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INDIANS.

THE CHEROKEE CASE.

OPINION

Of the Supreme Court, delivered by Mr. Chief Justice Marshall, June 1st 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 Slave, 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, laws, and treaties, of the United States.

The legislative power of the 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 controvertible.

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 prescribes the mode of proceeding, appears to have been literally pursued.

In February, 1797, a rule was

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

† W. H. 304, 361. † 8th W. H. 312.

‡ W. H. Rules.

made on a subject, in the following words:—“It is ordered by the Court that the Clerk of the Court to which any writ of error shall be directed, may make return of the same by transmitting a true copy of the record, and of all proceedings in the same, under his hand and the seal of the Court.”

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

In the case of *Buel vs. Van Ness*, 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 made by the judge of the State Court to which the writ was directed; but the exception was overruled, 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 usual 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 sanction of the Court could be necessary for the establishment of this position, it has been silently given.

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

The 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 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 of crimes, and each of them were committed, if committed at all, at the town of New Echota, in said Cherokee nation, out from the jurisdiction of this court, and not in the county of Gwinnett, or elsewhere within the jurisdiction of this court: And the defendant saith, that he is a citizen of the State of Vermont, one of the United States of America, and that he entered the aforesaid Cherokee nation, in the capacity of a duly authorized missionary of the American Board of Commissioners for Foreign Missions, under the authority of the President of the United States, and served the same, 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 Gov-

ernment 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 by the State of Ga. ought not to have or main-

tain, because, he saith, that several

treatingies 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 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 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 arraigned, pleaded 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 25th section of the “Act to establish the judicial courts of the United States.”

The plea avers that residence charged in the moment, was under the authority of the President of the U. S. and the penninsular and approval of the Cherokee nation.

The United States and the Cherokee, 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. The Cherokee nation, and the United States, 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

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

The individual 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 in question the validity of a Statute of the State of Georgia, on the ground of its being repugnant to the Constitution, treaties, and laws of the United States, and the decision is in favor of its validity.”

It is, then, we think, too clear for controversy, that the act of Congress, by which this Court is constituted, by which it is 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 subjects to be brought before them. We must examine the defense 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 condemned, be consistent with or repugnant to, the Constitution, laws, and treaties of the United States.

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

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

It enacts, that “all white persons 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 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 conviction thereof, shall be punished by confinement to the penitentiary, at hard labor, for a term not less than four years.”

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

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

And this separated from Europe by a wide ocean, was inhabited by a native empire divided into separate nations, independent of each other and of the rest of the world, and governing themselves by their own laws. It is

See fourth page.