THOMPSON, J., Dissenting Opinion

SUPREME COURT OF THE UNITED STATES

30 U.S. 1

Cherokee Nation v. Georgia

Argued: --- Decided:

Mr. Justice THOMPSON, dissenting.

Entertaining different views of the questions now before us in this case, and having arrived at a conclusion different from that of a majority of the Court, and considering the importance of the case and the constitutional principle involved in it, I shall proceed, with all due respect for the opinion of others, to assign the reasons upon which my own has been formed.

In the opinion pronounced by the Court, the merits of the [p51] controversy between the State of Georgia and the Cherokee Indians have not been taken into consideration. The denial of the application for an injunction has been placed solely on the ground of want of jurisdiction in this Court to grant the relief prayed for. It became, therefore, unnecessary to inquire into the merits of the case. But thinking as I do that the Court has jurisdiction of the case, and may grant relief, at least in part, it may become necessary for me, in the course of my opinion, to glance at the merits of the controversy, which I shall, however, do very briefly, as it is important so far as relates to the present application.

Before entering upon the examination of the particular points which have been made and argued, and for the purpose of guarding against any erroneous conclusions, it is proper that I should state that I do not claim for this Court the exercise of jurisdiction upon any matter properly falling under the denomination of political power. Relief to the full extent prayed by the bill may be beyond the reach of this Court. Much of the matter therein contained by way of complaint would seem to depend for relief upon the exercise of political power, and, as such, appropriately devolving upon the executive, and not the judicial department of the government. This Court can grant relief so far only as the rights of person or property are drawn in question, and have been infringed.

It would very ill become the judicial station which I hold to indulge in any remarks upon the hardship of the case, or the great justice that would seem to have been done to the complainants according to the Statement in the bill, and which, for the purpose of the present motion I must assume to be true. If they are entitled to other than judicial relief, it cannot be admitted that, in a Government like ours, redress is not to be had in some of its departments, and the responsibility for its denial must rest upon those who

have the power to grant it. But believing as I do that relief to some extent falls properly under judicial cognizance, I shall proceed to the examination of the case under the following heads.

1. Is the Cherokee Nation of Indians a competent party to sue in this Court? [p52]

2. Is a sufficient case made out in the bill to warrant this Court in granting any relief?

3. Is an injunction the fit and appropriate relief?

1. By the Constitution of the United States it is declared (Art. 3, § 2), that the judicial power shall extend to all cases in law and equity, arising under this Constitution, the laws of the United States, and treaties made or which shall be made under their authority; &c. to controversies between two or more States, &c. and between a State or the citizens thereof and foreign states, citizens or subjects.

The controversy in the present case is alleged to be between a foreign state and one of the States of the union, and does not, therefore, come within the Eleventh Amendment of the Constitution, which declares that the judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States by citizens of another State, or by citizens or subjects of any foreign state. This amendment does not, therefore, extend to suits prosecuted against one of the United States by a foreign state. The Constitution further provides that, in all cases where a State shall be a party, the Supreme Court shall have original jurisdiction. Under these provisions in the Constitution, the complainants have filed their bill in this Court, in the character of a foreign state, against the State of Georgia; praying an injunction to restrain that State from committing various alleged violations of the property of the Nation, claimed under the laws of the United States, and treaties made with the Cherokee Nation.

That a State of this union may be sued by a foreign state when a proper case exists and is presented is too plainly and expressly declared in the Constitution to admit of doubt; and the first inquiry is whether the Cherokee Nation is a foreign state within the sense and meaning of the Constitution.

The terms "state" and "nation" are used in the law of nations, as well as in common parlance, as importing the same thing, and imply a body of men, united together to procure their mutual safety and advantage by means of their union. Such a society has its affairs and interests to manage; it deliberates, and takes resolutions in common, and thus becomes a moral [p53] person, having an understanding and a will peculiar to itself, and is susceptible of obligations and laws. Vattel 1. Nations being composed of men naturally free and independent, and who, before the establishment of civil societies, live together in the state of nature, nations or sovereign states, are to be considered as so many free persons, living together in a state of nature. Vattel 2, § 4. Every nation that governs itself, under what form soever, without any dependence on a foreign power is a sovereign state. Its rights are naturally the same as those of any other state. Such are

moral persons who live together in a natural society under the law of nations. It is sufficient if it be really sovereign and independent -- that is, it must govern itself by its own authority and laws. We ought, therefore, to reckon in the number of sovereigns those states that have bound themselves to another more powerful, although by an unequal alliance. The conditions of these unequal alliances may be infinitely varied; but whatever they are, provided the inferior ally reserves to itself the sovereignty or the right to govern its own body, it ought to be considered an independent state. Consequently, a weak state, that, in order to provide for its safety, places itself under the protection of a more powerful one without stripping itself of the right of government and sovereignty, does not cease on this account to be placed among the sovereigns who acknowledge no other power. Tributary and feudatory states do not thereby cease to be sovereign and independent states, so long as self-government and sovereign and independent authority is left in the administration of the state. Vattel, c. 1, pp. 16, 17.

Testing the character and condition of the Cherokee Indians by these rules, it is not perceived how it is possible to escape the conclusion that they form a sovereign state. They have always been dealt with as such by the Government of the United States, both before and since the adoption of the present Constitution. They have been admitted and treated as a people governed solely and exclusively by their own laws, usages, and customs within their own territory, claiming and exercising exclusive dominion over the same, yielding up by treaty, from time to time, portions of their land, but still claiming absolute sovereignty and self-government over what remained unsold. [p54] And this has been the light in which they have, until recently, been considered from the earliest settlement of the country by the white people. And indeed, I do not understand it is denied by a majority of the Court that the Cherokee Indians form a sovereign state according to the doctrine of the law of nations, but that, although a sovereign state, they are not considered a foreign state within the meaning of the Constitution.

Whether the Cherokee Indians are to be considered a foreign state or not is a point on which we cannot expect to discover much light from the law of nations. We must derive this knowledge chiefly from the practice of our own government and the light in which the Nation has been viewed and treated by it.

That numerous tribes of Indians, and among others the Cherokee Nation, occupied many parts of this country long before the discovery by Europeans is abundantly established by history, and it is not denied but that the Cherokee Nation occupied the territory now claimed by them long before that period. It does not fall within the scope and object of the present inquiry to go into a critical examination of the nature and extent of the rights growing out of such occupancy, or the justice and humanity with which the Indians have been treated, or their rights respected.

