treatment of infants and children, whose health is often destroyed, or materially injured through mismanagement in the nursery.

3. A table will be given of those positions which are frequently taken, with the symptoms, and directions how to act when medical aid is at hand.

4. Stories on the use of Mercury and other minerals, in the practice of medicine, will from time to time, and in places,

5. Medical Essays, and Reports of the treatment of interesting cases in practice, will frequently be given.

6. Various kinds of patent medicines in general use, and highly extolled, will be examined and tested; and their merits or demerits laid before the reader.

"By timely assistance and simple application, (says a medical author,) many symptoms which are the forerunner of disease, and eventually of death, might be palliated, or removed, were mankind to make a point of acquiring a sufficient portion of medical knowledge, to qualify them to assist a friend or neighbor, sufficient with any small illness besides the benefit he might render the judicious physician, by his aid and co-operation. How curious must be the reflection in a benevolent man, who by a application, has found himself frequently enabled to procure returning health to a suffering individual."

7. ERAS. I. The Reformed Medical Journal, will be published in pamphlet form, on medium sheet of paper, each number containing sixteen pages, octavo, with two columns to each page. It will be issued on the first Saturday in each month, and afforded at the low price of one dollar per annum, payable in advance, or on the receipt of the first number.

8. Every member of the Reformed Medical Society of the United States, is a regular agent for this paper; and is hereby authorized and requested to act in that capacity.

9. Any person who will procure six subscribers, and become responsible for the same, shall be entitled to the seventh copy gratis; or if a company of six procure five dollars, a copy will be sent to each.

10. Editors and publishers of papers, who will insert this prospectus a few times, will be entitled to the Journal for one year, without sending theirs, except they prefer it.

11. Every agent must inform the editor, as early as possible, the number of subscribers he has obtained, and where and to whom he wishes them sent.

12. All letters and communications must be directed to the editors, 28, Eddy street, New-York, post paid.

New-York, 1832.

[From the first page.]

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 annul 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, & 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 their rights over hunters and fisherman, or 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 recollections, might shed some light on existing pretensions.

The great maritime powers of Europe discovered and visited different parts of this continent at nearly the same time. The object was too immense for any one of them to grasp the whole; and the claimants were too powerful to submit to the exclusive or unreasonable pretensions of any single potentate. To avoid bloody conflicts, which might terminate disastrously to all, it was necessary for the nations of Europe to establish some principle which all would acknowledge, and which should decide their respective rights as between themselves. This principle, suggested by the actual state of things, was "that discovery gave title to the Government by whose subjects or by whose authority it was made against all other European Governments, which title might be consummated by possession."

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 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 find that right on a denial of the right of the possessor to sell.

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

Soon after Great Britain determined on planting colonies in America, the king granted charters to companies of his subjects, who associated for the purpose of carrying the views of the crown into effect, and of enriching themselves. The first of these charters was made before possession was taken of any part of the country. They purport generally, to convey

the soil, from the Atlantic to the South Sea. This soil was occupied by numerous and warlike nations, equally willing and able to defend their possessions. The extravagant and absurd idea, that the feeble settlements made on the sea coast, or the companies under whom they were made acquired legitimate power by them to govern the people, or occupy the lands from sea to sea, did not enter the mind of any man. They were well understood to convey the title, which, according to the common law of European sovereigns respecting America, they might rightfully convey, and no more. This was the exclusive right of purchasing such lands as the natives were willing to sell. The crown could not be understood to grant what the crown did not affect to claim, nor was it so understood.

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

The charter to Connecticut concedes 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 incursion 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 in the charter to Lord Baltimore.

The charter to Georgia professes to be granted for the charitable purpose of enabling poor subjects to gain a comfortable subsistence by cultivating lands in the American provinces, "at present waste and desolate." It recites, "and whereas our provinces in North America have been frequently ravaged by the Indian enemies, more especially that of South Carolina, which, in the late war, by the neighboring savages, was laid waste by fire and sword, and great numbers of the English inhabitants miserably massacred; & 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 like calamities, inasmuch as their whole Southern frontier continues 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 conciliating 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. They pre-

tensions unavoidably interfered with each other; though the discovery of one was admitted by all to exclude the claim of any other, the extent of that discovery was the subject of unceasing contest. Bloody conflicts arose between them, which gave importance and security to the neighboring nations. Fierce and warlike in their character, they might be formidable enemies, or affectionate friends. Instead of rousing their resentments, by asserting claims to their lands, or to dominion over their persons, their alliance was sought by flattering processions, and purchased by rich presents.

