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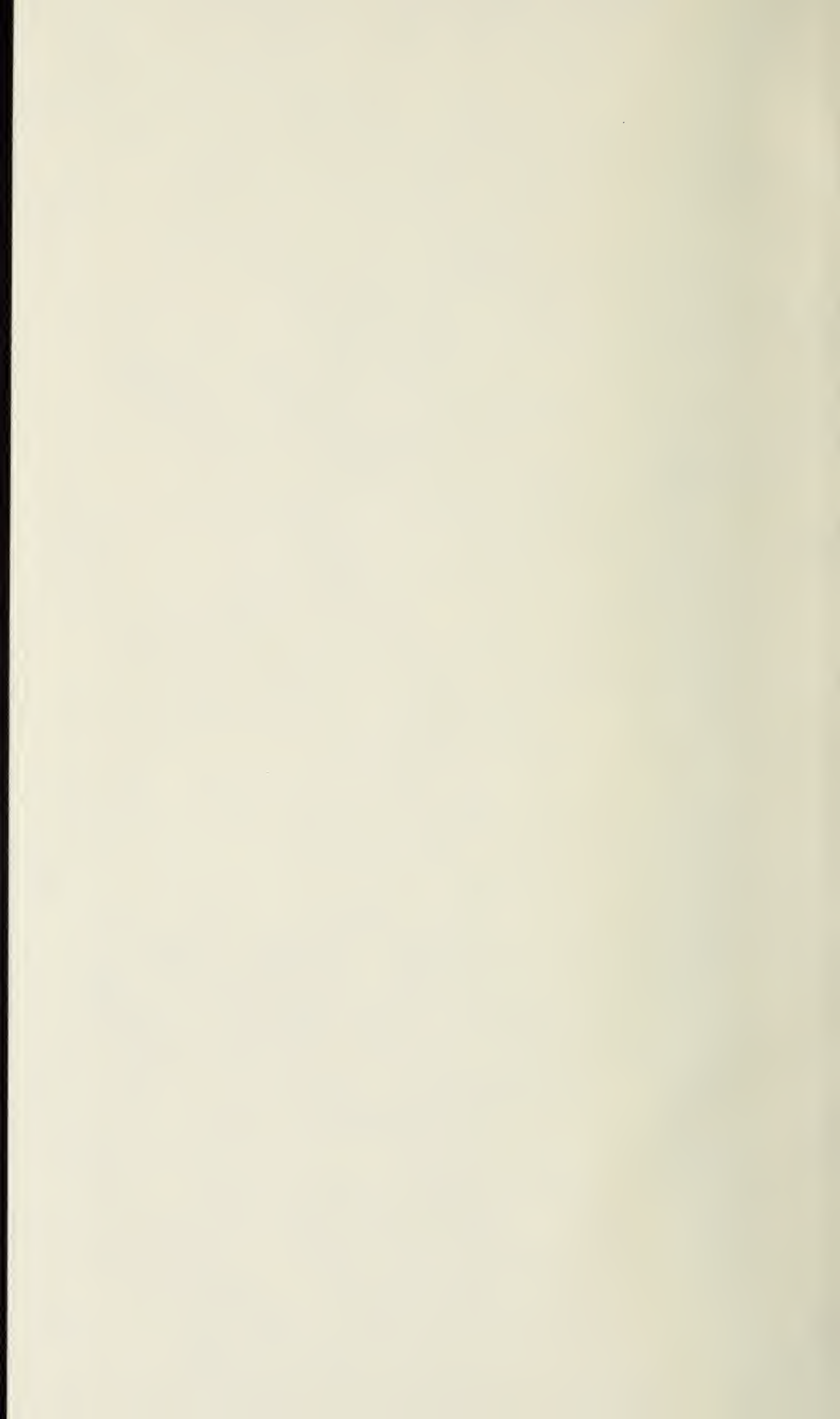

ESSAYS

ON THE

PRESENT CRISIS IN THE CONDITION

OF

THE AMERICAN INDIANS;

FIRST PUBLISHED IN

THE NATIONAL INTELLIGENCER,

UNDER THE SIGNATURE OF

WILLIAM PENN.

By Jeremiah Evarts

Philadelphia:

THOMAS KITE—64 WALNUT STREET.

1830.

ADVERTISEMENT.

In the letter, which contained the two first papers of the following series, addressed to the Editors of the National Intelligencer, an introductory statement was given, for the purpose of disclosing the general design of the writer, and describing the manner in which he intended to pursue the investigation. It is deemed proper to copy that statement, as a preface to the formal discussion.

Gentlemen: I send for your paper two numbers of a series of Essays *on the pending and ripening controversy* between the United States and the Indians. I hope you will insert them. Permit me as an inducement, to make the following suggestions:

1. This is a subject which must be abundantly discussed in our country.

2. It will be among the most important, and probably the most contested, business of the 21st Congress. Some able members of Congress, to my certain knowledge, wish to have the matter discussed.

3. I expect to make it appear, by a particular examination of treaties, that the United States are bound to secure to the Cherokees the integrity and inviolability of their territory, till they voluntarily surrender it.

4. In the course of this investigation, I shall not agree with the present Executive of the United States, in the construction which he gives to treaties; but shall be sustained by the uniform tenor of our negotiations with the Indians, and legislation for them, from the origin of our government to the present day.

5. My discussions will not assume a party character at all; and whenever I speak of the President, or the Secretary at War, it shall always be by their official designation, and in a respectful manner. Though I think that the President has greatly mistaken his powers and his duty, in regard to the Indians, I have no wish concerning him, but that he may be a wise and judicious ruler of our growing republic.

I have always approved of the decorum which you have observed, in speaking of public characters.

6. I propose to furnish two numbers a week, that they may be copied into semi-weekly papers, if their editors see fit.

7. The two numbers now sent have been read to an eminent civilian, and approved by him; and I shall endeavour to be careful in my principles, and accurate in my conclusions. At any rate, should I fall into error, I am perfectly willing that my error should be exposed.

8. Should you insert these papers as I hope you may, I would request that there may be as little delay as possible: for there are many symptoms that the country will be awake to the discussion, and is impatient for it.

In the mean time, permit me to use the signature of that upright legislator and distinguished philanthropist,

WILLIAM PENN.

Daily Nat. Intell. Aug. 1. 1829.]

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PRESENT CRISIS IN THE CONDITION

OF THE

AMERICAN INDIANS.

No. 1.

Contents of this Number.—Information needed—Great interests at stake—The character of our country involved—The world will judge in the case—Value of national character—Apprehensions of the divine displeasure—Statement of the controversy.

Every careful observer of public affairs must have seen, that a crisis has been rapidly approaching, for several years past, in reference to the condition, relations, and prospects, of the Indian tribes, in the southwestern parts of the United States. The attention of many of our most intelligent citizens has been fixed upon the subject with great interest. Many others are beginning to inquire. Several public documents, which have recently appeared in the newspapers, serve to awaken curiosity, and to provoke investigation.

Still, however, the mass of the community possess but very little information on the subject; and, even among the best informed, scarcely a man can be found, who is thoroughly acquainted with the questions at issue. Vague and inconsistent opinions are abroad; and however desirous the people may be of coming at the truth, the sources of knowledge are not generally accessible. Some persons think, that the Indians have a perfect right to the lands which they occupy, except so far as their original right has been modified by treaties fairly made, and fully understood at the time of signing. But how far such a modification may have taken place, or whether it has taken place at all, these persons admit themselves to be ignorant. Others pretend, that Indians have no other right to their lands, than that of *a tenant at will;* that is, the right of remaining where they are, till the *owners of the land* shall require them to remove. It is needless to say, that, in the estimation of such persons, the white neighbours of the Indians are the real owners of the land. Some people are puzzled by what is supposed to be a collision between the powers of the general government and the

claims of particular States. Others do not see that there is any hardship in bringing the Indians under the laws of the States, in the neighbourhood of which they live; or, as the phrase is, within *the limits of which* they live. Some consider it the greatest kindness that can be done to the Indians to remove them, even without their consent and against their will, to a country where, as is supposed, they will be in a condition more favourable to their happiness. Others think, that if they are compelled to remove, their circumstances will be in all respects worse than at present; and that, suffering under a deep sense of injury, and considering themselves trodden down by the march of inexorable oppression, they will become utterly dispirited, and sink rapidly to the lowest degradation, and to final extinction.

So great a diversity of opinion is principally owing to want of correct information. It is my design, Messrs. Editors, to furnish, in a few numbers of moderate length, such materials, as will enable every dispassionate and disinterested man to determine where the right of the case is.

In the mean time, I would observe, that the people of the United States owe it to themselves, and to mankind, to form a correct judgment in this matter. The questions have forced themselves upon us, as a nation:—*What is to become of the Indians? Have they any rights?* If they have, *What are these rights? and how are they to be secured?* These questions must receive a practical answer; and that very soon. What the answer shall be, is a subject of the deepest concern to the country.

The number of individuals, who are interested in the course now to be pursued, is very great. It is computed, that there are within our national limits more than 300,000 Indians; some say 500,000; and, in the southwestern States, the tribes whose immediate removal is in contemplation, have an aggregate population of more than 60,000. The interests of all these people are implicated, in any measure to be taken respecting them.

The character of our government, and of our country, may be deeply involved. Most certainly an indelible stigma will be fixed upon us, if, in the plenitude of our power, and in the pride of our superiority, we shall be guilty of manifest injustice to our weak and defenceless neighbours. There are persons among us, not ignorant, nor prejudiced, nor under the bias of private interest, who seriously apprehend, that there is danger of our national character being most unhappily affected, before the subject shall be fairly at rest. If these individuals are misled by an erroneous view of facts, or by the adoption of false principles, a free discussion will relieve their minds.

It should be remembered, by our rulers as well as others, that this controversy, (for it has assumed the form of a regular controversy,) will ultimately be well understood by the whole civilized world. No subject, not even war, nor slavery, nor the nature of free institutions, will be more thoroughly canvassed. The voice of mankind will be pronounced upon it;—a voice, which will not be drowned by the clamor of ephemeral parties, nor silenced by the paltry considerations of local or private interest. Such men as the Baron Humboldt and the Duc de Broglie, on the continent of Europe, and a host of other statesmen, and orators, and powerful writers, there and in Great Britain, will not be

greatly influenced, in deciding a grave question of public morality, by the excitements of one of our elections, or the selfish views of some little portions of the American community. Any course of measures, in regard to the Indians, which is manifestly fair, and generous, and benevolent, will command the warm and decided approbation of intelligent men, not only in the present age, but in all succeeding times. And with equal confidence it may be said, if, in the phraseology of Mr. Jefferson, the people of the United States should "feel power, and forget right;"—if they should resemble a man, who, abounding in wealth of every kind, and assuming the office of lawgiver and judge, first declares himself to be the owner of his poor neighbour's little farm, and then ejects the same neighbour as a troublesome incumbrance;—if, with land enough, now in the undisputed possession of the whites, to sustain ten times our present population, we should compel the remnants of tribes to leave the places, which, received by inheritance from their fathers and never alienated, they have long regarded as their permanent homes;—if, when asked to explain the treaties, which we first proposed, then solemnly executed, and have many times ratified, we stammer, and prevaricate, and complete our disgrace by an unsuccessful attempt to stultify, not merely ourselves, but the ablest and wisest statesmen, whom our country has yet produced;—and if, in pursuance of a narrow and selfish policy, we should at this day, in a time of profound peace and great national prosperity, amidst all our professions of magnanimity and benevolence, and in the blazing light of the nineteenth century, drive away these remnants of tribes, in such a manner, and under such auspices, as to insure their destruction;—if all this should hereafter appear to be a fair statement of the case;—then the sentence of an indignant world will be uttered in thunders, which will roll and reverberate for ages after the present actors in human affairs shall have passed away. If the people of the United States will imitate the ruler who coveted Naboth's vineyard, the world will assuredly place them by the side of Naboth's oppressor. Impartial history will not ask them, whether they will feel gratified and honored by such an association. Their consent to the arrangement will not be necessary. The revolution of the earth in its orbit is not more certain.

It may be truly said, that the character which a nation sustains, in its intercourse with the great community of nations, is of more value than any other of its public possessions. Our diplomatic agents have uniformly declared, during the whole period of our national history, in their discussions with the agents of foreign powers, that we offer to others the same justice which we ask from them. And though, in times of national animosity, or when the interests of different communities clash with each other, there will be mutual reproaches and recriminations, and every nation will, in its turn, be charged with unfairness or injustice, still, among nations, as among individuals, there is a difference between *the precious and the vile;* and that nation will undoubtedly, in the long course of years, be most prosperous and most respected, which most sedulously cherishes a character for fair dealing, and even generosity, in all its transactious.

There is a higher consideration still. The Great Arbiter of Nations never fails to take cognizance of national delinquencies. No sophistry

can elude his scrutiny; no array of plausible arguments, or of smooth but hollow professions, can bias his judgment; and he has at his disposal most abundant means of executing his decisions. In many forms, and with awful solemnity, he has declared his abhorrence of oppression in every shape; and especially of injustice perpetrated against the weak by the strong, *when strength is in fact made the only rule of action.* The people of the United States are not altogether guiltless, in regard to their treatment of the aborigines of this continent; but they cannot as yet be charged with any *systematic legislation* on this subject, inconsistent with the plainest principles of moral honesty. At least, I am not aware of any proof, by which such a charge could be sustained.

Nor do I, in these preliminary remarks, attempt to characterize measures now in contemplation. But it is very clear, that our government and our people should be extremely cautious, lest, in judging between ourselves and the Indians, and carrying our own judgment into execution with a strong hand, we incur the displeasure of the Most High.—Some very judicious and considerate men in our country think, that our public functionaries should stop where they are; that, in the first place, we should humble ourselves before God and the world, that we have done so much to destroy the Indians, and so little to save them; and that, before another step is taken, there should be the most thorough deliberation, on the part of all our constituted authorities, lest we act in such a manner as to expose ourselves to the judgments of Heaven.

I would have omitted this topic, if I thought that a majority of readers would regard it its introduction as a matter of course, or as a piece of affectation, designed for rhetorical embellishment. In my deliberate opininion, it is more important, and should be more heeded, than all other considerations relating to the subject; and the people of the United States will find it so, if they should unhappily suppose themselves above the obligation to *do justly, love mercy, and walk humbly with their God.*

I close this introductory number, by stating what seems to be the present controversy between the whites and the Indian tribes of the southwestern States: I say the *whites*, (that is our country generally,) because certain positions are taken by the government of the United States, and certain claims are made by the State of Georgia, and certain other claims by the States of Alabama and Mississippi. The Indians do not admit the validity of any of these positions or claims; and if they have a perfect original title to the lands they occupy, which title they have never forfeited or alienated, their rights cannot be affected by the charters of kings, nor by the acts of provincial legislatures, nor by the compacts of neighbouring states, nor by the mandates of the executive branch of our national government.

The simple question is: *Have the Indian tribes, residing as separate communities in the neighbourhood of the whites, a permanent title to the territory, which they inherited from their fathers, which they have neither forfeited nor sold, and which they now occupy?*

For the examination of this question, let the case of a single tribe or nation be considered; for nearly the same principles are involved in the claims of all the Indian nations.

The Cherokees contend, that their nation has been in possession of

their present territory from time immemorial; that neither the king of Great Britain, nor the early settlers of Georgia, nor the state of Georgia after the revolution, nor the United States since the adoption of the federal constitution, have acquired any title to the soil, or any sovereignty over the territory; and that the title to the soil and sovereignty over the territory have been repeatedly *guaranteed to the Cherokees, as a nation*, by the United States, in treaties which are now binding on both parties.

The government of the United States alleges, as appears by a letter from the Secretary of War,* dated April, 1829, that Great Britain, previous to the revolution, " *claimed* entire sovereignty within the limits of what constituted the thirteen United States;" that ' all the rights of sovereignty which Great Britain had within said states became vested in said states respectively, as a consequence of the declaration of independence, and the treaty of 1783;' that the Cherokees were merely 'permitted' to reside on their lands by the United States; that this permission is not to be construed so as to deny to Georgia the exercise of sovereignty; and that the United States has no power to guarantee any thing more than a right of possession, till the state of Georgia should see fit to legislate for the Cherokees, and dispose of them as she should judge expedient, without any control from the general government.

This is a summary of the positions taken by the Secretary of War; and, though not all of them expressed in his own language, they are in strict accordance with the tenor of his letter.

In my next number, I shall proceed to inquire, *What right have the Cherokees to the lands which they occupy?*

No. II.

The Cherokees have the same rights as other men—They are not hunters—They have sold much good land to the United States—Original extent of their country—Its present extent—The mere claims of one party cannot affect the rights of another party—Necessity of examining treaties.

In my first number I prepared the way to inquire, ' *What right have the Cherokees to the lands which they occupy?* This is a plain question, and easily answered.

The Cherokees are human beings, endowed by their Creator with the same natural rights as other men. They are in peaceable possession of a territory which they have always regarded as their own. This territory was in possession of their ancestors, through an unknown series of generations, and has come down to them with a title *absolutely unincumbered in every respect.* It is not pretended, that the Cherokees have ever alienated their country, or that the whites have ever been in possession of it.

If the Cherokees are interrogated as to their title, they can truly say,

* See Appendix.

" God gave this country to our ancestors. We have never been in bondage to any man. Though we have sold much land to our white neighbors, we have never bought any from them. We own the land which we now occupy, by the right of the original possessors ; a right which is allowed in all countries to be of incontestible validity. We assert, therefore, that no human power can lawfully compel us to leave our lands."

If the Cherokees are correct in their statement of facts, who can resist their conclusion ? We might as well ask the Chinese, what right *they* have to the territory which they occupy. To such a question they would answer, " God gave this land to our ancestors. Our nation has *always* been in possession of it, so far as history and tradition go back. The nations of Europe are comparatively of recent origin ; the commencement of ours is lost in remote antiquity."

What can be said to such a statement as this ? Who can argue so plain a case ?

It has been alleged, that the savage of the wilderness can acquire no title to the forests, through which he pursues his game. Without admitting this doctrine, it is sufficient to reply here, that it has no application to the case of the Cherokees. They are at present neither savages nor hunters. It does not appear that they ever were mere wanderers, without a stationary residence. At the earliest period of our becoming acquainted with their condition, they had fixed habitations, and were in undisputed possession of a widely extended country. They were then in the habit of cultivating some land near their houses, where they planted Indian corn, and other vegetables. From about the commencement of the present century, they have addicted themselves more and more to agriculture, till they now derive their support from the soil, as truly and entirely as do the inhabitants of Pennsylvania or Virginia. For many years they have had their herds, and their large cultivated fields. They now have, in addition, their schools, a regular civil government, and places of regular Christian worship. They earn their bread by the labor of their own hands, applied to the tillage of their own farms ; and they clothe themselves with fabrics made at their own looms, from cotton grown in their own fields.

The Cherokees did not show themselves unwilling to sell their lands, so long as an adequate motive was presented to their minds. During every administration of our national government, applications were made to them for the purpose of obtaining additional portions of their territory. These applications were urged, not only, nor principally, by the consideration of the money or presents which they were to receive in exchange, but often, and strongly, by the consideration that they would become an agricultural people, like the whites—that it was for their interest to have their limits circumscribed, so that their young men could not have a great extent of country to hunt in ; and that, when they became attached to the soil, and engaged in its cultivation, the United States would not ask them to sell any more land. Yielding to these arguments, and to the importunities of the whites, the Cherokees sold, at different times, between the close of the revolutionary war and the year 1820, more than three quarters of their original inheritance. That

the reader may have some definite idea of the territory in question, he should pursue the following delineation by the aid of a good map.

It would seem that the Cherokees possessed land extending to the following limits, if not beyond them, viz: From the mouth of Duck river, in Tennessee, on the west, to the waters of French Broad, in North Carolina, on the east; and from the head waters of the Holston, in Virginia, on the north, to some distance down the Oconee, in Georgia, on the south; comprising, beside what is now the Cherokee country, more than half of the State of Tennessee, the southern part of Kentucky, the southwest corner of Virginia, a considerable portion of both of the Carolinas, a small portion of Georgia, and the northern part of Alabama. This tract probably contained more than 35,000,000 acres, of which a large proportion is extremely fertile, and some of it not inferior to any land in North America, or perhaps in the world. The country is also generally healthy, and the climate delightful. Of all this vast and beautiful tract, watered by numerous rivers, which find their way to the ocean, some of them circuitously by the Mississippi, and others more directly to the gulph of Mexico and the Atlantic, the Cherokees now retain less than 8,000,000 acres, of a quality far below the average quality of that which they have sold. Georgia claims 5,000,000 acres of this remnant, as falling within the map of that State. Alabama claims nearly 1,000,000 of the residue. The portions which, in the general division, will fall to Tennessee and North Carolina, seem hardly worth enquiring about; for, if the other portions are given up, or taken by force, there will be no motive for retaining these.

To every application made for their lands within the last ten years, the Cherokees have said, "We are not disposed to sell any more. We have betaken ourselves to an agricultural life. We are making progress in civilization. We are attached to our schools and our Christian teachers; to our farms; to our native rivers and mountains. We have not too much land for our own comfort, and for affording us a fair chance in the experiment we are making." This language has been repeated in many forms, and with every indication of sincerity and earnestness.

The assertion of the Cherokees, that their present country is not too large for a fair experiment in the work of civilization, is undoubtedly correct. The wisest men, who have thought and written on this subject, agree in the opinion, that no tribe of Indians can rise to real civilization, and to the full enjoyment of Christian society, unless they can have a community of their own; and can be so much separated from the whites, as to form and cherish something of a national character. If the limits of the Cherokee country were much smaller than they are, this would be impracticable.

Thus stands the case; and it is now my intention to inquire how the government of the United States has regarded the Indian title, and how it has been regarded by the several States in the vicinity of the Cherokees.

Before this inquiry is commenced, however, it is proper to say, that the title of one party cannot be safely decided by the mere *claims* of another party. If those claims are founded in justice, they ought to prevail; if not, they should be set aside. Now, whatever doctrines the government of the United States may have held and promulgated on this

subject, they cannot be binding upon the Indians, unless acknowledged by them to be binding, or unless founded in the immutable principles of justice.

Let us suppose that the kings of Great Britain had issued an annual proclamation, from the time of the discovery of America to the peace of 1783, claiming all the lands in North America between 30 and 50 north latitude, and declaring that all the nations, tribes, and communities, then residing on said lands, were subject to the laws of Great Britain, and that the title to all these lands was vested in, and of right belonged to, the crown of that realm ; and let us further suppose, that the Government of the United States had issued an annual proclamation, from the date of the declaration of independence to the present day, applying the same doctrine to our advantage, and declaring, that all the Indian nations within the limits prescribed by the peace of 1783, were subject to the laws of the United States, and that the lands of which they were in possession, belonged of right to the United States, so long as the Indians did not acknowledge the binding nature of these claims, the mere *claims* would have amounted to nothing. It was the practice of the king of England, during several centuries, to declare himself, (as often as he issued a proclamation on any subject whatever,) king of Great Britain, France and Ireland. Was he therefore king of France ? What if he were now to declare himself king of Great Britain and China ? It would be a cheap way, indeed, of acquiring a title, if merely setting up a claim would answer the purpose.

By what right do the people of the United States hold the lands which they occupy ? The people of Ohio, for instance, or of Connecticut ? By the right of occupancy only, commenced by purchase from the aboriginal possessors. It would be folly to plead the charters of kings, or the mere drawing of lines of latitude and longitude. The powers of Europe have indeed acknowledged our right to our country. But what if they had not ? Our right is not at all affected by their claims, or acknowledgements. The same doctrine is applicable to the condition of the Cherokees. They have a perfect right to their country,—the right of peaceable, continued, immemorial occupancy ;—and although their country may be *claimed* by others, it may lawfully be ***held*** by the possessors against all the world.*

The Cherokees need not fear, however, that their rights are in danger, as a consequence of any principles sanctioned by the national legislature of the United States. The co-ordinate branches of our government have not yet declared, that Indians are tenants at will. On the other hand, the whole history of our negotiations with them, from the peace of 1783 to the last treaty to which they are a party, and of all our legislation concerning them, shows, that they are regarded as a separate community from ours, having a national existence, and possessing a territory, which they are to hold in full possession, till they voluntarily surrender it.

* Some shallow writers on this subject have said, that " the Cherokees have *only* the title of occupancy ; just as though the title of occupancy were not the best title in the world, and the only original foundation of every other title. Every reader of Blackstone knows this to be the fact. As to the past, the Cherokees have *immemorial occupancy;* as to the future, they have a perfect right to *occupy their country indefinitely.* What can they desire more ?

I now proceed to the examination of treaties, between the United States and the Cherokee nation. And here I would apprize the reader, that the case can never be fairly and fully understood, without a reference to every material article, in every treaty which has been made between these parties. Unless such a reference is had, no reader can be sure that he has a view of the whole ground; and a caviller might object, that there had been omissions, in order to conceal a weak part of the case. This is a subject, too, which the people of the United States must have patience to investigate. When measures are in progress, which have a bearing on the permanent rights and interests of *all* the Indians, it must not be thought tedious to read an abstract of the solemn engagements, by which we have become bound to *one* of these aboriginal nations.

In the revolutionary contest, the Cherokees took part with the king of Great Britain, under whose protection they then considered themselves, just as they now consider themselves under the protection of the United States. After the peace of 1783, it does not appear that any definite arrangement was made with this tribe till the year 1785. In the course of that year, the old Congress appointed four commissioners plenipotentiary, men of distinction at the south, to meet the head men and warriors of the Cherokees, and negociate a treaty of peace.

The parties met at Hopewell, now in Pendleton District, S. C.; and, on the 28th of November, executed an instrument, which is usually cited as the treaty of Hopewell. The abstract of this instrument, with some remarks upon it, will be given in my next number.

No. III.

First compact between the United States and the Cherokees; viz. the treaty of Hopewell—Abstract of this treaty—Reasons for thinking it still in force—The Old Congress had the power to make treaties—Argument of the Secretary of War—Meaning of the phrases *to give peace*, and *to allot*.

The title of the treaty to which I referred in my last number, is in these words:

> "Articles concluded at Hopewell, on the Keowee, between Benjamin Hawkins, Andrew Pickens, Joseph Martin, and Lachlan McIntosh, 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 preface to the articles is thus expressed:

> "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:"

Before I proceed to make an abstract of the articles, it is proper to say, that in regard to this and all subsequent treaties, I shall be as brief as appears to be consistent with putting the reader in full possession of the case. The more material parts of treaties I shall cite literally; and these will be distinguished by double inverted commas. Other parts

will be abridged ; but where the principal words of any abridgment are taken from the treaties, such passages will be marked by *single* inverted commas. The less material parts will be expressed as briefly as possible in my own language ; but in all these cases I pledge myself to the strictest fidelity. At least *the subject of every article* shall be mentioned, that the reader may judge of the general aspect of the whole, as well as of the meaning of the most important parts. The treaty of Hopewell, then, reads as follows :

Art. 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.

" Art. 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.

" Art. 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 whatsoever.

" Art. 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 :" This boundary defines the northern and eastern limits of the Cherokee country.

" Art. 5. If any citizen of the United Statos, or other person, not being an Indian, shall attempt to settle on any of the lands westward and 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." Then follows a proviso, as to settlers "between the fork of French Broad and Holston," whose case is to be referred to Congress.

" Art. 6. If any Indian, or Indians, or persons 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 crime had been committed by a citizen on a citizen.'

" Art. 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," he shall be punished in the same manner as if " the crime had been committed on a citizen ;" and the punishment shall be in the presence of some of the Cherokees, who shall have due notice of the time and place.

Art. 8. No punishment of the innocent for the guilty, 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."

" Art. 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.

" Art. 10. Until the pleasure of Congress be known respecting the 9th article," a temporary provision is made for the security of traders.

" Art. 11. The said Indians shall give notice" of any designs " formed in any neighbouring tribe, or by any person whomsoever, against the peace, trade, or interests of the United States.

" Art. 12. 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.

"Art. 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 endeavours to maintain the peace given as aforesaid, and friendship re-established."

These articles were signed by the four commissioners of the United States, and by thirty-seven head men and warriors of the Cherokees, in the presence of William Blount, afterwards Governor of Tennessee, and eight other witnesses. In the formulary, which precedes the signatures, the articles are called a "Definitive Treaty."

Among the documents of Congress, published during the last session, is a letter from the Honourable Hugh L. White, now senator in Congress, to Mr. John Ross, at present the chief magistrate of the Cherokee nation, in which the writer argues, at some length, that the treaty of Hopewell is not now in force, on account of its having been abrogated by a subsequent war, and its not being expressly recognised in any subsequent treaty.

Mr. White admits, that treaties are not, as a matter of course, abrogated by war; but he thinks that, in the case before us, such is the natural conclusion to be formed, after attending to subsequent treaties. I must be permitted to question, whether he would have come to this conclusion, if he had seen *all* the subsequent treaties, and duly considered them.

The following reasons, which have become apparent, in the course of this investigation, satisfy me that the treaty of Hopewell is still in force.

1. In all the subsequent treaties, there is no intimation, not even the most obscure, that this treaty, or any other, had been abrogated, annulled, or superseded.

2. In the second treaty of Philadelphia, 1794, the United States give money, "to evince their justice," to the Cherokees, "for relinquishments of land by the treaty of Hopewell, and the treaty of Holston." Here both treaties are mentioned in precisely the same manner; which would hardly have been the case, if one of them had been abrogated.

3. The first article of the third treaty of Tellico, 1805, is in these words: "All former treaties, which provide for the maintenance of peace and preventing of crimes, are, on this occasion, recognised and continued in force." The treaty of Hopewell was a *former treaty*, which was directed almost wholly to *the maintenance of peace and the preventing of crimes*.

4. In the second treaty, negociated by General Jackson, 1817, it is stipulated, that "the treaties heretofore [made] between the Cherokee nation and the United States, are to continue in full force." The phrase "*the treaties*," means the same as *all treaties*.*

This is the first treaty made by the United States with either of the south-western tribes, or nations. The State of Georgia had, previously to the revolutionary war, entered into compacts with the Cherokees, of

* These reasons were not inserted in the number as originally published. They were discovered, as the examination of treaties proceeded. The reader will probably think them unanswerable.

which notice will be taken, at the proper time. After the peace of 1783, and before the adoption of the federal constitution, the Congress made treaties with the Indians, in precisely the same manner as with European nations. If the power to do this was doubted, or denied, the doubt or denial, has never come to my knowledge. The treaty of Hopewell was negotiated by commissioners, all of whom, if I mistake not, resided at the south; and I have never heard that any remonstrance was offered by either of the states in the neighbourhood of the Cherokees, on the ground, that the Old Congress had *no power* to agree upon a line of demarkation with the Indians. A line was fixed, in the 4th article, securing to the Indians the undisturbed possession of a territory, which appeared on the map to be a part of Virginia, the two Carolinas, and Georgia; the States of Kentucky, Tennessee, Alabama, and Mississippi, not having then been formed. If this treaty now stood alone, and the relations of the parties had not been changed by subsequent events, no white man could have "*attempted* to settle on any of the lands within the Cherokee boundary," even down to the present day, however he might have been sustained in his attempt by the constituted authorities of any or all of the states, situated in the neighbourhood of the Cherokees. Against such an attempt, the Indians would have been protected by the faith of the Confederated Republic. This remark is made, simply for the sake of drawing the attention of the reader to the inviolability of the Indian territory, as strongly implied in the fifth article.

From the phraseology adopted in two or three passages of the treaty, the conclusion seems to be drawn by the present Secretary of War, that treaties with the Cherokees are not binding upon the whites; at least, not to the extent of their literal and proper meaning. The argument stands in this form. The Cherokees fought on the side of the British, in the war of independence. The British were beaten; and therefore the Cherokees were a conquered people. To a conquered people the United States *gave peace;* and therefore the United States are not bound by the very articles which they dictated. They *allotted a boundary* to the Cherokees; and therefore the United States are not under obligation to respect the boundary, which they themselves allotted. To refute such conclusions, established by such a process of reasoning, is unnecessary. The very statement of the argument is enough.

It is true, that the commissioners of the United States, in several treaties made about the same time, express themselves rather haughtily, when they declare that they *give peace* to the Indians. The fact is well known, however, that the whites were much more desirous of peace than the Cherokees were. The inhabitants of our frontier settlements were in constant dread of incursions from the natives of the forest. Impoverished as our country was by a seven years' war, it would have been impossible to have scoured the vast wilderness, from the settled country to the Mississippi. Any force which could then have been sent, would have fared worse than the army of St. Clair did, in a far less dangerous field, nine years afterwards.

The Cherokees could not have set up for nice verbal critics of the English language, as they did not understand a word of it. It is questionable, whether one Indian interpreter in ten would make any differ-

ence between *give peace*, and *make peace*, or *agree to a peace*. The Cherokees doubtless understood, that the United States were desirous that there should be *an end of fighting;* but it is incredible that they should have thought there was lurking, under the phrase of *giving peace*, any such mysterious implication of superiority on the part of the whites, as should ultimately exonerate the superior from all obligation to keep faith with his inferior. Least of all could they have supposed, that there was a latent power in this phrase, which should destroy the validity of all future compacts between the same parties, in not one of which the insidious phrase is to be found.

The phrase *to give peace* was a favourite one with the Romans, and was doubtless copied from them. I think Bonaparte used it also on some occasions. But neither the Romans, nor Bonaparte, so far as I know, ever soberly contended that a treaty was to be interpreted, otherwise than according to the obvious and proper meaning of the words, merely because one of the parties assumed rather a haughty air, in some few instances of the phraseology.

As to the word *allot*, it is said to have been commonly used in the southern States as synonymous with *fix*, or *establish*. To say that a boundary was *allotted* to the Cherokees, was no more than to say that a boundary was *established* or *agreed upon;* for the boundary is not said to have been *allotted by the United States*. It may have been, indeed it must have been, as the whole scope of the treaty shows, *allotted by the consent of both parties*.*

No. IV.

Apparent inferiority of the United States to the Chickasaws—The Cherokees under the protection of the United States—Hunting grounds a good designation of land—Proofs of equality of rights in the parties—Treaty of Holston, or second compact with the Cherokees, 1791—Title and preamble—The manner in which this treaty was negociated and ratified.

If our statesmen are about to interpret treaties, on the principle of favoring the party which assumed a superiority, they must take care lest there should be some very unexpected consequences.

In a treaty formed between the United States and the Chickasaws, in the year 1801, and ratified by President Jefferson and the Senate, the first article commences thus: "The Mingo, principal men, and warriors of the Chickasaw nation of Indians *give leave and permission* to the President of the United States of America to lay out, open, and make a convenient wagon road *through their land*." After stating that the road "shall be a highway for the citizens of the United States and the Chickasaws," and that the Chickasaws "shall appoint two discreet men as

* The correctness of this criticism on the word *allot* is abundantly proved, by a passage of an act of Congress, which was discovered after this number was written. The passage makes the meaning of *lands allotted to the Indians* to be synonymous with *lands secured to the Indians*.

guides," who shall be paid by the United States for their services, the article closes thus: "Provided always, That the necessary ferries over the water courses, crossed by the said road, shall *be held and deemed to be the property of the Chickasaw nation.*"

The second article makes a pecuniary compensation to the Chickasaws for "their respectful and friendly attention to the President of the United States of America, and *to the request made to them, in his name, to permit the opening of the road.*"

Who is the superior here? Translate these passages faithfully, and send them to the Emperor of China, and let him lay the matter before his counsellors, who never heard of the United States. They will say, in a moment, that the Mingo of the Chickasaws is a monarch, who, in his great condescension, has granted the humble request of the President, on the condition that the petitioner shall make a pecuniary compensation, and pay tribute, under the name of ferriage, to the Chickasaws, as often as any of the President's people pass through the territory of the king of the Chickasaws.

According to the recent code of national morality, what is to be the operation of this Chickasaw treaty? Most undoubtedly, in the first place, the Chickasaws *may close up the road*, the stipulations of the treaty to the contrary notwithstanding. Indeed, they must have exercised great forbearance already, as they have permitted the road to be open *twenty seven years*, solely out of regard to this treaty; just as Georgia has waited twenty-seven years before taking possession of the Cherokee territory, out of complaisance to the engagements of the United States, which it would seem, are to be discarded as of no validity.

In the second place, none of the treaties made subsequently by the Chickasaws are binding upon them; and therefore they may reclaim all the lands which they have ceded to the United States. Of course, the inhabitants of West Tennessee, who now live on fertile lands, which were ceded to the whites by the Chickasaws, must immediately remove, if the Chickasaws require it. The reason is plain. No superior can be bound to an inferior; but that the Chickasaws *are* the superiors, is evident, as the Secretary of War says in the other case, because "the emphatic language" of the treaty "cannot be mistaken."

But it may be said, that there are other indications in the treaty of Hopewell, that the United States assumed a superiority, beside the phraseology, in the instances above cited. The question is not, be it remembered, whether the United States, at the time of the treaty of Hopewell, were a more powerful nation than the Cherokees; but whether, being a more powerful nation, they are on that account exempted from the obligation of treaties.

The Cherokees did, undoubtedly, place themselves under the protection of the United States, in the third article. They had formerly been under the protection of the king of Great Britain; but his power had failed them. It was natural that they should accept proffers of protection from some other quarter. This is not a new thing in the world. From the time of Abraham to the present day, there have been alliances, offensive and defensive, confederacies, and smaller states relying for protection upon the plighted faith of larger ones. But what is implied in the very idea of protection? Is it not that the party protected is to have

all its rights secure, not only against others, but against the protector also? If some rights are yielded as the price of protection, is it not that other rights may be preserved with the greater care and certainty?