That they are entitled to such occupancy so long as they choose quietly and peaceably to remain upon the land cannot be questioned. The circumstance of their original occupancy is here referred to merely for the purpose of showing that, if these Indian communities were then, as they certainly were, nations, they must have been foreign nations to all the world, not

having any connexion, or alliance of any description with any other power on earth. And if the Cherokees were then a foreign nation, when or how have they lost that character, and ceased to be a distinct people, and become incorporated with any other community?

They have never been, by conquest, reduced to the situation of subjects to any conqueror, and thereby lost their separate national existence, and the rights of self-government, and become subject to the laws of the conqueror. Whenever wars have taken place, they have been followed by regular treaties of peace, containing stipulations on each side according [p55] to existing circumstances; the Indian Nation always preserving its distinct and separate national character. And notwithstanding we do not recognize the right of the Indians to transfer the absolute title of their lands to any other than ourselves, the right of occupancy is still admitted to remain in them, accompanied with the right of self-government according to their own usages and customs, and with the competency to act in a national capacity although placed under the protection of the whites, and owing a qualified subjection so far as is requisite for public safety. But the principle is universally admitted that this occupancy belongs to them as matter of right, and not by mere indulgence. They cannot be disturbed in the enjoyment of it, or deprived of it without their free consent, or unless a just and necessary war should sanction their dispossession.

In this view of their situation, there is as full and complete recognition of their sovereignty, as if they were the absolute owners of the soil. The progress made in civilization by the Cherokee Indians cannot surely be considered as in any measure destroying their national or foreign character so long as they are permitted to maintain a separate and distinct government; it is their political condition that constitutes their foreign character, and in that sense must the term "foreign" be understood as used in the Constitution. It can have no relation to local, geographical, or territorial position. It cannot mean a country beyond sea. Mexico or Canada is certainly to be considered a foreign country in reference to the United States. It is the political relation in which one government or country stands to another which constitutes it foreign to the other. The Cherokee territory being within the chartered limits of Georgia does not affect the question. When Georgia is spoken of as a State, reference is had to its political character, and not be boundary, and it is not perceived that any absurdity or inconsistency grows out of the circumstance that the jurisdiction and territory of the State of Georgia surround or extend on every side of the Cherokee territory. It may be inconvenient to the State, and very desirable that the Cherokees should be removed, but it does not at all affect the political relation between Georgia and those Indians. Suppose the [p56] Cherokee territory had been occupied by Spaniards or any other civilized people, instead of Indians, and they had from time to time ceded to the United States portions of their lands precisely in the same manner as the Indians have done, and in like manner retained and occupied the part now held by the Cherokees, and having a regular government established there; would it not only be considered a separate and distinct nation or state, but a foreign nation, with reference to the State of Georgia or the United States. If we look to lexicographers, as well as approved writers, for the use of the term "foreign," it may be applied with the strictest propriety to the Cherokee Nation.

In a general sense, it is applied to any person or thing belonging to another nation or country. We call an alien a foreigner because he is not of the country in which we reside. In a political sense, we call every country foreign which is not within the jurisdiction of the same government. In this sense, Scotland before the union was foreign to England; and Canada and Mexico foreign to the United States. In the United States, all transatlantic countries are foreign to us. But this is not the only sense in which it is used.

It is applied with equal propriety to an adjacent territory as to one more remote. Canada or Mexico is as much foreign to us as England or Spain. And it may be laid down as a general rule that, when used in relation to countries in a political sense, it refers to the jurisdiction or government of the country. In a commercial sense, we call all goods coming from any country not within our own jurisdiction foreign goods.

In the diplomatic use of the term, we call every minister a foreign minister who comes from another jurisdiction or government. And this is the sense in which it is judicially used by this Court, even as between the different States of this union. In the case of *Buckner v. Finlay,* 2 Peters 590, it was held that a bill of exchange drawn in one State of the union on a person living in another State was a foreign bill, and to be treated as such in the courts of the United States. The Court says that, in applying the definition of a foreign bill to the political character of the several States of this Union in relation to each other, we are all clearly of opinion [p57] that bills drawn in one of these States upon persons living in another of them partake of the character of foreign bills, and ought to be so treated. That, for all national purposes embraced by the federal Constitution, the States and the citizens thereof are one, united under the same sovereign authority and governed by the same laws. In all other respects, the States are necessarily foreign to, and independent of, each other, their Constitutions and forms of government being, although republican, altogether different, as are their laws and institutions. So, in the case of *Warder v. Arrell,* decided in the Court of Appeals of Virginia, 2 Wash. 298, the Court, in speaking of foreign contracts and saying that the laws of the foreign country where the contract was made must govern, add the same principle applies, though with no greater force, to the different States of America, for though they form a confederated government, yet the several States retain their individual sovereignties and, with respect to their municipal regulations, are to each other foreign.

It is manifest from these cases that a foreign state, judicially considered, consists in its being under a different jurisdiction or government, without any reference to its territorial position. This is the marked distinction, particularly in the case of *Buckner v. Finlay.* So far as these States are subject to the laws of the Union, they are not foreign to each other. But so far as they are subject to their own respective State laws and government, they are foreign to each other. And if, as here decided, a separate and distinct jurisdiction or government is the test by which to decide whether a nation be foreign or not, I am unable to perceive any sound and substantial reason why the Cherokee Nation should not be so considered. It is governed by its own laws, usages and customs; it has no connexion with any other government or jurisdiction, except by way of treaties entered into with like form and ceremony as with other foreign nations. And this seems to be the view taken of them by Mr Justice Johnson in the case of *Fletcher v. Peck,* 6 Cranch 146; 2 Peters' Condens. Rep. 308.

In speaking of the State and condition of the different Indian nations, he observes

> that some have totally extinguished their national fire, and submitted themselves to the laws of the States; others have by treaty acknowledged that they hold **[p58]** their national existence at the will of the State within which they reside; others retain a limited sovereignty and the absolute proprietorship of their soil. The latter is the case of the tribes to the west of Georgia, among which are the Cherokees. We legislate upon the conduct of strangers or citizens within their limits, but innumerable treaties formed with them acknowledge them to be an independent people, and the uniform practice of acknowledging their right of soil by purchasing from them, and restraining all persons from encroaching upon their territory, makes it unnecessary to insist upon their rights of soil.