The English, the French, and the Spaniards, were equally competitors for their friendship and their aid. Not well acquainted with the exact meaning of words, nor supposing it to be material whether they were called the subjects, or the children of their father in Europe; lavish in professions of duty, and affection, in return for the rich presents they received; so long as their actual independence was untouched, and their right to self-government acknowledged, they were willing to profess dependence on the Power which furnished supplies of which they were in absolute need, and restrained dangerous intruders from entering their country; and this was probably the sense in which the term was understood by them.

Certain it is, that our history furnishes no example, from the first settlement of our country, of any attempt, on the part of the crown, to interfere with the internal affairs of the Indians, rather than to keep out the agents of foreign powers, who as traders or otherwise, might seduce them into foreign alliances. The King purchased their lands when they were willing to sell, at a price they were willing to take; but never exacted 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. Stewart, superintendent of Indian affairs, in a speech delivered at Mobile, in the presence of several persons of distinction, soon after the peace of 1763. Towards the conclusion he says, "Sir, I inform you that it is the King's order to all his Governors and subjects to treat the Indians with justice and humanity, and to forbear all encroachments on the territories allotted to them; accordingly all individuals are prohibited from purchasing any of your lands; but as you know, that your white brethren cannot feed you you when you visit them, unless you give them grounds to plant, it is expected that you will cede lands to the King for that purpose. But, whenever you shall be pleased to surrender any of your territories to his majesty, it must be done for the future, at a public meeting of your nation, when the Governors of the provinces, or the superintendent shall be present, and obtain the consent of all your people. The boundaries of your hunting grounds will be accurately fixed, and no settlement permitted to be made upon them.—As you may be assured that all treaties with you will be faithfully kept, so it is expected that you also, will be careful strictly to observe them."

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

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

"And we do further strictly enjoin and require all persons whatever, who have, either wilfully or inadvertently settled themselves upon any land within the countries above described, or upon any other lands which, notwithstanding, having been ceded to, or purchased by us, are still reserved to the said Indians, as aforesaid, forthwith to remove themselves from such settlements."

"And we do further strictly enjoin

and require all persons whatever, who have, either wilfully or inadvertently settled themselves upon any land within the countries above described,

or upon any other lands which, notwithstanding,

having been ceded to, or purchased by us,

are still reserved to the said Indians,

as aforesaid, forthwith to remove themselves from such settle-

ments."

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 Oubache, the proclamation orders such persons to quit these countries without delay."

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

This was the settled state of things when the war of our Revolution commenced.

The influence of our enemy was established; her resources enabled her to keep up that influence, and the colonists had much cause for the apprehension that the Indian nations would, as the allies of Great Britain, add their arms to hers. This, as we see 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 congress which was before felt for the King of Great Britain." This may account for the language of the treaty of Hopewell. There is 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 most strenuous exertions were made to procure those supplies on which Indian friendship was supposed to depend, & 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.

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

"2d. That a perpetual peace and friendship shall, from henceforth,

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

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

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

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

6th. The sixth article is entitled to peculiar attention, as it contains a disclaimer of designs which were, at that time, ascribed to the United States, by their enemies, and from the imputation of which Congress was the peculiarly anxious to free the Government. It is in these words:

"Whereas the enemies of the United States have endeavored, by every artifice in their power, to possess the Indians in general with an opinion that it is the design of the States aforesaid to extirpate the Indians, and take possession of their country: To obviate such false suggestion the United States do engage to guaranty to the aforesaid nation of Delawares, and their heirs, all their territorial rights, in the fullest and most ample manner, as it hath been bounded by former treaties, as long as the said Delaware nation shall abide by, and hold fast, the chain of friendship now entered into."

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

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

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

During the war of the Revolution, the Cherokees took part with the British. 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 more reason for supposing that the Cherokee chiefs were not very critical judges of the language, from the fact that every one makes his mark; no chief was capable of signing his name. It is probable the treaty was interpreted to them.

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

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

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

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

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

The general law of European sovereigns, respecting their claims in America, limited the intercourse of Indians, in a great degree, to the particular potentate, whose ultimate right of domain was acknowledged by the others. This was the general state of things in time of peace. It was sometimes changed in war. The consequence was, that their supplies were derived chiefly from that nation, and their trade confined to it. Goods, indispensable to their comfort, in the shape of presents, were received from the same hand. What was of [See second page.]