It is said that the United States were to have the sole and exclusive right of *regulating trade* with the Cherokees. True: but this was expressly declared to be for the benefit of the Indians, and to save them from injustice and oppression. These laudable objects were gained to a considerable extent; and, if the laws of the United States on this subject had been always carried into full execution, the condition of the Indians would have been rapidly improved, as a consequence of this very stipulation.

It is said that the lands of the Indians are called their "*hunting grounds*;" and that they could not, therefore, have a permanent interest in lands thus described. But how does this appear? The treaty has no limitation of time, nor is there the slightest intimation that it was to become weaker by the lapse of years. As the Indians gained their principal support by hunting, it was natural to designate their country by the phrase "hunting grounds;" and this is as good a designation, in regard to the validity of a title, as any other phrase that could be chosen. It contains the idea of property, and has superadded the idea of constant use.

But to put the matter beyond all question at once, let me refer to two treaties made at the same place, by three out of four of the same American Commissioners, within six weeks of the date of the Cherokee treaty. In both these documents, "*lands*" are allotted to the Choctaws and Chickasaws "*to live and hunt on.*" These lands were secured to the Indians, therefore, so long as any of the race survived upon earth.

Having been occupied some time, in considering the indications of superiority, let us look a little at the proofs of equality. I leave to a future occasion some remarks upon the words *treaty*, *peace*, *contracting parties*, *&c.* which carry with them sundry most important significations.

The two first articles are strictly reciprocal. Each party is to restore prisoners of war. The articles would be proper, in a treaty between France and England.

The 6th and 7th articles provide that crimes committed against individuals of one party, by individuals of the other, shall be punished in the same manner.

The 8th article has the remarkable provision, that no retaliatory measures shall be adopted by either party, unless *this treaty shall be violated;* and even then, before such measures can be adopted, justice must have been demanded by the complaining party and refused by the other, and "*a declaration of hostilities*" must have been made. Thus it is admitted, as well as in the two first articles, that the Cherokees have the same right to declare war, as other powers of the earth have. To declare war and make peace are enumerated, in our own declaration of independence, as among the highest attributes of national sovereignty. The other attributes there enumerated are to form alliances and to establish commerce. It is a curious fact, that every one of these attributes was exercised by the Cherokees, in the negotiation of the treaty of Hopewell.

The present doctrine is, that the Indians were regarded as a sort of non-descript tenants at will, enjoying by permission some imperfect privilege of hunting on grounds which really belonged to the United States. But who ever heard of tenants at will being solemnly admitted to have the right of declaring war upon their landlords? These tenants were also strangely allowed to possess the right of punishing, according to their pleasure, any of their landlords, who should "attempt to settle" upon any lands, which, it is now contended, were then the absolute property of said landlords. But I shall have other occasions of bringing this interpretation to the test.

After the treaty of Hopewell, white settlers pushed forward into the wilderness in the neighbourhood of the Indians, difficulties arose; blood was shed; war was declared; the new settlements in that quarter were in a state of great alarm and anxiety.

In the mean time, the new constitution had gone into operation. The treaty-making power, which had been exercised by the Old Congress, was now confided to the President and Senate of the United States. General Washington, who always pursued a magnanimous policy towards the Indians, as well as towards other nations, took the proper measures to establish a peace. On the 2d of July, 1791, the treaty of Holston was made; and it was afterwards ratified by President Washington and the Senate. The title is in these words:

"A treaty of peace and friendship, made and concluded between the President of the United States of America, on the part and behalf of the said States, and the undersigned chiefs and warriors of the Cherokee nation, on the part and behalf of the said nation."

PREAMBLE.

"The parties being desirous of establishing permanent peace and friendship between the United States and the said Cherokee nation, and the citizens and members thereof, and to remove the causes of war by ascertaining their limits, and making other necessary, just, and friendly arrangements:—the President of the United States, by William Blount, Governor of the territory of the United States south of the River Ohio, and superintendant of Indian affairs for the Southern District, who is vested with full powers for these purposes, by and with the advice and consent of the Senate of the United States; and the Cherokee nation, by the undersigned chiefs and warriors representing the said nation, have agreed to the following articles, namely:"

I have thought it best to cite the whole title and preamble, that the reader may see in what manner the parties to this instrument saw fit to describe themselves; or, more properly, in what manner the plenipotentiary of the United States, with the President and Senate, saw fit to describe these parties: for it will not be pretended that the *Cherokees* reduced the treaty to writing. This is the second treaty, which was made with Indians, by the government of the United States, after the adoption of the Federal Constitution. The first was made with the Creek nation; and was executed at New York, August 7th, 1790, by Henry Knox, then Secretary of War, as the commissioner of the United States, and twenty-four Creek chiefs, in behalf of their nation. In comparing these two treaties, it is found, that the title and preamble of the Cherokee treaty are an exact transcript from the other, except that "Cherokee" is inserted instead of "Creek," and the word "kings," before "chiefs and warriors," is omitted.

All the principal articles of the two treaties are of the same tenor, and expressed by the same phraseology. As Governor Blount made the Cherokee treaty after the model of the Creek treaty, there can be little doubt that he was directed to do so, by the head of the War Department. It is morally certain, that the Creek treaty was drawn up, not only with great care, but with the concentrated wisdom of a cabinet, which is universally admitted, I believe, to have been the ablest and the wisest, which our nation has yet enjoyed. General Washington was at its head,—always a cautious man, and eminently so in laying the foundations of our Union, and entering into new relations. This treaty was made under his own eye, at the seat of government, and witnessed by distinguished men, some of whom added their official stations to their names. The two first witnesses were "Richard Morris, Chief Justice of the State of New York," and "Richard Varick, Mayor of the City of New York."

These treaties were, in due season, ratified by the Senate of the United States, at that time composed of men distinguished for their ability. Among them was Oliver Ellsworth, afterwards Chief Justice of the United States; William Patterson, afterwards an eminent Judge of the Supreme Court of the United States; Rufus King, afterwards for many years, Minister of the United States at the British Court; and William Samuel Johnson, who did not leave behind him in America, a man of equal learning in the Civil Law and the Law of Nations. These four individuals, and six other senators, had been members of the convention, which formed the federal constitution; though Mr. Ellsworth did not sign that instrument, having been called away before it was completed. He was a most efficient member, however, in the various preparatory discussions; and did much in procuring the adoption of the constitution, by the state which he had represented.

The reader may fairly conclude, that the document in question is not a jumble of words, thrown together without meaning, having no object, and easily explained away, as a pompous nullity. On the contrary, it was composed with great care, executed with uncommon solemnity, and doubtless ratified with ample consideration. It has, therefore, a solid basis, and a substantial meaning. That meaning shall be considered in a future number.

No. V.

What is a treaty?—of peace?—and friendship?—What is a nation?—The United States *estopped*—The five first Presidents admitted the Cherokees to be a nation —First and second articles of the treaty of Holston—Absurdity of the recent pretensions of Georgia.

Having described the manner in which the first Indian treaty, after the organization of our present form of government, was negotiated by the cabinet of President Washington, and shown that it was ratified by senators, not inferior to any of their successors, and who were doubtless

peculiarly cautious in the first exercise of the treaty-making power; and having ascertained, by a minute comparison, that the important articles of the treaty of Holston, executed less than a year afterwards, are a mere transcript of the first treaty, I proceed now to inquire, *What is the meaning of the treaty of Holston?*

The title and preamble were quoted in my last number. The title begins thus: "*A treaty of peace and friendship.*" What is a treaty? It is a compact between independent communities, each party acting through the medium of its government. No instrument, which does not come within this definition, can be sent to the Senate of the United States, to be acted upon as within the scope of the treaty-making power.

If the agents of the United States purchase land for a public object, such a purchase is not a treaty. If the State of Virginia, on the application of the United States, cedes a piece of land for a navy yard, or a fort, a compact of this sort is not a treaty. If the state of Georgia cedes to the United States all its claim to territory, enough for two large new states, and the United States agree to make a compensation therefor, such cession and agreement are not a treaty. Accordingly, such negotiations are carried on and completed by virtue of laws of the National and State Legislatures. Of course, compacts of this kind are never called treaties; and the idea of sending them to the Senate of the United States for ratification, would be preposterous. One of the confederated states is not an independent community; nor can it make a treaty, either with the nation at large, or with any foreign power. But the Indian tribes and nations have made treaties with the United States during the last forty years, till the whole number of treaties thus made far exceeds a hundred, every one of which was ratified by the Senate before it became obligatory. Every instance of this kind, implies that the Indian communities had governments of their own; that the Indians, thus living in communities, were not subject to the laws of the United States; and that they had rights and interests distinct from the rights and interests of the people of the United States, and, in the fullest sense, public and national. All this is in accordance with facts; and the whole is implied in the single word *treaty*.

Again; the parties on the banks of the Holston signed a treaty "*of peace.*" It is matter of history, that there had been fighting and bloodshed. These acts of violence were not denominated a *riot*, a *sedition*, a *rebellion;* they constituted a *war*. The settlement of the difficulty was not called a *pardon*, an *amnesty*, a *suppression* of a riot, a *conviction*, a *punishment;* it was called a *peace*. Nor is it said here, as in the treaty of Hopewell, that the United States "*give peace.*" There is, in the title and preamble, every indication of perfect equality between the parties. In point of fact, the whites were, at that moment, much more desirous of peace than the Cherokees were.

This is also a treaty of "*friendship;*" which implies, that the Cherokees were not only a substantive power, capable of making peace and declaring war, but that, after the treaty was executed, they were expected *to remain in the same state*. It was not a surrendry of their national existence, but the establishment of amicable relations to remain;

and, so far as this treaty could operate, the amicable relations, thus acknowledged to exist, were to continue through all future time.

Who are the parties to this "*treaty of peace and friendship?*" The President acts in behalf of one of the parties, and "the undersigned chiefs and warriors of the Cherokee Nation of Indians, *on the part and behalf of said Nation.*" The Cherokees then are a *nation;* and the best definition of a nation is, that it is *a community living under its own laws.*

A nation may be a power of the first, second, third, or tenth rate. It may be very feeble, and totally incompetent to defend its own rights. But so long as it has distinct rights and interests, and manages its own concerns, it is a substantive power; and should be respected as such. Any other rule of interpretation would make force the only arbiter. St. Marino, in Italy, is described in our best gazetteers, as "a small but independent republic;" and yet it has not half so many people, nor the three hundredth part so much land, as the Cherokee nation now has.

It has been said, indeed, that the Indians, being an uncivilized people, are not to be ranked among nations. But this is said gratuitously, and without the least shadow of proof. How many treaties did Julius Cæsar make with savage tribes, who were greatly inferior, in every intellectual and moral respect, to the Cherokees of the present day? There is as little reason as truth in the objection. Has not God endowed every community with some rights? and are not these rights to be regarded by every honest man, and by every fair-minded and honourable ruler?

But, above all, the objection comes too late. The United States are, as a lawyer would say, *estopped.* General Washington, with his cabinet and the Senate, pronounced the Cherokees to be a nation. It does not appear, that a doubt ever crossed the mind of a single individual, for nearly forty years, whether this admission were not perfectly correct. Presidents Adams, (the elder,) Jefferson, Madison, and Monroe, all admitted the Cherokees to be a nation, and treated with them as such. The Secretary of War, (now Vice President of the United States,) negotiated the last treaty with the Cherokees, and affixed his signature to it. In this treaty, as in every preceding one, the Cherokees, are admitted to be a nation, and there is not a word in any of these solemn instruments, which has the most distant implication of the contrary. If the United States are not bound in this case, how is it possible that a party should ever be bound by its own admissions? The truth is, that if our country were bound to France, or England, by any stipulation, however mortifying to our pride, or disadvantageous to our interest, and the meaning of the obnoxious clause were supported by one fiftieth part of the evidence by which it can be proved that the United States have recognised the *national character of the Cherokees,* no lawyer, civilian, or politician even, would risk his reputation, by attempting to dispute or evade the meaning. We should be obliged to submit to inconveniences resulting from our own stipulations, till we could remove them by subsequent negotiations. If we have been overreached by the Cherokees, in so many successive treaties; if they have had the adroitness to get from us repeated acknowledgments of their possessing a character and rights, which they did not possess; if General Washington, and a long

line of distinguished statesmen, have made incautious admissions; and if, in this way, we have made a bargain which bears hard upon ourselves —still, our hands and seals testify against us. We must be more cautious the next time. "He that sweareth to his own hurt, and changeth not," is declared in Holy Writ to give *one* proof that he is an upright man, and will receive the approbation of God. In a word, if Washington and Knox, Hamilton and Jefferson, compromitted the interests of this country, by indiscreet and thoughtless stipulations, we must gain wisdom by experience, and appoint more faithful and more considerate public agents hereafter.

Having inquired into the meaning of the title and preamble of the treaty of Holston, let me now direct the attention of the reader to its provisions:

"Art. 1. There shall be perpetual peace and friendship between all the citizens of the United States of America, and all the individuals composing the whole Cherokee nation of Indians."

If the "peace and friendship" were to be "perpetual," the future continuance of the "Cherokee nation of Indians" for an indefinite period, was taken to be a matter beyond all question. It appears from this article, as well as from the preamble, that "Indians" may constitute a "nation." The word *tribe*, when used to denote *a community, living under its own laws*, is of equal force with the word nation; and in this sense it is to be taken, wherever it occurs, in the course of my remarks. But the Cherokee nation had been divided, from time immemorial, into seven *clans*, sometimes called *tribes*, and the Choctaw nation into two such tribes. This fact occasioned some of the peculiar phraseology in the treaty of Hopewell. As the seven clans, or tribes, of the Cherokees were united under one government, they were all comprehended under the phrase of "*the whole Cherokee nation of Indians;*" and the word *tribe* is not found in the treaty of Holston. The word nation is applied to the Cherokees, in this single instrument, no less than twenty-seven times; and always in its large and proper sense.

"Art. 2. The undersigned chiefs and warriors, for themselves and all parts of the Cherokee nation, do acknowledge themselves and the said Cherokee nation, to be under the protection of the United States of America, and of no other sovereign whatsoever; and they also stipulate, that the said Cherokee nation will not hold any treaty with any foreign power, individual State, or with individuals of any State."

I remarked upon the treaty of Hopewell, that it has always been a common thing for weak states to rely upon the protection of stronger ones. When a weak state acknowledges a superior, it is bound in good faith, to act in accordance with that acknowledgment; but it is, in all other respects, independent of the superior. In other words, it retains all the rights, which it has not surrendered. This is the dictate of common sense, and is decisively stated by Vattel.

What is to be understood by the Cherokees being under the protection of the United States, will very fully appear in the course of this investigation. In the very article just quoted, the Cherokees bind them-

selves not to hold any treaty "with any foreign power," nor with any "individual state." This was a very material relinquishment of their natural rights; but it was supposed to be counterbalanced by various advantages secured to them by the treaty, particularly by the solemn guaranty in the seventh article, which will be considered in its order.

It is now contended by the politicians of Georgia, that the United States had no power to make treaties with Indians "living," as they express it, "*within the limits of a sovereign and independent State.*" Thus, according to the present doctrine, General Washington and his advisers made a solemn compact, which they called a *treaty*, with certain Indians, whom they called *the Cherokee nation.* In this compact, the United States bound the Cherokees not to treat with Georgia. Forty years have elapsed without any complaint on the part of Georgia, in regard to this exercise of the treaty-making power; but it is now found that the Cherokees are tenants at will of Georgia; that Georgia is the only community on earth that could treat with the Cherokees; and that they must now be delivered over to her discretion. The United States, then, at the very commencement of our federal government, bound the Cherokees, hand and foot, and have held them bound nearly forty years, and have thus prevented their making terms with Georgia, which might doubtless have been easily done at the time of the treaty of Holston. Now it is discovered, forsooth, that the United States *had no power to bind them at all.*

If such an interpretation is to be endured by an enlightened people in the nineteenth century, and if, in consequence of it, the Cherokees are to be delivered over, bound and manacled; if this is to be done in the face of day, and before the eyes of all mankind, it must be expected that shouts and hisses of shame and opprobrium will be heard in every part of the civilized world. Pettifogging is no very honorable business, when practised in a twenty shilling court; but what sort of pettifogging would this be? The Cherokees have fully and honorably fulfilled their engagements. They have sold us, at a moderate price, three quarters of their country, comprising all the best parts of it. They have submitted to a qualified dependence. They have abstained from 'holding any treaty with any foreign power, or individual state.' And now, when the United States are called upon to fulfil *their* part of the contract, and defend the Cherokees from Georgia, it is gravely proposed to say to these oppressed Indians, "We have no power to defend you. It is true we promised to do it; and you confided in our promise; and, in that confidence, made valuable concessions to us. But, really, we never had the power to make such a promise."

Has fraud of this barefaced and most disgraceful character been perpetrated in the sanctuary of our dignified Senate, and by means of solemn treaties ratified in mockery? the effect of which is to dispossess a "nation" of its hereditary lands and government, and to drive the individuals of which it was composed, (who are called in the preamble already cited, "the *citizens and members thereof*")—To drive away these "*citizens*" as outcasts and vagabonds?

But such an interpretation, so insulting to the Cherokees and to the common sense of mankind, and so cruel in its operation, cannot be admitted. Washington was neither a usurper, nor an oppressor; nor were Ellsworth and his fellow senators, either novices or cheats.

No. VI.

Treaty of Holston continued—Articles of boundary and session—The nature of a session—Grant of a road—Regulation of trade—Articles of guaranty—Importance of this article—Nature of a guaranty—Instance of Buonaparte and Switzerland.

I proceed in the consideration of the treaty of Holston. The third article provides, that "the Cherokee nation shall deliver" up "all persons who are now prisoners, captured by them from any part of the United States;" and "the United States shall restore to the Cherokees all prisoners now in captivity, whom the citizens of the United States have captured from them." A period of about nine months was allowed for a compliance with this article. Here the most entire reciprocity exists, precisely as it is found, usually, in treaties of peace between European powers.

"Art. 4. The boundary between the citizens of the United States and the Cherokee nation is and shall be as follows:" [Here the boundary is described, which is, in part, the same with that in the treaty of Hopewell; but the Cherokee country on the northeast is considerably curtailed. Here had been the seat of war during the interval between the two treaties. A tract, which is now the central part of Tennessee, and which probably contains a population of more than 200,000 souls, was still retained by the Cherokees.]

The article provides that the boundary shall be ascertained and marked, and then proceeds thus:

"And, in order to extinguish forever all claims of the Cherokee nation, or any part thereof, to any of the land lying to the right of the line above described, beginning as aforesaid, at the Currahee mountain, it is hereby agreed that, in addition to the consideration heretofore made for the said land, the United States will cause certain valuable goods to be immediately delivered to the undersigned chiefs and warriors, for the use of their nation; and the said United States will also cause the sum of $1,000 to be paid annually to the said Cherokee nation. And the undersigned chiefs and warriors do hereby, for themselves and the Cherokee nation, their heirs and descendants, for the consideration above mentioned, release, quit claim, relinquish, and cede all the land to the right of the line described, and beginning as aforesaid."

One object of the treaty was declared in the preamble to be to "*ascertain the limits* of the Cherokees." In the article just quoted, the limits are defined on the north and east; that is, on those sides where the white settlers were approaching the borders of the Cherokee country. On the south and west the Cherokees were limited by the country of their Creek and Chickasaw neighbors; so that there would have been no propriety in even mentioning the subject here.

At the close of the article, the Cherokee chiefs, "for themselves and the whole Cherokee nation, their heirs and descendants, release, quit claim, relinquish, and cede" a certain portion of their country; that very country which had been called "hunting grounds" in the treaty of Hopewell, and of which, as it is now pretended, the Cherokees were tenants at will. Was it ever before heard, that a tenant at will *released* and *ceded* land to the rightful owner?

The phraseology here used not only implies that the word *allotted*, in the previous treaty, meant no more than that the boundary of the Cherokee country was *fixed* or *defined*, by the article in which it was used:

but, it implies also, in the strongest manner, that the sovereign power of the Cherokees over their territory was unquestionable. The word "*cede*" is the most common and operative word, in all transfers of territory from one nation to another. Unless explained and limited, it conveys the right of sovereignty. Thus, in cessions of small portions of land to the general government, for navy yards, &c. the several States are in the practice of *reserving* certain rights; such as the right of entering to apprehend criminals, &c. implying that the word *cede* would, *ex vi termini*, convey to the general government *all* the rights of sovereignty. But no party can convey what it does not possess; and it would have been absurd for the United States to ask and accept a cession, without admitting that the Cherokees had power to make one. This article expressly declares that the agreement was entered into, the cessions made, and the compensation given "to extinguish forever all claims of the Cherokee nation" to the lands thus ceded. The Cherokees are acknowledged, then, to have had claims, not cancelled by war, —not swept away by the superior force of the United States,—never before surrendered: claims, which the solemn sanction of treaties was deemed necessary to extinguish.

"Art. 5. It is stipulated and agreed that the citizens and inhabitants of the United States shall have a free and unmolested use of a road from Washington district to Mero district, and the navigation of the Tennessee river."

This is another very curious provision, if we are to believe that the Cherokees are merely tenants at will, and the people of the United States the rightful owners. But upon the only tenable ground, viz. that the Cherokees had a perfect title to the soil, with undoubted rights of sovereignty over it, the article is intelligible and reasonable. The people of the United States wanted a free passage through a particular part of the Cherokee territory; and, as the parties now sustained amicable relations, such a passage was granted by a treaty stipulation.

Art. 6. It is agreed on the part of the Cherokees, that the United States shall have the sole and exclusive right of regulating their trade."

By the constitution of the United States it had been provided, that Congress should have power to regulate commerce "with the Indian tribes." This policy had been pursued in the treaty of Hopewell, and was doubtless chosen wisely, and with a view to benefit the Indians. It was not binding upon them, however, till they voluntarily consented to it.

"Art. 7. The United States solemnly guaranty to the Cherokee nation all their lands not hereby ceded."

This is the most important article in the treaty. The Cherokees had yielded some of their natural rights. They had agreed not to treat with any foreign power. They had committed the regulation of their trade to the United States. They had admitted the United States to participate in the navigation of the Tennessee; and had granted a free passage through a certain part of their country to the citizens of the United States. They had ceded a portion of their territory.

On the other hand, the United States engaged to protect the Cherokees, to promote their civilization, as will hereafter be seen, and especially, *to guaranty the integrity and inviolability of their territory.* In a world full of outrage, fraud, and violence, it is a great advantage for a weak state to obtain the solemn guaranty of a powerful neighbour, that its rights and sovereignty shall be safe. All this is implied by a guaran-

ty. The United States solemnly engaged to preserve and defend the Cherokees against all foreign powers, (a colony of Spain being then in the neighbourhood,) against the states of Georgia and North Carolina, against the United States, in their federative capacity, and against all whites who should threaten to commit aggressions upon the Cherokees.

The word *guaranty* can mean no less, unless limited by the subject or context. If Bonaparte guarantees the integrity of Switzerland, he engages to defend and preserve Switzerland from aggression and invasion, whether the danger arises from Austria, Prussia, Holland, or even France itself. It is the chosen and appropriate word to express the utmost security, which can be pledged to one party by the power and good faith of another.

Upon the guaranty of the United States the Cherokees have relied, with unshaken constancy, since the year 1791. Within a few months their confidence has been shaken; and they are now in a state of great solicitude and anxiety. It remains to be seen whether a treaty will bind the United States to a weak and dependent ally, or whether force is to be the only arbiter in the case.

No. VII.

Treaty of Holston continued—Further remarks on the guaranty—Statement of parallel cases—Whether the world can be made to receive the modern interpretation—The Cherokees would never have made a peace without this guaranty—We urged the Cherokees to a peace, and called them brothers—Abstract of remaining articles—Delivery and punishment of criminals—Proffered aid in civilization.

In the article of guaranty, which was the subject of discussion in my last number, the country of the Cherokee nation is called "*their lands*;" an expression utterly at variance with the notion that the lands belonged to the whites. Indeed, the recent interpretation of our compacts with the Indians, does great violence to the ordinary rules of language. The seventh article is short, and will bear repeating.—It reads thus: "THE UNITED STATES SOLEMNLY GUARANTY TO THE CHEROKEE NATION ALL THEIR LANDS NOT HEREBY CEDED." This seems to be, upon the face of it, a plain sentence. A man of moderate information would at least suppose himself to understand it. He would not suspect that there was a secret, recondite meaning, altogether incompatible with the apparent one. But it seems that there *was* such a meaning. How it was discovered, or by whom, the public are not informed. The present Secretary of War, however, has lately adopted it, and urged it upon the Cherokees as decisive of the whole question at issue. The true meaning of the article, then, as explained by a public functionary thirty eight years after it was made, would have been accurately expressed as follows: "*The United States solemnly declare, that the Cherokee Indians have no right nor title to any lands within the*

territory of the United States, as fixed by the treaty of 1783 ; *but the United States permit the Cherokees to remain on the lands of North Carolina, South Carolina, and Georgia, (south and west of the above described boundary,) until the said states shall take possession of the same.*"

This is the guaranty of the Cherokee country! It is certainly the interpretation of the Secretary of War. How would other treaties bear a similar explanation? The newspapers tell us, that Russia, Great Britain, and France, have engaged to *guaranty* the territory of Greece within certain limits. Does this mean that the Greeks are to be permitted to live, for the present, on lands which belong to the Turks ; but that the Turks, whenever they please, may take possession of their own lands, and massacre the Greeks?

The Federal Constitution says, (Art. IV. sec. 4,) "The United States shall *guaranty* to every state in this Union, *a Republican form of government;*" the true meaning of which may hereafter appear to be as follows: "The United States shall *permit* each state to have a Republican form of government for the present; and until *a monarchical form of government* shall be imposed upon the people thereof."

The true meaning of an instrument is that which was in the minds of the parties, at the time of signing. Can the Secretary of War prove that General Washington understood the treaty of Holston, according to the explanation now given? Can he prove that the Cherokee chiefs and warriors understood it in the same manner? Surely he would not have it signed and ratified in one sense, and carried into effect in a totally different and opposite sense. He must therefore suppose, that the Cherokees intended to admit that they had no right to 'their own lands,' and that they stood ready to remove whenever requested. But he must allow, that, if this were the meaning of the parties, it was very strangely expressed ; and however sincerely he may entertain the newly discovered opinion as to the meaning, he may still find it extremely difficult to convince the world that he is right.

Will the Secretary of War guaranty his country against any loss of character, as a consequence of adopting his interpretation? Whom will he get for sponsors and compurgators? Can he engage that impartial and disinterested men will be satisfied? And if they will not, or if there is *danger* that they will not, should he not distrust his own conclusions? And may he not have arrived at them without sufficient examination?

Not to dwell longer on the *words* of the article, is it credible that the Cherokees would have signed a treaty, in the year 1791, if they had been plainly told that the United States did not acknowledge them as a separate people; that they had no rights, nor any lands; that they lived upon their ancient hunting grounds by the permission of the whites; and that, whenever the whites required it, they must remove beyond the Mississippi? At that very moment the Cherokees felt strong. They and the neighbouring tribes could collect a formidable force. They had an illimitable forest in which to range, with many parts of which they were perfectly acquainted. They could have driven in the white settlers, on a line of more than 500 miles in extent. Many a Braddock's field, many a St. Clair's defeat, many a battle of Tippa-

canoe, would have been witnessed, before they could have been expelled from their swamps and their mountains, their open woods and their impervious cane-brakes, and fairly dislodged from the wide regions on this side of the Mississippi.

The people of the United States wanted a peace. We invited the Cherokees to lay down their arms. We spoke kindly to them; called them our brothers, at the beginning of every sentence; treated them as equals; spoke largely of our future kindness and friendship; and shall we now—I speak to the people of the United States at large—shall we now hesitate to acknowledge the full force of the obligations by which we bound ourselves? Having, in the days of our weakness, and at our own instance, obtained a peace for our own benefit, shall we now, merely because no human power can oppose an array of bayonets, set aside the fundamental article, without which no treaty could ever have been made?

But I must proceed with other parts of the compact.

Art. 8. If any person, not an Indian, shall settle on any of the Cherokees' lands, he shall forfeit the protection of the United States, and the Cherokees may punish him.

Art. 9. No citizen of the United States shall attempt to hunt on the lands of the Cherokees; nor shall any such citizen go into the Cherokee country without a passport from the governor of a State, or Territory, or such other person as the President of the United States may authorize to grant the same.

Art. 10. and 11. Reciprocal engagements, in regard to the delivery and punishment of criminals.

Art. 12. No retaliation or reprisal, in case of injury, till after satisfaction shall have been demanded and refused.

Art. 13. The Cherokees to give notice of any hostile designs.

Art. 14. "That the Cherokee Nation may be led to a greater degree of civilization, and to become herdsmen and cultivators, instead of remaining in a state of hunters, the United States will, from time to time, furnish, gratuitously, the said nation with useful implements of husbandry; and further to assist the said nation in so desirable a pursuit, and at the same time to establish a certain mode of communication, the United States will send such and so many persons to reside in said nation, as they may judge proper, not exceeding four in number, who shall qualify themselves to act as interpreters. These persons shall have lands assigned by the Cherokees for cultivation for themselves and their successors in office; but they shall be precluded exercising any kind of traffic."

Art. 15. All animosities to cease, and the treaty to be executed in good faith.

Art. 16. The treaty to take effect as soon as ratified, by the President of the United States, with the advice and consent of the Senate.

The Treaty was signed, in behalf of the United States, by William Blount, governor of the territory south of the Ohio, and by forty-one Cherokee chiefs and warriors in behalf of the Cherokee nation; and was afterwards duly ratified by the President and Senate.

A few remarks seem to be demanded on several of these articles. In the ninth, the country of the Cherokees is again called their "*lands*," as it had been twice before; and the citizens of the United States are strictly prohibited from *attempting to hunt* on said lands; nor could any of our people even enter the country without a passport.

The tenth article, which is barely mentioned in the preceding abstract, provides, that "if any Cherokee Indian, or Indians, or person residing among them, or who shall take *refuge in their nation*, shall steal a horse

from, or commit a robbery, or murder, or other capital crime on any citizens or inhabitants of the United States, the Cherokee nation shall be bound *to deliver him or them up*, to be punished according to the laws of the United States."

Thus it appears, that if a party of Cherokees should commit murder in the white settlements, upon citizens of the United States, the murderers could not be pursued a foot within the Cherokee boundary. Nay more, if one of our own people should commit murder, or any other capital crime, and should take refuge in the Cherokee nation, he could not be pursued, however flagrant the case might be, and however well known the criminal. The Cherokees must arrest him in their own way, and by their own authority; and they were bound by this treaty to do, what by the laws of nations they would not have been bound to do, that is, to deliver up criminals for punishment. Neither the United States, nor any particular State, had any jurisdiction over the Cherokee country. But the next article, which my argument makes it necessary to quote at large, is, if possible, still more decisive of the matter.

"Art. 11. If any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, shall go into any town, settlement, or territory belonging to the Cherokees, and shall there commit any crime upon, or trespass against the person or property of any peaceable and friendly Indian or Indians, which, *if committed within the jurisdiction of any State, or within the jurisdiction of either of the said districts*, against a citizen or any white inhabitant thereof, would be punishable by the laws of such State or district, such offender or offenders shall be subject to the same punishment, and shall be proceeded against in the same manner as if the offence had been committed *within the jurisdiction of the State or district* to which he or they may belong, against a citizen or white inhabitant thereof."

If there is any meaning in language, it is here irresistibly implied, that the Cherokee country, or "territory" is not "within the jurisdiction of any State, or within the jurisdiction of either of the territorial Districts of the United States." Within what jurisdiction is it, then? Doubtless within Cherokee jurisdiction; for this territory is described as "*belonging to the Cherokees*,"—one of the most forcible idiomatic expressions of our language to designate absolute property. What then becomes of the assumption of jurisdiction over the Cherokees by the State of Georgia? This question will be easily decided by the man who can tell which is the strongest, a treaty of the United States, or an act of the Legislature of a State. The treaty says that the Cherokee territory is inviolable; and that even white renegadoes cannot be pursued thither. A recent law of Georgia declares the greater part of the Cherokee country to be under the jurisdiction of that State; and that the laws of Georgia shall take full effect upon the Cherokees within less than a year from the present time. The Constitution of the United States (Art. VI.) has these words: "All treaties made under the authority of the United States, shall be *the supreme law of the land*; and the judges in every State shall be bound thereby, any thing in the laws or Constitution of any State *to the contrary notwithstanding*." The question of jurisdiction is, therefore, easily settled.

But the full acknowledgment of the national rights of the Cherokees, and of the sacredness of their territory, is not all that the treaty contains. The fourteenth article was framed expressly for the purpose of

preserving and *perpetuating* the national existence of the Cherokees. That they might "*be led to a greater degree of civilization*" appears to have been a favourite design of the American government. With a view to this object, and that they might "become *herdsmen and cultivators*," the United States proffered some important advantages; and it is by the aid of these very advantages, and by the co-operation of faithful teachers and missionaries, that the Cherokees have been led to "a greater degree of civilization" than any other tribe of Indians. So undeniable is this fact, that Georgia has complained of it; and the government has been blamed for doing those things, which the United States were bound to do by the most solemn treaty stipulations.

In a word, the treaty of Holston is a plain document, having a direct object. It is consistent with itself. It does not contain the most distant implication, that any portion of the human race, except the Cherokees themselves, had even the shadow of a claim upon the Cherokee territory. It guarantees that territory to its possessors as their own absolute property; accepts grants from them; and engages that the United States shall befriend them, in their future efforts for improvement. That the Cherokees have never forfeited the benefit of these stipulations will appear in subsequent numbers.

No. VIII.

Third treaty, 1792—Fourth treaty, or second treaty of Philadelphia, 1794—Guaranty of another Indian treaty—Fifth treaty, or first treaty of Tellico, 1798—The guaranty repeated, and declared to be *forever*—The construction of former treaties confirmed—No shadow of evidence on the other side.

On the 17th of February, 1792, an additional article was signed at Philadelphia, by Henry Knox, Secretary of War, for the United States, and seven chiefs and warriors in behalf of the Cherokees. As this article was the result of a distinct negotiation, held seven months after the execution of the Treaty of Holston, it may with propriety be called the THIRD TREATY between the United States and the Cherokees. It provided that the annuity, given by the fourth article of the next previous treaty, should be raised from $1,000 to $1,500; and it declared that this annual sum was given "in consideration of the relinquishment of lands," which had been made in that treaty. Of course, the United States admitted, that the Cherokees had possessed lands, on the outside of the limits established by the treaty, which lands they had relinquished to the United States. This additional article was a confirmation of the Treaty of Holston, after ample time had elapsed for consideration:

FOURTH TREATY WITH THE CHEROKEES.

This document was executed at Philadelphia, on the 26th of June, 1794, by Henry Knox for the United States, and thirteen chiefs for the Cherokees.

After a preamble, which states that the treaty of Holston "had not been fully carried into execution by reason of some misunderstanding," and that the parties were "desirous of re-establishing peace and friendship,"

Art. 1st declares, "that the said treaty of Holston is, to all intents and purposes, in full force, and binding upon the said parties, as well in respect to *the boundaries* therein mentioned, as *in all other respects whatever.*"

Art. 2d stipulates, that the boundaries shall be ascertained and marked, whenever the Cherokees shall have ninety days' notice.

Art. 3. "The United States, to evince their justice by amply compensating the said Cherokee Nation of Indians for relinquishments of land," made 'by the treaty of Hopewell and the treaty of Holston,' agree to give to the Cherokees, in lieu of former annual payments, $5,000 a year in goods.

Art. 4. The Cherokees agree that $50 shall be deducted from their annuity for every horse stolen by any of their people from the neighbouring whites.

Art. 5. These articles to be permanent additions to the treaty of Holston, as soon as ratified. They were soon after ratified by President Washington and the Senate.

It has appeared, in the course of this discussion, that the treaty with the Creeks, in 1790, was the basis of the treaty of Holston in 1791. This was confirmed in 1792, and again, expressly and solemnly, in 1794. Thus we have four distinct documents, which received the approbation of General Washington, and his cabinet, all agreeing in the same principles, and all ratified by the senate of the United States. Several other treaties, in which the same principles were involved, were formed with other tribes of Indians, during the same administration. In one of these, the United States engage, that they '*will never claim* the lands reserved to the Indians;' but that the Indians 'shall have the free use and enjoyment thereof, until they choose to sell the same to the people of the United States.'

FIFTH TREATY, OR TREATY OF TELLICO.

This treaty was signed "near Tellico, on Cherokee Ground," Oct. 2, 1798, by Thomas Butler and George Walton, commissioners of the United States, and thirty-nine Cherokee chiefs and warriors, in the presence of Silas Dinsmoor, Agent of the United States among the Cherokees, and thirteen other witnesses, among whom was the late Mr. Charles Hicks, who acted as interpreter on the occasion.

The treaty begins with a long preamble, stating the reasons why it was necessary to make another treaty; and among the reasons are these two clauses; viz. "for the purpose of *doing justice to the Cherokee Nation of Indians;*" and "in order to promote *the interest and safety* of the States."

Art. 1. Peace renewed and declared perpetual.

Art. 2. The treaties subsisting between the parties in full force; "*together with the construction and usage under the respective articles; and so to continue.*"

Art. 3. Limits to remain the same, "where not altered by the present treaty."

Art. 4. The Cherokee Nation "do hereby *relinquish and cede* to the United States all the lands within the following points and lines:" [Here follows a boundary, by which a considerable district of land, now in East Tennessee, was ceded to the United States.]