Although there are many cases in which one of these United States has been sued by another, I am not aware of any instance in which one of the United States has been sued by a foreign state. But no doubt can be entertained that such an action might be sustained upon a proper case being presented. It is expressly provided for in the Constitution, and this provision is certainly not to be rejected as entirely nugatory.

Suppose a State, with the consent of Congress, should enter into an agreement with a foreign power (as might undoubtedly be done, Constitution, Art. 1, § 10) for a loan of money; would not an action be sustained in this Court to enforce payment thereof? Or suppose the State of Georgia, with the consent of Congress, should purchase the right of the Cherokee Indians to this territory, and enter into a contract for the payment of the purchase money; could there be a doubt that an action could be sustained upon such a contract? No objection would certainly be made for want of competency in that Nation to make a valid contract. The numerous treaties entered into with the Nation would be a conclusive answer to any such objection. And if an action could be sustained in such case, it must be under that provision in the Constitution which gives jurisdiction to this Court in controversies between a State and a foreign state. For the Cherokee Nation is certainly not one of the United States.

And what possible objection can lie to the right of the complainants to sustain an action? The treaties made with this Nation purport to secure to it certain rights. These are not gratuitous obligations assumed on the part of the United States. They are obligations founded upon a consideration paid by the [p59] Indians by cession of part of their territory. And if they, as a nation, are competent to make a treaty or contract, it would seem to me to be a strange inconsistency to deny to them the right and the power to enforce such a contract. And where the right secured by such treaty forms a proper subject for judicial cognizance, I can perceive no reason why this Court has not jurisdiction of the case. The Constitution expressly gives to the Court jurisdiction in all cases of law and equity arising under treaties made with the United States. No suit will lie against the United States upon such treaty, because no possible case can exist where the United States can be sued. But not so with respect to a State, and if any right secured by

treaty has been violated by a State, in a case proper for judicial inquiry, no good reason is perceived why an action may not be sustained for violation of a right secured by treaty, as well as by contract under any other form. The judiciary is certainly not the department of the government authorised to enforce all rights that may be recognized and secured by treaty. In many instances, these are mere political rights, with which the judiciary cannot deal. But when the question relates to a mere right of property, and a proper case can be made between competent parties; it forms a proper subject for judicial inquiry.

It is a rule which has been repeatedly sanctioned by this Court that the judicial department is to consider as sovereign and independent States or nations those powers that are recognized as such by the executive and legislative departments of the government, they being more particularly entrusted with our foreign relations. 4 Cranch 241, 2 Peters's Cond.Rep. 98; 3 Wheat. 634; 4 Wheat. 64.

If we look to the whole course of treatment by this country of the Indians from the year 1775 to the present day when dealing with them in their aggregate capacity as nations or tribes and regarding the mode and manner in which all negotiations have been carried on and concluded with them, the conclusion appears to me irresistible that they have been regarded, by the Executive and Legislative branches of the Government, not only as sovereign and independent, but as foreign nations or tribes, not within the jurisdiction nor under the government of the States within which they were located. This remark is to be [p60] understood, of course, as referring only to such as live together as a distinct community, under their own laws, usages and customs, and not to the mere remnant of tribes which are to be found in many parts of our country, who have become mixed with the general population of the country, their national character extinguished and their usages and customs in a great measure abandoned, self-government surrendered, and who have voluntarily, or by the force of circumstances which surrounded them, gradually become subject to the laws of the States within which they are situated.

Such, however, is not the case with the Cherokee Nation. It retains its usages and customs and self-government, greatly improved by the civilization which it has been the policy of the United States to encourage and foster among them. All negotiations carried on with the Cherokees and other Indian nations have been by way of treaty, with all the formality attending the making of treaties with any foreign power. The journals of Congress, from the year 1775 down to the adoption of the present Constitution, abundantly establish this fact. And since that period, such negotiations have been carried on by the treaty-making power, and uniformly under the denomination of treaties.

What is a treaty as understood in the law of nations? It is an agreement or contract between two or more nations or sovereigns, entered into by agents appointed for that purpose and duly sanctioned by the supreme power of the respective parties. And where is the authority, either in the Constitution or in the practice of the government, for making any distinction between treaties made with the Indian nations and any other foreign power? They relate to peace and war, the surrender of prisoners,

the cession of territory, and the various subjects which are usually embraced in such contracts between sovereign nations.

A recurrence to the various treaties made with the Indian nations and tribes in different parts of the country will fully illustrate this view of the relation in which our Government has considered the Indians as standing. It will be sufficient, however, to notice a few of the many treaties made with this Cherokee Nation.

By the treaty of Hopewell of the 28th November 1785, [p61] 1 Laws U.S. 322, mutual stipulations are entered into to restore all prisoners taken by either party, and the Cherokees stipulate to restore all negroes and all other property taken from the citizens of the United States, and a boundary line is settled between the Cherokees, and the citizens of the United States, and this embraced territory within the chartered limits of Georgia. And, by the sixth article, it is provided that, if any Indian or person residing among them, or who shall take refuge in their nation shall commit a robbery, or murder, or other capital crime on any citizen of the United States or person under their protection, the nation or tribe to which such offender may belong shall deliver him up to be punished according to the ordinances of the United States. What more explicit recognition of the sovereignty and independence of this Nation could have been made? It was a direct acknowledgement that this territory was under a foreign jurisdiction. If it had been understood that the jurisdiction of the State of Georgia extended over this territory, no such stipulation would have been necessary. The process of the Courts of Georgia would have run into this as well as into any other part of the State. It is a stipulation analogous to that contained in the treaty of 1794 with England, 1 Laws U.S. 220, by the twenty-seventh article of which it is mutually agreed that each party will deliver up to justice all persons who, being charged with murder or forgery committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other. Upon what ground can any distinction be made as to the reason and necessity of such stipulation in the respective treaties. The necessity for the stipulation in both cases must be because the process of one government and jurisdiction will not run into that of another, and separate and distinct jurisdiction, as has been shown, is what makes governments and nations foreign to each other in their political relations.

The same stipulation as to delivering up criminals who shall take refuge in the Cherokee Nation is contained in the treaty of Holston of the 2d of July 1791, 1 Laws U.S. 327. And the eleventh article fully recognizes the jurisdiction of the Cherokee Nation over the territory occupied by them. It provides that if any citizen of the United States shall go into [p62] the territory belonging to the Cherokees and commit any crime upon or trespass against the person or property of any friendly Indian which, if committed within the jurisdiction of any State, would be punishable by the laws of such State, shall be subject to the same punishment, and proceeded against in the same manner, as if the offence had been committed within the jurisdiction of the State. Here is an explicit admission that the Cherokee territory is not within the jurisdiction of any State. If it had been considered within the jurisdiction of Georgia, such a provision would not only be unnecessary, but absurd. It is a provision looking to the punishment of a citizen of the United States for some act done in a foreign country. If exercising exclusive jurisdiction over a country is sufficient to constitute the

State or power so exercising it a foreign state, the Cherokee Nation may assuredly with the greatest propriety be so considered.

The phraseology of the clause in the Constitution giving to Congress the power to regulate commerce is supposed to afford an argument against considering the Cherokees a foreign nation. The clause reads thus, "to regulate commerce with foreign nations, and among the several States, and with the Indian tribes." Constitution, Art. 1, § 8. The argument is that if the Indian tribes are foreign nations, they would have been included without being specially named, and being so named imports something different from the previous term "foreign nations."

This appears to me to partake too much of a mere verbal criticism to draw after it the important conclusion that Indian tribes are not foreign nations. But the clause affords, irresistibly, the conclusion that the Indian tribes are not there understood as included within the description of the "several States;" or there could have been no fitness in immediately thereafter particularizing "the Indian tribes."

It is generally understood that every separate body of Indians is divided into bands or tribes, and forms a little community within the nation to which it belongs; and as the nation has some particular symbol by which it is distinguished from others, so each tribe has a badge from which it is denominated, and each tribe may have rights applicable to itself.

Cases may arise where the trade with a particular tribe may [p63] require to be regulated, and which might not have been embraced under the general description of the term nation, or it might at least have left the case somewhat doubtful; as the clause was intended to vest in Congress the power to regulate all commercial intercourse, this phraseology was probably adopted to meet all possible cases, and the provision would have been imperfect if the term "Indian tribes" had been omitted.

Congress could not then have regulated the trade with any particular tribe that did not extend to the whole nation. Or it may be that the term "tribe" is here used as importing the same thing as that of "nation," and adopted merely to avoid the repetition of the term nation, and the Indians are specially named because there was a provision somewhat analogous in the confederation; and entirely omitting to name the Indian tribes might have afforded some plausible grounds for concluding that this branch of commercial intercourse was not subject to the power of Congress.

On examining the journals of the old congress, which contain numerous proceedings and resolutions respecting the Indians, the terms "nation" and "tribe" are frequently used indiscriminately, and as importing the same thing, and treaties were sometimes entered into with the Indians, under the description or denomination of tribes, without naming the nation. *See* Journals 30th June and 12th July 1775; 8th March 1776; 20th October 1777: and numerous other instances.

But whether any of these suggestions will satisfactorily account for the phraseology here used or not, it appears to me to be of too doubtful import to outweigh the considerations to which I have referred to show that the Cherokees are a foreign nation. The difference between the provision in the

Constitution and that in the Confederation on this subject appears to me to show very satisfactorily that, so far as related to trade and commerce with the Indians wherever found in tribes, whether within or without the limits of a State, was subject to the regulation of Congress.

The provision in the confederation, Art. 9, 1 Laws United States 17, is that Congress shall have the power of regulating the trade and management of all affairs with the Indians not members of any of the States, provided that the legislative right of any State within its own limits be not infringed or violated. [p64] The true import of this provision is certainly not very obvious; *see* Federalist, No. 42. What were the legislative rights intended to be embraced within the proviso is left in great uncertainty. But whatever difficulty on that subject might have arisen under the confederation, it is entirely removed by the omission of the proviso in the present Constitution, thereby leaving this power entirely with Congress, without regard to any State right on the subject, and showing that the Indian tribes were considered as distinct communities, although within the limits of a State.

The provision, as contained in the confederation, may aid in illustrating what is to be inferred from some parts of the Constitution, Art. 1, § 1, par. 3, as to the apportionment of representatives, and acts of Congress in relation to the Indians, to-wit, that they are divided into two distinct classes, one composed of those who are considered members of the State within which they reside and the other not; the former embracing the remnant of the tribes who had lost their distinctive character as a separate community and had become subject to the laws of the States, and the latter such as still retained their original connexion as tribes, and live together under their own laws, usages and customs, and, as such, are treated as a community independent of the State. No very important conclusion, I think, therefore can be drawn from the use of the term "tribe" in this clause of the Constitution, intended merely for commercial regulations. If considered as importing the same thing as the term "nation," it might have been adopted to avoid the repetition of the word nation.

Other instances occur in the Constitution where different terms are used importing the same thing. Thus, in the clause giving jurisdiction to this Court, the term "foreign states" is used instead of "foreign nations," as in the clause relating to commerce. And again, in Art. 1, § 10, a still different phraseology is employed. "No State, without the consent of Congress, shall enter into any agreement or compact with a foreign power." But each of these terms, nation, state, power, as used in different parts of the Constitution, imports the same thing, and does not admit of a different interpretation. In the treaties made with the Indians, they are sometimes designated under the name of tribe, and sometimes that [p65] of nation. In the treaty of 1804 with the Delaware Indians, they are denominated the "Delaware Tribe of Indians." 1 Laws United States 305. And in a previous treaty with the same people in the year 1778, they are designated by the name of "the Delaware Nation." 1 Laws United States 302.

As this was one of the earliest treaties made with the Indians, its provisions may serve to show in what light the Indian nations were viewed by Congress at that day.

The territory of the Delaware Nation was within the limits of the States of New York, Pennsylvania and New Jersey. Yet we hear of no claim of jurisdiction set up by those States over these Indians. This treaty, both in form and substance, purports to be an arrangement with an independent sovereign power. It even purports to be articles of confederation. It contains stipulations relative to peace and war, and for permission to the United States troops to pass through the country of the Delaware Nation. That neither party shall protect in their respective States, servants, slaves, or criminals, fugitives from the other, but secure, and deliver them up. Trade is regulated between the parties. And the sixth article shows the early pledge of the United States to protect the Indians in their possessions against any claims or encroachments of the States. It recites that, whereas the enemies of the United States have endeavoured to impress the Indians in general with an opinion that it is the design of the States to extirpate the Indians and take possession of their country, to obviate such false suggestions, 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 has been bounded by former treaties, &c. And provision is even made for inviting other tribes to join the confederacy, and to form a state, and have a representation in Congress, should it be found conducive to the mutual interest of both parties. All which provisions are totally inconsistent with the idea of these Indians' being considered under the jurisdiction of the States, although their chartered limits might extend over them.