Art. 5. The line described in the treaty to be marked immediately, "which said line shall form a part of the *boundary between the United States and the Cherokee Nation.*"

Art. 6. In consideration of the preceding cession, the United States agree to pay $5,000 on signing, and $1,000 annually, in addition to previous stipulations of this kind; "*and will continue the* GUARANTY of the remainder of their country FOREVER, *as made and contained in former treaties.*"

Art. 7. A road granted by "the Cherokee nation," across a small corner of their country, to the citizens of the United States; and in consideration of this grant, the Cherokees are to be permitted "to hunt and take game upon the lands

relinquished and ceded by this treaty," until settlements shall make such hunting improper.

Art. 8. Due notice to be given of the payment of the annual stipends, and the United States to furnish provisions for a reasonable number of Cherokees, who shall assemble on these occasions.

Art. 9. Horses stolen from Cherokees by whites, to be paid for by the United States; and horses stolen from whites by Cherokees, to be paid for by a deduction from the annuity.

Art. 10. The Agent of the United States residing among the Cherokees to have a sufficient piece of ground allotted "*for his temporary use.*"

Lastly: this treaty to "be carried into effect on both sides *with all good faith.*"

The treaty was ratified soon after, by President Adams, and the Senate of the United States.

A few remarks on this treaty may not be improper.

The words *cede*, *nation*, and *guaranty*, are used in the same senses here, as in the treaty of Holston, seven years before. During the interval, the government of the United States had been frequently employed in making treaties with various tribes of Indians; and it is safe to say, that in no period of our national history, was the meaning of public documents more thoroughly weighed, or the tendency and ultimate effect of public measures more seriously considered; and the world may be challenged to produce an example of the administration of a government over an extensive territory, and over a people in new, various, and complicated relations, in which fewer mistakes, either theoretical or practical, were made, than during the administration of General Washington.

The parties were so careful of the inviolability and integrity of the Cherokee territory, that the use of a short road, in the northern extremity of that territory, (now in the State of Kentucky,) at a great distance from the actual residence of the Cherokees generally, was made the ground of a solemn treaty stipulation, and an equivalent was given for it. Nay more, the Agent of the United States, residing among the Cherokees to distribute the annual payments, to encourage the natives in agriculture and manufactures, and to execute the treaties in other respects, could not claim even the *temporary use* of land for a garden, or a cow pasture, till this small convenience was allowed him by treaty.

The United States not only acknowledge former treaties, and declare them to be in full force; but "the *construction and usage* under their respective articles" are acknowledged, ratified, and declared to be the rule of future usage and construction. This is a very remarkable provision; and was doubtless adopted to quiet the Cherokees in regard to encroachments feared from the United States. The construction and usage, under the previous treaties, can be proved at this day, by living witnesses, and by public archives, to have tended invariably to this one point—that the Cherokees were to retain the unimpaired sovereignty of their country; and that to enable them to do this permanently, and in the most effectual manner, they were to be taught all the common arts of civilized life. To this course they were urged, in the most affectionate manner, by letters written with General Washington's own hand. This was pressed upon them at every council, and habitually in private, by the Agent of the United States, in pursuance of written and verbal instructions from the head of the War Department. No historical facts can be proved with more absolute certainty than these; and there is not, it is believed, even the pretence of any evidence to the contrary.

It appears, moreover, in the preamble to this treaty of Tellico, that the "*misunderstandings*" had arisen, because white settlers had transgressed the Cherokee boundary, "contrary to the intention of previous treaties;" and that these intruders had been removed by the authority of the United States.

Again: this treaty was negotiated by George Walton, a citizen of Georgia, in whom that state reposed great confidence, and by Thomas Butler, commanding the troops of the United States, in the state of Tennessee; and it was executed, (to use its own language) "*on Cherokee ground.*"

Thus, the country of the Cherokees is called, as I have already shown, "their lands," their "territory," "their nation," and their "ground." These epithets are used, not by careless letter writers, nor in loose debate; but in the most solemn instruments, by which nations bind themselves to each other. And what is there on the other side? Is it said, or implied, that the Cherokees had a qualified title? a lease for a term of years? a right to hunt till Georgia should want the land for growing corn or cotton? the privilege of administering their own laws, till Georgia should exercise her rightful jurisdiction, as a sovereign and independent State? Is there any thing that looks this way? Not a word; not a syllable; not the most distant hint. While it is asserted in various forms, and implied more than a hundred times over, that the Cherokees were a nation, capable of treating with other nations; that they had a country, which was acknowledged to be indisputably their own; that they had a government to punish criminals and to deliver up renegadoes; and that they were to become a civilized people, permanently attached to the soil; there is not, in all these instruments, a single intimation, or ground of plausible argument to the contrary.

Lastly, this treaty not only adopts the word "*guaranty*" from the treaty of Holston, but interprets it, (as every civilian in Europe and America would have done,) to be applicable to "*the remainder of their country* FOREVER;" that is, (for the meaning can be no less,) the Cherokees were to retain the clear title and unincumbered possession of the *remainder* of their country, which they previously had of the *whole;* and such title and possession were guaranteed to them forever, by the power and good faith of the United States.

No. IX.

Guaranty to the Delawares, in 1778—Ingratitude of not giving a fair construction to these treaties—Sixth compact with the Cherokees, 1803—Caution in the preservation of their rights—Use of the word Father—Second treaty of Tellico, or seventh compact, 1804—Third treaty of Tellico, or eighth compact, 1805.

The idea of a *guaranty*, and of a *country*, as a territory belonging to Indians, was not new, even at the period of the treaty of Holston.

The first treaty, which I have been able to find, made with Indians

by the United States in their confederated character, was executed at Fort Pitt, on the 17th of September, 1778. It contains the following very remarkable article :

" Art. 6. Whereas the enemies of the United States have endeavoured, by every artifice in their power, to possess the Indians in general with the 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 they, the said Delaware nation, shall abide by, and hold fast, the chain of friendship now entered into. And it is further agreed on, between the contracting parties (should it for the future be found conducive to the mutual interest of both parties) to invite any other tribes, who have been friends to the interest of the United States, to join the present confederation, and to form a State, whereof *the Delaware nation shall be the head* and have *a representation in Congress;* provided nothing contained in this article to be considered as conclusive, until it meets with the approbation of Congress." [That it did meet with the approbation of Congress is manifest; because it is now part of a national treaty.]

The bare suggestion that the United States designed to *take possession of the Indian country* was treated as a slander and a calumny. The *territorial rights* of the Indians were to be respected, and the Indian tribes generally were encouraged with the proposal that they might be represented in Congress. The natural implication of this last proposal must have been, that the Indians not only had territorial rights, but might expect to retain them *permanently*, in the same manner as the State of Virginia, or Connecticut, and the other confederated republics, expected to retain *their* territorial rights.

Let it be remembered, that this treaty was made when the United States were struggling for independence against the whole force of the British empire, and when every accession of strength to the American cause, and every subtraction from the power of the enemy, was a matter of great importance. Nor should it be forgotten, that other treaties formed with the Indians, after the peace of Great Britain were extremely desirable to the United States; that the exhausted treasury of the nation could ill afford the expense of Indian wars ; that the Indians had the undisputed possession of boundless forests, on all our frontiers; that many of them had endured public and private injuries, which were unavenged and uncompensated; that the Indian tribes were strong, compared with their subsequent decline and their present total want of power ; and that the United States were weak, compared with their present gigantic strength.

Though the treaties were formed in such circumstances, not a single article bore hardly, or oppressively, on the United States, or on the new settlers. The Indians claimed nothing unjust or unreasonable. The early negotiations wear the aspect of mutual benefit, and appear to have been concluded with a desire to secure permanent peace to the parties, founded on the acknowledgment of their mutual rights.

Are the people of the United States unwilling to give a fair, candid, and natural construction to a treaty thus made ? I might say, Are they unwilling to give it the *only* construction of which it is capable ? Are they unwilling to admit a meaning which stands out prominently upon the very face of the transaction, and which no ingenuity can distort, pervert, or evade ? Will they refuse to be bound by the plainest and

most solemn engagements, deliberately formed, ratified, acted upon, confirmed, ratified again and again by the highest authority of our republic? How can it for a moment be apprehended, that the co-ordinate branches of our Government—our high, legislative, executive, and judicial functionaries, will manifest so total a disregard of every principle of public morality?

SIXTH COMPACT WITH THE CHEROKEES.

This instrument was executed on the 20th of October, 1803, by Return J. Meigs, Agent of the United States among the Cherokees, and by fourteen Cherokee chiefs, beginning with Black Fox, the principal chief, and ending with the famous James Vann. It was witnessed by five officers of the United States' Army, and three other persons, one of whom was Charles Hicks, then acting as interpreter. I have called it a *compact*, not a *treaty*, because it was not sent to the Senate for ratification. But though it be not technically a treaty, it is morally binding upon the United States; for it has been carried into effect, and the United States, particularly the people of Tennessee and Georgia, have derived great benefit from it. I have an accurate copy before me.

"Articles of agreement between the United States and the Cherokee nation, for opening a road from the state of Tennessee to the State of Georgia, through the Cherokee nation.

"The Cherokee nation having taken into consideration the request of their Father, the President of the United States, to grant that a road may be opened through the nation, from the State of Tennessee to the State of Georgia, and being desirous to evince to their Father, the President, and the good people of the United States, their good will and friendly disposition, do hereby agree, that a road may be opened from the State of Tennessee to the State of Georgia, with the reservations and provisions, as in the following articles are expressed; and further to evince to our Father, the President, that we are not influenced by pecuniary motives, we make a present of the road to the United States."

Art. 1. A road granted, sixty feet in width, passing through about 150 miles of Cherokee territory, and opening a communication from Augusta, Georgia, to Knoxville and Nashville, Tennessee. [This has usually been called the Federal Road. It has been much travelled; and great quantities of merchandise, and other valuable property, have been transported over it.] It was to be made solely at the expense of the United States. The article also provides, that when the road is opened, the direction of it shall not be changed; and that no branch or branches (except one which had been described) "shall ever be permitted to be opened *without the consent of the Cherokee nation*."

Art. 2. The Cherokees reserve to themselves the income of the ferries; and specify where the ferries shall be kept.

Art. 3. Various regulations respecting houses of entertainment, which the Cherokees were to establish; keeping the road in repair, &c. &c.

Art. 4. No neat cattle from the southern States shall be driven through the Cherokee nation; and when horses are taken through, the number of them shall be inserted in the passport of the owner. The Cherokees not to be answerable for estrays from among the animals of the whites.

Art. 5. Officers, civil and military, mail carriers, and some other classes, exempted from toll and ferriage.

Art. 6. Commissioners to be appointed on each side to survey and mark the road.

Art. 7. One copy of this agreement to be sent to the Secretary of War, another to be left with the principal Cherokee Chief, and a third with the Agent of the United States among the Cherokees.

The road was opened the following year, and has now been travelled for a quarter of a century; and, during this whole time, has greatly facilitated intercourse between different parts of the southern states.

No reader of the foregoing abstract can be so dull as not to perceive, that the privilege was granted to the United States, at the special instance of the President; that the Cherokees were extremely cautious not to compromit their territorial rights; that they made the grant from motives of friendship, and a willingness to afford the desired accommodation. They guard, in a suitable manner, against vexations and liabilities, to which this act of kindness might be thought to expose them; and they reserve the income of the ferries, some of which are over considerable rivers, and have been quite profitable.

The word 'Father' is repeatedly used in this document, to indicate the relation which the President of the United States held to the Cherokees, as their protector from aggression, and as bound to see that the treaties with them are carried into effect "with all good faith." We had obtruded the word upon them. We had put it into their mouths, and it was made the standing pledge, not merely of our justice, but of our kindness and generosity towards them. Shall this sacred and venerable name be prostituted to purposes of injustice and oppression? For most assuredly, it will be deemed oppression, rank oppression, if we disown our engagements, forswear our most solemn covenants, and then take possession of the lands of our poor neighbours, which had been secured to them by the highest guaranty which we could make. Nor will the oppression be less odious on account of its being accompanied by professions of great benevolence, and the promise of a new guaranty.

SECOND TREATY OF TELLICO, OR SEVENTH NATIONAL COMPACT WITH THE CHEROKEES.

This instrument was executed "in the garrison of Tellico, on Cherokee ground," October 24, 1804, by Daniel Smith and Return J. Meigs, for the United States, and ten chiefs and warriors for the Cherokees, in the presence of five witnesses.

The preamble says, that certain propositions were made by the Commissioners; that they were considered by the Chiefs; and that "the parties aforesaid have unanimously agreed and stipulated, as is definitely expressed in the following articles:"

Art. 1. "For the considerations hereinafter expressed, the Cherokee nation *relinquish and cede* to the United States, a tract of land, bounding," &c. [This was a small tract, called Wafford's Settlement, containing perhaps not more than 100,000 acres. It was a strip on the frontier between the Cherokees and Georgia.]

Art. 2. "In consideration of the *relinquishment and cession*, the United States, upon signing the present treaty," shall pay the Cherokees $5,000, in goods or money, at the option of the Cherokees, and $1,000 annually, in addition to the previous annuities.

The treaty was ratified by President Jefferson and the Senate. The "relinquishment and cession" are of the same nature, and carry with them the same implications, as have been described in preceding comments.

THIRD TREATY OF TELLICO, OR EIGHTH COMPACT WITH THE CHEROKEES.

This treaty was executed October 25, 1805, by two Commissioners of the United States, and thirty-three Cherokee chiefs and warriors, in the presence of ten witnesses.

Art. 1. "Former treaties recognised and continued in force.

Art. 2. "The Cherokees *quit claim and cede* to the United States, all the land which they [the Cherokees] have heretofore claimed, lying to the north of the following boundary line:" [The lands here ceded were of great value, and fell into the State of Tennessee, extending east and west, near the central parts of that State.]

Art. 3. "In consideration of the above *cession and relinquishment*, the United States agree to pay immediately," $14,000, and $3,000 a year, in addition to previous annuities.

Art. 4. The citizens of the United States to have the free and unmolested use of two roads, in addition to those previously established; one leading from Tennessee to Georgia, and the other from Tennessee to the settlements on the Tombigbee. These roads to be marked out by men appointed on each side for the purpose.

Art. 5. This treaty to take effect, "as soon as it is ratified by the President of the United States, by and with the advice and consent of the Senate of the same."

The treaty was ratified by President Jefferson and the Senate. It will be observed, that the first article contains an express recognition of previous treaties, and pledges the faith of the United States anew for the fulfilment of those treaties.

Several documents of this kind remain to be considered; but I engage myself to you, Messrs. Editors, and to your readers, that I will be as brief as possible, consistent with fidelity to the cause. This is a serious matter to the Indians and to the people of the United States. It is a matter which must be decided by the great body of the people, through their Representatives in Congress. The people must therefore have the means of understanding the subject.

No. X.

Fourth treaty of Tellico, or ninth compact, 1805—Proceedings of the State of Tennessee—First treaty of Washington, or tenth compact, 1806—Settlement of the Chickasaw boundary—Treaty of Chickasaw Old Fields, or eleventh compact, 1807—Second treaty of Washington, or twelfth compact, 1816—Proceedings of South Carolina.

I would content myself with saying, in reference to the remaining treaties, that they are perfectly consistent with the preceding ones, were it not, that this sweeping declaration would by no means do justice to the cause of the Indians. Several of these treaties contain new and striking illustrations of the doctrine that the Cherokees were understood to possess their country in full sovereignty.

FOURTH TREATY OF TELLICO, OR NINTH NATIONAL COMPACT WITH THE CHEROKEES.

This treaty was executed October 27, 1805, at the same place, as the

one next preceding, and only two days afterwards. It was signed by the same commissioners and fourteen of the same Cherokee chiefs.

The occasion of it is sufficiently explained in the first article:

Art. 1. "Whereas it has been represented by the one party to the other, that the section of land on which the garrison of Southwest Point stands, and which extends to Kingston, is likely to be a desirable place for the Assembly of the State of Tennessee to convene at, (a committee from that body, now in session, having viewed the situation,) now, the Cherokees, *being possessed of a spirit of conciliation*, and seeing that this tract is desired for public purposes, and not for individual advantages, *reserving the ferries to themselves, quit claim and cede* to the United States the said section of land, understanding, at the same time, that the buildings erected by the public are to belong to the public, as well as the occupation of the same during the pleasure of the Government. We also cede to the United States the first Island in the Tennessee above the mouth of the Clinch."

Art. 2. The Cherokees grant a mail road to the United States, from Tellico to the Tombigbee, "to be laid out by viewers appointed on both sides."

Art. 3. "In consideration of the above *cession and relinquishment*, the United States agree to pay to the said Cherokee Indians, $1,600."

Art. 4. The treaty to be obligatory when ratified.

Within a year or two past, as I have already said, the politicians of Georgia have contended, that the national government has no authority to make treaties with Indians living, as they describe the matter, "within the limits of a sovereign and independent State." The fact is, that the national government is the only competent authority, under the federal constitution, to enter into any engagements with the Indian tribes, which yet retain their organization as separate communities, and are acknowledged to possess a title to land within definite limits. The uniform practice of the government has accorded with these principles; and Georgia herself has, until very lately, been urging Congress and the Executive to hold treaties with the Cherokees.

How did the State of Tennessee understand this subject? Let the first article of the preceding treaty answer. The legislature of Tennessee, desirous of obtaining a site for the erection of buildings to accommodate their state government, sent a committee to view the point, at the junction of two beautiful rivers, the Tennessee and the Clinch. The boundary, as it then stood, ran very near this point; and the State solicited a square mile for the public object above described. The Cherokees, out of a spirit of conciliation, and for $1,600 in money, ceded the section of land with these remarkable reservations, viz. that they were to retain the ferries at the seat of government of Tennessee; and that the grant was made for public objects only. Of course, the land would revert to the Cherokees, if the seat of government should be removed. As the legislature afterwards fixed the seat of government farther west, no public buildings were erected at this place. Narrower boundaries were subsequently established between the United States and the Cherokees; but the ferries were held for a long time, if they are not now held, by assignees of the Cherokees. The treaty was ratified by President Jefferson and the Senate.

This whole transaction strongly illustrates several important positions, which have been taken, or implied, in the preceding discussion; such as the inviolability of the Cherokee territory; the right of the Cherokees to make or withhold cessions of land, according to their pleasure; their right to impose such restrictions upon their grants as they pleased;

and the treaty-making power of the United States being the only medium by which a State can get a proper title to Indian territory.

TREATY OF WASHINGTON OR TENTH COMPACT WITH THE CHEROKEES.

This treaty was negotiated at Washington, January 7, 1806, by Henry Dearborn, Secretary of War, and seventeen Cherokee chiefs and warriors.

The object appears to have been to adjust certain claims of the Cherokees and Chickasaws to the same lands, lying between the Tennessee river and Duck river, in what is now West Tennessee. This was done by obtaining a relinquishment to the United States of " all the right, title, interest and claim, which the Cherokees, or their nation, have, or ever had," to the tract described, except that two reservations of small portions of this tract are made by the Cherokees.

The United States give 10,000 dollars, and certain privileges, in consideration of the above relinquishment.

The United States also agree to use their influence to have a certain boundary established between the Cherokees and Chickasaws, on the south side of the Tennessee river; "but it is understood by the contracting parties, that the United States do not *engage* to have the aforesaid line or boundary established, but only to endeavour *to prevail on the Chickasaw nation to consent to such a line*, as the boundary *between the two nations*."

Here it is implied, in the strongest manner, that the United States had no right to encroach upon Indian territory, or to fix boundaries between neighbouring tribes; and that these tribes had, as *separate nations*, the unquestioned power to settle their own boundaries.

The government of the United States was willing, however, to act the part of a mediator in the adjustment of the boundaries.—Ratified by Mr. Jefferson and the Senate.

TREATY OF CHICKASAW OLD FIELDS; OR ELEVENTH COMPACT WITH THE CHEROKEES.

This treaty was executed by Return J. Meigs and James Robertson, on the one part, and five Cherokee chiefs on the other, September 11, 1807.

It was made to 'elucidate' the next preceding treaty, or to ascertain the real intention as to the boundary. The Cherokees were to receive $2,000 for 'their readiness to place *the limits of the land ceded out of all doubt*;' and it was stipulated that " the Cherokee hunters, as hath been the custom in such cases, may hunt *on such ceded tract*, until by the fulness of settlers, it shall become improper."

This is the second instance, in which a privilege to hunt on *ceded lands* is granted; that is, the Cherokees were allowed to exercise the same rights of ownership, over land which they had quit claimed and sold, and for which they had been paid, as, (if we are to believe the present Secretary of War,) they could ever exercise over any of their lands, which had *not* been ceded. I am willing to presume, however, that the Secretary of War, after mature deliberation, will abandon a position so utterly untenable.

This treaty was ratified by Mr. Jefferson in the usual manner.

SECOND TREATY OF WASHINGTON; OR TWELTH COMPACT WITH THE CHEROKEES.

The sole object of this treaty was to obtain for South Carolina a small portion of mountainous country, lying at the northwest point of that state. It was executed by George Graham, commissioner of the United States, and six Cherokee Chiefs, March 22, 1816.

Art. 1. "Whereas the executive of South Carolina has made an application to the President of the United States to extinquish the claim of the Cherokee nation to that part of their lands, which lie within the boundaries of the said state, as lately established and agreed upon, between that state and the state of North Carolina; and as the Cherokee nation is disposed to comply with the wishes of their brothers of South Carolina, they have agreed, and do hereby agree to *cede* to the State of South Carolina, and forever quit claim to the tract of country contained within the following bounds:" [Here the bounds are described, comprising a tract now in the N. W. corner of South Carolina. The tract was of small extent and very little value, as it is among the mountains.]

Art. 2. The United States agree, that the State of South Carolina shall pay the Cherokees $5,000 for this grant, in ninety days: "*Provided*, That the Cherokee nation *shall have sanctioned the same in Council;* and provided also, that the Executive of the State of South Carolina shall approve of the stipulations contained in this article."

This treaty was ratified by the parties; viz. President Madison and the Senate, and the Cherokee nation in council assembled; and it was doubtless approved by the governor of South Carolina.

Here is another perfect illustration of the manner in which the several states obtained a title to lands, which had remained the property of Indians: though the lands appeared, according to the maps, to belong to those states. White men, not Indians, made the maps. The northwest corner of South Carolina, as that state appeared on the map, still belonged to the Cherokee Indians. The state wished to obtain possession of this little fraction of mountainous territory. In a manner perfectly fair and honourable, she applied to the general government, requesting that the territory might be purchased of the rightful owners. She does not say, that the land belongs to her; but simply that North Carolina has agreed with South Carolina, as to the boundary between them, when the land shall have been obtained of the Cherokees. She does not pretend that the Cherokees are bound, or that their rights are in any degree affected, by agreements between third parties. This is a correct view of the subject; and quite as applicable to Georgia, as to South Carolina, or any other state.

No. XI.

Third treaty of Washington, or thirteenth compact, 1816—Claim of the Cherokees previously recognized—The right to navigate riversin the Cherokee nation obtained by treaty—Treaty of the Chickasaw Council House, or fourteenth compact, 1816—Preface, or title of the treaty—Reasons for the treaty—Abstract of it—Remarks upon it.

There are four remaining treaties to be examined. Two of them

were negotiated by the distinguished general, who is now the Chief Magistrate of the United States, and one by the distinguished Secretary of War, who is now Vice President of the United States. On these accounts, as well as from their inherent importance, they are worthy of particular attention.

THIRD TREATY OF WASHINGTON; OR THIRTEENTH NATIONAL COMPACT WITH THE CHEROKEES.

This treaty was executed on the same day with the one next preceding; viz. March 22, 1816, and signed by George Graham for the United States, and six Cherokee chiefs, for the Cherokee nation. Being on a different subject entirely, it was embodied in a separate document.

Art. 1. The boundary between those parts of the Creek and Cherokee nations, which were west of the Coosa river, is agreed upon. The United States, having obtained, by treaty, the Creek lands west of the Coosa and contiguous to the Cherokees, it became necessary to ascertain and establish the true boundary between these nations. In the body of the article it is said, that in the treaty of January, 1806, (already described as the *tenth compact*,) "the United States, have *recognized a claim* on the part of the Cherokee nation to the lands south of the Big Bend," &c.

Art. 2. "It is expressly agreed, on the part of the Cherokee nation, that the United States, shall have the right to lay off, open, and have the free use of such road, or roads," as shall be needed to open a communication through the Cherokee country north of the boundary now fixed. The United States freely to navigate all the rivers and waters "within the Cherokee nation."

Art. 3. "In order to preclude any dispute hereafter, relative to the boundary line now established, it is hereby agreed, that *the Cherokee nation shall appoint two commissioners* to accompany the commissioners, already oppointed on the part of the United States, to run the boundary," &c.

Art. 4. In order to avoid delay, when the President of the United States shall wish, at any time hereafter, to open a new road, under the grant of the second article of this treaty, "the principal chief of the Cherokee nation shall appoint one commissioner to accompany the commissioners appointed by the President" to lay off the road.

Art. 5. The United States agree to pay $25,500 to "individuals of the Cherokee nation," an an indemnity for losses sustained by them, from the march of the United States troops "*through that nation.*"

The treaty was duly ratified by President Madison and the Senate.

A very few remarks on this document will be sufficient.

The first article says, that the United States, in a treaty made ten years before, recognized a *claim* of the Cherokee nation to land south of the Big Bend of the Tennessee. What claim? Doubtless such claim as the Cherokees made. But they never made any partial, limited, or qualified claim to their lands. They never set up a title as tenants for the lives of the existing generation, or tenants for years, or tenants at will. They simply, and always, claimed the land *as their own;* and this claim the United States must have recognized, if they recognized any claim at all.

The fact was, that the article here referred to, as containing a recognition of the Cherokee claim, was the one, by which the United States engaged to prevail on the Chickasaws to agree upon a certain boundary between them and the Cherokees. Thus, the friendly attempt to fix a boundary between these two Indian nations, was justly construed, in a

treaty ten years afterwards, to be *a recognition of the claims of those nations, to the lands on each side of the boundary.*

By article second it is agreed, on the part of the Cherokee nation, that the United States *shall have the right* to lay off roads, in a certain part of the nation, and in a prescribed manner. Of course, it must be inferred, that the United States had not this right before; that the assent of the Cherokee nation was necessary to invest the United States with the right; and that it must, even when expressly granted, be exercised in the manner, which the treaty prescribed. This article speaks, also, of rivers and waters, "*within the Cherokee nation;*" and stipulates, that the citizens of the United States may freely navigate these waters. On looking at the map of the Cherokee country, as it then existed, the reader will find, that beside the Hiwassee, the Oostanawlee, the Coosa, and many smaller streams, that noble river, the Tennessee, took a sweep of more than 150 miles through the Cherokee nation. There was good reason to wish for the privilege of navigating these waters; but how absurd to resort to the treaty-making power for the purpose of obtaining it, if the country really belonged to Georgia and the neighbouring states.

By articles 3d and 4th, it appears, that the Cherokee nation had a government, which the United States acknowledged, as being always in existence, and always competent to transact any national business.

TREATY OF THE CHICKASAW COUNCIL HOUSE; OR FOURTEENTH COMPACT WITH THE CHEROKEES.

This document was signed on the 14th of September, 1816. The preface is important, and I must cite it at length.

> "To perpetuate peace and friendship between the United States and the Cherokee tribe or nation of Indians, and to remove all future causes of dissension which may arise from indefinite territorial boundaries, the President of the United States of America, by major-general Andrew Jackson, general David Meriwether, and Jesse Franklin, esquires, commissioners plenipotentiary on the one part, and the Cherokee delegates on the other, covenant and agree to the following articles and conditions, which, when approved by the Cherokee nation, and constitutionally ratified by the government of the United States, shall be binding on all parties."

It is always to be presumed, that the President of the United States will give a fair and natural construction to all public engagements made by the proper authority. There are special reasons, why the present incumbent of that high office should respect the document I am now considering, and a similar one, which was executed the following year.

The reasons for the treaty, assigned in the preface above quoted, are good and sufficient reasons; and such as commend themselves to every man's heart and conscience. "To *perpetuate* peace and friendship" between neighbouring communities is a benevolent work, the importance of which much depends on the durability of the relation, to which such phraseology is applied; and to remove all future causes of dissension, which may arise from "*indefinite territorial boundaries,*" is a work scarcely less benevolent than the other. This is the very language, which would be used on a similar subject, by Russia and Prussia, or any two contiguous nations in Europe.

Further, it appears by the very preface, as well as by the subsequent proceedings, that this treaty, though made in the immediate neighbourhood of the Cherokee country, and signed by fifteen chiefs, was not considered as binding, till it should be "approved by the Cherokee nation." When this should have been done, and the treaty should have been ratified by the government of the United States, it would be "*binding on all parties.*"

It is humiliating to be obliged to prove, that parties to a treaty are bound by it. To pretend the contrary is an utter perversion of reason and common sense. There are persons, however, to whom express covenants seem stronger than unavoidable implications. Such persons are requested to observe, that major general Andrew Jackson and his colleagues did expressly, in so many words, "*covenant and agree,*" that the treaty should "*be binding on all parties.*" Why is it not binding then? Where is the promised perpetual peace, if the weaker party is to be outlawed? Where is the benefit of *definite territorial boundaries*, if these boundaries are not respected?

The following is a brief abstract of the treaty:

Art. 1. 'Peace and friendship established.'

Art. 2. The western boundary described. It curtailed the Cherokee country on the southwest, and gave to the United States a tract of land, now in the State of Alabama.

Art. 3. The Cherokees relinquish and cede the land just mentioned, and, in consideration thereof, the United States agree to pay $5,000 in 60 days, and $6,000 a year, for ten successive years.

Art. 4. The line to be plainly marked.

Art. 5. The Cherokee nation to meet the commissioners of the United States at Turkey-town, on the 28th of the same month, "there and then to *express their approbation, or not*, of the articles of this treaty;" but, if the nation did not assemble, it would be considered "*as a tacit ratification.*"

On this treaty I would observe, that there are several things in it worthy of special commendation; viz: the solicitude to avoid future difficulties, the uncommon care manifest in article fourth, (which a regard to brevity prevented my citing at large,) to have the line of territory made plain; and the repeated and explicit acknowledgment, that the Cherokees were to express their approbation of the treaty, before it would be binding. Of course, they were to be dealt with as intelligent and moral beings, having rights of their own, and capable of judging in regard to the preservation of those rights.

It must be presumed, that the commissioners of the United States were at Turkey-town, on the 28th of September, the day appointed for the ratification; but whether the Cherokees were dilatory in assembling, or whether strong arguments were necessary to obtain their consent, does not appear. Six days afterwards the transaction was closed, as is proved by the following certificate:

"Ratified at Turkey-town by the whole Cherokee nation in council assembled. In testimony whereof, the subscribing commissioners of the United States, and the undersigned chiefs and warriors of the Cherokee nation, have hereto set their hands and seals, this fourth day of October, in the year of our Lord one thousand eight hundred and sixteen."

Signed, ANDREW JACKSON,
D. MERIWETHER, and

nine Cherokee chiefs, in the presence of the venerable Col. Meigs, two interpreters, and Major Gadsden of the United States army, who subscribed as witnesses.

The treaty was ratified by President Madison and the Senate.

I close this number by requesting all our public men to meditate upon the following words of a very sagacious king :—*Remove not the old land mark ; and enter not into the fields of the fatherless ;* that is, of the weak and defenceless ; *for their Redeemer is mighty ; He shall plead their cause with thee.*

No. XII.

Treaty of the Cherokee Agency, or fifteenth compact, 1817—Title of the treaty —Long and curious preamble—Abstract of the treaty—Remarks upon it—Singular arrangement of Providence—Consideration of Mr. Jefferson's letter—The United States to be bound by fear alone—The Cherokees relied on these promises.

The next treaty is unique in its character ; but all its provisions are in accordance with the principles of preceding compacts. It forcibly illustrates the change, in the condition and prospects of the Cherokees, which had then commenced, and has been constantly increasing.

TREATY OF THE CHEROKEE AGENCY, OR FIFTEENTH COMPACT WITH THE CHEROKEES.

TITLE.

" Articles of a treaty concluded at the Cherokee Agency within the Cherokee nation between major general Andrew Jackson, Joseph McMinn, governor of the State of Tennessee, and general David Meriwether, commissioners plenipotentiary of the United States of America of the one part, and the chiefs, head men, and warriors of the Cherokee nation, east of the Mississippi river, and the chiefs, head men, and warriors of the Cherokees on the Arkansas river, and their deputies, John D. Chisholm and James Rodgers, duly authorized by the chiefs of the Cherokees on the Arkansas river, in open council, by written power of attorney, duly signed and executed in presence of Joseph Sevier and William Ware."

Here surely are parties, commissioners, and agents enough to make a treaty ; but the preamble, occupying an octavo page and a half, is still more remarkable. It declares, that in the year 1808, a deputation from the Upper and Lower Cherokee towns went to Washington : that the deputies from the Upper Towns signified to the President " their anxious desire to engage in the pursuit of agriculture and civilized life, *in the country they then occupied ;*" that the nation at large did not partake of this desire ; that the upper towns wished, therefore, for a division of the country, and the assignment to them of the lands on the Hiwassee ; that, " by thus contracting their society within narrow limits, they proposed to begin *the establishment of fixed laws, and a regular government ;* that the deputies from the lower towns wished to pursue the hunter life, and with this view to remove across the Mississippi ; that the President of the United States, " after maturely considering the petitions of both parties," wrote to them on the 9th of January, 1809, as follows : " The United States, my children, are the friends of both parties ; and, as far as can be reasonably asked, they are willing to satisfy the wishes of both. Those who remain may be *assured of our patronage, our aid, and good neighbourhood.* Those who wish to remove, are permitted to send an exploring party to reconnoitre," &c. That in the

same letter, the President added—" When the party shall have found a tract of country suiting the emigrants, and *not claimed by other Indians,* we will arrange with them and you the exchange of that for a just portion of the country they leave, and to a part of which, proportioned to their numbers, *they have a right;*" and that in conclusion, he told the emigrating Cherokees, that the United States would " still consider them as our children," and " *always hold them firmly by the hand.*"

The preamble states further, that, " the Cherokees relying on the promises of the President of the United States, as above recited," explored the country west of the Mississippi, made choice of land to which no other Indians had a just claim, and were desirous of completing the proposed exchange of country.

" Now, know ye," concludes the preamble, " that the contracting parties, to carry into full effect the before recited promises *with good faith,* and to promote a continuation of friendship," &c. &c. " have agreed and concluded on the following articles :"

Art. 1. " The chiefs, head men, and warriors, of the whole Cherokee nation, cede to the United States all the lands lying north and east of the following boundaries :" [The line here described left out a tract of land, which fell into Georgia.]

Art. 2. The Cherokees also cede certain valuable lands, which fall into the central parts of Tennessee.

Art. 3. A census to be taken with a view to ascertain the number of emigrants; that is, the number of Cherokees who wish to remove across the Mississippi.

Art. 4. The annuities to be divided between the remaining and the emigrating Cherokees, in proportion to their numbers respectively.

Art. 5. In consideration of the lands ceded in the first and second articles of this treaty, the United States engage to give an equal quantity of land, acre for acre, between the Arkansas and White rivers, within certain boundaries mentioned. This article closes with the following words: " And it is further stipulated, that the treaties heretofore between the Cherokee nation and the United States *are to continue in full force* with both parts of the nation; and both parts thereof are entitled to all the immunities and privileges which *the old nation enjoyed*, under the aforesaid treaties; the United States *reserving* the right of establishing factories, a military post, and roads within the boundaries above defined."

Art. 6. The United States to make full compensation for the improvements on land within the Cherokee nation, which shall have belonged to the emigrating Cherokees, and to furnish flat-bottomed boats and provisions for their removal.

Art. 7. Improvements on land ceded to the United States, to be paid for by the United States. There is a provision, also, in this article, that the profit of the improvements mentioned in article 6th, shall be applied to the benefit of poor and decrepid Cherokees.

Art. 8. To every head of an Indian family, residing on the lands ceded by the Cherokees in this treaty, shall be allowed a section of land, that is 640 acres, provided he wishes to remain on his land thus ceded, and to become a citizen of the United States. He shall hold a life estate, with a right of dower to his widow, and shall leave the land in fee simple to his children.

Art. 9. Both parties to enjoy a free navigation of rivers.

Art. 10. The Cherokee nation cedes to the United States, certain small reservations, without the present limits of the nation.

Art. 11. The boundary lines to be marked.

Art. 12. No whites to enter upon the lands ceded, till the treaty " shall be ratified by the President and Senate of the United States, and duly promulgated."

Art. 13. The treaty to be in force as soon as thus ratified.

The Treaty was signed on the 8th of July, 1817, by Andrew Jackson, and the other commissioners, and by thirty-one chiefs and warriors for the Cherokees, who expected to remain east of the Mississippi, and fifteen chiefs and warriors for the emigrating Cherokees, in the presence of nine witnesses. It was ratified by President Monroe and the Senate.

It would seem as though the public affairs of the Cherokees had been so ordered by Providence, as to present the very strongest conceivable exhibition of the obligation of treaties. It has usually been thought, that if a single plain stipulation were made between two nations, and duly ratified, this would bind the parties. I am now examining the fifteenth treaty with the Cherokees, every one of which is perfectly consistent with every other; and they all unite in leading to the same conclusion. As if this were not sufficient, the individual character and political consistency of our most prominent statesmen, not only lend their aid to confirm these national compacts; but are actually personified, as it were, and embodied in the treaties. It may be doubted whether there is a similar instance in the annals of mankind.