The recital in this treaty contains a declaration and admission of Congress of the rights of Indians in general, and that the impression which our enemies were [p66] endeavouring to make, that it was the design of the States to extirpate them and take their lands, was false. And the same recognition of their rights runs through all the treaties made with the Indian nations or tribes from that day down to the present time.

The twelfth article of the treaty of Hopewell contains a full recognition of the sovereign and independent character of the Cherokee Nation. To impress upon them full confidence in the justice of the United States respecting their interest, they have a right to send a deputy of their choice to Congress. No one can suppose that such deputy was to take his seat as a member of Congress, but that he would be received as the agent of that nation. It is immaterial what such agent is called, whether minister, commissioner or deputy; he is to represent his principal.

There could have been no fitness or propriety in any such stipulation if the Cherokee Nation had been considered in any way incorporated with the State of Georgia, or as citizens of that State. The idea of the Cherokees' being considered citizens is entirely inconsistent with several of our treaties with them. By the eighth article of the Treaty of the 26th December, 1817, 6 Laws U.S. 706, the United States stipulate to give 640 acres of land to each head of any Indian family residing on the lands now ceded or which may hereafter be surrendered to the United States who may wish to become citizens of the United States; so also, the second article of the treaty with the same nation, of the 10th of March, 1819, contains the same stipulation in favour of the heads of families who may choose to become citizens of the United States, thereby clearly showing that they were not considered citizens at the time those stipulations were entered into, or the provision would have been entirely unnecessary, if not absurd. And if not citizens,

they must be aliens or foreigners, and such must be the character of each individual belonging to the nation. And it was, therefore, very aptly asked on the argument, and I think not very easily answered, how a Nation composed of aliens or foreigners can be other than a foreign nation.

The question touching the citizenship of an Oneida Indian came under the consideration of the Supreme Court of New [p67] York in the case of *Jackson v. Goodel,* 20 Johns. 193. The lessor of the plaintiff was the son of an Oneida Indian who had received a patent for the lands in question as an officer in the revolutionary war, and although the Supreme Court, under the circumstances of the case, decided he was a citizen, yet Chief Justice Spencer observed, we do not mean to say that the condition of the Indian tribes (alluding to the six nations), at former and remote periods, has been that of subjects or citizens of the State; their condition has been gradually changing, until they have lost every attribute of sovereignty and become entirely dependent upon and subject to our government. But the cause being carried up to the Court of Errors, chancellor Kent, in a very elaborate and able opinion on that question, came to a different conclusion as to the citizenship of the Indian, even under the strong circumstances of that case.

"That Oneidas," he observed, and

> the tribes composing the six nations of Indians were originally free and independent nations, and it is for the counsel who contend that they have now ceased to be a distinct people and become completely incorporated with us to point out the time when that event took place. In my view, they have never been regarded as citizens or members of our body politic. They have always been, and still are, 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. The whites have been gradually pressing upon them, as they kept receding from the approaches of civilization. We have purchased the greater part of their lands, destroyed their hunting grounds, subdued the wilderness around them, overwhelmed them with our population, and gradually abridged their native independence. Still they are permitted to exist as distinct nations, and we continue to treat with their sachems in a national capacity, and as being the lawful representatives of their tribes. Through the whole course of our colonial history, these Indians were considered dependent allies. 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 **[p68]** a qualified subjection in a national 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 the protection of the British Crown; such a fact is of frequent occurrence between independent nations. One community may be bound to another by a very unequal alliance and still be a sovereign state. Vat. B. 1, ch. 16, § 194. The Indians, though born within our territorial limits, are considered as born under the dominion of their own tribes.

> There is nothing in the proceedings 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. In the treaties made with them, we have the forms and requisites peculiar to the intercourse between friendly and independent states, and they are conformable to the received institutes of the law of nations. What more demonstrable proof can we require of existing and acknowledged sovereignty.

If this be a just view of the Oneida Indians, the rules and principles here applied to that Nation may with much greater force be applied to the character, state, and condition of the Cherokee Nation of Indians, and we may safely conclude that they are not citizens, and must, of course, be aliens; and, if aliens in their individual capacities, it will be difficult to escape the conclusion that, as a community, they constitute a foreign nation or state, and thereby become a competent party to maintain an action in this Court according to the express terms of the Constitution.

And why should this Court scruple to consider this Nation a competent party to appear here?

Other departments of the Government, whose right it is to decide what powers shall be recognized as sovereign and independent nations, have treated this Nation as such. They have considered it competent, in its political and national capacity, to enter into contracts of the most solemn character; and if these contracts contain matter proper for judicial inquiry, [p69] why should we refuse to entertain jurisdiction of the case? Such jurisdiction is expressly given to this Court in cases arising under treaties. If the executive department does not think proper to enter into treaties or contracts with the Indian nations, no case with them can arise calling for judicial cognizance. But when such treaties are found containing stipulations proper for judicial cognizance, I am unable to discover any reasons satisfying my mind that this Court has not jurisdiction of the case.

The next inquiry is whether such a case is made out in the bill as to warrant this Court in granting any relief?

I have endeavoured to show that the Cherokee Nation is a foreign state, and, as such, a competent party to maintain an original suit in this Court against one of the United States. The injuries complained of are violations committed and threatened upon the property of the complainants, secured to them by the laws and treaties of the United States. Under the Constitution, the judicial power of the United States extends expressly to all cases in law and equity arising under the laws of the United States and treaties made or which shall be made under the authority of the same.

In the case of *Osborn v. The United States Bank,* 9 Wheat. 819, the Court say that this clause in the Constitution enables the judicial department to receive jurisdiction to the full extent of the Constitution, laws, and treaties

of the United States when any question respecting them shall assume such a form that the judicial power is capable of acting on it. That power is capable of acting only when the subject is submitted to it by a party who asserts his rights in the form presented by law. It then becomes a case, and the Constitution authorises the application of the judicial power.

The question presented in the present case is, under the ordinary form of judicial proceedings, to obtain an injunction to prevent or stay a violation of the rights of property claimed and held by the complainants under the treaties and laws of the United States which, it is alleged, have been violated by the State of Georgia. Both the form and the subject matter of the complaint therefore fall properly under judicial cognizance.

What the rights of property in the Cherokee Nation are [p70] may be discovered from the several treaties which have been made between the United States and that Nation between the years 1785 and 1819. It will be unnecessary to notice many of them. They all recognize in the most unqualified manner a right of property in this nation to the occupancy, at least, of the lands in question. It is immaterial whether this interest is a mere right of occupancy or an absolute right to the soil. The complains is for a violation, or threatened violation, of the possessory right. And this is a right, in the enjoyment of which they are entitled to protection according to the doctrine of this Court in the cases of *Fletcher v. Peck,* 6 Cranch 87, 2 Peters's Cond.Rep. 308, and *Johnson v. M'Intosh,* 8 Wheat. 592. By the fourth article of the treaty of Hopewell, as early as the year 1785, 1 Laws United States 323, the boundary line between the Cherokees and the citizens of the United States within the limits of the United States is fixed.

The fifth article provides for the removal and punishment of citizens of the United States or other persons, not being Indians, who shall attempt to settle on the lands so allotted to the Indians, thereby not only surrendering the exclusive possession of these lands to this nation but providing for the protection and enjoyment of such possession. And it may be remarked in corroboration of what has been said in a former part of this opinion that there is here drawn a marked line of distinction between the Indians and citizens of the United States entirely excluding the former from the character of citizens.

Again, by the treaty of Holston in 1791, 1 Laws United States 325, the United States purchase a part of the territory of this nation, and a new boundary line is designated and provision made for having it ascertained and marked. The mere act of purchasing and paying a consideration for these lands is a recognition of the Indian right. In addition to which, the United States, by the seventh article, solemnly guaranty to the Cherokee Nation all their lands not ceded by that treaty. And, by the eighth article, it is declared that any citizens of the United States, who shall settle upon any of the Cherokee lands, shall forfeit the protection of the United States, and the Cherokees may punish them or not as they shall please. [p71]

This treaty was made soon after the adoption of the present Constitution. And, in the last article, it is declared that it shall take effect and be obligatory upon the contracting parties as soon as the same shall have been ratified by the President of the United States, with the advice and consent of the Senate, thereby showing the early opinion of the government of the

character of the Cherokee Nation. The contract is made by way of treaty, and to be ratified in the same manner as all other treaties made with sovereign and independent nations, and which has been the mode of negotiating in all subsequent Indian treaties.

And this course was adopted by President Washington upon great consideration, by and with the previous advice and concurrence of the Senate. In his message sent to the Senate on that occasion, he states that the White people had intruded on the Indian lands, as bounded by the treaty of Hopewell, and declares his determination to execute the power entrusted to him by the Constitution to carry that treaty into faithful execution unless a new boundary should be arranged with the Cherokees embracing the intrusive settlements and compensating the Cherokees therefor. And he puts to the Senate this question: shall the United States stipulate solemnly to guarantee the new boundary which shall be arranged? Upon which, the Senate resolve that, in case a new or other boundary than that stipulated by the treaty of Hopewell shall be concluded with the Cherokee Indians, the Senate do advise and consent solemnly to guaranty the same. 1 Executive Journal 60. In consequence of which the treaty of Holston was entered into, containing the guarantee.

Further cessions of land have been made at different times by the Cherokee Nation to the United States for a consideration paid therefor and, as the treaties declare, in acknowledgement for the protection of the United States (*see* Treaty of 1798, 1 Laws U.S. 332), the United States always recognizing in the fullest manner the Indian right of possession; and in the Treaty of the 8th of July, 1817, art. 5 (6 Laws U.S. 702), all former treaties are declared to be in full force, and the sanction of the United States is given to the proposition of a portion of the Nation to begin the establishment of fixed laws and a regular government: thereby recognizing in the Nation a political existence, capable of forming an independent [p72] government, separate and distinct from and in no manner whatever under the jurisdiction of the State of Georgia; and no objection is known to have been made by that State.

And again, in 1819 (6 Laws U.S. 748), another treaty is made sanctioning and carrying into effect the measures contemplated by the treaty of 1817, beginning with a recital that the greater part of the Cherokees have expressed an earnest desire to remain on this side of the Mississippi, and being desirous, in order to commence those measures which they deem necessary to the civilization and preservation of their nation, that the Treaty between the United States and them, of the 8th of July, 1817, might without further delay be finally adjusted, have offered to make a further cession of land, &c. This cession is accepted, and various stipulations entered into with a view to their civilization and the establishment of a regular government, which has since been accomplished. And, by the fifth article, it is stipulated that all white people who have intruded or who shall thereafter intrude on the lands reserved for the Cherokees shall be removed by the United States and proceeded against according to the provisions of the act of 1802, entitled "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers." 3 Laws U.S. 460. By this act, the boundary lines established by treaty with the various Indian tribes are required to be ascertained and marked, and, among others, that with the Cherokee Nation according to the Treaty of the 2d of October, 1798.

It may be necessary here briefly to notice some of the provisions of this Act of 1802 so far as it goes to protect the rights of property in the Indians, for the purpose of seeing whether there has been any violation of those rights by the State of Georgia which falls properly under judicial cognizance. By this Act, it is made an offence punishable by fine and imprisonment for any citizen or other person resident in the United States, or either of the territorial districts, to cross over or go within the boundary line to hunt or destroy the game, or drive stock to range or feed on the Indian lands, or to go into any country allotted to the Indians without a passport, or to commit therein any robbery, larceny, trespass, or other crime against the person or property of any friendly [p73] Indian, which would be punishable, if committed within the jurisdiction of any State against a citizen of the United States, thereby necessarily implying that the Indian territory secured by treaty was not within the jurisdiction of any State. The Act further provides that ,when property is taken or destroyed, the offender shall forfeit and pay twice the value of the property so taken or destroyed. And, by the fifth section, it is declared that, if any citizen of the United States or other person shall make a settlement on any lands belonging or secured or guarantied 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 one thousand dollars, and suffer imprisonment not exceeding twelve months.