General Washington, soon after the organization of our national government, laid the basis of our Indian relations, in perfect consistency with the principles and practice of the early settlers and colonial rulers. Mr. Jefferson was a member of his cabinet, and doubtless intimately conversant with these fundamental measures. The five first Presidents of the United States made treaties with the Cherokees, all resting on the same acknowledged principles. Mr. Jefferson, the third President, having pursued the policy of General Washington on this subject, with more undeviating zeal than on any other subject whatever—being about to retire from the chief magistracy—and standing mid-way between the era of 1789 and the present year, wrote a fatherly letter to the Cherokees, giving them his last political advice. This letter is preserved by them in their archives. A negotiation is held with them, on their own soil, or, as the title has it, "within the Cherokee nation," under the direction of the fifth President of the United States. The letter of Mr. Jefferson is produced and incorporated into a treaty. It is therefore adopted by the people of our land, and approved as among the national muniments, erected for the defence of our weak neighbours. What adds to the singularity of the transaction, is, that this letter, reaching backward and forward through five administrations, is adopted in the fifth, by a negotiator, who is now the seventh President of the United States; thus bringing all the weight of personal character and political consistency to support as plain stipulations, as can be found in the English language, or any other. May it not be said, then, that the case of the Cherokees has been prepared by Providence, that we may show to ourselves and to the world, whether *engagements can bind us;* or whether the imagined present interest of a small portion of the American people will transform itself into a Samson, and break national treaties by dozens, and by scores, "*as a thread of tow is broken when it toucheth the fire?*"

If this case should unhappily be decided against the Cherokees, (which may Heaven avert!) it will be necessary that foreign nations should be well aware, that the People of the United States are ready to take the ground of fulfilling their contracts so long only, as they can be overawed by physical force; that we as a nation, are ready to avow, that we can be restrained from injustice *by fear alone;* not the fear of God, which is a most ennobling and purifying principle; not the fear of sacrificing national character, in the estimation of good and wise men in every country, and through all future time; not the fear of present

shame and public scorn; but simply, and only, the fear of bayonets and cannon.

But what does the letter of Mr. Jefferson, thus adopted and sanctioned, and made the mouth-piece of the nation; what does this letter, written after much deliberation and much experience, and on the eve of quitting public life, say to the Cherokees? It says, that the United States will always regard both branches of the Cherokee nation as *their children.* (A good father, I suppose, does not tell lies to his children, nor break his promises to them; especially promises that have been often repeated during the lapse of many years, and in which they have confided in making all their arrangements for comfort and usefulness through life.) It says that the Cherokees of the Arkansas must not enter upon lands *claimed by other Indians*, thus admitting that the wildest savages have a claim to lands. It says, that all the individuals of the Cherokee nation *have a right to their country;* and, therefore, if a part of the nation surrenders to the United States its right to lands east of the Mississippi, it must receive from the United States a right to lands west of that river. It says, that those Cherokees, who choose to remove, may emigrate with the good wishes and assistance of the United States, and that those *who remain, may be assured,* (yes, *assured* is the word of Mr. Jefferson, adopted by General Jackson,) "*may be assured of our patronage, our aid and good neighbourhood.*" It would be difficult to make any comments upon this passage, which would add to the impression which it cannot fail to make upon every fair and honourable mind.

The preamble says, that the Cherokees *relied upon the promises* of the President of the United States, and took their measures accordingly. Why should they not rely upon his promises? No President of the United States had broken faith with the Indians. But if these very promises, and a thousand others, should now be broken, there will be an end of reliance on our promises; and out of tenderness to my country, and that we might not be unnecessarily reminded of the infamy thus laid up in store for future generations, I could heartily wish, that none of our public functionaries may ever hereafter make a promise to an Indian.

No. XIII.

Fourth treaty of Washington, or sixteenth and last compact, 1819—Abstract of the treaty—Recognition of industrious Cherokees—Permanent school fund for Indians east of the Missisipi—Incorporation of the Intercourse Law into the treaty—Provisions of that law—Incidental recognition of the rights of Indians by the Supreme Court of the United States.

There is but a single treaty more in this long chain of negotiations. It was executed on the 27th of Februrary, 1819, by John C. Calhoun, then Secretary of War, for the United States, and by twelve Cherokee Commissioners. It may be called

THE FOURTH TREATY OF WASHINGTON; OR THE SIXTEENTH AND LAST NATIONAL COMPACT BETWEEN THE UNITED STATES AND THE CHEROKEES.

The preamble states, that "the greater part of the Cherokee nation have ex-

pressed an earnest desire to remain on this side of the Mississippi," and that they wish "to commence those measures which they deem necessary to the civilization and preservation of their nation;" they therefore offer to cede to the United States a tract of country at least as extensive as the United States will be entitled to, according to the provisions of the preceding treaty.

Art. 1. The Cherokee nation cedes to the United States all its lands, lying north and east of the following line: [By this boundary considerable tracts of land were ceded, which fell under the jurisdiction of Alabama, Tennessee, and Georgia. There was a reservation of about 100,000 acres, lying without the new boundary, for a school-fund for the Cherokees.]

The cession in this article to be in full satisfaction for the lands on the Arkansas, given by the United States, in the next preceding treaty.

Art. 2. The United States to pay for improvements on the ceded territory; and to allow a reservation of 640 acres to each head of a family, who wishes to remain, and become a citizen of the United States.

Art. 3. A reservation of 640 acres to each of 31 persons mentioned by name, "all of whom are believed to be persons of industry, and capable of managing their property with discretion."

There were also eight other reservations of 640 acres to each of eight other persons designated.

Art. 4. The land reserved for a school fund to be sold. in the same manner as the public lands of the United States, and the proceeds vested by the President of the United States, the annual income to be applied "to diffuse the benefits of education among the *Cherokee nation on this side of the Mississippi.*

Art. 5. Boundaries to be run as prescribed in former treaties. Intruders from the white settlements to be removed by the United States, and proceeded against according to a law of Congress which was enacted March 30, 1802.

Art. 6. Two thirds of the annuities shall hereafter be paid to the Cherokees on the east, and one third to those on the west of the Mississippi.

Art. 7. The citizens of the United States not to enter upon the ceded lands, before Jan. 1, 1820.

Art. 8. This treaty to be binding when ratified.

The treaty was ratified by President Munroe and the Senate.

The preamble of this last treaty declared, that the Cherokees, as a body, wished to remain upon their ancient territory, with a view to their national preservation. The treaty was therefore avowedly made with the same view. This is perfectly manifest from the words of the document; and I feel warranted in saying, that the Cherokee chiefs, (who consented to the cessions of the first article with great reluctance,) were positively and solemnly assured, that the government of the United States did not intend to ask them to sell any more land. This is implied, indeed, in the preamble, which, after recognizing the desire of the Cherokees to remain and become civilized, adds, in effect, that the cession now made was so extensive, as not to require any future cession.

To about forty individuals specific reservations were made by the third article, on the alleged ground, that these individuals were "*persons of industry, capable of managing their property with discretion.*"

A very small portion of the Cherokee population resided upon the land ceded; yet from this small portion, (excluding, also, those who wished to emigrate from the ceded district to the Arkansas,) about forty heads of families were selected, ten years ago, as possessing the character above described. It is incontrovertible that the Cherokee nation has been improving to the present day.

The number of industrious persons has been greatly increased, as could easily be shown by an induction of particulars, if my limits would allow. The words of the treaty are not more plain, therefore, nor its principles more just, than its spirit is humane and benevolent.

The fourth article looks directly at the permanent residence of the Cherokees on the territory of their fathers. The lands reserved for a school fund have not yet been sold ; but, when the treaty was signed, it was supposed that they would sell for a great sum of money. Similar lands, not far distant, had been sold by the United States at auction, a year or two before, at very great prices. The principle tract reserved lies on the Tennessee, and, as was thought, would produce so large a capital, that the interest would afford the means of education to all the children of the Cherokees. What is to be done with this sum ? The treaty says, the President of the United States shall vest it as a permanent fund ; and that the annual income is to be applied " to diffuse the benefits of education among *the Cherokee nation on this side of the Mississippi.*" Here is a permanent fund for a specific object ; and that object implies the permanent existence of the Cherokee nation eastward of the Mississippi.

But the provision of the fifth article is still more important to the Cherokees. It would seem as if every contrivance was used, which human ingenuity could devise, for the purpose of binding the faith and constancy of the United States to a just and honorable course with the Indians. The integrity of their territory had been guaranteed by treaty. Rigorous laws had been enacted for the punishment of intruders. These laws had been executed. But the time might come when the laws would be repealed ; and when Congress would, by a feeble system of legislation, leave the Cherokees defenceless. In order to guard against this species of bad faith, a stipulation is here inserted, by which a certain law of the United States, so far as it relates to the intrusion of whites upon Indian lands, is made a part of the treaty. This law, therefore, as it respects the Cherokees, cannot be repealed by Congress. It is to be considered in just the same light, as if all those parts of it, which relate to intruders, had been literally copied into the treaty. Let us then look at some of its provisions.

By the law of March 30, 1802, it is enacted, (section 2,) that if ' any citizen of the United States shall cross over, or go within, the boundary line, between the United States and the Indians, to hunt, or in any wise destroy the game ; or shall drive horses, or cattle, to range on any lands allotted or secured, by treaty with the United States, to any Indian tribes, he shall forfeit a sum not exceeding $100, or be imprisoned not exceeding six months.'

By section 5th, it is enacted, ' that if any citizen shall make a settlement on any lands belonging, or secured, or granted, by treaty with the United States, to any Indian tribe, or shall survey, *or attempt to survey,* such lands, or *designate any of the boundaries by marking trees, or otherwise,* such offender shall forfeit a sum not exceeding $1,000, and suffer imprisonment not exceeding twelve months.' In the same section, the President is armed with full power to take such measures, and to employ such military force, as he shall judge necessary to remove from Indian lands any person who should "*attempt to make a settlement thereon.*"

There are other provisions in the act, all tending to the protection of the Indians, and to the preservation of their territory inviolate. This general law is now in force, in regard to all the Indians, whose lands

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are secured to them by treaty ; and in regard to the Cherokees, let me say again, *Congress cannot repeal it ;* for it is incorporated into a solemn national compact, which cannot be altered, or annulled, without the consent of both parties.

Within a few months past, a train of surveyors, professing to act under the authority of Georgia, have made an irruption into the Cherokee nation, to the great annoyance and alarm of the peaceable inhabitants. These agents of Georgia have not only *attempted* to survey, but have actually surveyed, what they call an old Creek boundary, which they have doubtless designated by marking trees, and otherwise. Thus have they done the very thing which is forbidden by the 5th section above quoted, under a penalty of $1,000 and twelve months' imprisonment.

Even if the people of Georgia were right, as to the Creek boundary, they are not the proper persons to ascertain the fact. Several treaties between the United States and the Cherokees provide, that boundaries shall be ascertained by commissioners appointed by the United States, accompanied by commissioners appointed by the Cherokee nation. Can any good reason be assigned, then, why the President should not direct a prosecution to be commenced against these offenders, who have trampled on a law, which is of vital importance to sustain the plighted faith of the nation ?

It is said that the United States can make no treaty with Indians living within the limits of a State ; that is, within the limits of what appears, *by the map*, to be one of the United States. I beg leave to make a distinction between a State, and the map of a State ; not having yet seen it proved, that the engraver of a map has the power of disinheriting a whole people, and delivering their property into the hands of others. What did the men, who formed the federal constitution, think of the extent of the treaty-making power ? This appears to me to be a pertinent question. It is certainly a question, to which a decisive answer can be given. In the first law of Congress, on the subject of intercourse with the Indians, which was enacted under our present form of government, the fourth section reads as follows :

"That no sale of lands made by any Indians, or any nation or tribe of Indians, within the United States, shall be valid to any person or persons, *or to any State*, whether having the right of preemption to such lands or not, unless the same shall be made and duly executed *at some public treaty, held under the authority of the United States.*"—[Judge Story's edition of U. S. Laws, p. 109.]

This act was approved, July 22, 1790 ; only sixteen days before the execution of the Creek treaty, in the city of New York, which was described in my fourth number. The leading members of Congress had been leading members of the Convention, that formed the federal constitution. Their exposition of that instrument will not be controverted by any considerate writer or speaker ; and their decision, in the section just quoted, is as positive and peremptory, as can well be imagined. The same provision was continued in subsequent laws, and is found, in the law of March 30, 1802, in these words :

"*And be it further enacted*, That no purchase, grant, lease, or other conveyance, of lands, or of any title or claim thereto, from any Indian, or nation, or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty or convention, entered into pursuant to

the constitution: And it shall be a misdemeanor in any person, not employed under the authority of the United States, to negociate such treaty or convention, directly or indirectly to treat with any such Indian nation, or tribe of Indians, for the title or purchase of any lands by them held or claimed, punishable by fine, not exceeding one thousand dollars, and imprisonment, not exceeding twelve months."

Then follows a proviso, that an agent from a State may be present, and propose terms, when commissioners of the United States are treating with the Indians.

In accordance with the constitution, and with the express provisions of these national laws, it has been the universal practice to obtain cessions of Indian lands through the medium of treaties, made under the authority of the United States. No fewer than nine of these treaties have been duly formed and ratified, in regard to small reservations of Indian territory, in the single State of New York. That great and powerful State has never yet complained that its rights, "as a sovereign and independent State," are in any way endangered or abridged, by a faithful adherence to the letter and spirit of the federal constitution.

Thus, Messrs. Editors, I have gone through the long list of treaties which our country has made with the Cherokees, and which have received the highest sanction of the legislative and executive branches of our government; and which, no doubt, will receive the sanction of the judiciary, whenever regularly brought before it. The Judges of the Supreme Court of the United States long since declared, incidentally, that the United States are bound by treaties to the Indians. Mr. Justice Johnson said, nineteen years ago, (6 Cranch, p. 147,) "innumerable treaties formed with them, [the Indians,] acknowledge them *to be an independent people;* and the uniform practice of acknowledging their right of soil, and restraining all persons *from encroaching upon their territory,* makes it unnecessary to insist upon their right of soil." Chief Justice Marshall said, that the Indian title "is certainly to be respected by all courts, until it be *legitimately extinguished.*" This is enough for the perfect defence of the Cherokees, till they voluntarily surrender their country; such an act on their part being the only way in which their title can be *legitimately* extinguished, so long as treaties are the supreme law of the land.

No. XIV.

Apology for this prolonged discussion—The people of the United States are jurymen in the case, and must hear it—The Cherokees have refused to treat for ten years—Scruples of Georgia about the treaty-making power—Perfect consistency of treaties—No evidence to the contrary—Laws, treaties, common sense, justice, all on the side of the Cherokees.

It is well known, Messrs. Editors, that a long series of numbers, on a single subject, is not apt to be read; especially if it be of the nature of a legal or diplomatic discussion. On this account, I have felt many misgivings, in calling upon the public to follow me from one stage to another of the negotiations with the Cherokees; but I have been advised, that no part of the preceding numbers could be omitted without injury to the cause. If I were arguing this question before the Supreme Court of the United States, simple references would be suffi-

cient in many cases, where I have felt it necessary to make quotations. Yet I think any candid lawyer will admit, that, if he were pleading the cause of the Indians before the highest tribunal in our country, he would be constrained, by faithfulness to his clients, to dwell much longer upon some topics than I have done. Let it be remembered, that those members of the American community, who may be justly denominated honest and intelligent, are to decide this question ; or at least, that they *may* decide it properly, if they will take the trouble to understand it, and will distinctly and loudly express their opinion upon it.

And here let me humbly intreat the good people of the United States to take this trouble upon themselves, and not to think it an unreasonable task. Let every intelligent reader consider himself a juryman in the case ; and let him resolve to bring in such a verdict, as he can hereafter regard with complacency. It is not a single man, who is on trial, and who may lose his life by the carelessness of the jury. Sixty thousand men, women, and children, in one part of the United States, are now in constant expectation of being driven away from their country, in such a manner as they apprehend will result in their present misery and speedy extermination :—sixty thousand human beings, to whom the faith of the United States has been pledged in the most solemn manner, to be driven away—and yet is it possible that the people of the United States should be unwilling to hear their story, or even to require silence till their story can be heard ?

I am encouraged, Messrs. Editors, to proceed, by the assurance, which has reached me from different quarters, that our community is not callous to every feeling of justice and honor, in relation to the Indians ; that there is a greater disposition to inquire on this subject, than on any other now before the public ; and that even my numbers, deficient as they are in vivacity, are extensively read with that interest, which the magnitude of the cause, in all its bearings, may well excite.

A few remarks upon the treaties with the Cherokees may not be useless.

It is a natural inquiry, Have there been any attempts to treat with this nation, since the year 1819 ? There have been many ; and although the politicians of Georgia now think that the United States have no power to make treaties with the Indians, it is not more than one or two years since they were urging Congress to make appropriations for this object, and pressing the executive to procure the Cherokee country by negotiation. In regard to this matter, they have been extremely importunate. Mr. Monroe was teased by them during his whole presidency. Their scruples, as to the extent of the treaty-making power, are of quite recent origin ; and it is supposed, that they would not vehemently remonstrate, if a treaty should now be made, the terms of which should compel the Cherokees to take up their residence under the shade of the Rocky Mountains. The scruples about the treaty-making power seem not to have existed till after the Cherokees refused to treat any more. When chiefs and people had thus refused, at home and abroad, in their own territory and at Washington ;—When they had declared in writing, that there was not money enough in our national treasury to purchase an additional foot of Cherokee land ; and when these declarations were made with a determination and constancy,

which left no hope of forming a treaty;—*then* it was discovered, that the government of the United States possessed no power to make a treaty.

There is a provision in the treaty of Hopewell, (the first treaty in the long series,) similar to the proposal made to the Delawares; viz. 'That the Cherokees may send a deputy of their choice to Congress.' On this provision I omitted to make a remark, in the proper place, which may be introduced here. Though the treaty of Hopewell was formed under the old confederation, it is not the less binding on that account; and good faith would now require, that the Cherokees should be allowed a privilege, as nearly as possible *tantamount* to what would have been the privilege of sending a deputy to the Old Congress.*

Here then we have sixteen treaties with the Cherokees, negotiated from 1785 to 1819, ratified by five presidents, all resting on the same principles,—all consistent with each other,—and all now in force, except that some parts may have become obsolete by subsequent stipulations on the same subjects. The earlier treaties are repeatedly and solemnly recognized by later ones. An official letter of Mr. Jefferson is curiously wrought into a treaty, so as to form a connecting bond to the whole system. In the last treaty of all, negotiated by the present Vice President of the United States, a law of Congress is introduced for the permanent defence of the Cherokees.

If we look into other treaties with Indians, from the Delaware treaty of 1778, (from which a quotation was made in my ninth number,) to the Creek treaty of 1826, the same inviolable territory, the same solemn guaranty, the same proffer of friendship and good neighbourhood, will every where be found. So many treaties had been formed with Indians previously to 1810, that Mr. Justice Johnson pronounced them "innumerable." In none of these treaties is the original title of the Indians declared to be defective. In none of them is it said, that Indians have not the power of self-government; or that they must come under the government of the several States. In no case, have the Indians signed away their inheritance, or compromitted their independence. They have never admitted themselves to be tenants at will, or tenants for years. Upon the parchment all stands fair; and, so far as their present engagements extend, they are under no more obligation to leave their country, than are the inhabitants of Switzerland, to leave their native mountains.

What is the evidence brought against this mighty mass of treaties? Nothing; absolutely nothing. The Secretary of War merely says, that the Cherokees were *permitted* to remain on the lands of Georgia. But where is his authority?

If we turn from treaties to the laws of the United States, we find the whole system of legislation made in exact accordance with the treaties. Nearly all these compacts required appropriations of money. When the appropriations were made, the treaties came of course under the view of both houses of Congress; and every such appropriation was of course an assent of Congress to the treaty.

Besides, some of the most important articles of treaties, were taken from previously existing laws of Congress. Thus, the 11th article of

* Some other remarks, on the treaty of Hopewell, are anticipated in the third number, as published in this pamphlet, p. 13, and are therefore omitted here.

the treaty of Holston, is taken from the treaty made with the Creeks at New York, August 7, 1790, where it was inserted *verbatim* from "an act to regulate trade and intercourse with the Indian tribes," which was approved by President Washington, only sixteen days before. This discovery I have just made, and consider it as decisive evidence, that the treaty with the Creeks was a measure of great deliberation, and that the eminent men of that day laboured to make every part of their political system harmonize with every other part.

If we leave both laws and treaties, and look at the conduct of our government toward the Indians, we find the declarations of Indian agents to have been always directed to this one point: viz. to satisfy the Indians, that the government would deal justly and faithfully by them,—would perform all its engagements,—and would secure to them the permanent possession of their country. They were constantly urged to become farmers, to educate their children, and form a regular government for themselves; and all this, avowedly, with a view to their permanent residence. This was done by General Washington—by Mr. Jefferson, by Mr. Madison, by Mr. Monroe, as can be shown from published documents; and probably by the elder Adams and his son.

To treaties, laws, usage,—every public and every private pledge,—are to be added the dictates of reason and common sense, and the principles of immutable justice. All these stand on the side of the Cherokees. Still Georgia demands all the land, which lies within what are called her chartered limits. The nature of this demand will be examined hereafter.

No. XV.

Complaints of Georgia—The question between Georgia and the Cherokees, if no other party were concerned—Claims on the ground of civilization—Answer of the Cherokees—Replication of Georgia—Doctrine of Vattel—It does not apply to this case—Vattel's opinion of the Puritans and Penn—The Cherokees not under the jurisdiction of Georgia.

It has appeared, in the preceding discussion, that the United States have entered into solemn engagements with the Cherokees, by which we are bound, as a people, to defend their title and their sovereignty, and to protect them from every species of encroachments and aggression. If this be not the obvious meaning of numerous and express stipulations, it will be impossible to frame articles in the English language, which shall express any meaning whatever.

But Georgia complains that the government of the United States transcended its powers in making these engagements, which are therefore to be considered null and void. The reader must bear in mind, that this complaint of Georgia is not of long standing. Indeed, I am not certain that the legislature has expressed it; but the leading men of that State, and some of the newspapers, are loud in making and repeating it. Till very recently, as was mentioned in my last, the authorities of Georgia have been urging the United States to make treaties with the Indians.

In order to come to a full understanding of this case, in all its bearings, let us inquire how the controversy would present itself, if the old thirteen States, after obtaining their independence, had never formed any system of confederation whatever, and each State were entirely, and in all respects, independent of every other State. The whole question at issue would then lie between Georgia and the Cherokees. Neither South Carolina, nor any other State, would have any right to interfere, however oppressively Georgia might conduct herself toward the Indians ; unless, indeed, South Carolina, or some other State, had made a treaty with the Cherokees, of the nature of an alliance offensive and defensive. On this supposition, both the allies would have a right, by the laws of nations, to speak to Georgia and to be heard. But we will suppose, that the Cherokees had made no treaty with any community upon earth, and were, as to their mode of living, precisely in their present condition ; that is, peaceably engaged in agricultural pursuits, and providing for their own families by the labour of their own hands.

In these circumstances, the people of Georgia ask the Cherokees to remove ; who, in their turn, demand the reasons of so extraordinary a request. And here let me say, no good reasons can be given ; no reasons, which an honest man would not be ashamed to give, in any private transaction. But I will fairly state all the reasons, which have come to my knowledge, and would wish the reader to allow them every particle of weight to which they are entitled.

The Georgians say to the Cherokees ; " We are a civilized people ; you are a vagrant, hunting, and savage people. By virtue of this distinction, the lands which you occupy, and which your fathers called their hunting grounds, belong in reality to us ; and we must take possession. The writers on the law of nations bear us out in the demand."

To such a statement the Cherokees might justly reply : " We are not about to dispute as to your being a civilized people, though the manner of urging this demand of the houses and lands of your poor neighbours, argues neither great modesty nor benevolence. We do not profess to be learned in the law of nations ; but we read the Bible, and have learned there some plain principles of right and wrong. The Governor of the world gave us this country. We are in peaceable possession. We have never acknowledged any earthly lord or sovereign. If our Creator has taken away our land and given it to you, we should like to see some proof of it, beside your own assertion. We have read in the book, which we understand you to acknowledge as the word of God, that, "*to oppress a stranger wrongfully*" is a mark of great national wickedness.

" But we are not the sort of people that you take us to be. We are not vagrants, like some tribes of which we have heard ; nor were our fathers. They always had a fixed place of residence. And as to *our* wandering about, we have not the time. We are busy with our crops ; and many of us do not go so far as our nearest county court once a year, unless called out as jurymen. We do not hunt. Not a family within our bounds derives its subsistence from the chase. As to our being savages, we appeal to the white men, who travel on our turnpike roads, whether they receive any ill treatment. We have a legislature and a judiciary, and the judges of our supreme court are very rigid in

punishing immorality. We have herds of cattle, farms and houses, mills and looms, clothing and furniture. We are not rich; but we contrive, by our industry, to provide against hunger and nakedness; and to lay up something comfortable for winter. Besides these things, we have schools and places of public worship. Judge ye, whether we are such a sort of people, as the writers on the laws of nations had in their minds, when they talked of vagrants, hunters, and savages."

To this the Georgians rejoin: "But you had no business to betake yourselves to an agricultural life. It is a downright imposition upon us. This is the very thing that we complain of. The more you work on land, the more unwilling you are to leave it, Just so it is with your schools; they only serve to attach you the more strongly to your country. It is all designed to keep us, the people of a sovereign and independent State, from the enjoyment of our just rights. We must refer you to the law of nations again, which declares that populous countries, whose inhabitants live by agriculture, have a right to take the lands of hunters and apply them to a better use."

In answer to this legal argument, the Cherokees have only to say, that, even if Vattel had the power, by a flourish of his pen, to dispossess a nation of its patrimonial inheritance, the present case does not come within the limits which he has prescribed. Georgia is not populous. She has many millions of acres of unoccupied land. The Cherokees are not an "erratic people," to use the phrase of Vattel; so that neither part of the case answers to the description.

When Georgia shall have a hundred souls to the square mile; (and her soil is capable of sustaining a larger number than that;) the Cherokees may have four times as many to the square mile as Georgia now contains.

If any one has the curiosity to read what Vattel has said on this subject, he will find it in sections 81 and 209; where he will also find a commendation of the manner in which the Puritan settlers of New England, and the great founder of Pennsylvania, obtained possession of the lands of the natives, viz: by the consent of the occupants, and not by a reliance on the charters of kings.

Thus stands the case on the law of nations; and if Vattel were admitted as absolute authority, and the Cherokees were left to their naked right, undefended by any compact, either with Georgia or the United States, they would have nothing to fear. No respectable lawyer, unless he is entirely deranged in his intellect, as a consequence of violent party feelings, will say that the doctrine of Vattel would take the lands of the Cherokees, and give them to Georgia.

But it is added, that the Cherokees are in the chartered limits of Georgia; and it is triumphantly asked, "Cannot Georgia govern her own territory? Is she not entitled to her own property?" This statement of the case is a mere begging of the question. It is not admitted that the Cherokees are now, or ever were, in the State of Georgia, in any such sense as is implied, by the confident tone here assumed. They have never acknowledged themselves to be in the State of Georgia. The laws of the United States, and the 11th article of the treaty of Holston, irresistibly imply, that Indian territory is not within the jurisdiction of any State, nor within the jurisdiction of any territorial district of the

United States. It seems, however, that our national statute-book is of very light authority, when compared with the *supposed* conclusions of a philosophical writer, whose theories are produced as the arbiters of a people's destiny.

Let me ask here, whence did the Secretary of War derive the power of repealing an act of Congress? This is a plain question; and the people of the United States would like to receive a plain answer. Whence did he derive the power to set aside existing treaties? The treaties and the laws assume, in the most unequivocal manner, that the Cherokees are *not under the jurisdiction of Georgia*, nor of any other State, nor of the United States; that citizens of the United States have no right to enter the Indian country, except in accordance with treaty stipulations; that it is a high misdemeanor, punishable by fine and imprisonment, for any such citizen to attempt to survey Indian lands, or to mark trees upon them; and that the Indian title cannot be extinguished, except by the consent of the Indians, expressed by a regular treaty. Yet the Secretary of War seems never to have known that any such laws or treaties are in existence. Is he not aware of all this? or does he really think he has power to annul treaties and repeal laws, according to his sense of convenience and propriety?

But this is a digression. Having shown, as it seems to me, that Georgia can gain nothing by an appeal to the law of nations, I propose to inquire briefly, what support she can derive from the charter of the king of England.

No. XVI.

Not even a king can grant what he does not possess—The people of one continent have no right to dispossess the people of another continent—The proper uses of charters—Claims of the Pope, and of Queen Elizabeth—Charters of Georgia—Treaty of 1763 between England and Spain—Proclamation of George the Third—True meaning of protection.

The next enquiry will relate to the title conveyed to the first European settlers of Georgia, by the charter of the British crown. There are some people, even in our republican country, who appear to suppose that there is wonderful virtue in the grant of a king. But is it not manifest, on the bare statement of this subject, that not even a king can grant what he does not possess? And how is it possible, that he should possess vast tracts of country, which neither he, nor any European, had ever seen; but which were in fact inhabited by numerous independent nations, of whose character, rights, or even existence, he knew nothing. Many grants to American colonists were bounded by lines running west from the Atlantic to the Pacific ocean. This was particularly the case with the charters of Georgia. Will it be seriously contended, that a royal grant of this kind conferred any rightful authority to dispossess of their territory the original occupants of the soil? From such a principle it would follow, that all the aboriginal inhabitants might be lawfully driven into the ocean, and literally and utterly exterminated at once; for the European powers, by their proclamations and

charters, divided the whole American continent among themselves. But who will dare to advocate the monstrous doctrine, that the people of a whole continent may be destroyed, for the benefit of the people of another continent?

It is very easy to understand, that England, France, and Spain, would find it convenient to agree upon certain boundaries among themselves, so that the subjects of one European power might not come into collision with the subjects of another. All this was wise and proper; and when it was accomplished, one of these powers might properly grant *unoccupied lands* to its subjects; not encroaching, however, upon the original rights of the natives, or the conventional rights of Europeans. For these two purposes, viz: The prevention of strife between new settlers, and the establishment of colonies upon territory not claimed, or the claims to which had been, or might be amicably extinguished—the charters of European governments were extremely valuable. Further than this they could not go; and the idea that they could divest strangers of their rights is utterly preposterous.

It is true that the Pope, immediately after the discovery of America, issued a bull, by which the kings of Spain were authorized to conquer and subdue all the inhabitants of the new world, and bring them into the pale of the Catholic church. About a hundred years afterwards, Queen Elizabeth, much in the spirit of popery, issued a proclamation, by which she directed her subjects to subdue the Pagans of this continent. But the people of Georgia will not build upon either of these foundations. None of the Protestant colonists professed to act upon such principles; and the first settlers from England, as a general thing, if not universally, obtained of the natives, by treaty, the privilege of commencing their settlements. Whenever they afterwards got possession of lands by conquest, they did so in consequence of what they considered to be unprovoked wars, to which the Indians were instigated, either by their own fears and jealousies, or by the intrigues of European nations. It is undeniable, that the English colonists, as a body, and for a hundred and fifty years, disavowed, in principle and practice, the doctrine that the aborigines might be driven from their lands because they were an uncivilized people, or because the whites were more powerful than they. I have not been able to find an assembly of legislators, anterior to December 1827, laying down the broad principle, that, in this case, *power becomes right;* a memorable declaration, which was made by the legislature of Georgia, in one of the paroxysms of the present controversy.

Let it be fixed in the mind, then, that the charters of British kings, however expressed, or whatever might seem to be implied in them, could not divest the Indians of their rights.

The charters of Georgia are cited in the famous case of Fletcher vs. Peck, (6 Cranch, p. 87,) and it may be presumed, that all the parts which have a bearing on this investigation, are there copied. The first charter was granted by Charles the Second, one hundred and sixty three years ago, and embraced all that part of North America which lies between 29 and 36½ degrees of north latitude; that is, a tract of country more than five hundred English miles broad, extending from the Atlantic ocean to the Pacific. It granted the territory, "together with all ports,

harbors, bays, rivers, soil, land, fields, woods, lakes, and other rights and privileges therein named." So far as appears, the charter said nothing of the native inhabitants. Whether it said any thing in regard to them, or not, is immaterial to the case now in hand : for as I have already observed, no man will undertake to maintain the proposition, that the unknown tribes and nations between the Atlantic and the Mississippi, and thence westward to Mexico and the Pacific, could have their rights and property justly taken from them by the signature of the British king, in his palace of Whitehall.

The rights derived from this charter were surrendered to the British crown in the year 1729. Three years afterwards, George the Second incorporated James Oglethorpe and others, as a charitable society, which he styled "The Trustees for establishing the Colony of Georgia, in America, with perpetual succession." To this corporation he granted all lands lying between the rivers Savannah and Altamaha, and between parallel lines, drawn westward to the Pacific, from the heads of said rivers respectively, "with all the soils, grounds, havens, bays, mines, minerals, woods, rivers, waters, fishings, jurisdictions, franchises, privileges, and preeminences, within the said territories."

In the year 1752, this charter also was surrendered to the crown. A royal government was instituted in 1754, over the colony of Georgia, which was bounded in the same manner as the tract granted to the corporation above described. This tract embraced all the northern part of the present states of Georgia, Alabama, and Mississippi, and extended westward to the South Seas, as the Pacific Ocean was then called.

By the peace of 1763, it was agreed between England and Spain, that the Mississippi should be the western boundary of the British colonies. The same year a proclamation was issued by George the Third, which, among other things, annexed to the colony of Georgia, what is now the southern part of the states of Georgia, Alabama, and Mississippi.

The same proclamation contains the following passage :

"That it is 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 land and territories not included within the limits of our said three new governments, or within the limits of the territory granted to the Hudson's Bay Company, *as also all the land 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."

The lands now in dispute between Georgia and the Cherokees are within the description, which is printed in italics ; and were therefore reserved "*for the use of the Indians.*" Thus matters remained, so far as the British government was concerned, till the close of the revolutionary war. By the peace of 1783, the colony of Georgia was acknowledged to be one of the independent states of America. There can be no doubt, that the state of Georgia thenceforward might exercise, within her proper limits, all that authority, in regard to the Indians, or any other subject, which either the colony of Georgia, or the

British government might have rightfully exercised within the same limits. It is to be understood, however, that any modifications of her power, which Georgia afterwards made, either by entering into the old confederation, or by adopting the present national constitution, are to be duly regarded.

There are no means within my reach, by which the claims of the British government, in regard to the possessions of the Indians, can be accurately known. Nor is it of any consequence that they should be known. Unless they were founded in reason and justice, they could be of no validity; and in regard to what *is* founded in reason and justice, impartial, disinterested, intelligent men of the present day, can form as correct an opinion, as could be formed by the kings of England.

It is admitted on all hands, and is even strenuously contended for by the people of Georgia, that the Indians were considered by the British crown, *as under its protection*. From this claim of the crown, it is inferred, that the Indians held their lands by *permission* of the crown. Now I humbly conceive, that here is too large a leap from the premises to the conclusion. There is a distinction between affording protection and usurping unlimited control over rights and property. How many small states remained for hundreds of years under the protection of the Roman Republic? The greatest men in that republic were always proud of their good faith to their dependent allies, so long as these allies remained faithful. The right of retaining their territory, laws, customs, and habits of living was not invaded. How many small states are there in Europe, at this moment, possessing a limited sovereignty, and remaining under the protection of larger states, yet exercising the right of administering their own government, in regard to many essential things, as truly as the state of Massachusetts, or South Carolina, administers its own government?

Would it not be safer to infer, that the Indians were claimed to be under the protection of Great Britain because they had important rights, *which needed protection?* rights which were in danger from the encroachments of other European nations, the avarice and fraud of speculators, and the hostile machinations of neighbouring tribes? A guardian is the acknowledged protector of his ward. Is it sound law, therefore, that the guardian is the sole owner of his ward's property; and may set the helpless orphan adrift in the world? The father is the protector of his children: may he, therefore, oppress them, dishearten them, and thus prepare them to become outcasts and vagabonds? A husband is the protector of his wife: may he, therefore, abuse her, repudiate her without cause, and drive her from her own house and her patrimonial inheritance?

The people of the United States may conclude, therefore, without the least danger of mistake, that the rights of the Cherokees and Creeks were not taken from them by a royal proclamation. The thing is impossible in itself; and the proclamation does not assert, nor imply, that the rights of the Indians were to be disregarded.

No. XVII.

Controversies about unappropriated lands—Indian title always respected—First intercourse of Oglethorpe with Indians, 1733—Treaty of Savannah—Abstract of it—Ratified in London—Treaties written by the English—Visit and speech of Tomochichi—Reply of George II.—Treaty with the governor of St. Augustine.

At the close of the revolutionary war, great controversies arose, in regard to the disposal which should be made of the unappropriated lands lying within the limits of the United States, as defined by the treaty of 1783. Lands were considered as unappropriated, if they had not been parcelled out to the whites. If Indians were in possession, and living on amicable terms with their white neighbours, it was taken for granted that the Indian title must be lawfully extinguished, before the whites could be justified in taking possession ; and such an extinguishment of Indian title could be obtained by the consent of the original owners, but in no other way.

Some of the States contended, that the vast tracts lying to the west and northwest of the portion inhabited by whites, should be made a common fund, and held for the common benefit ; as the whole had been secured by the common privations and sacrifices. Other States were determined to retain all the territory, which fell within the limits described in their original charters. It is not my intention to enter at all into a dispute which was put at rest, as a practical matter, by various conventional arrangements, made between particular States and the United States, from 1781 to 1802. My object, in adverting to the subject here, is, that the reader may be aware of the existence of such a controversy. Virginia set an example of public spirit, by relinquishing to the United States her claim to the vast tract northwest of the river Ohio ; and it was contended that Georgia ought to relinquish all claim to the lands on her western waters. These relinquishments, actual or contemplated, were not considered as affecting, or as likely to affect, the Indian title. Every cession was subject to this title. In other words, every party was considered as bound to deal justly with the Indians, and to recognise their territorial rights.