This Act contains various other provisions for the purpose of protecting the Indians in the free and uninterrupted enjoyment of their lands, and authority is given (§ 16) to employ the military force of the United States to apprehend all persons who shall be found in the Indian country in violation of any of the provisions of the act, and deliver them up to the civil authority to be proceeded against in due course of law.

It may not be improper here to notice some diversity of opinion that has been entertained with respect to the construction of the nineteenth section of this Act, which declares that nothing therein contained shall be construed to prevent any trade or intercourse with the Indians living on lands surrounded by settlements of citizens of the United States, and being within the ordinary jurisdiction of any of the individual States. It is understood that the State of Georgia contends that the Cherokee Nation come within this section, and are subject to the jurisdiction of that State. Such a construction makes the Act inconsistent with itself, and directly repugnant to the various treaties entered into between the United States and the Cherokee Indians. The Act recognizes and adopts the boundary line as settled by treaty. And by these treaties, which are in full force, the United States solemnly guaranty to the Cherokee Nation all their lands not ceded to the United States; and these lands lie within the chartered limits of Georgia; and this was a subsisting guarantee under the [p74] Treaty of 1791, where the Act of 1802 was passed. It would require the most unequivocal language to authorise a construction so directly repugnant to these treaties.

But this section admits of a plain and obvious interpretation, consistent with other parts of the Act, and in harmony with these treaties. The reference undoubtedly is to that class of Indians which has already been referred to, consisting of the mere remnants of tribes which have become almost extinct and who have, in a great measure, lost their original character and

abandoned their usages and customs and become subject to the laws of the State, although in many parts of the country living together, and surrounded by the whites. They cannot be said to have any distinct government of their own, and are within the ordinary jurisdiction and government of the State where they are located.

But such was not the condition and character of the Cherokee Nation, in any respect whatever, in the year 1802 or at any time since. It was a numerous and distinct nation, living under the government of their own laws, usages, and customs and in no sense under the ordinary jurisdiction of the State of Georgia, but under the protection of the United States, with a solemn guarantee by treaty of the exclusive right to the possession of their lands. This guarantee is to the Cherokees in their national capacity. Their land is held in common, and every invasion of their possessory right is an injury done to the Nation, and not to any individual. No private or individual suit could be sustained; the injury done being to the Nation, the remedy sought must be in the name of the Nation. All the rights secured to these Indians under the treaties made with them remain unimpaired. These treaties are acknowledged by the United States to be in full force by the proviso to the seventh section of the Act of the 28th May 1830, which declares that nothing in this Act contained shall be construed as authorising or directing the violation of any existing treaty between the United States and any Indian tribes.

That the Cherokee Nation of Indians have, by virtue of these treaties, an exclusive right of occupancy of the lands in question, and that the United States are bound under their guarantee to protect the Nation in the enjoyment of such occupancy, [p75] cannot, in my judgment, admit of a doubt, and that some of the laws of Georgia set out in the bill are in violation of and in conflict with those treaties and the Act of 1802 is, to my mind, equally clear. But a majority of the Court having refused the injunction, so that no relief whatever can be granted, it would be a fruitless inquiry for me to go at large into an examination of the extent to which relief might be granted by this Court, according to my own view of the case.

I certainly, as before observed, do not claim as belonging to the Judiciary the exercise of political power. That belongs to another branch of the Government. The protection and enforcement of many rights secured by treaties most certainly do not belong to the Judiciary. It is only where the rights of persons or property are involved, and when such rights can be presented under some judicial form of proceedings, that courts of justice can interpose relief.

This Court can have no right to pronounce an abstract opinion upon the constitutionality of a State law. Such law must be brought into actual or threatened operation upon rights properly falling under judicial cognizance, or a remedy is not to be had here.

The laws of Georgia set out in the bill, if carried fully into operation, go the length of a abrogating all the laws of the Cherokees, abolishing their government, and entirely subverting their national character. Although the whole of these laws may be in violation of the treaties made with this Nation, it is probable this Court cannot grant relief to the full extent of the complaint. Some of them, however, are so directly at variance with these

treaties and the laws of the United States touching the rights of property secured to them that I can perceive no objection to the application of judicial relief. The State of Georgia certainly could not have intended these laws as declarations of hostility, or wish their execution of them to be viewed in any manner whatever as acts of war, but merely as an assertion of what is claimed as a legal right, and in this light ought they to be considered by this Court.

The Act of the 2d of December, 1830 is entitled

> An act to authorize the Governor to take possession of the gold and silver and other mines lying and being in that section of the chartered limits of Georgia, commonly called the Cherokee country, **[p76]** and those upon all other unappropriated lands of the State, and for punishing persons who may be found trespassing on the mines.

The preamble to this Act asserts the title to these mines to belong to the State of Georgia, and by its provisions, twenty thousand dollars are appropriated and placed at the disposal of the Governor to enable him to take possession of those mines; and it is made a crime, punishable by imprisonment in the penitentiary of Georgia at hard labour, for the Cherokee Indians to work these mines. And the bill alleges that, under the laws of the State in relation to the mines, the Governor has stationed at the mines an armed force who are employed in restraining the complainants in their rights and liberties in regard to their own mines, and in enforcing the laws of Georgia upon them. These can be considered in no other light than as acts of trespass, and may be treated as acts of the State, and not of the individuals employed as the agents. Whoever authorises or commands an act to be done may be considered a principal, and held responsible if he can be made a party to a suit, as the State of Georgia may undoubtedly be. It is not perceived on what ground the State can claim a right to the possession and use of these mines. The right of occupancy is secured to the Cherokees by treaty, and the State has not even a reversionary interest in the soil. It is true that, by the Compact with Georgia of 1802, the United States have stipulated to extinguish, for the use of the State, the Indian title to the lands within her remaining limits "as soon as it can be done peaceably and upon reasonable terms." But until this is done, the State can have no claim to the lands.

The very Compact is a recognition by the State of a subsisting Indian right, and which may never be extinguished. The United States have not stipulated to extinguish it until it can be done "peaceably and upon reasonable terms," and whatever complaints the State of Georgia may have against the United States for the nonfulfillment of this compact, it cannot affect the right of the Cherokees. They have not stipulated to part with that right, and, until they do, their right to the mines stands upon the same footing as the use and enjoyment of any other part of the territory.