On the supposition that Georgia had, at the conclusion of the American war, an unquestionable right, on every ground of law and honour, to all the land within the limits of the king's charter, *subject only to the Indian title*, it would remain to inquire whether her jurisdiction could be fairly and properly extended over the original inhabitants, or their country. To me, it seems perfectly clear, that Georgia could have claimed *no jurisdiction at all* over the Creeks or Cherokees, or over their territory. They were, respectively, a separate people, living under their own laws, upon their own soil. No argument, but that of force, could have been adduced, in favour of taking away their possessions ; and, if they had been able to defend themselves, no argument would ever have been thought of. Could the Cherokees now bring into the field a formidable array of bayonets, all these arguments about the hunter state, would be suffered to repose in quiet, with other lumber of the schools. The more savage the Indians were, the less inclined the peo-

ple of Georgia would be to have a quarrel with them; and the more readily would all their territorial and national rights be acknowledged.

The claims of Georgia, which are set forth as being supported by the law of nations and the king's charter, have been examined; and, unless I am mistaken, have been shown to be altogether groundless; especially when compared with the strong title of immemorial possession. But there is no need of resting the case here, however safe it would be here to rest it.

I therefore proceed to show, that Georgia has, during her whole history, till within a very few years, admitted the national character and territorial rights of the Creeks and Cherokees; and that she is bound, by numerous public acts performed by her, in the very capacity of which she is most proud and jealous, (that of a sovereign and independent State,) for ever to admit and respect the rights of the Cherokees, unless these rights shall hereafter be voluntarily surrendered.

In the year 1733, James Oglethorpe commenced a settlement on the site where Savannah now stands. In his first letter to the corporation, whose agent he was, dated February 10th, he says: "A little Indian nation, the only one within fifty miles, is not only in amity, but desirous to be subjects to his majesty King George, to have lands given them among us, and to breed their children at our schools. Their chief and his beloved man, who is the second man in the nation, desire to be instructed in the Christian religion." It appears from M'Call's History of Georgia, (on which I shall rely as authority for several succeeding statements,) that this little tribe of Indians, which is now extinct, must have received a splendid account of the power and benevolence of the British king. How much they understood of what was implied in becoming his subjects, cannot be known. They were doubtless informed, that the settlers were intending to live in a compact manner, and to have schools and preaching; and that the Indians would act wisely, if they would be friends to the English, and live in the same manner. They might naturally, therefore, have been pleased with the notion of taking farms for cultivation, side by side, with the new settlers. This must have been the meaning of their having lands given them among the settlers, for the old English doctrine of *seisin in fee*, and of *the fee being in the king*, was too metaphysical an idea to have found a lodgment in their unsophisticated heads. Indeed, it is quite ridiculous, to embarrass this question with the abstract terms, and nice distinctions, which had their origin in the feudal tenures of Europe. The whole philosophy, and the whole morality of the Indian title, as opposed to the encroachments of the European settlers, might be thus expressed by the Indians: "These lands are ours. We had them from our fathers. They are not yours. Neither you, nor your fathers, nor your king, ever had them. When we consent to your taking them, they will be yours. Till then, they belong to us."

If the little tribe of Indians, who had the possession of the lands at the mouth of Savannah River, consented to the settlement of Oglethorpe, and if their consent was obtained fairly and honourably, (which I am not inclined to question,) then the founder of the State of Georgia had a rightful possession. The lawfulness of his possession, as against the

Indians, was founded altogether upon their consent: while, in regard to the whites of South Carolina, he might justly plead the king's charter.

"But as this tribe was inconsiderable," says the historian, "Oglethorpe judged it expedient to have the other tribes also, *to join with them in the treaty.*" So, it seems, that Oglethorpe supposed the Indians to be capable of making a treaty, as all the early settlers had done, from the discovery of America to that day, and as all his successors continued to do, till this same Georgia controversy has, within two years past, led to the discovery, *that Indians are not capable of being treated with.* It is morally certain, that the colony of Oglethorpe would have been of short duration, if he had told the Indians, that he, acting under the king of Great Britain, was the owner of all the lands from Savannah to the Altamaha, and thence westward to the other side of the world; and that he could not form any compact with them, because they were incapable of making a bargain. Had the whites distinctly avowed such principles of morality and law, they would never have established themselves on this continent beyond the reach of their guns. No other refutation of so monstrous a system seems necessary, than its utter impracticability, at the commencement of the settlements. In other words, the emigrants from Europe could never have become strong enough to throw off all the restraints of justice, and disavow the most obvious principles of moral honesty, unless they had been, or at least, had pretended to be, honest and just during a period of two hundred years.

Oglethorpe, having found an interpreter summoned a meeting of the chiefs to hold a congress with him at Savannah, in order to obtain "their consent to the peaceable settlement of the colony." About fifty chiefs assembled. Oglethorpe represented to them "the great power, wisdom, and wealth of the English nation, and the many advantages that would accrue to the Indians in general, from a connexion and friendship with them; and, as they had plenty of lands, he *hoped they would freely resign a share of them* to his people, who were come to settle among them for their benefit and instruction."

This is the first overture of the colonists to the assembled Indians; and it certainly does not look much like demanding the whole country, in the name of the king of England. It seems more like a humble intreaty for permission to remain, which permission was solicited for the purpose of doing good to the natives. The consent of the lords of the soil was obtained, and a treaty was made, of which the following is an abstract:

TREATY OF SAVANNAH.

The preamble recites the authority of Oglethorpe, and says that certain "articles of friendship and commerce" were made between him "and the chief men of the nation of the Lower Creeks," viz.

1. The colony engages to let traders carry goods into the "Creek nation" for sale.
2. The colony engages to make restitution to the Creeks for any injury which shall be done to them by white traders, and to punish the offenders according to English law.
3. If the Creeks should not treat the traders well, the colony will withdraw the English trade.
4. The Creeks say, that they are glad the English have come, and add these memorable words: "Though *this land belongs to us,* (the Lower Creeks,) yet we, that we may be instructed by them, (the English,) *do consent and agree,* that they

shall make use of, and possess, all those lands *which our nation hath not occasion to use:* Provided always, that they, upon settling every new town, shall set out for *the use of ourselves, and the people of our nation*, such lands as shall be agreed upon between their beloved men, and the head men of our nation; *and that these lands shall remain to us forever*."

5. The Creeks agree not to do any injury to any of the traders; but if any Indians should transgress this article, the nation will deliver them up, to be punished according to English law.

6. The Creeks agree to apprehend and restore runaway negroes.

7. The Creeks to give no encouragement to white settlers from other European nations.

A schedule of prices of articles, exchanged for peltry, was also agreed upon.

This treaty was ratified by the corporation, in the city of London, October 18, 1733.

So far as appears, Oglethorpe was entirely fair and honest in this whole transaction. The Indians confided in all his statements, and both parties doubtless supposed that the colony would conduce to the permanent advantage of the Indians, and that they and the settlers would live together in friendship, according to the import of the preceding articles. The corporation, in ratifying the treaty, declare that they are 'greatly desirous to maintain an inviolable peace to the world's end.'

It is to be remembered, that all treaties with the Indians were written by the English, and that there is no probability that they made the expressions stronger against themselves, than they actually were. Yet here is a firm and decided protestation of the Creeks, that the grants which they made out of friendship, should never be construed as an admission that they had no original title. They also took care to provide that no new settlement should be made without their consent. If the colony intended to rely upon the right of the English king, here was the time and place to have asserted it, and to have obtained, if possible, the acknowledgment of it from the Indians.

The principal speaker in this council was a Creek chief, called Tomochichi. When Oglethorpe returned to England, in the spring of 1734, this chief was induced to accompany him. On being introduced to King George, he made a flourishing speech, in which, however, he does not admit that the king of England is his liege lord and sovereign. He gave the king some eagles' feathers, "as a token of everlasting peace;" and concluded by saying, "Whatever words you shall say unto me, I will faithfully tell them to all the kings of the Creek nation." This is all the allegiance he promised. King George expressed his kind regards, gave thanks for the eagles' feathers, and concluded by saying, "I shall always be ready to cultivate a good correspondence *between the Creeks and my subjects;* and shall be glad on any occasion to show you marks of my particular friendship."

Here is no arrogant claim of sovereignty, on the ground of the divine right of kings, or any other factitious title. Indeed, the king of England implicitly says, that the Creeks *are not his subjects*.

When the old chief Tomochichi died, in 1739, he charged his people to remember the kindness of the king of England, and hoped they would always be friendly to his subjects; thus making the very distinction which the king himself had made.

In the year 1736, Oglethorpe made a treaty with the Spanish Gover-

nor of St. Augustine, in which the second article reads as follows: "In respect to the nations of free Indians, called Creeks, I will use my utmost amicable endeavors, upon any reasonable satisfaction given them, to prevail with them to abstain from any hostilities whatsoever, with the subjects of his Catholic majesty."

Here it is evident that Oglethorpe saw, as no man in his circumstances could help seeing, that the Creeks were an independent people; and that they must decide for themselves, whether they would go to war with the king of Spain, or not. He would advise them, however, to accept of reasonable satisfaction.

No. XVIII.

Second treaty of Georgia with the Indians, 1738—Assertion of right by the Creeks—Stipulations of Oglethorpe in favour of the Creeks—Claims of Bosomworth—War with Virginia and other colonies—Engagements of the king's agent—Treaty of Augusta, or fourth compact of Georgia, 1763—Cessions of land in 1773—Treaty of Duet's corner, 1777—Second treaty of Augusta, or sixth compact, 1783—Objects of these treaties—Postscript.

As Georgia is so strenuous an advocate for State Rights, and protests so strongly against any interference on the part of the general government, the inquiry how far she has herself acknowledged the national character of the Creeks and Cherokees becomes peculiarly interesting.

In 1738, Oglethorpe renewed the treaty of friendship and alliance, of which an abstract was given in my last number. The next year he took a journey into the wilderness, four hundred miles, as the distance was then computed, having been previously invited thither by the Creeks of the Coweta towns. There he was received with the greatest kindness, and had the opportunity of conferring with deputies of the Creeks, Chickasaws, and Cherokees. On the 7th of August, another treaty was made between him and "the assembled estates of all the Lower Creek nation." This may be called

THE SECOND TREATY OF GEORGIA WITH THE INDIANS.

The instrument begins by enumerating the towns and tribes of the Creeks which were represented in the council. The Indians then declared, without a dissenting voice, that they adhered to their ancient love to the King of Great Britain. They next declared, that all the territory from the Savannah to the St. John's, with the intermediate islands, and from the St. John's to the bay of Appalache, and thence to the mountains, "doth, by ancient right, belong to the Creek nation, who have maintained possession of said right against all opposers, by war, and can show the heaps of bones of their enemies, slain by them in defence of the said lands." They further declared, that they were under the protection of the king of England, and would not suffer the Spaniards, or any other nation but the English, to settle upon the territory. They acknowledged that they had granted to the corporation for which Oglethorpe acted 'the lands from the Savannah to the St. John's, and as far

back from the coast as the tide flows.' But they reserved to themselves three islands, and a small district adjoining Savannah.

Oglethorpe engaged, on his part, that the English should " not take any other lands *except those granted by the Creek nation* to the trustees," and that he would punish any person who should intrude beyond the limits. He issued a proclamation immediately afterwards, in which he says : " Know ye, that you are not to take up or settle any lands beyond the above limits *settled by me with the Creek nation.*"

About the year 1747, a man by the name of Bosomworth, having married a half Indian woman, claimed, in her right, all the lands in the possession of the colony, and artfully induced the Creeks to support his claim. He greatly endangered the safety of Savannah, and put all the settlements into the greatest alarm. It is not a little curious, that he instigated the Indians to assert that Oglethorpe and his followers had been merely *tenants at will* of the Creeks from the beginning ; applying the same phraseology to the whites, as the legislature of Georgia has recently applied to the Cherokees, and with much greater plausibility. Although Mr. Stephens, then governor of Georgia, did not admit the claim of Bosomworth and his wife, yet the whole affair evinced that it would have idle and dangerous for the settlers to have pretended any other right to the country, than that which they had acquired with the consent of the natives.*

Before 1760, a destructive war existed between the Cherokees and the colonists of Virginia, the Carolinas, and Georgia. During the contest many cruelties were perpetrated on both sides. The southern States were unable to defend themselves, and applied for aid to General Amherst, commander of the British forces in America, from whom indispensable assistance was twice received. A treaty of peace was at last made between the Cherokees and the colonies, the terms of which I do not find.

Soon after the close of this war, captain Steuart, a sagacious and intelligent man, having been much acquainted with the Indian character, was appointed, by the king, superintendent of Indian affairs for all the territory south of Virginia. He convened a general congress of Indians at Mobile, where he made a long speech to them, addressing the different tribes in succession. At the close of his speech, he said,—

> " 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 for them.* Accordingly all individuals are prohibited from purchasing any of your lands ; but as you know that your white brethren cannot

* It is a remarkable fact, that Bosomworth induced the Creek chiefs, or rather a few of them, to appoint a general agent to transact their business for them, and then inveigled this agent to make a deed to him [Bosomworth] of the three reserved islands, and the small tract near Savannah. After he had occasioned much trouble to the colonial government, he went to England, and commenced a suit on the strength of this Indian grant. The litigation continued twelve years, when one of the islands was adjudged to him. He returned to America, and he and his wife lived and died on the island. From the account of this law-suit, which is given in McCall's History of Georgia, it would seem as though the English tribunals not only admitted the validity of Indian title, but of Indian grants to individuals. Some time afterwards, the King of England prohibited his subjects from making purchases of land from the natives.

feed 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."

It is not necessary to detain the reader with any comments on these declarations of the authorized representatives of the British crown: only let them be compared with the present claims of Georgia.

TREATY OF AUGUSTA; OR FOURTH TREATY WITH THE INDIANS, IN WHICH GEORGIA WAS A PARTY.

A great meeting of chiefs of the Catawba, Cherokee, Choctaw, Chickasaw, and Creek nations, was convened at Augusta, by invitation of the colonists, at which were present Gov. Wright, of Georgia, Gov. Boone, of South Carolina, Gov. Dobbs, of North Carolina, Lieut. Gov. Fauquier, of Virginia, and Capt. Steuart, Superintendent of Indian affairs in the southern department. A treaty was concluded, Nov. 10, 1763, by which a cession of lands was made in satisfaction of debts, which the Indians had contracted with the English. The Cherokees and Creeks united in this grant, which, with what had been previously granted, embraced all the sea-coast of Georgia, and so far back as to make about one-eighth part of the State, as it now appears on the map, or one-twentieth part within the limits, which were fixed by the king of England, for his colony of Georgia, after the peace with Spain of the same year, and which include Alabama and Mississippi.

Having given an account of this treaty, the historian adds, "I believe it may be said of Georgia, that there has been no instance in which lands have been forced from the aborigines by conquest; and that, in all cases, the Indians have expressed their entire satisfaction at the compensations which have been given them for acquisitions of territory." The history was published in 1811.

I most sincerely desire that the historian, who shall write a hundred years hence, may be enabled to say the same thing. It can never be truly said, however, that Georgia has not repeatedly, within a few years past, *threatened* to take the lands of Indians by force, and thus been chargeable with oppressing them, by creating the most serious alarm among them.

The Creek Indians, not being very skilful casuists in distinguishing between rights to real and personal property, interpreted the treaty in such a sense as to give them a right to cattle and horses, which they found straggling in the woods on their lands. They fairly remonstrated with Gov. Wright, however, against the whites permitting their stock to stray over the boundaries. Having occasion to use some horses, which were found there, the Indians took several. A party of the whites, irritated by the loss of their horses, made an irruption into the Creek country, re-took the property, remunerated themselves to their own satisfaction for other losses, and burned all the houses in the towns.

The chiefs came to Savannah and complained of this harsh treatment; the governor made them compensation, and peace was restored. Let the reader decide, which party gave the most evidence of savage manners in this transaction.

In 1773, a convention of Creeks and Cherokees was held at Augusta, when another tract of land was ceded to the colonists, in payment of debts.

When the revolutionary war broke up, the Indians took the side of the mother country. A peace was concluded with the Cherokees by the commissioners of Georgia, at Duet's Corner, South Carolina, May 20, 1777.

Hostilities were afterwards renewed. In May, 1783, the Cherokee chiefs were invited to Augusta, and six distinguished men were appointed by Georgia to negotiate with them. A treaty was concluded on the 30th of that month, establishing the boundary of the Chatahoochy, which remained the line of demarkation between Georgia and the Cherokees till long after the treaty-making power had been given to the general government. It is still the boundary in part.

This treaty was declared to be made between the state of Georgia (then, as averred by that instrument, *in the seventh year of its independence*) and "the head men, warriors, and chiefs of the hordes or tribes of Cherokee Indians, *in behalf of the said nation.*"

The two objects of the treaty were peace and a definite boundary, both of which were obtained on the undisputed basis of the Cherokees being a "*nation,*" and having territorial rights. Why is not Georgia bound by this treaty, made by herself, in the plenitude of her independence, signed by her governor, and by the late Col. Few, who was one of her delegates to form the federal constitution, and by four others of her most valued citizens? Here can be no pretence of encroachment on the rights of Georgia by the national authorities of the United States. The act is exclusively the act of Georgia, performed by her own agents, and for her own benefit.

This treaty, being made on the same principles as the preceding ones, is an implicit attestation to the validity of them all, and should secure the Cherokees the peaceable possession of their country.

P. S. It will be some weeks, Messrs Editors, before I shall offer another communication to your columns. With your permission, I propose, then, to examine the following questions:

How far Georgia is bound by the acts of the general government, in pursuance of the treaty-making power?

How far the Cherokees are implicated in the compact of 1802 between Georgia and the United States?

How far Georgia has assented to treaties actually made between the United States and the Cherokees?

And, in conclusion, having considered the demands of justice, I shall briefly inquire, whether a benevolent and upright man, with a full knowledge of the case, would advise the Cherokees to sell their country, and remove beyond the Mississippi?

Nat. Intell. Oct. 14, 1829.

No. XIX.

Statement of important positions on this subject—Other treaties with Georgia—Treaty-making power of the general government—Are the Indians capable of making a treaty?—Are engagements with them to be called *agreements?*—The Supreme Court cannot pronounce a treaty void—Supposed case of Mr. Girard—Whether the national government can cede the territory of a State.

In the postscript to my last number, I proposed to suspend my communications for some weeks, announcing, at the same time, several topics, which remained to be discussed. This annunciation seems not to have been sufficiently explicit. I must be permitted, therefore, to state, in the use of different phraseology, the points, which ought still to be examined, before the strength of the Cherokee cause can be justly estimated.

Unless I am mistaken, it can be clearly shown,

That the original right of the Cherokees, confirmed and guaranteed by so many treaties, was not, and could not be, affected by the compact of 1802, between Georgia and the United States:

That Georgia so understood the matter, for a quarter of a century after the year 1802, as appears by numerous acts of her legislature:

That the proposed plan for removing the Indians is visionary, and derives no support from experience:

That the proposed guaranty of a new country would not be entitled to confidence; and that the offer of a guaranty, in present circumstances, would be esteemed by the Cherokees a cruel insult:

That the actual removal of the southwestern tribes, would, in all probability, be followed by great evils to them, without any corresponding benefit to them, or to others; and

That a conscientious man will be very cautious how he advises the Indians to yield their unquestionable rights, and to commit all their interests to the issue of a mere theoretical experiment, which, to say the least, is very likely to fail, and for the failure of which there can be neither remedy nor indemnity.

It has appeared, that the colony of Georgia, (with the cognizance of the British government,) and the State of Georgia, in the days of her youthful independence, negotiated with the Creeks and Cherokees on the undisputed basis, that these Indians were nations; that they had territorial and personal rights; that their territory was in remain in their possession, till they should voluntarily surrender it; and that treaties with them are as truly binding, as treaties are between any communities whatever. Such is the aspect of all the transactions, in relation to this subject; and no candid reader of history can avoid these conclusions. Seven formal treaties, all possessing these general characteristics, have been already mentioned. The last of them was dated in the year 1783, just fifty years from the first settlement of the colony. It is probable, that, within this period, many subordinate negotiations were held.

The treaty of Galphinton was formed in the year 1785, and is not unfrequently referred to. The next year, a treaty of peace was made

between Georgia and the Creeks. I have not been able to find these two documents, nor to ascertain the provisions which they contain. Quotations made from them on the floor of Congress by a representative of Georgia, leave no room to doubt, that they are of the same general character, as the treaties which preceded them.

In 1787 the federal constitution was formed, by which the power of making treaties was conferred on the President and Senate of the United States. As this was a subject of great importance, the framers of the constitution not only took care (Art. III. section 2) to assign the treaty-making power of the general government, but to inhibit (Art. I. section 10) the several States from entering into "any treaty, alliance, or confederation." Since the constitution was adopted, no State has negotiated with Indians. All public measures respecting them have fallen within the scope of the powers vested in the general government.

Georgia, in her character of a sovereign and independent State, adopted the constitution, and thus became a member of the Union. She must be bound, therefore, by all acts of the President and Senate, which are performed by virtue of powers conferred in the constitution. Very recently, some of her public men have asserted, that the United States have neither the power to make treaties with Indians, nor to cede any part of the territory of a State.

The power to make treaties with Indians is denied on the ground, that treaties can be made with *nations only;* and that communities of Indians are not *nations.* Unfortunately for this theory, it was notoriously invented to answer a particular purpose. It is not, and cannot be, entitled to the least degree of credit. Communities of Indians have been called nations, in every book of travels, geography, and history, in which they have been mentioned at all, from the discovery of America to the present day. Treaties have been made with them, (uniformly under the *name* of treaties,) during this whole period. The monarchs of Europe, and the colonies of Europeans, were perpetually making treaties with Indians, in the course of the 17th and 18th centuries. The colony of Georgia always spoke of the Creek and Cherokee *nations;* and the compacts, which she made with them, she called *treaties.* The framers of the constitution must be supposed to have used language in its ordinary acceptation. When the constitution speaks of a *treaty,* it certainly embraces every sort of compact, which the universal voice of mankind had designated by that name.

It would seem, according to the present doctrine of Georgia politicians, that civilized people may be called nations and can make treaties; but uncivilized people are to be called savages, and public engagements with them are to be denominated——*what* such engagements are to be denominated, we are not as yet informed. There must be a new code of national law, and a new set of writers upon it, in order to help Georgia out of her present imagined difficulties—I say *imagined,* because there is no real difficulty; not the slightest. What are the distinctive marks of a civilized people, and who is to decide whether these marks are found in a given case, are matters unexplained. Nor are we told in what respects treaties between

civilized nations are to be interpreted differently from public engagements with an uncivilized people.

A representative from Georgia said in his place last winter, that these "agreements with the Indians had improperly been called treaties." (Let it be borne in mind, that Georgia herself *always called them treaties.*) In a subsequent part of his speech, he spoke of the "bad faith" of the Creeks, in not observing the stipulations, which they had made in these "agreements;" and to this alleged *bad faith*, he gave the additional hard names of "*fraud and perfidy.*" We may gather, therefore, the conclusion, that savages are bound by their *agreements*, though these agreements must not be called *treaties*. It is contended, however, that the United States are *not* bound by *their* agreements with the Cherokees, because the United States cannot, in their federal capacity, make *agreements with savages*, although the general government has the exclusive power of making *treaties with civilized nations:* the whole of which philosophy and logic, when thoroughly digested and concocted, amounts to this;—that treaties between civilized nations bind both the parties; but that agreements with savage tribes, while they bind the savages, on the penalty of extermination, to observe every one of their engagements, leave civilized parties to break every one of *their* engagements, or "*agreements*," whenever it suits their pleasure, or their interest, to do so. This is the morality to be incorporated into the new code of national law, with another section declaring, that all parties to an *agreement*, even though it be called a *treaty*, have the perfect right to decide whether they are themselves civilized, or not, and whether other parties are uncivilized or not.

It is by no means favorable to this theory, that Washington, Hamilton, and Jefferson had the temerity, (following the uninterrupted current of example and authority, which had come down from the discovery of America,) to treat with Indians as nations, and to consider engagements with them as being treaties, within the meaning of the constitution. From the origin of our general government to the present day, every President of the United States, not excepting the present incumbent, has used the words treaty and nation, in precisely the same manner; and every Senate has confirmed the universal use.

Besides, the President and Senate must decide, from the nature of the case, what is a treaty, and what is not. Even the Supreme Court cannot pronounce a document not to be a treaty, which the President and Senate have pronounced to be one; for the constitution expressly declares treaties to be "the supreme law of the land, and the judges, in every State, to be bound thereby." If treaties are the supreme law, they cannot surely be pronounced null and void by any judicial tribunal.

Again, if the President and Senate should be justly chargeable with a mistake, in extending the treaty-making power to a subject, to which it was not properly applicable; and if the Supreme Court *might* decide, that a certain document, purporting to be a treaty, is only an agreement between the President and Senate of the United States and another party, although both parties had long understood it to be a treaty, and had observed it as such;—in such a case, what would honor

and justice require? Should the people of the United States take advantage of a blunder made by their highest functionaries, and long acquiesced in? especially if the other party had reposed entire confidence in the validity of the proceeding, and had made important sacrifices in fulfilling his stipulations?

Suppose, for instance, that an agent of the United States had bought ships of Mr. Girard, for public purposes, to the amount of $100,000, and the contract had been sent to the Senate and ratified as a treaty. Here would have been a great blunder, no doubt; but is Mr. Girard to suffer by it? When he applies for payment, is he to be told, that the contract with him has improperly been called a treaty; that the President and Senate have no power to make treaties on such subjects; and that, therefore, he cannot be paid for his ships? Mr. Girard would be not a little amazed at this; and might naturally enough exclaim, that, in all his intercourse with mankind, he had never before met with so impudent, and so foolish, an attempt to cheat. As he grew cooler, he might say: "You have had my ships, and sent them to sea. You engaged to pay me for them. If you called the contract a *treaty*, the name is one of your own choosing. Nor had I any thing to do with sending it to the Senate. I sold my ships to an authorized agent of the government, and he engaged that I should be paid for them. If the transaction is not a treaty, it is at least *a fair bargain*; and that is enough for me. I expect honest men, whether public or private, willingly to execute their bargains; and, as to dishonest men, I shall do all in my power to *hold them to their bargains*, whether they are willing, or not."

So the Cherokees may plead, that it was not for them to judge, as to the extent of the treaty-making power. They made an agreement with men, who represented their Father, the President. They supposed the President to know the extent of his own powers. At any rate, they relinquished land, and gave up many advantages, for the sake of a solemn guaranty in return. If the agreement which they made, was not a treaty, it was *an obligatory contract;* and they have a right to expect, and to demand, that the contract shall be fulfilled.

The politicians of Georgia contend, that, even if the United States have power to make treaties with Indians, still, they have no power to cede away the territory of a State. This objection cannot be supported, in any sense. But it is plausible; and the whole plausibility rests in a mere sophism. The United States have never ceded, nor attempted to cede, any part of the territory of Georgia. They simply guaranteed to the Indians their original title; or, in other words, the United States solemnly engaged to the Indians, that no human power should deprive them of their hereditary possessions, without their own consent. This was no encroachment upon the rights of Georgia; nor did it relate at all to the territory of Georgia; which territory embraced those lands only, that had been previously obtained from the Indians. If the treaty of Holston were an encroachment upon the rights of Georgia, why was no complaint made at the time? The senators from Georgia were in their seats; and the citizens of Georgia were never charged, I believe, with passively surrendering their rights. Why, then, was no complaint made for more than thirty-five years?

But it is perfectly clear, that the United States *may* cede the territory of any State in the Union by treaty. Such an event may be very improbable; I care not if you say it is morally impossible, that the President and Senate should ever cede any part of what is really, and truly, the territory of a State. Yet, if such an event should take place, the transaction would not be void for want of constitutional power. The general government has the power to make treaties without limitation. Of course, treaties may be made by the United States, on all subjects which are frequently found in treaties of other nations. But there is scarcely a more common subject of treaties, in every part of the world, than a cession of territory. How are foreign nations to know the extent of our treaty-making power? If our President, and two-thirds of our Senators, will cede any part of our territory, there is no help for it. Our security lies, not in their want of power to do this; but in their want of inclination.

If the United States had ceded to England, all that part of the State of Maine, which was in possession of the British forces at the close of the last war, how can it be pretended that the treaty would not be binding? Indeed, at this very moment, there is a dispute about the boundaries of Maine. If the king of the Netherlands should egregiously mistake, in deciding the question now referred to him, which I admit to be very improbable;—still, if he *should* mistake, the State of Maine will lose 7,000,000 acres of land; and all this will be lost by the operation of the treaty of Ghent.

Proud nations have often been mortified, by being obliged to cede some part of their territory. It is not probable that our mortifications will come from that qnarter. We have, however, not a few permanent causes of severe mortification. If it should be said, five hundred years hence, that in the middle of the nineteenth century the United States were compelled, by an overwhelming force, to cede Staten Island to a foreign power, the fact would not be a thousanth part so disgraceful, as to have it truly said, that the United States adopted from Georgia, the maxim, that *power is right*;* and, in pursuance of that maxim, despoiled an unoffending and suffering people, of those very possessions, which WE HAD SOLEMNLY GUARANTEED TO THEM FOREVER.

No. XX.

Controversy respecting unappropriated lands—Compact of 1802—The United States charged with a failure to execute the compact—The Indians not bound by a compact between third parties—Disappointed expectations of Georgia—The word *peaceably* as much binding upon Georgia, as upon the United States—The public measures of Georgia, till lately, in accordance with the compact—Proclamation of Governor Troup—His opinion of the sacredness of treaties.

From the preceding investigation, it is manifest, that the Cherokees can plead against the claims of Georgia, not only that best of all titles,

* The legislature of Georgia adopted this maxim, in nearly these words, as I shall show in a quotation from a report, approved by that body, in December, 1827.

immemorial occupancy, fortified as it is by the solemn guaranty of the United States, in which guaranty the faith of Georgia is pledged with that of every other State in the Union; but they can plead, also, the repeated and solemn acts of Georgia herself, as an independent State,—acts, which stand forth as most convincing proof, that the national character of the Indians was acknowledged by that State, and their rights of territory regarded as indisputable.

It is contended, however, that the United States are bound *to extinguish the Indian title to all lands*, which are now claimed as belonging to Georgia. This obligation is supposed to be derived from the compact of 1802.

In one of my previous numbers it was mentioned, that a controversy existed, at the close of the revolutionary war, in regard to the question, whether the United States in their federative capacity, or the several States, in their independent character, had the most equitable claim to lands, which had never been settled by whites, and which lay within the chartered limits of the States respectively. This claim, as preferred by either party, was merely the right of purchasing lands of the Indians, to the exclusion of all other purchasers except the claimants, with the right of jurisdiction over the territory, *after it should have been thus purchased.* If, however, there were any lands, which had never come into the actual possession of whites, and which did not belong to any nation of Indians, such lands would be, in the strictest sense, unappropriated, and the possession of them and jurisdiction over them might properly be assumed without delay, by the United States, or the several States, accordingly as the claim should be settled between these parties.

I have nothing to say of the merits of this controversy. As between the United States and Georgia, it was settled by the compact of 1802, which I will now describe.

James Madison, Albert Gallatin, and Levi Lincoln, commissioners of the United States, and James Jackson, Abraham Baldwin, and John Milledge, commissioners of Georgia, executed "a deed of articles and mutual cession," April 24, 1802, of which the following provisions are all that are material to the present inquiry.

The State of Georgia cedes to the United States "all the right, title, and claim, which the said state has to the jurisdiction and soil of the lands," which now appear on the map as the States of Alabama and Mississippi.

The United States engage to pay Georgia $1,250,000, from the first net proceeds of said lands, "as a consideration for the expenses incurred by the said State, in relation to the said territory."

"The United States shall, 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 the county of Talassee," &c. &c. "and the United States shall, in the same manner, also extinguish the Indian title to all the other lands within the State of Georgia."

The United States cedes to Georgia "whatever claim, right, or title, they may have to the jurisdiction or soil of any lands," which are within the chartered limits of Georgia, and east of the present line between Alabama and Georgia.

The great outlines of this compact are,

1. The parties agree upon a division of claims, which they had both made to the same lands.

2. The United States give Georgia a sum of money, not as the price

of lands, nor as the price of claims to land, but "*as a consideration for expenses incurred*" *by Georgia*, "in relation to said territory."

3. The United States engage to extinguish the Indian title to lands within certain limits, "*as early as the same can be peaceably obtained, on reasonable terms*."

Georgia now complains, that the United States have failed to fulfil this compact. But in what does the failure consist? The money has been paid. The Indian title to three quarters of the lands, which belonged to the Indians in 1802, within the intended limits, has been extinguished by the United States, in the manner prescribed; and Georgia is now in actual possession. The remaining quarter has been repeatedly applied for; and the United States have always stood ready to purchase it of the rightful owners, "on reasonable terms." At least, this has been repeatedly and officially declared to be the fact, by public functionaries of the United States. But if Georgia can convict our national authorities of culpable negligence in this respect, let her claim a fair indemnity. In order to a conviction, however, something more than mere assertion will be necessary. The evidence of neglect must be produced. It seems to be morally certain, whether the United States shall be able to vindicate themselves or not, that the remaining lands of the Cherokees cannot be "peaceably obtained" of the rightful owners; and if any indemnity is really due to Georgia, let her receive it.

The reader will not fail to see, that the Creeks and Cherokees could not be in any manner affected, as to their rights of soil and jurisdiction, by a compact, to which they never consented, and in the formation of which they had no agency. If A. covenants with B. for a valuable consideration, that he will purchase the farm of C., as soon as he can obtain it lawfully, and at a reasonable price, this is a good contract, and will remain binding on A., till he discharges himself from it. But it would be absurd to say that C. is bound by such a contract. He may refuse to sell his farm on any terms; or he may ask an unreasonable price for it. In either case, so long as A. stands ready to purchase, at a reasonable price, he cannot be charged with a breach of contract. If he has been culpably negligent, by not taking suitable pains, or making reasonable offers, B. can doubtless claim an indemnity. It would be rather a hard measure upon C., however, to turn him out of his house, and drive him from his farm, merely because he refused to sell his possessions. Such an administration of law would not be much admired, except perhaps in the court of Ahab and Jezebel.

Nor would it alter the case, if A. and B., at the time of making the contract, *expected* that C. would sell his farm, at the first reasonable offer. There might be strong indications, that C. would become an intemperate man, a spendthrift, a sot, a vagrant, and that his farm would speedily pass into other hands: and yet these indications might prove fallacious. C. might become a thrifty husbandman, keep his farm clear of debt, and leave it unincumbered to his heirs. And is he to be blamed, because he turned out to be an industrious man, and thus disappointed the unfavourable prognostications of B., who stood looking upon the farm with covetous eyes?

Georgia says, that she *expected* the United States would have long

since extinguished the title to all the Indian lands, which she claims. Very well. What if she did? The history of every man, and of every community, is full of disappointed expectations. In the spring of 1818, the planters of Georgia expected to get thirty cents a pound for cotton, in many subsequent years; and they made their purchases of land and slaves in that expectation; but they are now glad to get ten cents a pound. This disappointment is a hundred times more felt by each man individually, than the failure to get lawful possession of a tract of indifferent land, in the remotest corner of the state.

The terms of the compact between the United States and Georgia save the rights of the Indians, and were manifestly intended to save them. But if the United States had agreed to take *forcible* possession of the Indian country, and to put Georgia in possession, such an agreement would be absolutely void, for several reasons. First, it would be palpably and monstrously unjust. Secondly, it would be in opposition to previously existing treaties, between the United States and the Indians, which treaties were the supreme law of the land. Thirdly, it would be in opposition to treaties between Georgia and the Indians,—treaties never abrogated nor annulled,—and therefore Georgia could not insist upon its execution.

There is not a more established maxim of English law than this; viz. that unlawful contracts are not binding. If, for instance, A. covenants with B. in consideration of a thousand dollars, that he will *compel* C., by threats, duress, or false imprisonment, to sign a deed of land; and B. should undertake to enforce the covenant in a court of justice, it is probable that both the parties would find themselves in a penitentiary, much sooner than in possession of C.'s land.

It is clear, then, that the United States could not be bound, by the compact of 1802, however that instrument might be understood or construed, to do more than purchase the lands of the Cherokees, within the prescribed limits, whenever the rightful owners should be willing to sell.

But this is not all. A fair interpretation of the compact *binds Georgia* to the same course of proceeding, which had previously been pursued, for the acquisition of Indian lands. This course was perfectly well known to both parties. It was always through the medium of the treaty-making power.

The compact says, that the United States shall *extinguish the Indian title*. The Indians had a *title*, it would seem; and a title of such a kind, as would require the agency of the United States before it could be extinguished. It would not expire of itself; it would not vanish before the march of civilization; but the immense power of the general government must be brought to bear upon it. Even this power might fail; and hence the provision, that the United States should not be bound to do what was impossible, or unreasonable. At that time, it would doubtless have been thought morally impossible for our general government to break plain, positive treaties; or to take forcible possession of lands in the peaceable occupancy of Indians, even though these lands were not protected by treaty. The title was to be extinguished *peaceably*, and *on reasonable terms*. The law of the strongest was not to be relied on. All the parties were to sustain the character

of reasonable beings. There was to be a consent of terms, a union of minds, and not an appeal to the sword. This part of the compact is as truly obligatory, as any other part; and as truly obligatory upon Georgia, as upon the United States.

It was stipulated by the commissioners, that the compact should be binding, if the assent of the legislature of Georgia should be given within six months from the date; provided, that Congress should not, within the same period, repeal the act, by virtue of which the agreement had been made. The legislature of Georgia assented to the compact, and Congress did not repeal the act. The compact therefore took effect.

The enacting clause, by which Georgia ratified the compact, is in the the following words, which ought to be very diligently considered by the leading men of that state: viz.

> "*Be it enacted by the senate and house of representatives of the State of Georgia, in general assembly met, and by the authority thereof*, That the said deed, or articles of agreement and cession be, and the same hereby is and are fully, substantially, and amply ratified and confirmed *in all its parts;* and hereby is and are declared to be *binding and conclusive on the said State, her government and citizens, forever.*"

Now let it be remembered, that the state of Georgia, fully aware that the treaty-making power was vested exclusively in the general government; knowing in what manner that power had been exercised for thirteen years; that no less than eight treaties had previously been made by the general government with Indian nations, residing within the chartered limits of Georgia; that most of these treaties contained cessions of land, and established boundaries of territory, with solemn guaranties; that there was no way of extinguishing the Indian title, except by treaty;—the legislature of Georgia, knowing all these things, solemnly ratified the compact, in accordance with which *the United States only could extinguish the Indian title*, and this could be done *only in a peaceable manner*. The compact containing these provisions was ratified, "*in all its parts*," and declared to be binding on the "*State, her government and citizens, forever.*"

With what shadow of reason, then, can it be pretended. that Georgia has a right to extinguish the Indian title herself, without waiting for the interposition of the general government; or that the Cherokees have *no title to be extinguished*, being merely tenants at will, or tenants by sufferance? When the politicians of Georgia stretch out their grasping hands to seize the property of unoffending Cherokees, let this word *forever*, the closing word of a solemn act of legislation, ring in their ears, till they shrink back from oppression, and betake themselves to that course of equity, which is prescribed in the compact, thus solemnly ratified and sanctioned.

The public measures of Georgia, in relation to the Indians, have all, till recently, been conformed to the principles of this compact of 1802. It is not quite five years since the spurious treaty of the Indian Spring was made; a treaty, which the highest authorities of our nation set aside for manifest fraud. The proclamations and reasonings of the Governor of Georgia, in regard to the effect of this treaty, (on the assumption that it was valid,) are, in the main, correct and proper.

The treaty was made February 12, 1825. On the 22d of March following, Governor Troup issued a proclamation, which commences thus: "Whereas, by a treaty concluded with the Creeks, &c. their claims to the whole territory within the limits of Georgia, were ceded to the United States, &c. by which act the territory aforesaid, according to the stipulations of the treaty and of the articles of agreement and cession of 1802, will, on or before the first day of September, 1826, pass into the actual possession of the State of Georgia:" &c.

In this preamble, some of the principal doctrines, for which I have been contending, are plainly acknowledged or implied. The lands are here admitted to have been *ceded to the United States by a treaty;* and it is declared that they will pass *into the actual possession of Georgia,* eighteen months after the date of the proclamation; not because Georgia, as a sovereign and independent State, had a paramount title to them, nor because it was found written in the laws of nations that these lands belonged to Georgia; but because *the stipulations of the treaty* and the *compact* of 1802, so required.

This is an honest and accurate account of the matter. The United States had purchased lands of the Indians. These lands, when purchased, and after the time for the Creeks to remove from them should have arrived, would "*pass into the actual possession of Georgia,*" for this very good reason; viz. the United States had covenanted, that as soon as lands, within certain limits, could be peaceably obtained, they should be thus obtained, "*for the use of Georgia.*"

In the same proclamation, Governor Troup warns "all persons, citizens of Georgia or others, against trespassing, or intruding upon, lands occupied by the Indians, within the limits of this State, [that is, the lands described in the treaty,] 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 of the United States."

The treaty prescribed, that the Creeks should remove before September of the next year, till which time they were to retain unmolested possession of their country. But some of the citizens of Georgia might feel inclined to take possession earlier. Such a measure the Governor warns them against; assuring them, that it would be a *direct violation of the treaty,* and would bring upon the trespassers and intruders *certain and summary punishment;* and this punishment would fall upon *citizens of Georgia,* as well as others, if they should expose themselves to it. Now, as the treaty of the Indian Spring was justly considered by Governor Troup as a sufficient barrier to protect the Creeks in the possession of their country, till the time fixed in the treaty for their removal, why are not the treaty of Holston, with its solemn guaranty, (1791,) and the first treaty of Tellico, with its repeated guaranty, (1798,) and the treaty of General Jackson, with its recognition of previous treaties, (1817,)—why are not all these compacts a sufficient protection of the Cherokees "against all persons," to use the language of the proclamation, "citizens of Georgia, or others, trespassing or intruding upon the lands occupied by the Indians?"

We may safely gather from the passages here quoted, and the one which is to follow, that Governor Troup found no difficulty in under-

standing the treaty ; that its provisions were, in his opinion, to be rigidly observed ; and that ample powers were in the possession of the public authorities of the United States for punishing " aggressors."

The proclamation continues thus : " All good citizens, therefore, pursuing the *dictates of good faith*, will unite in enforcing *the obligations of the treaty as the supreme law*, aiding and assisting, &c. &c. and all officers, civil and military, are commanded to be vigilant in preventing offences under it, and in detecting and punishing offenders."

In the principles here assumed and enforced I heartily concur. The Governor, who issued his proclamation, is now a member of the Senate of the United States : where he will have the best opportunity *to pursue the dictates of good faith*, and to assert *the obligations of treaties as the supreme law*. Most gladly shall I see him engage in a work, which so well becomes a Senator of our great republic ; and, should he thus engage, he may be encouraged with the thought, that his efforts will not be unsuccessful.

No. XXI.

Gov. Troup's opinion of the effect of treaties—Soil and jurisdiction go together —The Cherokees cannot be secured in the possession of their lands, if they come under the laws of the States—Reasoning of Messrs. Campbell and Meriwether—Select Committee of Congress—Laws of Georgia—Decisions of the Supreme Court—These decisions a defence of the Cherokees.

It is at the present moment a favorite doctrine of Georgia, that the right of soil in the Indian country and of sovereignty over it, is vested in that State*;* and has been thus vested, ever since the peace of 1783. As a consequence of this assumed right, the Senate of Georgia openly declared, in December, 1827, that the State might properly take possession of the Cherokee country by force ; and that it was owing to her moderation and forbearance that she did not thus take possession.

But Governor Troup appears to have been of a different opinion. In his letter to the Secretary of War, dated June 3, 1825, speaking of the treaty, by which he supposed the territory of the Creeks had been ceded, (in which supposition he would have been correct, if the treaty had not been spurious,) he says : " By the treaty of the Indian Spring, the Indian claims are extinguished forever. The article is worded in the present tense. On the instant of ratification, the title and jurisdiction became absolute in Georgia."

Now I humbly conceive, that *if the title and jurisdiction became absolute in Georgia*, as a consequence of the treaty, the inference is inevitable, that neither the title, nor the jurisdiction, was absolute before that event ; and if the *Indian claims were extinguished by the treaty*, there must have been claims in existence, previously to that treaty, capable of being extinguished by it. The Cherokees are now in the same condition, as to title and claims, as the Creeks were, before the treaty of the Indian Spring ; therefore the Cherokees have, at the present time, on the authority of Governor Troup, claims yet to be extinguished by treaty,

and neither the title, nor the jurisdiction, of the Cherokee country, has yet become absolute in Georgia.

Proceeding in his argument, as to the effect of the treaty, Governor Troup says: "Soil and jurisdiction go together; and if we have not the right of both, at this moment, we can never have either by better title. If the absolute property, and the absolute jurisdiction have not passed to us, when are they to come? Will you make a formal concession of the latter? When and how? If the jurisdiction be separated from the property, show the reservation which separates it: 'tis impossible."

The design of this argument was to prove to the general government, that Georgia might properly survey the newly acquired lands immediately; though the Creeks were not obliged to remove till September 1826. The argument is this: By the treaty, the right of soil became absolute in Georgia, and the right of jurisdiction accompanied the right of soil; therefore Georgia might immediately exercise the power of surveying the lands. Without giving any opinion as to the conclusiveness of the Governor's reasoning, it is evident, (and for this purpose I have cited the passage,) that he considered the *title as having passed by means of the treaty.* Consequently, the title, both in respect to jurisdiction and soil, was previously in the Creeks, and not in Georgia; and, of course, the title to the Cherokee country, both in respect to soil and jurisdiction, is now in the Cherokees, and not in Georgia.

I entirely agree with the Governor, that the soil and jurisdiction go together. The letter of the President of the United States to the Cherokees, by which they were assured that they should retain possession of their lands, though they should come under the laws of Georgia, must have been founded altogether in mistake. Where is the power in the general government to secure individual Cherokees in the possession of their lands, after the Cherokee community shall have ceased to exist, and the individuals of which it was composed shall have come under the dominion of four or five different States? The Senate of Georgia has declared, that the Cherokees, as individuals, will not be suffered to retain more than a sixth part of the land, which is now in the possession of the Cherokee community, within the chartered limits of Georgia. And as to that sixth part, how could the President of the United States secure the individuals in the possession of it, or guard against the effect of State laws, which might be designed to operate in such a manner, as should speedily deprive the Indians of what little property they now possess?

In the written communication of Messrs. Campbell and Meriwether, eminent citizens of Georgia, acting as commissioners of the United States, and being exceedingly desirous to obtain a cession of the Cherokee country for the use of Georgia, these negotiators, in the year 1823, say to the Cherokee nation, "The sovereignty of the country which you occupy is in the United States alone. No State, or foreign power, can enter into a treaty or compact with you. These privileges have passed away; and your intercourse is restricted exclusively to the United States."

The doctrine is here plainly asserted, that *the general government only* could treat with the Indians; and that separate States were as really excluded from such an agency, as foreign nations were. This exclusive right of treating, which the commissioners call *sovereignty,* was not an

encroachment upon the natural rights of the Indians, it being a matter of express and positive stipulation with them, perfectly understood by them, and operating for their protection.

A Select Committee of the House of Representatives, in a Report made to Congress, March 3, 1827, cite a passage from a letter, addressed, by the Senators and Representatives in Congress from Georgia, to the Secretary of War, dated March 10, 1824; in which the writers are understood to say, that the Cherokees are "to be viewed as other Indians, as persons suffered to reside within the territorial limits of the United States, [that is, the limits of the peace of 1783,] and subject to every restraint, *which the policy and power of the general government* require to be imposed on them, for the interest of the Union, the interest of a particular State, and their own preservation."

Here it is implied, that whatever restraint is imposed upon the Indians, must be imposed by the general government, as well when "*the interest of a particular State*" is concerned, as when "*the interest of the Union*" is to be affected. This is certainly the only rational construction, which can be given to the whole history of our intercourse with the Indians, since the adoption of the federal constitution.

But there is one more source of evidence on this subject, which is of a still more striking character, and which should set the question at rest, even in the minds of the people of Georgia. It is the constant admission, on the part of that State, in her most solemn acts of legislation, that the Indian lands within her chartered limits, are acquired for her use, through the medium of the treaty-making power, which is vested exclusively in the United States. This is manifest in the very titles of her laws, as well as in the enactments.

The statute book of Georgia contains an act, which was approved by Gov. Troup, June 9, 1825, of which the following is the title: viz.

"An act to dispose of and distribute the lands lately acquired by the United States for the use of Georgia, of the Creek nation of Indians, by a treaty made and concluded at the Indian Spring, on the 12th of February, 1825."

In the first section it is enacted, "That the territory acquired of the Creek nation of Indians, by the United States, for the use of Georgia, as described in articles of a treaty entered into and concluded between commissioners on the part of the United States, and the chiefs, head men, and warriors of the Creek nation of Indians," &c.

This is a perfectly fair statement of the case. If the *territory was lately acquired of the Creek nation*, it manifestly belonged to the Creek nation before it was thus acquired; and if the *territory* belonged to the Creeks, it was plainly under their jurisdiction; for, as Gov. Troup said, in his letter above quoted, which was written only six days before signing this act, "*soil and jurisdiction go together.*" If it was acquired *by the United States*, this was done because, under the federal constitution, as it has been uniformly administered, the United States have the exclusive power of extinguishing Indian title. If it was acquired *by a treaty*, it was because the Creeks, being *a nation*, could dispose of their common property by treaty only. If it was acquired *for the use of Georgia*, then Georgia had not the use previously; but the United States had covenanted with Georgia, that they would obtain this title for her use, as soon as it could be obtained "peaceably" and "on reasonable terms."

Abundant evidence might be adduced to prove that Georgia, till after this period, always admitted the exclusive power of acquiring the Indian territory to be vested in the United States. But additional proof is unnecessary. The man who will not be convinced by the citations already made, must be beyond the reach of conviction.

It has been said, that the Supreme Court of the United States has declared the jurisdiction of the Indian country to be in Georgia. But the decision of the Court, in the only two cases which I have seen quoted on this subject, does not touch the question of jurisdiction, or present title; except that the Court throws out some expressions, which were manifestly intended for the protection of the Indians in their right of occupancy; that is, their right of possessing their own country, to the exclusion of the whites, without limitation of time.

The Court decided, in the case of Fletcher and Peck, that the contingent interest of Georgia in the Indian territory was of such a nature, that it might be granted to individuals, and might not improperly be designated by the technical phrase of *seisin in fee;* though this contingent interest was subject to the Indian title of occupancy, which 'title was certainly to be respected by all courts, until it should have been legitimately extinguished.' 6 Cranch, 142.

In the case of Johnson and McIntosh, the point decided was, that grants of land, by Indian chiefs to individuals among the whites, cannot be sustained by the courts of this country. The reason assigned is, that the rulers of the European nations, the legislatures of the colonies before the revolution, and of the several states, and the United States, since the revolution, have all asserted the exclusive right of the government to extinguish the Indian title. The court did not feel justified in going into the consideration of abstract principles. The question to be decided was a mixed question of national and municipal law, which had been settled by the practice of the governments of Europe and America, from the discovery of this continent to the present time. But the Court was very explicit in admitting the Indian title of occupancy.

After stating, that the governments of Europe agreed among themselves to respect the right of discovery as claimed by each, the court said:

"The exclusion of all other European nations, necessarily gave to the nation making the discovery *the sole right of acquiring the soil from the natives,* and establishing settlements upon it." 8 Wheaton, p. 573.

Again: "They [the original inhabitants] were admitted to be *the rightful occupants of the soil, with a legal as well as just claim to retain possession of it,* and to use it according to their own discretion." p. 574.

Yet, as the Indians could not sell to foreign nations, except to the discoverers and those claiming under them, (this being a matter of agreement among the European nations;) and as they could not sell to private purchasers, (this being a matter of municipal law among the whites, and often of treaty stipulation between whites and Indians,) the natural rights of the Indians were impaired, or rather circumscribed or limited. There was nothing in this limitation, however, of the nature

of usurpation or encroachment. It was a matter of necessity, if perpetual collisions were to be avoided ; and a matter of mutual benefit to colonists from different nations ; and especially of benefit to the Indians. What a scene of strife, enmity, fraud, and bloodshed, would have been exhibited, if English, French, and Spanish colonists had been permitted to make purchases of Indian lands from the same tribe, in the same neighborhood, and at the same time ? And what impositions would have been practised upon Indians by white purchasers, if they had been allowed to make purchases of the natives, without any restraint from the government ? It is both absurd and cruel to construe this necessary limitation of the natural rights of the Indians, (a limitation which was necessary to the protection and security of all parties,) as a denial that the Indians have any rights at all. The court gives no sanction to such an absurdity. Besides the passages already quoted, are several others in accordance with the same principles.

" It has never been contended," says the court, " that the Indian title amounted to nothing. Their right of possession has never been questioned. The claim of government extends to the complete ultimate title, *charged with the right of possession*, and *to the exclusive power of acquiring that right.*" p. 603.

The Indians have the *right*, then, of possessing their country, without limitation of time ; though they are restrained from selling their country to any individuals, or any community, except the general government ; a restraint, which operates altogether in their favour.

Again, the court says : " Such a right [the Indian title of occupancy] is no more incompatible with a seisen in fee, than a lease for years is, and might as effectually bar an ejectment." p. 592.

I consider this passage as most decisively in favour of the *right* of the Cherokees to remain on their land, as long as they please. Most readers of newspapers do not understand terms of law. I must be permitted, therefore, to attempt an illustration of what is, to a lawyer, perfectly plain.

If A. holds land to himself and his heirs forever, he is said to be seized in fee of that land. He may sell an estate, or interest, in the land to B. and his assignee, for a hundred or a thousand years, and yet he will himself remain seized in fee ; because, at the expiration of the hundred, or the thousand years, the land will come again to the possession of his heirs. During all this time, A. and his heirs are seized in fee, and B. and his assigns are tenants for years. Now a decision that Georgia is seized in fee of land within her chartered limits, which land is at present in the possession of the Cherokees, no more proves that the Cherokees are not the " righful occupants of the soil, with a legal as well as just claim to retain possession of it," than the fact that A. is seized in fee of land, of which B. has a good lease to him and his assigns for a term of years, proves that A. may bring an ejectment against B. while the term is unexpired. As, in the latter case, A. and his heirs must wait till the hundred or the thousand years are expired, before they can claim possession ; so, in the case of the Cherokees, Georgia must wait, till they voluntarily dispose of their country, through the medium of the treaty-making power, and then Georgia may take the immediate possession.

There is, indeed, another possible alternative. If the Cherokees should make war upon the United States, they might then, by the laws of nations, be treated as a conquered people. In that case, their country would fall under the full sovereignty of the United States, and by virtue of the compact of 1802, that part of it, which is within the chartered limits of Georgia, would immediately come into the actual possession of Georgia. But so long as the Cherokees act in a peaceable manner, it would be barbarous in the extreme to treat them as a conquered people. I speak without any reference to treaties, and on the supposition that we were bound only by the common obligations of justice and humanity.

It is to be observed, that the court said nothing, in either of these cases, as to the effect or application of treaties. What was said on the subject of the *rightful occupancy* of the Indians, had respect to the naked claims of peaceable Indians, who remained upon the lands of their fathers. How much stronger the case of the Cherokees now is, defended as they are by so many solemn stipulations, must be apparent to every candid mind.

No. XXII.

Report of a joint committee of the legislature of Georgia—Reasoning and morality of the Report—Lands not held against the Indians by discovery alone—Flagitious immorality cannot be legalized—Instance of the slave trade—Law of Georgia, Dec. 20, 1828—Remarks upon it—Who are the persons thus reduced to slavery?—and by whom?

In a quotation, which my last number contained, from a decision of the Supreme Court of the United States, it is said, "That the Indian right of possession has never been questioned;" and that "it has never been contended that their title amounted to nothing." This dicision was pronounced in 1823. Since that time the politicians of Georgia have strenuously contended, that the Indian title amounts to nothing.

In a Report of the Joint Committee of the Legislature of Georgia, whieh was approved by the Senate of that State, December 27, 1827, are found such passages as the following:

The Committee say, that European nations "asserted succesfully the right of occupying such parts" of America, "as each discovered, and thereby they established their supreme command over it."

Again: "It may be contended, with much plausibility, that there is, in these claims, more of *force* than of *justice;* but they are claims, which have been recognized and admitted, by the whole civilized world; and it is unquestionably true, that, under such circumstances, *force* becomes *right.*"

The committee suppose that "every foot of land in the United States is held" by the same title.

The Committee say, that it is contended, that, by the compact of 1802, a *consideration* was contemplated to be paid by the United States to the Indians, for their relinquishment of this title; aud therefore that it was of such a character as was entitled to respect, and as could not be taken from them unless by their consent." The Committee add, "But we are of a different opinion."

"Before Georgia became a party to the articles of agreement and cession, [the

compact of 1802] she could rightfully have possessed herself of those lands, either by *negotiation* with the Indians, or by *force;* and she had determined, in one of the two ways, to do so: but by this contract she made it the duty of the United States to sustain the expense of obtaining for her the possession, provided it could be done upon reasonable terms, and by negotiation; but in case it should be necessary to resort to *force*, this contract with the United States makes no provision: the consequence is, that Georgia is left untrammelled, and at full liberty to prosecute her rights in that point of view, according to her own discretion, and as though no such contract had been made."

The Committee give it as their opinion, "that the right of soil and sovereignty was perfect in Great Britain; that the possession of the Indians was permissive; that they were under the protection of that government; that their title was temporary; that they were mere tenants at will; and that such tenancy might have been determined at any moment, either by negotiation or force, at the pleasure of Great Britain."

The words printed in italics are thus distinguished by the Committee.

It might be difficult to tell which is most remarkable, the reasoning or the morality of these extracts.

The Committee argue, that, as there is no provision in the compact of 1802, by virtue of which the United States are bound to use force upon the Indians, it follows, that Georgia has a right to apply force, whenever she pleases. This is one specimen of the logic. Again: to most people there would seem to be weight in the remark, that, as the Indians were evidently to receive a *consideration* for their lands, they must have a title which should command respect. But no; in view of this statement, the Committee come to a different conclusion. Here is another specimen.

The morality of the doctrines inculcated by the Georgia legislature may be sufficiently understood by the broad positions, that discovery gave absolute title to Europeans; that the title of the original inhabitants was permissive; that it was a mere tenancy at will, (which is no title at all); that the discoverer might determine the tenancy *at any moment*, by negotiation or force; and that, as all European governments are alleged to be agreed in these principles, "*force becomes right.*"

The inhabitants of North America might, therefore, have been rightfully driven into the ocean, "*at any moment*," when the discoverers should have been willing and able thus to drive them. It is to be inferred, that Cortes and Pizarro were only executing the lawful commands of the king of Spain, when they were taking possession of Mexico and Peru, which, according to this doctrine, rightfully belonged to him; though, in doing so, they were under the unpleasant necessity of murdering the original inhabitants.

The Committee are entirely mistaken, in point of fact, when they say, that "every foot of land in the United States is held" by such a title as has been described; that is, a title in the European sovereign, which, on the moment of discovery, supplanted and subverted all the rights of the natives to the lands, on which they were born, and of which they were in full possession. It may be truly said, that there is not, within the limits of the United States, as fixed by the peace of 1783, a single foot of land held, as against the original inhabitants, by the title of discovery alone. Incomparably the largest portion of the territory, within the above mentioned limits, has been purchased of the Indians. Some small portions have been conquered; the original owners have been nearly

exterminated in war, or driven from their lands by a superior force, or compelled to cede them, as the price of a pacification. But in all these cases, the wars had some other origin, than an attempt to enforce the title of discovery. The politicians of Georgia are requested to produce a single instance, after the settlement of the Anglo-American colonies commenced, of any English sovereign, or any colonial governor, or any colonial legislature, or any State Legislature, anterior to the treaty of the Indian Spring, in 1825, having assumed the right of taking forcible possession of Indian country, at any moment, by virtue of the title of discovery, and without any regard to what the Supreme Court has called "the just and legal claim" of the natives to retain possession of their country. The exclusive right *of extinguishing the Indian title*, or what has usually been called the right of pre-emption, is a totally different thing from this all-absorbing and overwhelming right of discovery, on which Georgia now insists. If a single instance of such an assumption can be produced, let it be brought forward. Let us contemplate the circumstances in which it originated, and examine its claims to respect. Thousands of instances can be adduced, on the other hand, of acknowledgments made by emigrants from Europe, and by rulers of every grade from the highest to the lowest;—acknowledgments, which admitted the perfect right of the Indians to the peaceable possession of their country, so long as they chose to retain it.

But if all the governments of Europe had, during the three last centuries, held the doctrine now so warmly espoused by Georgia, how utterly vain would be every attempt to defend it, or to make it appear otherwise than tyrannical, cruel, and abominable. Not all the monarchs of Europe, nor all the writers on the laws of nations,—not all the power and all the sophistry in the world,—could alter its character, or convince an honest, candid, intelligent man, that it is entitled to the least respect. What is this doctrine, so necessary to the present claims of Georgia? It is neither more nor less than the assumption, that the circumstance of an English vessel having sailed along the American coast from Cape Hatteras to the Bay of Fundy, as the case might be, gave the English king an absolute and perfect title, not only to the coast, but to all the interior; and that he might therefore empower any of his subjects to take forcible possession of the country, to the immediate exclusion and destruction of the original inhabitants.

In the history of the slave-trade, we have a perfect exhibition of the total inefficacy of human law to sanction what is flagitiously immoral; especially after the eyes mankind are fixed upon it. For more than two hundred years, the principal powers of Europe legalized the slave-trade. The judicial tribunals of all countries sustained it by their decisions. It was universally established and assented to. But was it right? The voice of the world has pronounced its irrevocable sentence. It is now piracy, and to have been recently connected with it is indelible infamy. But is it more clearly wrong to take Africans from their native land, than it is to make slaves of the Cherokees upon *their* native land? or, on penalty of their being thus enslaved, driving them into exile?

It may be supposed, that this is too strong a representation of the case; and that it would be no very serious calamity to the Cherokees, if they were to come under the laws of Georgia. One would think,

however, that the spirit of the Report, from which quotations have been made, must be an indication of what is to be expected from Georgia, in the way of systematic legislation on this subject.

One law has already been enacted, with the direct view of extending the jurisdiction of Georgia over the Cherokees. It was approved Dec. 20, 1828, and deserves a particular consideration.

The first five sections divide that part of the Cherokee country, which falls within the chartered limits of Georgia, into five portions, attaching each one of these portions to a contiguous county of Georgia. The sixth section extends the laws of Georgia over white residents within the limits above mentioned; and the seventh declares, that, after June 1, 1830, all Indians "residing in said territory, and within any one of the counties as aforesaid, shall be liable and subject to such laws and regulations, as the legislature may hereafter prescribe."

Sec. 8. "That all laws, usages, and customs, made, established, and in force, in the said territory, by the said Cherokee Indians, be, and the same are hereby, on and after the first day of June, 1830, declared null and void.

9. "That no Indian, or descendant of Indian, residing within the Creek or Cherokee nations of Indians, shall be deemed a competent witness, or a party to any suit, in any court created by the constitution or laws of this State, to which a white man may be a party."

Under the administration of this law, a white man might rob or murder a Cherokee, in the presence of many Indians, and descendants of Indians; and yet the offence could not be proved. That crimes of this malignant character would be committed is by no means improbable; but assaults, abuses, and vexations, of a far inferior stamp, would render the servitude of the Cherokees intolerable. The plan of Georgia, is, as explained by her Senate, to seize five sixths of the territory in question, and distribute it among her citizens. If a Cherokee head of a family chooses to remain, he may possibly have his house and a little farm assigned to him. This is the most favorable supposition. But his rights are not acknowledged. He does not keep the land because it is his own; but receives it as a boon from Georgia. He will be surrounded with five white neighbors. These settlers will not be from the more sober, temperate, and orderly citizens of Georgia, but from the idle, the dissolute, the quarelsome. Many of them will hate Indians, and take every opportunity of insulting and abusing them. If the cattle of a Cherokee are driven away in his presence; if his fences are thrown down and his crops destroyed; if his children are beaten, and his domestic sanctuary invaded;—whatever outrage and whatever injury he may experience, he cannot even seek a legal remedy. He can neither be a party, nor a witness. He has no friend, who can be heard in his behalf. Not an individual can be found, who has any interest in seeing justice done him, and who, at the same time has any power to serve him. Even the slaves of his new neighbors are defended by the self-interest of their masters. But he has not even this consolation. He is exposed to the greatest evils of slavery, without any of its alleviations. Every body is let loose upon him; and it is neither the interest, nor the inclination, nor the official duty, of the white settlers to defend him. Every body may destroy his property; but nobody is bound to keep him from

starving, when his property is gone. How long could a Cherokee live under such treatment as this?

Accustomed from his birth to feelings of entire equality and independence, he would find himself, at a single stroke, smitten to the earth, and there held till manacles of a most degrading vassalage were fastened upon him. As soon as the net of Georgia legislation is sprung over him, he is equally and instantly exposed to public persecution and private indignity. He feels himself to be a vagabond, even while standing upon the very acres, which his own hands have laboriously subdued and tilled,—an outlaw, in the house, which he has erected and made comfortable for himself, and which, to a white man, would be a castle,—a trespasser, for innocently treading the soil of his native forests,—an intruder, for drinking the pure water of his native springs, or breathing the air of his native mountains,—a stranger among his neighbors,—an alien, on the spot where he was born.

Who are the human beings, thus suddenly brought into so deplorable and abject a condition? Are they Caffres and Hottentots, skulking through the woods, in a state of nudity, or covered only by a few shreds of tattered sheepskin? Are they runaway slaves, pursued by the vengeance of exasperated masters? Are they Ishmaelites, waylaying the path of inoffensive travellers, and their hands reeking with the blood of recent murders? Are they bands of ruffians, collected from the worst among the discharged tenants of our penitentiaries? Have they invaded our settlements, driven off the inhabitants, and established themselves in an unrighteous possession, of which they are now about to be divested? What is their character, and what is their crime, that their lands are to be divided, and their persons and families to be put beyond the protection of the law?

If they were Caffres, or Hottentots, they should be dealt with kindly; and should be compassionated in their ignorance and degradation. If some of them were Ishmaelites and renegadoes, they should be tried in a regular manner. The innocent should not be punished with the guilty. The guilty should not be punished without a trial; and neither the innocent nor the guilty, should be delivered over to private malice.

How would an intelligent foreigner, a German, a Frenchman, or an Englishman, be astonished to learn, that the Cherokees are neither savages or criminals;—that they have never encroached upon the lands of others;—that their only offence consists in the possession of lands which their neighbors covet;—that they are peaceful agriculturists, better clothed, fed, and housed, than many of the peasantry, in most civilized countries;—that they have sustained diplomatic relations with the whites, at different periods, from the first settlement of the contiguous territory by Europeans;—that these relations have ripened into a firm and lasting peace, which has not been broken by a single act of hostility for forty years;—that the peace thus cemented is the subject of numerous treaties, the bases of which are, a sovereignty of the Ckerokees, limited, in certain respects, by express stipulations, and a guaranty, on the part of the United States, of protection and inviolate territorial limits;—that the treaties have been the foundation of numerous legal enactments for the protection of the

weaker party, whose title has been pronounced, by the highest tribunal in our country, to be worthy of the respect of all courts, till it be legitimately extinguished;—that the Cherokees are not charged with having broken their engagements, or done any thing to forfeit the guaranty, which they had received as the indispensable condition of their grants to the United States;—that they have always been called brothers and children by the President of the United States, and by all other public functionaries, speaking in the name of the country;—that they have been encouraged and aided, in rising to a state of civilization, by our national government, and benevolent associations of individuals; that one great motive, presented to their minds by the government, has uniformly been the hope and expectation of a permanent residence, as farmers and mechanics, upon the lands of their ancestors, and the enjoyment of wise laws, administered by themselves, upon truly republican principles; that, relying upon these guaranties, and sustained by such a hope, and aided in the cultivation of their minds and hearts by benevolent individuals stationed among them at their own request, and partly at the charge of the general government, they have greatly risen to their character, condition, and prospects;—that they have a regularly organized government of their own, consisting of legislative, judicial, and executive departments, formed by the advice of the third President of the United States, and now in easy and natural operation; —that a majority of the people can read their own language, which was never reduced to writing till less than seven years ago, and never printed, till within less than two years;—that a considerable number of the young, and some of the older, can read and write the English language;—that ten or twelve schools are now attended by Cherokee children;—that, for years past, unassisted native Cherokees have been able to transact public business, by written communications, which, to say the least, need not fear a comparison, in point of style, sense, and argument, with many communications made to them, by some of the highest functionaries of our national government;—that these Cherokees, in their treatment of whites, as in their intercourse with each other, are mild in their manners, and hospitable in their feelings and conduct;—and, to crown the whole, that they are bound to us by the ties of Christianity which they profess, and which many of them exemplify as members of regular Christian churches.

These are the men, whose country is to be wrested from them, and who are to be brought under the laws of Georgia without their own consent. These civilized and educated men;—these orderly members of a society, raised, in part by the fostering care of our national government, from rude materials, but now exhibiting a good degree of symmetry and beauty;—these laborious farmers, and practical republicans;—these dependent allies, who committed their all to our good faith, on the "guaranty" of Gen. Washington, the "assurance" of Mr. Jefferson, and the re-assurance of Gen. Jackson and Mr. Calhoun, sanctioned, as these several acts were, by the Senate of the United States;—these "citizens of the Cherokee nation," as we called them in the treaty of Holston;—these fellow Christians, regular members of Moravian, Presbyterian, Baptist, and Methodist churches, *fellow-citizens with the saints and of the household of God*, are to be suddenly

brought under the laws of Georgia, according to which they can be neither witnesses, nor parties, in a court of justice. Under the laws, did I say? It is a monstrous perversion to call such a state of things living under law. They are to be made outlaws on the land of their fathers; and, in this condition, to be allowed the privilege of choosing between exile and chains.

But who are the men, that impose so fearful an alternative? and what is the government, that hesitates to redeem its pledge? Is it some rotten Asiatic despotism, sinking under the crimes and corruptions of by-gone centuries, feeling no responsibility, and regarding no law of morality or religion? Not so. It is a government, which sprung into existence with the declaration "that all men are created equal; that they are endowed by their Creator with certain unalienable rights; that among these are life, liberty, and the pursuit of happiness." From a government thus established, this flagrant wrong is apprehended; and from a people, who boast that they are the freest and most enlightened community on earth; who insist on the right of every community to govern itself; and who abjure the very idea of foreign dictation.

No. XXIII.

Views of benevolent individuals--Supposed inconvenience--Georgia not deprived of her rights—The Cherokee country not of great value—No cause of alarm from *imperium in imperio*--Indian tribes in the older States--Terms, on which the Indian sovereignties should be extinguished—The consent of the Indians—The consent of the United States—Chancellor Kent's decision, with reference to principles of public morality.

There are in our country not a few benevolent individuals, who cheerfully admit that the Indians have a perfect right to the possession of their country; that we are bound by treaties to defend this right; and that the forcible seizure and division of their lands would be an act of enormous injustice: who yet suppose, that the continuance of the Cherokees, where they now are, would be extremely inconvenient to Georgia and to the United States. These persons are inclined to think, that the inconvenience will be found so great, as to amount to a sort of moral necessity; and that, therefore, the sooner the Cherokees consent to a removal, the better it will be for them, as well as for their white neighbours.

An acquaintance with the real state of facts would convince these benevolent individuals, that they are quite mistaken, in regard to the best manner of promoting the permanent good of all parties. The inconvenience, which appears so formidable, is altogether imaginary. It will utterly vanish, at the very moment when the state of Georgia, and other white neighbours of the Indians, shall be inclined to do what is right. If the disposition to take the property of the weak and defenceless and convert it to our own use, is to be dignified with the name of *moral necessity*, we should be aware that such a doctrine subverts the very foundation of law and order.

It is urged, that if the Cherokees remain where they are, Georgia

is deprived of a very valuable portion of land within her chartered limits. But this an abuse of language. Georgia is deprived of nothing. If the Cherokees are compelled to remove, either by physical force, or what is called moral necessity, *they* are deprived of their inheritance; but if they remain, there is no deprivation on either side. An opulent landholder might as well complain, that he was deprived of some excellent land, which would be very convenient to him, and which he expected to have acquired long ago for a trifle; but, to his great surprise, the rightful owner refused to sell. This is a species of privation to which covetous men have always been exposed, in every part of the world. They cannot get all the land that lies contiguous to their possessions; and the larger their domains are, the greater inconvenience do they feel; for the more extensive their limits, the greater is the number of obstinate neighbors, with whom they come into contact. What an inconvenient world do we live in! And what a calamity it is, that there should be so many of the poor, the weak, and the defenceless, who are in perpetual danger of being trodden under the feet of their betters!

Thus it is, that the insatiable desires of men create imaginary troubles. The State of Georgia, exclusive of the Cherokee country, has only six or seven souls, one half of whom are blacks, to each square mile; that is, omitting merchants, traders, and mechanics, less than one white family to two square miles of land. The most remote part of her chartered limits is still in the rightful occupancy of the Cherokees. The land of this portion is far less capable of lucrative cultivation, than the State is generally. I speak not without some knowledge on the subject; and I have made inquiries of others. Let the representatives in Congress from Georgia, if they are personally acquainted with the quality of the land within the Cherokee limits, state frankly how large a part is composed of mountains and barren tracts, which a Georgian would pronounce utterly worthless; how large a part would produce but moderate crops; and how small a fraction would be considered land of a very good quality. Let these things be stated, and it will be found that the Cherokee country is not by any means so valuable, as has commonly been supposed.

It can make no odds as to title, whether the soil be as fertile as the banks of the Ganges, or as barren as the sands of Arabia; but it should be known, that the value of the property here at stake is nothing, compared with the feelings of the Cherokees; not to mention the importance of the principles to be decided. Though the Cherokee country is in a healthful climate, and is a pleasant and comfortable residence for the original inhabitants, the far greater part of it would be left untouched for many years, if exposed to sale in the same manner as the public lands generally of the United States. The interest of Georgia, therefore, is inconsiderable; nor would the prosperity of that State be materially affected, if another acre were never to be added to the territory now in her actual possession.

It has been alleged, that great inconvenience will be experienced by having an *imperium in imperio*:—a separate, independent community surrounded by our own citizens. But in what do these frightful inconveniences consist? A little pacific community of Indians, living among the mountains, attending to their own concerns, and treating all who

pass through their borders with kindness and hospitality, is surely no very great cause of alarm. If there were a territory in possession of a powerful and hostile nation, and in the immediate vicinity of our white settlements, where our rivals and enemies might shelter themselves, while plotting against our peace, and where fugitives from justice could find a refuge, there might be some reason for apprehension ; though even these circumstances would never excuse a violation of treaties. But the Cherokees can never have any interests adverse to our national prosperity. They have solemnly agreed to live under our protection, and to deliver up fugitives from justice. We have by treaty a free navigation of their waters, and a free passage through their country. What more can we reasonably desire ?