Again, by the act of the 21st December, 1830, surveyors [p77] are authorized to be appointed to enter upon the Cherokee territory and lay it off into districts and sections, which are to be distributed by lottery among the people of Georgia, reserving to the Indians only the present occupancy of such improvements as the individuals of their Nation may now be residing

on, with the lots on which such improvements may stand, and even excepting from such reservation improvements recently made near the gold mines.

This is not only repugnant to the treaties with the Cherokees, but directly in violation of the Act of Congress of 1802, the fifth section of which makes it an offence punishable with fine and imprisonment to survey or attempt to survey or designate any of the boundaries, by marking trees or otherwise, of any land belonging to or secured by treaty to any Indian tribe, in the face of which, the law of Georgia authorises the entry upon, taking possession of, and surveying, and distributing by lottery, these lands guarantied by treaty to the Cherokee Nation, and even gives authority to the Governor to call out the military force to protect the surveyors in the discharge of the duty assigned them.

These instances are sufficient to show a direct and palpable infringement of the rights of property secured to the complainants by treaty, and in violation of the act of Congress of 1802. These treaties and this law are declared by the Constitution to be the supreme law of the land; it follows as matter of course that the laws of Georgia, so far as they are repugnant to them, must be void and inoperative. And it remains only very briefly to inquire whether the execution of them can be restrained by injunction according to the doctrine and practice of Courts of equity.

According to the view which I have already taken of the case, I must consider the question of right as settled in favour of the complainants. This right rests upon the laws of the United States and treaties made with the Cherokee Nation. The construction of these laws and treaties are pure questions of law, and for the decision of the Court. There are no grounds, therefore, upon which it can be necessary to send the cause for a trial at law of the right before awarding an injunction, and the simple question is whether such a case is made out by the bill as to authorize the granting an injunction. [p78]

This is a prohibitory writ, to restrain a party from doing a wrong or injury to the rights of another. It is a beneficial process for the protection of rights, and is favourably viewed by courts of chancery, as its object is to prevent, rather than redress, injuries, and has latterly been more liberally awarded than formerly. 7 Ves.Jun. 307.

The bill contains charges of numerous trespasses by entering upon the lands of the complainants and doing acts greatly to their injury and prejudice, and to the disturbance of the quiet enjoyment of their land, and threatening a total destruction of all their rights. And although it is not according to the course of chancery, to grant injunctions to prevent trespasses when there is a clear and adequate remedy at law, yet it will be done when the case is special and peculiar, and when no adequate remedy can be had at law, and particularly when the injury threatens irreparable ruin. 6 Ves. 147. 7 Eden 307. Every man is entitled to be protected in the possession and enjoyment of his property, and the ordinary remedy by action of trespass may generally be sufficient to afford such protection. But where, from the peculiar nature and circumstances of the case, this is not an adequate protection, it is a fit case to interpose the preventive process of injunction. This is the principle running through all the case on this

subject, and is founded upon the most wise and just considerations, and this is peculiarly such a case. The complaint is not of a mere private trespass, admitting of compensation in damages, but of injuries which go to the total destruction of the whole right of the complainants. The mischief threatened is great and irreparable. 7 Johns.Cha. 330. It is one of the most beneficial powers of a Court of equity to interpose and prevent an injury before any has actually been suffered, and this is done by a bill which is sometimes called a bill *quia timet.* Mitford 120.

The doctrine of this Court in the case of *Osborne v. The United States Bank,* 9 Wheat. 338, fully sustains the present application for an injunction. The bill in that case was filed to obtain an injunction against the auditor of the State of Ohio to restrain him from executing a law of that State which was alleged to be to the great injury of the bank, and to the destruction of rights conferred by their charter. The only [p79] question of doubt entertained by the Court in that case was as to issuing an injunction against an officer of the State to restrain him from doing an official act enjoined by statute, the State not being made a party. But even this was not deemed sufficient to deny the injunction. The Court considered that the Ohio law was made for the avowed purpose of expelling the bank from the State and depriving it of its chartered privileges, and they say, if the State could have been made a party defendant, it would scarcely be denied that it would be a strong case for an injunction; that the application was not to interpose the writ of injunction to protect the bank from a common and casual trespass of an individual, but from a total destruction of its franchise, of its chartered privileges, so far as respected the State of Ohio. In that case, the State could not be made a party according to the Eleventh Amendment of the Constitution, the complainants being mere individuals, and not a sovereign State. But, according to my view of the present case, the State of Georgia is properly made a party defendant, the complainants being a foreign state.

The laws of the State of Georgia in this case go as fully to the total destruction of the complainants' rights as did the law of Ohio to the destruction of the rights of the bank in that State, and an injunction is as fit and proper in this case to prevent the injury as it was in that.

It forms no objection to the issuing of the injunction in this case that the lands in question do not lie within the jurisdiction of this Court. The writ does not operate *in rem,* but *in personam.* If the party is within the jurisdiction of the Court, it is all that is necessary to give full effect and operation to the injunction; and it is immaterial where the subject matter of the suit, which is only affected consequentially, is situated. This principle is fully recognized by this Court in the case of *Massie v. Watts,* 6 Cranch 157, when this general rule is laid down, that in a case of fraud of trust or of contract, the jurisdiction of a court of chancery is sustainable wherever the person may be found, although lands not within the jurisdiction of the court may be affected by the decree. And reference is made to several cases in the English Chancery recognizing the same principle. In the case of *Penn v. Lord Baltimore,* 1 Ves. 444, a specific performance of a contract [p80] respecting lands lying in North America was decreed, the chancellor saying the strict primary decree of a Court of equity is *in personam,* and may be enforced in all cases when the person is within its jurisdiction.

Upon the whole, I am of opinion,

1. That the Cherokees compose a foreign state within the sense and meaning of the Constitution, and constitute a competent party of maintain a suit against the State of Georgia.

2. That the bill presents a case for judicial consideration arising under the laws of the United States and treaties made under their authority with the Cherokee Nation, and which laws and treaties have been, and are threatened to be still further, violated by the laws of the State of Georgia referred to in this opinion.

3. That an injunction is a fit and proper writ to be issued to prevent the further execution of such laws, and ought therefore to be awarded.

And I am authorised by my brother Story to say that he concurs with me in this opinion.