But if they were an inconvenience to us, as a consequence of their having been aboriginal inhabitants on this continent, how are these inhabitants to blame ? If we are incommoded, by having a little Indian community in the midst of us, we brought the evil upon ourselves by pushing our settlements into the wilderness, in such a manner as to surround our red brethren. They did not compel us, nor allure us, nor invite us, to such a course of proceeding ; and they are not under the slightest obligation to give up their national existence to save us from this supposed inconvenience, though it were many times greater than it has ever been alleged to be.

The dangers from an *imperium in imperio* are, in the case before us, altogether chimerical. Among our own citizens, we have governments within governments, of all sizes from a school district upwards ; and all sorts of corporations with limited powers. In Great Britain, there is a vast diversity of customs, rights, franchises, and exemptions, peculiar to different towns, boroughs, cities, and counties, and to the larger divisions of the realm. Germany is almost wholly composed of smaller communities, each possessing a limited sovereignty ; and many of them conducting their municipal affairs according to their own discretion. But, (which is more immediately to the purpose,) there have been separate communities of Indians, in most of the older members of our confederacy, from the first settlement of our country ; and no disastrous consequences have followed. At the present day there are, in the State of New York, several small tribes of Indians, living under their own laws, and not partaking of the rights of citizens of the United States. They have been declared, by the highest legal tribunal in that State, to be "not citizens, but distinct tribes or nations, living under the protection of the government." The opinion of Chancellor Kent, which I never saw till all the preceding numbers were in the printer's hands, supports the positions which I endeavoured to establish, in the examination of treaties. Yet the State of New York does not appear to suffer, from having permitted these tribes to remain on their own land ;—to hold it in common ,—to remain exempt from taxes, military duty, and every kind of public burden ;—and to sustain a qualified sovereignty, though surrounded by white neighbours.

If the time shall ever arrive, when these sovereignties may become extinct to the mutual advantage of the Indians and whites, the manner of bringing about such a change will demand the efforts of the most dis-

interested men in our country, and the councils of the wisest. In the mean time, let us hear the advice of Chancellor Kent on the subject.

"When the time shall arrive for us to break down the partition wall between us and them, and to annihilate the political existence of the Indians as nations and tribes, I trust we shall act fairly and explicitly, and endeavour to effect it with the full knowledge and assent of the Indians themselves, and with the most scrupulous regard to their weaknesses and prejudices, and with the entire approbation of the government of the United States. I am satisfied that such a course would be required by prudence, and would become necessary, not only for conscience' sake, but for the reputation of our justice." *Johnson's Reports*, vol. 20, p. 717.

The learned jurist was speaking of the small tribes, in the State of New York, whose domains are now restricted by their own consent to tracts of a few miles square, and whose numbers are reduced to a few hundreds. These tribes, having resigned many attributes of sovereignty which the Cherokees still retain, and living in the midst of a crowded population, may possibly find it for their interest to abdicate the sovereignty, which still remains to them. In such an event, the chancellor lays it down as indispensable, that the government of New York should 'endeavour to effect the change, with the full knowledge and assent of the Indians themselves.' This is, indeed, one of the first dictates, which would be obeyed by an upright and honourable mind: but how much more imperative is it in the case of the Cherokees, who number thousands for the hundreds of Oneidas and Senecas;—who have a sufficient territory, in which they can secure themselves, under the protecting laws of the United States, from molestation on the part of the whites;—who have a regular government of their own, suited to their habits, their condition, and their wants;—and who have their relations with the United States distinctly marked and defined by various treaties. If, however, the Cherokees can be persuaded, by fair and honest arguments, that they will be gainers by giving up their sovereignty, either now or fifty years hence, let their consent be obtained. Let them always be made to feel, that they are free agents;—not in such a sense as the traveller is free, when he delivers up his purse, with a pistol at his breast;—but as truly free as any man, or body of men, who make a contract under the protection of law, and on terms of perfect reciprocity. The Cherokees should, especially at this juncture, be again assured, that they stand behind the shield of the law,—*the supreme law of the land*—which, in a government like ours, should afford a defence not less perfect, and certainly much more convenient, than could be afforded by a cordon of 150,000 bayonets, or a wall of adamant from the earth to the skies.

The chancellor says, also, that this change should be effected, (if at all,) "with the most scrupulous regard to the weaknesses and prejudices" of the Indians. He would not justify the use of cold and unfeeling language, such as: "Indians must always retire from the march of civilization. It is in vain to attempt to save them." He would much sooner lament the frauds, and impositions, which have been practised upon them by profligate and interested white men, and the deficiency of benevolent feeling towards them, on the part of many, who would by no means, tolerate fraud or oppression. Justice requires that it should be

said, however, that most of the legislatures of the older States framed laws for the protection of Indians, with a most benevolent regard to their good, and on the genuine principles of Christianity.

The chancellor says again, that the change should be effected, " with the entire approbation of the government of the United States." This change, be it remembered, had reference to the little tribes, in the State of New York. Yet the highest law character in the State, delivering an opinion before the Senate, sitting as the highest court of law in the State, did not apprehend an impeachment for sacrificing State Rights, when he declared, that if an arrangement should be made on this subject, it should be made " *with the entire approbation of the government of the United States.*" And the Senate, consisting of thirty members, or more, from all parts of the State, supported the reasoning of the chancellor, with but a single dissenting vote. How different a spirit is here, from that which prevails in Georgia!

At the close of the paragraph, which I have quoted, the chancellor recommends this course, not only as the most prudent course, and " *not only for conscience' sake, but for the reputation of our justice.*" Whoever fears God, or regards man;—whoever possesses an enlightened conscience, and feels his accountability to his Maker, or wishes to deserve the confidence and respect of good men, and the gratitude of after times;—such a man, says this learned judge in effect, will take heed, that he deals kindly and justly by the Indians.

Hamilton, who is now admitted, by all parties, to have been an illustrious statesman, and to have felt deeply for the honour of his country, said, respecting treaties, that they are " contracts with foreign nations, which have the force of law, but derive it *from the obligations of good faith.*" [Federalist, No. 75.] He reckoned, as among the qualifications of those who were to make treaties, " *a nice and uniform sensibility to national character.*" These qualifications he expected to find, in men selected by the legislatures of the several States, as representatives of the worth, the dignity, and the character of the country, in the highest branch of our national legislature.

It is one of the most encouraging signs of the present times, that public men are made to feel their accountability to the public, and their obligation to bring their measures of state within the rules of private morality. I speak on a large scale, and not with reference to a single country; much less, in regard to a single administration. This demand of accountability will ultimately be made by the people of every country; and if rulers, whether kings or presidents, parliaments or congresses, perpetrate acts in their public character, which would be perfidious in a private man, they will be pronounced *guilty;* and, in cases of great importance, if thus pronounced guilty by the voice of dispassionate and intelligent men, their names will be consigned to infamy.

The great principles of morality are immutable. They bind nations, in their intercourse with each other, as well as individuals. On this point, I must be indulged with a quotation from Chancellor Kent's Commentaries.

" We ought not therefore to separate the science of public law from that of ethics, nor encourage the dangerous suggestion, that governments are not as strictly

bound by the obligations of truth, justice, and humanity, in relation to other powers, as they are in the management of their own local concerns. States, or bodies politic, are to be considered as moral persons, having a public will, capable and free to do right and wrong, inasmuch as they are collections of individuals, each of whom carries with him, into the service of the community, the same binding law of morality and religion, which ought to control his conduct in private life." Vol. I. p. 2.

"The law of nations, so far as it is founded on principles of natural law, is equally binding in every age, and upon all mankind. But the Christian nations of Europe, and their descendants on this side of the Atlantic, by the vast superiority of their attainments in arts, and science, and commerce, as well as in policy and government; and, above all, by the brighter light, the more certain truths, and the more definite sanctions, which Christianity has communicated to the ethical jurisprudence of the ancients, have established a law of nations peculiar to themselves." p. 3.

Christianity, then, is the basis of the present law of nations.

Another learned judge has recently declared, on a public and solemn occasion, that Christianity is a part of the common law.

"One of the beautiful boasts of our municipal jurisprudence is, that Christianity is a part of the common law, from which it seeks the sanctions of its rights, and by which it endeavours to regulate its doctrines. And, notwithstanding the specious objection of one of our distinguished statesmen, the boast is as true as it is beautiful. There never has been a period, *in which the common law did not recognize Christianity as lying at its foundations*." Judge Story's Inaugural Discourse, p. 20.

If Christianity is the basis of the law of nations and of the common law of the United States, it surely is not out of place, though it should be unnecessary, to remind our lawgivers and judges, that one of the great maxims of Christianity, for the regulation of intercourse among men, is, that *we should do to others whatever we would desire that they, in like circumstances, should do to us.* Let the people of Georgia, and the people of the United States, seriously reflect, whether they should be willing to receive the same treatment, with which the Cherokees are threatened. Would they be content to go into exile, or to come under the laws of a foreign state, with the studied premonition that they could be neither witnesses, nor parties, in a court of justice? Let the appeal be made to conscience; and unless the conscience be buried under impenetrable ignorance, or seared as with a hot iron, the answer cannot be doubtful.

No. XXIV.

Plan for the removal of the Indians—Objections to it—Invented for the benefit of the whites—It speaks too much of generosity, too little of justice—It is visionary—The Indians unwilling to remove—No good place can be found for them—Government cannot fulfil its promises—There can be no guaranty—Privations of a removal, and quarrels afterwards—Where shall they remove next?—If removed, the Indians will not confide in the government—Conclusion.

I have now arrived at my closing number; in which I propose to examine the plan for the removal of the Indians beyond the Mississippi.

This plan, so far as its principles have been developed and sanctioned by the government, is as follows:—

Congress will set apart a tract of country west of the Arkansas ter-

ritory, perhaps 150 miles long and 100 miles broad, and will guaranty it as a perpetual residence of Indians. Upon this tract will be collected numerous tribes, now resident in different States and Territories. The land will be divided among tribes and individuals, as Congress shall direct. The Indians, thus collected, will be governed by white rulers; that is, by agents of the United States; till the time shall arrive, when they can be safely trusted with the government of themselves. At present they are to be treated as children, and guarded with truly paternal solicitude. The United States will bear the expense of a removal; and will furnish implements of agriculture, the mechanical arts, schools and other means of civilization. Intruders will be excluded. Ardent spirits will not be allowed to pass the line of demarkation. And, as a consequence of all these kind and precautionary measures, it is supposed that the Indians will rise rapidly in various respects; that they will be contented and happy in their new condition; and that the government will merit and receive the appellation of benefactors. This is the plan; and the following considerations appear to my mind in the light of objections to it:—

1. It is a suspicious circumstance, that the wishes and supposed interests of the whites, and not the benefit of the Indians, afford all the impulse, under which Georgia and her advocates appear to act. The Indians are in the way of the whites; they must be removed for the gratification of the whites; and this is at the bottom of the plan. But if the Cherokees had been cheerfully admitted, by the inhabitants of Georgia, to possess an undoubted right to the permanent occupation of their country; and if this admission were made in terms of kindness, and with a view to good neighborhood, according to Mr. Jefferson's promise embodied in a treaty;—if such had been the state of things, we should have heard nothing of the present scheme. Is it likely that a plan conceived in existing circumstances, and with the sole view of yielding to unrighteous and unreasonable claims, can be beneficial in its operation upon the Indians? A very intelligent member of Congress from the west declared to the writer of these numbers, that the design of the parties most interested was, to destroy the Indians, and not to save them. I do not vouch for the accuracy of this opinion; but it is an opinion not confined to one, or two, or twenty of our public men. At any rate there is no uncharitableness in saying, that Georgia is actuated by *a desire to get the lands of the Cherokees;* for she openly avows it. As little can it be doubted, that the plan in question is suited to accomplish her desires. It is not common, for a party deeply interested, to devise the most kind and benevolent way of treating another party, whose interests lie in a different direction.

2. The plan is to be distrusted, because its advocates talk much of future generosity and kindness; but say nothing of the present obligations of honor, truth, and justice. What should we say, in private life, to a man, who refused to pay his bond, under hand and seal,—a bond, which he did not dispute, and which he had acknowledged before witnesses a hundred times over,—and yet should ostentatiously profess himself disposed to make a great many handsome presents to the obligee, if the obligee would only be so discreet as to deliver up the bond? Would it not be pertinent to say, "Sir, *be just before you are generous;* —first pay your bond, and talk of presents afterwards."

Let the government of the United States follow the advice given by Chancellor Kent to the State of New York. Let our public functionaries say to the Cherokees ; "The United States are bound to you. The stipulations are plain ; and you have a perfect right to demand their literal fulfilment. Act your own judgment. Consult your own interests. Be assured that we shall never violate treaties." If this language were always used ; if *acknowledged obligations* were kept in front of every overture ; there would be less suspicion attending advice, professedly given for the good of the Indians. It is not my province to question the motives of individuals, who advise the Cherokees to remove. No doubt many of these advisers are sincere. Some of them are officious ; and should beware how they obtrude their opinions, in a case of which they are profoundly ignorant, and in a manner calculated only to weaken the righteous cause. All advisers, of every class, should begin their advice with an *explicit admission of present obligations*.

3. The plan in question appears to me entirely visionary. There has been no experience among men to sustain it. Indeed, theoretical plans of government, even though supposed to be founded on experience gained in different circumstances, have uniformly and utterly failed. So wise and able a man as Mr. Locke was totally incompetent, as the experiment proved, to form a government for an American colony. But what sort of a community is to be formed here ? Indians of different tribes, speaking different languages, in different states of civilization, are to be crowded together under one government. They have all heretofore lived under the influence of their hereditary customs, improved, in some cases, by commencing civilization ; but they are now to be crowded together, under a government unlike any other that ever was seen. Whether Congress is to be employed in digesting a municipal code for these congregated Indians, and in mending it from session to session ; or whether the President of the United States is to be the sole legislator ; or whether the business is to be delegated to a civil or military prefect, we are not told. What is to be the tenure of land ;—what the title to individual property ;—what the rules of descent ;—what the modes of conveyance ;—what the redress for grievances ;—these and a thousand other things are entirely unsettled. Indeed, it is no easy matter to settle them. Such a man as Mr. Livingston may form a code for Louisiana, though it requires uncommon talents to do it. But ten such men as he could not form a code for a heterogeneous mixture of Indians.

If this embarrassment were removed, and a perfect code of aboriginal law were formed, how shall suitable administrators be found ? Is it probable that the agents and sub-agents of the United States will unite all the qualifications of Solon and Howard ? Would it be strange if some of them were indolent, unskilful, partial, and dissolute ? and if the majority were much more intent on the emoluments of office, than on promoting the happiness of the Indians ? One of the present Indian agents, a very respectable and intelligent man, assured me, that the plan for the removal of the Indians was altogether chimerical, and, if pursued, would end in their destruction. He may be mistaken ; but his personal experience in relation to the subject is much greater than

that of any person, who has been engaged in forming or recommending the plan.

4. The four southwestern tribes are unwilling to remove. They ought not to be confounded with the northern Indians, as they are in very different circumstances. The Cherokees and Choctaws are rapidly improving their condition. The Chickasaws have begun to follow in the same course. These tribes, with the Creeks, are attached to their native soil, and very reluctant to leave it. Of this the evidence is most abundant. No person acquainted with the actual state of things can deny, that the feelings of the great mass of these people, apart from extraneous influence, are decidedly and strongly opposed to a removal. Some of them, when pressed upon the subject, may remain silent. Others, knowing how little argument avails against power, may faintly answer, that they will go, *if they must*, and *if a suitable place can be found for them.* At the very moment, when they are saying this, they will add their strong conviction, that no suitable place can be found. In a word, these tribes will not remove, unless by compulsion, or in the apprehension of force to be used hereafter.

5. The Indians assert, that there is not a sufficient quantity of good land, in the contemplated tract, to accommodate half their present numbers ; to say nothing of the other tribes to be thrust into their company, Even the agents of the United States, who have been employed with a special view to make the scheme popular, admit that there is a deficiency of wood and water. Without wood for fences and buildings, and for shelter against the furious northwestern blasts of winter, the Indians cannot be comfortable. Without running streams, they can never keep live stock ; nor could they easily dig wells and cisterns for the use of their families. The vast prairies of the west will ultimately be inhabited. But it would require all the wealth, the enterprise, and the energy, of Anglo-Americans, to make a prosperous settlement upon them. Nor, if the judgment of travellers is to be relied on, will such a settlement be made, till the pressure of population renders it necessary. The most impartial accounts of the country, to the west of Missouri and Arkansas, unite in representing it as a boundless prairie, with narrow stripes of forest trees, on the margin of rivers. The good land, including all that could be brought into use by partially civilized men, is stated to be comparatively small.

6. Government cannot fulfil its promises to emigrating Indians. It is incomparably easier to keep intruders from the Cherokees where they now are, than it will be to exclude them from the new country. The present neighbours of the Cherokees are, to a considerable extent men of some property, respectable agriculturists, who would not think of any encroachment, if the sentence of the law were pronounced firmly in favour of the occupants of the soil. Stealing from the Indians is by no means so common, as it was fifteen years ago. One reason is, that the worst class of white settlers has migrated farther west. They are stated, even now, to hover around the emigrant Creeks, like vultures. It may be laid down as a maxim, that so long as Indians possess any thing, which is an object of cupidity to the whites, they will be exposed to the frauds of interested speculators, or the intrusion of idle and worthless vagrants : and the farther removed Indians are from the

notice of the government, the greater will be their exposure to the arts, or the violence, of selfish and unprincipled men.

Twenty years hence, Texas, whether it shall belong to the United States or not, will have been settled by the descendants of Anglo-Americans. The State of Missouri will then be populous. There will be great roads through the new Indian country, and caravans will be passing and repassing in many directions. The emigrant Indians will be *denationalized*, and will have no common bond of union. Will it be possible, in such circumstances, to enforce the laws against intruders.

7. If the Indians remove from their native soil, it is not possible that they should receive a satisfactory guaranty of a new country. If a guaranty is professedly made by a compact called a *treaty*, it will be done at the very moment that treaties with Indians are declared not to be binding, and for the very reason that existing treaties are not strong enough to bind the United States. To what confidence would such an engagement be entitled ?

It is now pretended that President Washington, and the Senate of 1790, had no power to guaranty to Indians the lands on which they were born, and for which they were then able to contend vigorously, at the muzzle of our guns. Who can pledge himself, that it will not be contended, ten years hence, that President Jackson, and the Senate of 1830, had no constitutional power to set apart territory for the permanent residence of the Indians ? Will it not then be asked, Where is the clause in the constitution, which authorized the establishment of a new and anomalous government, in the heart of North America ? The constitution looked forward to the admission of New States into the Union ; but does it say any thing about Indian States ? Will the men of 1840, or 1850, be more tender of the reputation of President Jackson, than the men of the present day are of the reputation of President Washington ? Will they not say, that the pretended treaty of 1830, (if a treaty should now be made,) was an act of sheer usurpation ? that it was known to be such at the time, and was never intended to be kept ? that every man of sense in the country considered the removal of 1830, to be one of the few steps, necessary to the utter extermination of the Indians ? that the Indians were avowedly considered as children, and the word *treaty* was used as a plaything to amuse them, and to pacify grown up children among the whites ?

If the design is not to be accomplished by a treaty, but by an act of Congress, the question recurs, Whence did Congress derive the constitutional power to make an Indian State, 150 miles long and 100 miles broad, in the heart of this continent ? Besides, if Congress has the constitutional power to pass such an act, has it not the power of repealing the act ? Has it not also the power of making a new State of whites, encircling this Indian community, and entitled to exercise the same power over the Indians, which the States of Alabama and Mississippi now claim the right of exercising over the four southwestern tribes ? Will it be said, that the contemplated Indian community will have been first established, and received its guaranty, and that therefore Congress cannot inclose the Indians in a new State ? Let it be remembered, that the Creeks and Cherokees received their guaranty about thirty years before the State of Alabama came into existence ; and yet

that State claims the Indians within its chartered limits, as being under its proper jurisdiction; and has already begun to enforce the claim. Let not the government trifle with the word guaranty. If the Indians are removed, let it be said, in an open and manly tone, that they are removed because we have the power to remove them, and there is a political reason for doing it; and that they will be removed again, whenever the whites demand their removal, in a style sufficiently clamorous and imperious to make trouble for the government.

8. The constrained migration of 60,000 souls, men, women, and children, most of them in circumstances of deep poverty, must be attended with much suffering.

9. Indians of different tribes, speaking different languages, and all in a state of vexation and discouragement, would live on bad terms with each other, and quarrels would be inevitable.

10. Another removal will soon be necessary. If the emigrants become poor, and are transformed into vagabonds, it will be evidence enough, that no benevolent treatment can save them, and it will be said they may as well be driven beyond the Rocky Mountains at once. If they live comfortably, it will prove, that five times as many white people might live comfortably in their places. Twenty-five years hence, there will probably be 4,000,000 of our population west of the Mississippi, and fifty years hence not less than 15,000,000. By that time, the pressure upon the Indians will be much greater from the boundless prairies, which must ultimately be subdued and inhabited, than it would ever have been from the borders of the present Cherokee country.

11. If existing treaties are not observed, the Indians can have no confidence in the United States. They will consider themselves as paupers and mendicants, reduced to that condition by acts of gross oppression, and then taken by the government, and stowed away in a crowded workhouse.

12. The moment a treaty for removal is signed by any tribe of Indians, on the basis of the contemplated plan, that moment such tribe is *denationalized;* for the essence of the plan is, that all the tribes shall come under one government, which is to be administered by whites. There will be no party to complain, even if the pretended treaty should be totally disregarded. A dead and mournful silence will reign; for the Indian communities will have been blotted out forever. Individuals will remain to feel that they are vassals, and to sink unheeded to despondency, despair, and extinction.

But the memory of these transactions will not be forgotten. A bitter roll will be unfolded, on which *Mourning, Lamentation, and Woe, to the people of the United States* will be seen written in characters, which no eye can refuse to see.

Government has arrived at the bank of the Rubicon. If our rulers now stop, they may save the country from the charge of bad faith. If they proceed, it will be known by all men, that in a plain case, without any plausible plea of necessity, and for very weak and unsatisfactory reasons, the great and boasting Republic of the United States of North America, *incurred the guilt of violating treaties;* and that this guilt was incurred when the subject was fairly before the eyes of the Ameri-

can community, and had attracted more attention than any other public measure since the close of the last war.

In one of the sublimest portions of Divine Revelation, the following words are written :

Cursed be he, that removeth his neighbour's landmark: and all the people shall say, Amen.

Cursed be he, that maketh the blind to wander out of the way; and all the people shall say, Amen.

Cursed be he that perverteth the judgment of the stranger, fatherless, and widow; and all the people shall say, Amen.

Is it possible that our national rulers shall be willing to expose themselves and their country to these curses of Almighty God ? Curses uttered to a people, in circumstances not altogether unlike our own ? Curses reduced to writing by the inspired lawgiver, for the terror and warning of all nations, and receiving the united and hearty *Amen* of all people, to whom they have been made known ?

It is now proposed *to remove the landmarks*, in every sense ;—to disregard territorial boundaries, definitely fixed, and for many years respected ;—to disregard a most obvious principle of natural justice, in accordance with which the possessor of property is to hold it, till some one claims it, who has a better right ;—to forget the doctrine of the law of nations, that engagements with dependent allies are as rigidly to be observed, as stipulations between communities of equal power and sovereignty ;—to shut our ears to the voice of our own sages of the law, who say, that Indians have a right *to retain possession of their land, and to use it according to their discretion*, antecedently to any positive compacts ; and, finally, to dishonor Washington, the Father of his country, —to stultify the Senate of the United States during a period of thirty-seven years,—to burn 150 documents, as yet preserved in the archives of State, under the denomination of treaties with Indians, and to tear out sheets from every volume of our national statute-book and scatter them to the winds.

Nothing of this kind has ever yet been done, certainly not on a large scale, by Anglo-Americans. To us, as a nation, it will be a new thing under the sun. We have never yet acted upon the principle of seizing the lands of peaceable Indians, and compelling them to remove. We have never yet declared treaties with them to be mere waste paper.

Let it be taken for granted, then, that *law will prevail.* "Of law," says the judicious Hooker, in strains which have been admired for their beauty and eloquence ever since they were written,—"Of law there can be no less acknowledged, than that her seat is the bosom of God ; her voice the harmony of the world. All things in heaven and earth do her homage ; the very least as feeling her care, and the greatest as not exempted from her power. Both angels and men, and creatures of what condition soever, each in different sort and order, yet all with uniform consent, admiring her as the mother of their peace and joy."

APPENDIX.

THE SECRETARY OF WAR TO THE CHEROKEE DELEGATION.

Department of War, April 18, 1829.

To Messrs. John Ross, Richard Taylor, Edward Gunter, and William S. Coody, Cherokee Delegation.

Friends and Brothers : Your letter of the 17th of February, addressed to the late Secretary of War, has been brought to the notice of this department, since the communication made to you on the 11th inst. ; and having conversed freely and fully with the President of the United States, I am directed by him to submit the following as the views which are entertained, in reference to the subjects which you have submitted for consideration.

You state that " the Legislature of Georgia, in defiance of the laws of the United States, and the most solemn treaties existing," have extended a jurisdiction over your nation, to take effect in June 1830. That " your nation had no voice in the formation of the confederacy of the Union, and has ever been unshackled with the laws of individual States, because independent of them :" and that consequently this act of Georgia is to be viewed " in no other light than a wanton usurpation of power, guaranteed to no State, neither by the common law of the land, nor by the laws of nature."

To all this there is a plain and obvious answer, deducible from the known history of the country. During the war of the Revolution, your Nation was the friend and ally of Great Britain ; a power which then claimed entire sovereignty within the limits of what constituted the thirteen United States. By the Declaration of Independence, and, subsequently, the treaty of 1783, all the rights of sovereignty pertaining to Great Britain became vested respectively in the original States of the Union, including North Carolina and Georgia, within whose territorial limits, as defined and known, your nation was then situated. If, as is the case, you have been permitted to abide on your own lands from that period to the present, enjoying the right of soil and privilege to hunt, it is not thence to be inferred, that this was any thing more than a permission growing out of compacts with your nation ; nor is it a circumstance whence now to deny to those States the exercise of their original sovereignty.

In the year 1785, three years after the Independence of the States, which compose this Union, had been acknowledged by Great Britain, a treaty at Hopewell was concluded with your nation by the United States. The emphatic language it contains cannot be mistaken, commencing as follows :—" The commissioners plenipotentiary of the United States in Congress assembled, give peace to all the Cherokees, and receive them into favour and protection of the United States of America." It proceeds then to allot and define your limits and your hunting grounds. You were secured in the privilege of pursuing the game, and from encroachments by the whites. No right, however, save a mere possessory one, is, by the provisions of the treaty of Hopewell, conceded to your nation. The soil, and the use of it were suffered to remain with you, while the sovereignty abided precisely where it did before, in those States within whose limits you were situated.

Subsequent to this, your people were at enmity with the United States, and waged a war upon our frontier settlements ; a durable peace was not entered into

with you until 1791. At that period a good understanding obtained, hostilities ceased, and by the treaty made and concluded, your nation was placed under the protection of our Government, and a guaranty given, favourable to the occupancy and possession of your country. But the United States, always mindful of the authority of the States, even when treating for what was so much desired, peace with their red brothers, forbore to offer a guaranty adverse to the sovereignty of Georgia. They could not do so; they had not the power.

At a more recent period, to wit, in 1802, the State of Georgia, defining her own proper limits, ceded to the United States all her western territory upon a condition, which was accepted, " that the United States shall, 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 all the lands within the State of Georgia." She did not ask the military arm of the Government to be employed, but in her mildness and forbearance, only, that the soil might be yielded to her, so soon as it could peaceably be obtained, and on reasonable terms. In relation to sovereignty, nothing is said or hinted at in the compact; nor was it necessary or even proper, as both the parties to the agreement well knew that it was a right which already existed in the State in virtue of the declaration of our independence, and of the treaty of 1783 afterwards concluded.

These things have been made known to you frankly and after the most friendly manner; and particularly at the making of the treaty with your nation in 1817, when a portion of your people stipulated to remove to the west of the Mississippi; and yet it is alleged, in your communication to this department, that you have " been unshackled with the laws of individual States, because independent of them."

The course you have pursued of establishing an independent, substantive government within the territorial limits of the State of Georgia, adverse to her will and contrary to her consent, has been the immediate cause, which has induced her to depart from the forbearance she has so long practised; and in virtue of her authority, as a sovereign, independent State, to extend over your country her legislative enactments, which she and every state embraced in the confederacy, from 1783 to the present time, when their independence was acknowledged and admitted, possessed the power to do, apart from any authority, or opposing interference by the General Government.

But suppose, and it is suggested merely for the purpose of awakening your better judgment, that Georgia cannot, and ought not, to claim the exercise of such power—what alternative is then presented? In reply, allow me to call your attention for a moment to the grave character of the course which, under a mistaken view of your own rights, you desire this government to adopt. It is no less than an invitation that she shall step forward to arrest the constitutional acts of an independent State, exercised within her own limits. Should this be done, and Georgia persist in the maintenance of her rights and her authority, the consequences might be that the act would prove injurious to us, and, in all probability, ruinous to you. The sword might be looked to as the arbiter in such an interference.—But this can never be done. The President cannot and will not beguile you with such an expectation. The arms of this country can never be employed to stay any State of this Union from the exercise of those legitimate powers, which attach and belong to their sovereign character. An interference to the extent of affording you protection, and the occupancy of your soil, is what is demanded of the justice of this country, and will not be withheld; yet in doing this, the right of permitting to you the enjoyment of a separate Government within the limits of a State, and of denying the exercise of sovereignty to that State within her own limits, cannot be admitted. It is not within the range of powers granted by the States to the General Government, and therefore not within its competency to be exercised.

In this view of the circumstances connected with your application, it becomes proper to remark, that no remedy can be perceived, except that which frequently heretofore has been submitted for your consideration—a removal beyond the Mississippi, where alone can be assured to you protection and peace. It must be obvious to you, and the President has instructed me to bring it to your candid and serious consideration, that to continue where you are, within the territorial limits

of an independent State, can promise you nothing but interruption and disquietude. Beyond the Mississippi your prospects will be different. There you will find no conflicting interests. The United States' power and sovereignty, uncontrolled by the high authority of State jurisdiction, and resting on its own energies, will be able to say to you, in the language of your own nation, "the soil shall be yours, while the trees grow or the streams run." But situated where you now are, he cannot hold to you such language, or consent to beguile you by inspiring in your bosoms hopes and expectations which cannot be realized. Justice and friendly feelings cherished towards our red brethren of the forest, demand that, in all our intercourse, frankness should be maintained.

The president desires me to say, that the feelings entertained by him towards your people, are of the most friendly kind ; and that, in the intercourse heretofore, in past times so frequently had with the chiefs of your nation, he failed not to warn them of the consequences which would result to them from residing within the limits of sovereign States.

He holds to them now no other language than that which he has heretofore employed ; and in doing so, feels convinced that he is pointing out that course which humanity and a just regard for the interests of the Indian will be found to sanction. In the view entertained by him of this important matter, there is but a single alternative—to yield to the operation of those laws which Georgia claims, and has a right to extend throughout her own limits, or to remove, and by associating with your brothers beyond the Mississippi, to become again united as one nation, carrying along with you that protection which, there situated, it will be in the power of the Government to extend. The Indians being thus brought together at a distance from their white brothers, will be relieved from very many of those interruptions, which, situated as they are at present, are without remedy. The Government of the United States will then be able to exercise over them a paternal and superintending care, to happier advantage ; to stay encroachments, and preserve them in peace and amity with each other ; while, with the aid of schools, a hope may be indulged that, ere long, industry and refinement will take the place of those wandering habits now so peculiar to the Indian character, the tendency of which is to impede them in their march to civilization.

Respecting the intrusion on your lands submitted also for consideration, it is sufficient to remark, that of these the Department had already been advised, and instructions have been forwarded to the Agent of the Cherokees, directing him to cause their removal ; and it is earnestly hoped that, on this matter, all cause for future complaint will cease, and the order prove effectual. With great respect, your friend, JOHN H. EATON.

RESOLUTIONS OF THE OLD CONGRESS.

The following extracts are taken from the proceedings of the Congress of the Revolution, the most illustrious body of men, in the judgment of Lord Chatham, that ever assembled to deliberate on national affairs. Shall our rulers and our people forget, in the days of our power and prosperity, the pledges which were given, and the solemn promises made, in the hour of our country's peril?

In Congress, *June* 30, 1775, "*Resolved*, That the committee for Indian affairs do prepare proper talks to the several tribes of Indians, for engaging the continuance of their friendship to us, and neutrality in our present unhappy dispute with Great Britain.

In Congress, *July* 12, 1775, " Resumed the consideration of the report of the committee on Indian affairs, and the same being gone through, was agreed to, as follows :

" That the securing and preserving the friendship of the Indian nations appear to be a subject of the utmost moment to these colonies.

"That there is too much reason to apprehend that administration [that is, the British government,] will spare no means to excite the several nations of Indians to take up arms against these colonies; and that it becomes us to be very active and vigilant in exerting every prudent means to strengthen and confirm the friendly disposition towards these colonies, which has long prevailed among the northern tribes, and which has lately been manifested by some of those to the southward."

"That the commissioners have power to treat with the Indians, in their respective departments, in the name and on behalf of the united colonies, in order to preserve peace and friendship with the said Indians, and to prevent their taking any part in the present commotions."

In Congress, July 13, 1775, "*Ordered*, That a talk be prepared for the Indian nations, so as to suit the Indians in the several departments."

In Congress, Sept. 14, 1775, "The commissioners for Indian affairs, in the nothern department, transmitted to the congress the minutes of a treaty, held with the Six Nations, at Albany, in August."

In Congress, Feb. 5, 1776, *Resolved*, That a friendly commerce between the people of the united colonies and the Indians, and the propagation of the gospel, and the cultivation of the civil arts among the latter, may produce many and inestimable advantages to both: and that the commissioners for Indian affairs be desired to consider of proper places, in their respective departments, for the residence of ministers and schoolmasters, and report the same to Congress."

In Congress, March 8, 1776, "*Resolved*, That Indians be not employed as soldiers in the armies of the united colonies, before the tribes to which they belong shall, in a national council, held in the customary manner, have consented thereunto, nor then, without express approbation of Congress."

In Congress, April 10, 1776, "*Resolved*, That the commissioners for 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 schoolmaster to teach their youth reading, writing, and arithmetic; also a blacksmith to do the work of the Indians in the middle department."

In Congress, May, 11, 1776, "*Resolved*, That the standing committee for Indian affairs be directed to take measures for carrying into execution the resolution of the 6th, for holding a treaty with the Indians in the different departments, as soon as practicable."

In Congress, May 27, 1776, "*Resolved*, That the standing committee for Indian affairs, be directed to prepare a speech to be delivered to the Indians, and to procure such articles as they judge proper for a present."

In Congress, Sept. 19, 1776, "*Resolved*, That it be recommended to the inhabitants of the frontiers, and to the officers at all the posts there, to treat the Indians who behave peaceably and inoffensively, with kindness and civility, and not to suffer them to be ill used or insulted."

"As it may be a means of conciliating the friendship of the Canadian Indians, or at least of preventing hostilities from them, in some measure to assist the President of Dartmouth college, in New Hampshire, in maintaining their youth, who are now there under his tuition, and whom the revenues of the college are not, at this time, sufficient to support; that for this purpose, five hundred dollars be paid to the Rev. Dr. Eleazar Wheelock, President of the said college."

In Congress, Oct. 20, 1777, "*Resolved*, That it be earnestly recommended to the president and assembly of the State of Georgia, to use their utmost exertions to cultivate peace and harmony with the Indian nations; and to enable them to effect this salutary purpose, that they forthwith enact laws, inflicting severe penalties on such of their inhabitants as may endeavour to provoke a war, which may endanger the state of Georgia, and entail great injury and expense on the United States."

In Congress, Feb. 2, 1778, "*Resolved*, That the commissioners speak and act in such manner as they shall think most likely to obtain the friendship, or at least, the neutrality of the Indians, and that Congress will support the commissioners in any measures they shall conceive best calculated to answer these ends."

In Congress, May 17, 1779, "*Resolved*, That the commissioners for Indian affairs in the northern department, be directed to consult General Washington

upon all treaties with the Indians, and to govern themselves by such instructions, as he shall give them, relative to any partial or general treaty of peace to be concluded with them." [It would seem that the Old Congress was so simple as really to believe, that General Washington had understanding sufficient to enable him to decide what was a treaty and what was not.]

In Congress, Feb. 21, 1780, "*Resolved*, That the commissioners of Indian affairs in the northern department, be authorized and instructed to take such securities from the hostile tribes of Indians, to ensure the faithful performance of their engagements with the said commissioners, as seem most conducive to the end proposed, in lieu of hostages."

In Congress, Oct. 15, 1783, "*Resolved*, That a convention be held with the Indians residing in the northern and middle departments, who have taken up arms against the United States, for the purposes of receiving them into the favour and protection of the United States, and of establishing boundary lines of property, for separating and dividing the settlements of the citizens from the Indian villages and hunting grounds, and thereby extinguishing, as far as possible, all occasion for future animosities, disquiet, and contention."

In Congress, July 15, 1788, "Whereas it is represented to congress, by the delegates of the State of Georgia, that the principal parts of the frontiers of that State have been for several years past invaded, and kept in a state of alarm by the Creek Indians; that the fighting men of that nation, supposed to amount to not less than six thousand, have been so far instigated by refugees and fugitive traders, who had formerly escaped from these States and taken refuge among them, as to keep up constant and bloody incursions on the different parts of that frontier, and that the settlements of four of the exterior counties are almost entirely broken up:

"*Resolved*, That the superintendant and commissioners for the southern department be instructed, if they shall find it necessary, to notify to the said Indians, that should they persist in refusing to enter into a treaty upon reasonable terms, the arms of the United States shall be called forth for the protection of that frontier."

In Congress, Sept. 1, 1788, "Whereas the United States in congress assembled by their commissions duly appointed and authorized, did, on the twenty-eighth day of November, one thousand seven hundred and eighty-five, at Hopewell, on the Keowee, conclude articles of a treaty with all the Cherokees, and among other things stipulated and engaged by article fourth, 'that 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: [The boundaries are here inserted]. And whereas it has been represented to congress, that several disorderly persons settled on the frontiers of North Carolina, in the vicinity of Chota, have, in open violation of the said treaty, made intrusions upon the said Indian hunting grounds, and committed many unprovoked outrages upon the said Cherokees, who, by the said treaty, have put themselves under the protection of the United States, which proceedings are highly injurious and disrespectful to the authority of the Union, and it being the firm determination of congress to protect the said Cherokees in their rights, according to the true intent and meaning of the said treaty; the U. S. in congress assembled, have therefore thought fit to issue, and they do hereby issue, this their proclamation, strictly forbidding all such unwarrantable intrusions, and hostile proceedings against the said Cherokees; and enjoining all those who have settled upon the said hunting grounds of the said Cherokees, to depart, with their families and effects, without loss of time, as they shall answer their disobedience to the injunctions and prohibitions expressed in this resolution at their peril:

"*Resolved*, That the Secretary of War be, and he is hereby directed, to have a sufficient number of the troops in the service of the United States, in readiness to march from the Ohio, to the protection of the Cherokees, whenever congress shall direct the same; and that he take measures for obtaining information of the best routes for troops to march from the Ohio, to Chota; and for dispersing among all the white inhabitants settled upon, or in the vicinity of the hunting grounds secured to the Cherokees, by the treaty concluded between them and the United States, Nov. 28, 1785, the proclamation of congress of this date."

The foregoing proclamation and resolution are, in the highest degree, honorable to the congress of the United States. Measures of a directly opposite character must therefore be highly dishonorable. A similar proclamation, followed by a corresponding order from the war department, would now afford a perfect shield to the Cherokees.

AN EXAMINATION OF THE CASES OF FLETCHER *vs.* PECK, AND JOHNSON *vs.* M'INTOSH.

The case of Fletcher *vs.* Peck, was decided in the Supreme Court of the United States, in the year 1810. *See Cranch's Reports*, vol. 6. This case touches Indian rights but very obliquely and incidentally. It was a suit brought by one white man against another, on a covenant which related to wild lands in the western part of the chartered limits of Georgia. The Indians were not a party. They had no counsel. The decision of the court was not designed to affect them at all.

It was disputed whether Georgia had such a right in lands within her chartered limits, (which lands were occupied by Indians,) as would authorize the State to make a grant of those lands, subject to the Indian title. The Court decided, that the State had such a right. The calling of this right *a seisin in fee*, was only a consequence of the habit, which all professional men have, of calling new things by old technical names. The fact is, that the right of a community to purchase lands of the Indians, to the exclusion of all other purchasers, has but a very slender resemblance to *a seisin in fee*, that is, an estate to a man and his heirs. The court did not think, however, that the substance of a party's defence should be lost, merely because he had, in his pleadings, used the old technical wards of English law, and applied them in a sense, not in accordance with their original meaning.

That such is the scope of the two last paragraphs of the opinion, delivered by Chief Justice Marshall, will be evident on a moment's reflection. The paragraphs are these:

" Some difficulty was produced by the language of the covenant and of the pleadings. It was doubted whether a State could be seized in fee of lands, subject to the Indian title: and whether a decision, that they were seized in fee, might not be construed to amount to a decision that their grantee might maintain an ejectment for them, notwithstanding that title.

" The majority of the Court is of the opinion that the nature of the Indian title, which is certainly to be respected by all courts, until it be legitimately extinguished, is not such as to be absolutely repugnant to seisin in fee on the part of the State."

The Court here acknowledged an embarrasment from the language of the covenant and pleadings, doubtless alluding to the technical phrase, *seisin in fee*, and confessed an apprehension, that the decision might be construed to mean, that the individuals, to whom the state had granted its right, would recover the land from the Indians, by a writ of ejectment, whenever the grantees should bring such a suit. Against such a construction, however, the Court effectually guarded, by saying, that "the Indian title is certainly to be respected by all courts until it be legitimately extinguished."

In other words, the Indian title is not in the least affected by this decision. Whenever it shall be extinguished, it will be extinguished according to the constitution and laws of the United States, and the treaties with the Indians.

That this is a fair account of the decision, in the case of Fletcher and Peck, so far as relates to the question now before the public, appears to us perfectly clear. But if we have mistaken the meaning of the Court, we hold ourselves open to conviction, whenever that meaning shall be more satisfactorily stated.

In the mean time, let those who are alarmed for the Indians, because their title to their country is " *only the right of occupancy*," be comforted with the reflection, that, by virtue of this right, the Cherokees may *occupy* the lands of their fathers till the end of the world, unless they shall voluntarily sell these lands to the United States, for the use of Georgia. Their right of occupancy

reaches back to time beyond the memory of man. This is as good a title, in its own nature, as any title that can be conceived. Blackstone says, "It is agreed on all hands, that occupancy gave the original title to the permanent property in the substance of the earth itself, which excludes every one else but the owner from the use of it." And the right to *occupy their country forever* has been solemnly and repeatedly guaranteed to the Cherokees, by the highest authorities of our nation.

It is said they have *only* the title of occupancy, because they cannot sell their lands, except to the United States, and in a prescribed manner. Nor can they give away their lands, except to the United States. Their rights are restrained in regard to the sale, or cession, of lands, for two good reasons. 1. They have solemnly agreed with the United States, that they will not sell, or cede their lands, except as above mentioned. This was a fair stipulation, which they had full power to make, and which was intended to be, and actually is, for their benefit. 2. The United States have forbidden the whites to purchase of the Indians, which the United States had a perfect right to do, and which was done for the protection of the Indians. Foreign nations are, of course, excluded from passing our national boundaries; and all the large tribes of Indians have covenanted not to form any connexion with foreigners, which shall be inconsistent with living under the protection of the United States.

In the case of Johnson and M'Intosh, which was decided in 1823, the Supreme Court thus expressed itself:—

"It has never been doubted that either the United States or the several States had a clear title to all the lands within the boundary lines described in the *treaty*, [of 1783] *subject only to the Indian right of occupancy*, and that the exclusive power to extinguish that right was vested in that government which might constitutionally exercise it."—8 *Wheaton's Reports*, *p.* 585.

The question, in the case of Johnson and M'Intosh, was, whether grants of land in the wilderness, which is now the state of Illinois, made to private purchasers, citizens of Virginia, in the years 1773 and 1775, by chiefs of the Illinois and Piankeshaw tribes of Indians, are good and valid grants, binding on the courts of the United States. The court decided, that such grants were not valid; and, in the course of the decision, went somewhat at length into the consideration of Indian title. We can confidently declare it as our opinion, that, in this very elaborate and candid discussion, the Court advanced nothing which has an unfavourable bearing upon the claims of the Cherokees.

The Court said, indeed, that "the United States, or the several states, have a clear title to all the lands within our national limits." What the Court meant by a "clear title," is abundantly explained to be the *exclusive right of acquiring the Indian lands.* European nations, the colonies of Europeans, and the independent states of North America, have all claimed that the *government*, to the exclusion of private purchasers, has the right of acquiring the possession of Indian territory; and that foreign nations could not intrude upon the discoveries of each other respectively. These principles have been so constantly asserted by all the governments above mentioned, that they have become principles of established law; and the Court is bound by them, and cannot go into the consideration of the principles of abstract justice. That is, as we all know, it is the duty of the Court to declare what the law is, and apply it—not to make the law. The "clear title," then, which the government has to Indian lands, comprises. first, the power of excluding foreign nations from intruding upon these lands; secondly, the power of forbidding private men from purchasing them; and thirdly, since the adoption of the federal constitution, the exclusive power of the general government to extinguish Indian title by treaty. All these claims of the government have been admitted by the Cherokees, Creeks, Chickasaws, and Choctaws, in the various treaties now in force. The Indians make no complaint, in regard to these claims. Though their natural rights are circumscribed in this manner, yet they very well know it is for their benefit; and they would be the first to desire, that their communities might be defended from the intrigues of foreign nations, and the frauds of private speculators. They would no more think of complaining that their natural rights are limited,

by the claims of the United States, and the stipulations made, for the benefit of both parties, in accordance with those claims, than the people of the United States generally would think of complaining, that the rights of the several states are abridged by the powers given to the general government.

In the passage quoted from Wheaton's Reports, the Court said that the title of the United States was *subject to the Indian right of occupancy*. What is meant by a *right of occupancy?* Let the reader look again into Wheaton, p. 574, and he will find, that the Court said of the "original inhabitants" of this continent generally, "They were admitted to be the rightful occupants of the soil, *with a legal as well as just claim to retain possession of it*, and to use it according to their own discretion."

This is said, be it remembered, respecting Indians generally, found in their native condition, and undefended by any guaranty of territory, or any express stipulation in their favor. The Indians, then, have the *right* of *occupying* their country, of *retaining possession of it*, of *using it according to their discretion*, and thus far they have a *legal* as well as *just* claim. But they cannot sell, except to the government.

Here we have a clear distinction between the rights of the Indians and the rights of Europeans, as fixed by Europeans themselves, and a thousand times admitted by different tribes of Indians. The original inhabitants have the right of occupying their country, and using it, as long as they please, according to their discretion; the descendants of Europeans have confided to their government the exclusive power of extinguishing the Indian title.

These principles are sufficient for the absolute defence of the Cherokees, so long as they behave peaceably, and are not disposed to sell their country. But over and above all this, the United States have *solemnly* guaranteed to them all their lands;—have covenanted to expel intruders;—have made laws for this purpose;—and have, in a hundred instances, admitted that the Cherokee country was under Cherokee jurisdiction, and irresistibly implied, that it was not under the jurisdiction of Georgia. The same thing has been implied, in numberless instances, in the language of the Legislature and Executive of Georgia, as could easily be shown, if our limits permitted. These agents of the State have always been in the habit of distinguishing between the "chartered limits," or the "conventional limits," and the actual limits of the State. It is not five years since Governor Troup wrote a letter to the Secretary of War, in which he argued, that the soil and jurisdiction of the Creek country went together; and that both "passed" to the State of Georgia by the treaty of the Indian Spring. If soil and jurisdiction passed to Georgia by treaty, it requires no conjuror to say, that they were not in Georgia before the treaty was made; and, of course, that the soil and jurisdiction of the Cherokee country, concerning which no treaty of cession has been made, are not in Georgia.

We make two more quotations from the opinion of the Court, in the case of Johnson and M'Intosh:—

"It has never been contended, that the Indian title amounted to nothing. Their right of possession has never been questioned. The claim of government extends to the complete ultimate title, charged with this right of possession, and to the exclusive power of acquiring that right." p. 603.

We understand the Court here as declaring, that all the world admits the right of the Indians to retain their possession. The government claims the sole power of acquiring of the Indians their unquestioned right of possession; but this claim of the government is always to be understood as charged, or incumbered, with the existing occupancy of the Indians. In other words, the right of the Indians to occupy their country as long as they please, is in no wise diminished or affected, by the claim of the government to be the exclusive purchaser; and the claim of exclusive purchase, or, as it has usually been called, this right of pre-emption, is the "ultimate title," of which the Court speaks.

Again: "The absolute ultimate title has been considered as acquired by discovery, subject only to the Indian title of occupancy, which title the discoverers possessed the exclusive right of acquiring. Such a right [that is, the

Indian title of occupancy] is no more incompatible with a seisin in fee, than a lease for years is, and might as effectually bar an ejectment." p. 592.

Common readers, not being acquainted with legal terms, cannot take the force of this quotation. Let us explain it. If Mr. Prime holds a house in Wall-street to himself and his heirs for ever, he is said to be seised in fee of that house. He may make a lease of the house, for a valuable consideration, to the corporation of the Merchants' Exchange, for the term of a thousand years, and the corporation may take possession : still Mr. Prime is seized in fee of the house, and has the ultimate title to him and his heirs. The lease of the house for a thousand years may be worth $100,000; and Mr. Prime's "ultimate title" which is to be enjoyed by his heirs a thousand years hence, would not probably sell at auction for enough to pay a lawyer for making a deed.

Now the Court, in effect, say, reverting to the doctrine laid down in the case of Fletcher and Peck, "The decision that the right of pre-emption, which the United States are to exercise for the use of Georgia, may be technically called *a seisin in fee*, no more proves that Georgia may take possession of the Cherokee country and drive out the natives, or that the grantees of Georgia may bring a suit of ejectment against the Indians, and thus get possession, than the fact that Mr. Prime is seised in fee of a house in Wall-street, would prove that he might bring an ejectment against the corporation of the Merchants' Exchange, when he had himself put the said corporation in possession of the premises, by a lease for a thousand years."

The Cherokees might "as effectually bar an ejectment," to use the very words of the Court, by pleading that possession, to which they have a *legal* and *just* claim, as, in the case supposed, the Merchants' Exchange could resist the suit of Mr. Prime, by pleading his own lease for a thousand years.

It is natural that people should mistake in regard to the decision of the Court, by the mere *sound of the words used;* that is, by taking the popular meaning of words, rather than the legal and technical meaning. Thus, for instance, the "undoubted title" and the "ultimate title" of an acre of land bordering on Wall-street, might not be worth five cents; because it might be charged or incumbered, with "*the mere right of occupancy*," for a certain period, which right of occupancy might be worth a million of dollars. But as to any mistakes of this kind, the Court is not in fault. In making legal decisions, it is often a matter of necessity that technical words should be used.

The Court was not called in either of the cases cited, to say any thing about treaties with the Indians; but should these treaties ever come before the Court, it will be seen that the "*judges*" of this Court, and of every other Court in the United States, are as much "*bound*" by them, as by the constitution itself.—*N.Y. Observer.*

EXTRACTS FROM THE OPINION OF CHANCELLOR KENT, IN THE CASE OF GOODELL *vs.* JACKSON. *Johnson's Reports*, vol. xx. page 693.

Indians not under the laws of New York.

"The Oneidas, and the other tribes composing the six nations of Indians, were, originally, free and independent nations. It is for the counsel, who contend that they have now ceased to be a distinct people, and become completely incorporated with us, and clothed with all the rights, and bound to all the duties of citizens, to point out the precise time when that event took place. I have not been able to designate the period, or to discover the requisite evidence of such an entire and total revolution. Do our laws, even at this day, allow these Indians to participate equally with us, in our civil and political privileges? Do they vote at our elections, or are they represented in our legislature, or have they any concern, as jurors or magistrates, in the administration of justice? Are they, on the other hand, charged with the duties and burthens of citizens? Do they pay taxes, or serve in the militia, or are they required to take a share in any of the details of our local institutions? Do we interfere

with the disposition, or descent, or tenure of their property, as between themselves? Do we prove their wills, or grant letters of administration upon their intestates' estates? Do our Sunday laws, our school laws, our poor laws, our laws concerning infants and apprentices, or concerning idiots, lunatics, or habitual drunkards, apply to them? Are they subject to our laws, or the laws of the United States, against high treason; and do we treat and punish them as traitors, instead of public enemies, when they make war upon us? Are they subject to our laws of marriage and divorce, and would we sustain a criminal prosecution for bigamy, if they should change their wives or husbands, at their own pleasure, and according to their own customs, and contract new matrimonial alliances? I apprehend that every one of these questions must be answered in the negative, and that on all these points they are regarded as dependant allies, and alien commuuities." pp. 709, 710.

"In my view of the subject, they have never been regarded as citizens or members of our body politic, within the contemplation of the constitution. They have always been, and are still considered by our laws as dependent tribes, governed by their own usages and chiefs, but placed under our protection, and subject to our coercion, so far as the public safety required it, and no farther." p. 710.

Indians always considered as separate communities.

"Through the whole series of our colonial history, these Indians were considered as dependent allies, who advance for themselves the proud claim of free nations, but who had voluntarily, and upon honourable terms, placed themselves and their lands under the protection of the British government. The colonial authorities uniformly negotiated with them, and made and observed treaties with them, as sovereign communities, exercising the right of free deliberation and action; but, in consideration of protection, owing a qualified subjection, in a national, but not in any individual capacity, to the British crown.

"No argument can be drawn against the sovereignty of these Indian nations from the fact of their having put themselves and their lands under British protection. Such a fact is of frequent occurrence in the transactions between independent nations.

"One community may be bound to another by a very unequal alliance, and still be a sovereign state. Though a weak state, in order to provide for its safety, should place itself under the protection of a more powerful one, yet according to Vattel, (B. 1. ch. 1. s. 5. and 6.) if it reserves to itself the right of governing its own body, it ought to be considered as an independent state. There are several kinds of submission, says this same jurist. (B. 1. ch. 16. s. 194.) The submission may leave the inferior nation a part of the sovereignty, restraining it only in certain respects, or it may totally abolish it, or the lesser may be incorporated with the greater power, so as to form one single state, in which all the citizens will have equal privileges. Now, it is very apparent, from our whole history, that the submission of the six nations has been of the former kind, and that as an inferior nation, they were only restrained of their sovereignty in certain respects. Though born within our territorial limits, the Indians are considered as born under the dominion of their tribes. They are not our subjects, born within the purview of the law, because they are not born in obedience to us. They belong, by birth, to their own tribes, and these tribes are placed under our protection, and dependent upon us; but still we recognize them as national communities. In this situation we stood in relation to each other at the commencement of our revolution.

"The American Congress held a treaty with the six nations in August, 1775, in the name, and on behalf of the United Colonies, and a convention of neutrality was made between them. 'This is a family quarrel between us and old England,' said the agents, in the name of the colonies; 'you Indians are not concerned in it. We desire you to remain at home, and not join either side.' Again, in 1776, Congress tendered protection and friendship to the Indians, and resolved, that no Indians should be employed as soldiers in the armies of the United States, before the tribe, to which they belonged, should, in a national council, have consented thereunto, nor then, without the express approbation of

Congress. What acts of government could more clearly and strongly designate these Indians as totally detached from our bodies politic, and as separate and independent communities?

"In 1778, Congress resolved, that they would chastise the Senecas, who had joined the enemy, and would reduce them to terms of peace; and when some Seneca chiefs appeared at Philadelphia, they directed the board of war to inquire whether they came in the character of representatives or ambassadors of their nation? And when, in 1779, Congress had resolved upon terms of peace with the Indians, the conditions were such as would be dictated to a public enemy, known as such by the laws of war; they had not the remotest resemblance to the terms or spirit of a negotiation with citizens or subjects who had broken their allegiance. In 1783, congress expressly waived the right of conquest over the Indians, and recommended proffers of peace and a friendly treaty, for the purpose of receiving them into favor and protection. Lastly, in October, 1784, a treaty of peace was made at Fort Stanwix, between the United States and the sachems and warriors of the six nations; and the United States gave peace to those of the six nations who had been hostile, and received them under protection, and required, that the hostile tribes should stipulate, that the Oneidas, and Tuscaroras, should be secured in the possession of their lands.

"There was nothing, then, in any act or proceeding, on the part of the United States, during the revolutionary war, which went to impair, and much less to extinguish the national character of the six nations, and consolidate them with our own people. Every public document speaks a different language, and admits their distinct existence and competence as nations, but placed in the same state of dependence, and calling for the same protection which existed before the war." pp. 711--713.

"In 1794, there was another treaty made between the United States and the six nations, in which perpetual peace and friendship were declared between the contracting parties, and the United States acknowledged the lands reserved to the Oneida, Onondaga and Cayuga nations, in and by their treaties with this state, to be their property; and the treaty contains this provision, which has a very important, and a very decisive bearing upon the point under discussion: The United States and the six nations agree, that for injuries done by individuals, on either side, no private retaliation shall take place, but complaint shall be made by the injured party to the other; that is, by the six nations, or any of them, to the President of the United States, and by or on behalf of the President, to the Principal Chiefs of the six nations, or of the nation to which the offender belongs. What more demonstrable proof can we require, of existing and acknowledged sovereignty residing in those Indians? We have here the forms and requisitions peculiar to the intercourse between friendly and independent states, and they are conformable to the received institutes of the law of nations. The United States have never dealt with those people, within our national limits, as if they were extinguished sovereignties. They have constantly treated with them as dependent nations, governed by their own usages, and possessing governments competent to make and to maintain treaties. They have considered them as public enemies in war, and allied friends in peace. If mere territorial jurisdiction would make the six nations citizens of this state, the same effect must have been produced as to the numerous tribes of Indians included within the vast territorial limits of the United States; and it is worth a moment's attention to observe the relations existing between the United States and the Indians, to the south and to the west.

"In the treaty between the United States and the Wiandots, Ottawas, Chippewas, and others, in 1785, it was provided, that if an Indian commit murder, or robbery, upon a citizen of the United States, they shall deliver him up to be punished according to our law. The surrender of criminals is here made part of a national compact, and the distinction is preserved between Indians and citizens; and while we assume the right to redress the injuries of the one, we abandon the other to the protection of their own people. The treaties with the Cherokees, in 1785, and 1791, go further, and provide, that citizens of the United States committing robbery, or murder, on the Cherokees, shall be punished by us in like manner as if the same were committed upon one of our own citizens.

They also contain a new and striking provision, and that is, that citizens settling upon their lands, thereby forfeit the protection of the United States, and the Cherokees may punish them as they please. The same provision, relative to the surrender and punishment of persons guilty of murder, or robbery, is inserted in the treaties with the Choctaws, Chickasaws, Shawanese, Creeks, Ottawas, Chippewas, &c. And, in the treaties with the latter tribes, in 1789, and 1795, citizens settling on their lands are declared to be out of the protection of the United States, and liable to punishment at the discretion of the Indians.

"It would seem to me to be almost idle to contend, in the face of such provisions, that these Indians were citizens or subjects of the United States, and not alien and sovereign tribes.

"In the ordinance of Congress, in 1787, passed for the government of the territory of the United States northwest of the Ohio, it was declared, that the Indians within that territory should never be invaded or disturbed in their property, rights, or liberties, unless in just and lawful war. By a just and lawful war, is here meant, a controversy according to the public law of nations, between independent States, and not an insurrection and rebellion. The United States have never undertaken to negotiate with the Indian tribes, except in their national character. They have always asserted their claims against them in the only two ways known to nations, upon the ground of stipulation by treaty or by force of arms. The ordinance further provided, that laws should be made to prevent wrongs done to the Indians; and this implies a state of dependence and imbecility on the part of the Indians, and that correspondent claim upon us for protection, arising out of the superiority of our condition, which afford the true solution to most of our regulations concerning them." pp. 713—715.

Manner in which the Indian sovereignties should be extinguished.

"I do not therefore consider the act of 1822, as affecting the question, whether the remainder of the six nations still rightfully exist as a separate people, or whether they have become amalgamated with us, and incorporated into the body politic, as members and citizens. In my opinion, that statute had no such intention; and when the time shall arrive for us to break down the partition wall between us and them, and to annihilate the political existence of the Indians as nations and tribes, I trust we shall act fairly and explicitly, and endeavour to effect it with the full knowledge and assent of the Indians themselves, and with the most scrupulous regard to their weaknesses and prejudices, and with the entire approbation of the government of the United States. I am satisfied, that such a course would be required by prudence, and would become necessary, not only for conscience sake, but for the reputation of our justice." p. 717.

Guardian care of our government, and fidelity of the Indians.

" Thus, in the resolution of Congress of January, 1776, regulating trade with the Indians, it was declared, that no person should be permitted to trade with them without license, and that the traders should take no unjust advantages of their distress and intemperance. In a speech, on behalf of congress, to the six nations, in April 1776, it was said to them, that Congress were determined to cultivate peace and friendship with them, and prevent the white people from wronging them in any manner, or taking their lands: that Congress wished to afford protection to all their brothers, the Indians, who lived with them on this great Island; and that the white people should not be suffered, by force or fraud, to deprive them of any of their lands. And in November, 1779, when Congress were discussing the conditions of peace to be allowed to the six nations, they resolved, that one condition should be, that no land should be sold or ceded by any of the said Indians, either as individuals, or as a nation, unless by consent of congress.

"This resolution, almost coeval with our constitution, shows the important fact, that individual Indians, as well as tribes and communities, were, and ought to be, equally protected from imposition in the sale of their lands; and if such were the views of congress in 1779, why should not the same views have been in the contemplation of our constitution in 1777?

"The government of the United States had, in the earliest and purest days of the republic, watched with great anxiety over the property of the Indians intrusted to their care. It must have been immaterial from what source the property proceeded, and whether it was owned by tribes, or families, or individuals. If it was Indian property in land, it had a right to protection from us as against our own people. The Indians under the colony administrations, confided their lands to our protection. As early as 1684, the Onondagas and Cayugas, for instance, told the Governor of New York, that they were a free people, and had put their lands and themselves under the protection of the Duke of York and of the great sachem Charles, that lived on the other side of the great water. The friendship of the six nations towards the colony government and the protection of the government to them, continued unshaken for upwards of a century, and this mutual good faith has received the most honorable, and the most undoubted attestations. Governor Colden, in his history of the six nations, states, that the Dutch entered into an alliance with them, which continued without any breach on either side, until the English conquered the colony in 1664. Friendship and protection were then renewed, and the Indians, he says, observed the alliance on their part strictly to his day; and we know that their fidelity continued unshaken down to the period of our revolution. On one occasion, the colonial assembly, in their address to the governor, expressed their abhorrence of the project of reducing the Indians by force, and possessing themselves of their lands; for, to the steadiness of these Indians to the interest of Great Britain, they said they owed, in a great measure, their internal security. The colony governors constantly acknowledged their friendship and services. We have, on the other hand, in favour of the colony, the report of a committee of congress, to which I have already alluded, 'that the colony of New York had borne the burden, both as to blood and treasure, of protecting and supporting the six nations for more than one hundred years, as the dependents and allies of the government.'

"After all this, who will hesitate to say, that it was worthy of the character of our people, enjoying so great a superiority over the Indians, in the cultivation of the mind, in the lights of science, the distinctions of property, and the arts of civilized life, to have made the protection of the property of the feeble and dependent remnants of the nations, within our limits, a fundamental article of the government? It is not less wise than it is just, to give to that article a benign and liberal interpretation, in favour of the beneficial end in view. We ought to bear in mind, when we proceed to the consideration of the subject, that the article was introduced for the benefit and protection of the Indians, as well as for our own good, and that we are bound to the performance of it, not only by duty, but by gratitude. The six nations were a great and powerful confederacy, and our ancestors a feeble colony, settled near the coasts of the ocean, and along the shores of the Hudson and the Mohawk, when these Indians first placed themselves, and their lands, under our protection, and formed a covenant chain of friendship that was to endure for ages. And when we consider the long and distressing wars in which the Indians were involved on our account with the Canadian French, and the artful means which were used, from time to time, to detach them from our alliance, it must be granted that fidelity has been no where better observed, or maintained with a more intrepid spirit, than by these generous barbarians." pp. 723—725.

"The act of March 15th, 1799, considers the Oneidas as very defenceless; and, in order to protect them from imposition, it directs the attorney of the district to advise and direct them in all controversies that may arise between the tribe, or any individual thereof, and any other person, and to defend suits instituted against them, and to institute suits for them, and particularly for trespasses committed upon their lands." p. 732.

This last paragraph is commended to the particular attention of congress. The state of New York provided, at the public expense, that the small tribe of Oneidas should have a competent legal adviser, in all their exposures to fraud and imposition. Does it not become the magnanimity, I might say the justice, of our national government to provide immediately, and at the public expense,

that the Cherokees should have, in their present difficult circumstances, as able and independent and disinterested legal advisers and advocates, as can be found in the United States? They are precisely in the condition of a man, whom the English law describes, (and *our* law too,) as *inops consilii*, and for whom counsel should therefore be provided, at the expense of the government. In the selection of the learned and honourable men, to whom this high trust should be confided, the wishes and feelings oft he Cherokees themselves should doubtless be consulted.

The secretary of war, in a letter addressed to the Rev. Eli Baldwin, dated Rip Raps, Aug. 25, 1829, asks the following question: "What would the authorities of the state of New York say to an attempt, on the part of the six nations, to establish, within her limits, a separate and independent government?" By a diligent perusal of the foregoing extracts, and especially by such a perusal of the whole case, the secretary of war will ascertain what the authorities of the state of New York *have said* on this subject.

EXTRACTS FROM JUDGE STORY'S CENTENNIAL DISCOURSE.

The legislature of Georgia says, that the governments of Europe, and colonies of Europeans, asserted the right of driving Indians from their lands by virtue of discovery. The reader has seen that chief justice Marshall and chancellor Kent hold a doctrine directly opposed to such an assumption. It may be interesting to see what another learned judge, who is worthy to be associated with the other two, has said on this subject.

"Our forefathers did not attempt to justify their own emigration and settlement, upon the European doctrine of the right of discovery. Their patent from the crown contained a grant of this right; but they felt there was a more general question behind. 'What warrant have we to take that land, which is, and hath been of long time possessed by others, the sons of Adam?' Their answer is memorable for its clearness, strength, and bold assertion of principles. That which is common to all (said they) is proper to none. This savage people ruleth over many lands without title or property. 'Why may not Christians have liberty to go and dwell amongst them in their waste lands? God hath given to the sons of men a two-fold right to the earth. There is a natural right and a civil right. The first right was natural, when men held the earth in common. When afterwards they appropriated some parcels of ground, by enclosing and peculiar manurance, this in time got them a civil right. There is more than enough land for us and them. God hath consumed them with a miraculous plague, whereby the greater part of the country is left void of inhabitants. Besides, we shall come in with the good leave of the natives.' Such arguments were certainly not unworthy of men of scrupulous virtue. They were aided by higher considerations, by the desire to propagate Christianity among the Indians; a desire, which is breathed forth in their confidential papers, in their domestic letters, in their private prayers, and in their public devotions. In this object they were not only sincere, but constant. So sincere and so constant, that one of the grave accusations against them has been, that in their religious zeal, they compelled the Indians, by penalties, to attend public worship, and allured them, by presents, to abandon their infidelity. In truth, the propagation of Christianity was a leading motive with many of the early promoters of the settlement; and we need no better proof of it, than the establishment of an Indian school at Harvard college to teach them the rudiments of Christian faith.

"Whatever, then, may have been the case in other parts of the continent, it is a fact, and it should not be forgotten, that our forefather never attempted to displace the nations by force, upon any pretence of European right. They occupied and cultivated what was obtained by grant, or was found vacant. They constantly respeeted the Indians in their settlements and claims of soil. They

protected them from their enemies when they sought refuge among them.— They stimulated no wars for their extermination. During the space of fifty years, but a single case of serious warfare occurred: and though we cannot but lament the cruelties then perpetrated, there is no pretence, that they were the aggressors in the contest. Whatever complaints, therefore, may be justly urged by philosophy, or humanity, or religion, in our day, respecting the wrongs and injuries of the Indians, they scarcely touch the Pilgrims of New England. Their hands were not imbrued in innocent blood. Their hearts were not heavy with crimes and oppressions engendered by avarice. If they were not wholly without blame, they were not deep in guilt. They might mistake the time, or the mode of christianizing and civilizing the Indians; but they did not seek pretences to extirpate them. Private hostilities and butcheries there might be, but they were not encouraged or justified by the government. It is not, then, a just reproach, sometimes cast on their memories, that their religion narrowed down its charities to Christians only; and forgot, and despised, and oppressed these forlorn children of the forest." pp. 72—74.

TREATY WITH THE CHOCTAWS.

The fourth article of the treaty of 1820, is in the following words:—

" The boundaries hereby established between the Choctaw Indians and the United States, on this side of the Mississippi river, shall remain *without alteration* until the period at which said nation shall become so civilized and enlightened as to be made citizens of the United States; and Congress shall lay off a limited parcel of land for the benefit of each family, or individual, in the nation."

In the subsequent treaty, negotiated by Mr. Calhoun, Jan. 20, 1825, the same subject was taken up, as follows:

" It is further agreed, that the fourth article of the treaty aforesaid shall be so modified, as that the Congress of the United States shall not exercise the power of apportioning the lands, for the benefit of each family or individual, of the Choctaw nation, and of bringing them under the laws of the United States, but with the consent of the Choctaw nation."

In framing the fourth article here referred to, the intention must have been, either that the Choctaws should ultimately form a territory by themselves, which should be taken under the care of the general government; or that they should become citizens of the State of Mississippi, and thus citizens of the United States. But neither of these things were to take place till the Choctaws should have become enlightened, and Congress should have declared them to be so, and should have made an apportionment of their lands.

In the last treaty, framed less than five years ago, it is solemnly stipulated, that the Choctaws shall not be brought under the laws of the United States in any sense, " but with the consent of the Choctaw nation." This is the same thing as to say, that the Choctaw nation is left where it was originally, and where the other Indian nations now are: viz. under their own laws, and not under the laws of any state nor of the United States.

The President of the United States, in his late Message to Congress, says very truly:—"Upon this country, more than any other, has, in the providence of God, been cast the special guardianship of the great principle of adherence to written constitutions." Let it be remembered that the constitution of the United States is express and positive, in regard to the binding nature of treaties; and that, by a solemn stipulation in our last treaty with the Choctaws, negotiated by the Secretary of War, now Vice President of the United States, *that nation of Indians is not to be brought under our laws* BUT WITH ITS OWN CONSENT.

THE END.

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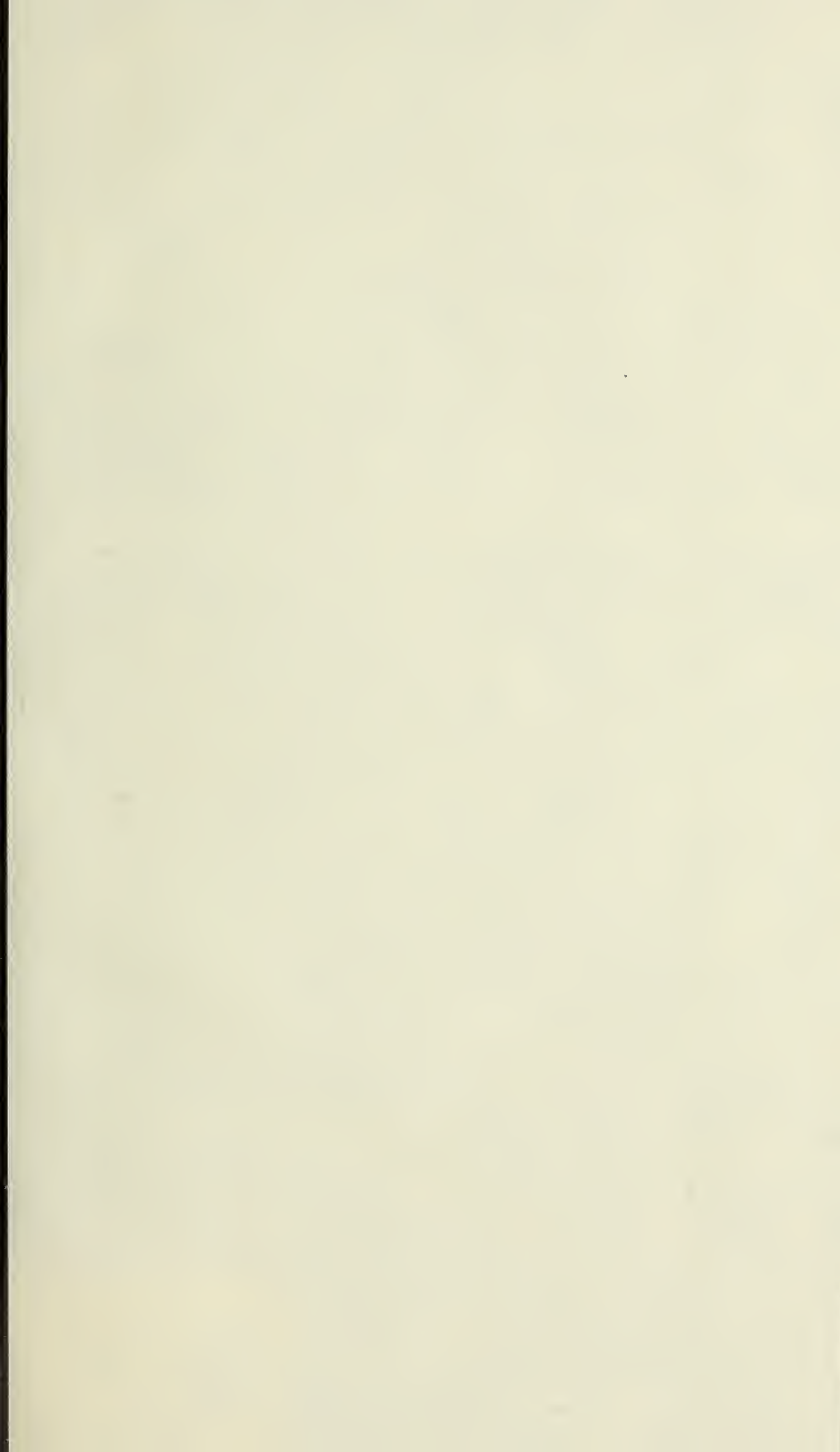

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