Syllabus

SUPREME COURT OF THE UNITED STATES

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30 U.S. 1

Cherokee Nation v. Georgia

Motion for an injunction to prevent the execution of certain acts of the Legislature of the State of Georgia in the territory of the Cherokee Nation, on behalf of the Cherokee Nation, they claiming to proceed in the Supreme Court of the United States as a foreign state against the State of Georgia under the provision of the Constitution of the United States which gives to the Court jurisdiction in controversies in which a State of the United States or the citizens thereof, and a foreign state, citizens, or subjects thereof are parties.

The Cherokee Nation is not a foreign state in the sense in which the terms "foreign state" is used in the Constitution of the United States.

The third article of the Constitution of the United States describes the extent of the judicial power. The second section closes an enumeration of the cases to which it extends with "controversies between a State or the citizens thereof and foreign states, citizens or subjects." A subsequent clause of the same section gives the Supreme Court original jurisdiction in all cases in which a State shall be a party -- the State of Georgia may then certainly be sued in this Court.

The Cherokees are a State. They have been uniformly treated as a State since the settlement of our country. The numerous treaties made with them by the United States recognise them as a people capable of maintaining the relations of peace and war; of being responsible in their political character for any violation of their engagements, or for any aggression committed on the citizens of the United States by any individual of their community. Laws have [p2] been enacted in the spirit of these treaties. The acts of our Government plainly recognise the Cherokee Nation as a State, and the Courts are bound by those acts.

The condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence. In general, nations not owing a common allegiance are foreign to each other. The term "foreign nation" is with strict propriety applicable by either to the other. But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else.

The Indians are acknowledged to have an unquestionable, and heretofore an unquestioned, right to the lands they occupy until that right shall be extinguished by a voluntary cession to our Government. It may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases; meanwhile, they are in a state of pupilage. Their relations to the United States resemble that of a ward to his guardian. They look to our Government for protection, rely upon its kindness and its power, appeal to it for relief to their wants, and address the President as their Great Father.

The bill filed on behalf of the Cherokees seeks to restrain a State from forcible exercise of legislative power over a neighbouring people asserting their independence, their right to which the State denies. On several of the matters alleged in the bill, for example, on the laws making it criminal to exercise the usual power of self-government in their own country by the Cherokee Nation, this Court cannot interpose, at least in the form in which those matters are presented. That part of the bill which respects the land occupied by the Indians, and prays the aid of the Court to protect their possessions, may be more doubtful. The mere question of right might perhaps be decided by this Court in a proper case with proper parties. But the Court is asked to do more than decide on the title. The bill requires us to control the Legislature of Georgia, and to restrain the exertion of its physical force. The propriety of such an interposition by the Court may well be questioned. It savours too much of the exercise of political power to be within the proper province of the Judicial Department.

This case came before the court on a motion on behalf of the Cherokee Nation of Indians for a subpoena, and for an injunction to restrain the State of Georgia, the Governor, Attorney General, judges, justices of the peace, sheriffs, deputy sheriffs, constables, and others the officers, agents, and servants of that State from executing and enforcing the laws of Georgia or any of these laws, or serving process, or doing anything towards the execution or enforcement of those laws, within the Cherokee territory, as designated by treaty between the United States and the Cherokee Nation.

The motion was made, after notice and a copy of the bill [p3] filed at the instance and under the authority of the Cherokee Nation had been served on the Governor and Attorney General of the State of Georgia on the 27th December, 1830, and the 1st of January, 1831. The notice Stated that the motion would be made in this court on Saturday, the 5th day of March, 1831. The bill was signed by John Ross, principal chief of the Cherokee Nation, and an affidavit, in the usual form, of the facts stated in the bill was annexed; which was sworn to before a justice of the peace of Richmond County, State of Georgia.

The bill set forth the complainants to be

the Cherokee Nation of Indians, a foreign state, not owing allegiance to the United States, nor to any State of this union, nor to any prince, potentate or State, other than their own.

That, from time immemorial, the Cherokee Nation have composed a sovereign and independent State, and in this character have been repeatedly recognized, and still stand recognized by the United States, in the various treaties subsisting between their nation and the United States.

That the Cherokees were the occupants and owners of the territory in which they now reside before the first approach of the white men of Europe to the western continent, "deriving their title from the Great Spirit, who is the common father of the human family, and to whom the whole earth belongs." Composing the Cherokee Nation, they and their ancestors have been and are the sole and exclusive masters of this territory, governed by their own laws, usages, and customs.

The bill states the grant, by a charter in 1732, of the country on this continent lying between the Savannah and Alatahama rivers, by George the Second, "monarch of several islands on the eastern coast of the Atlantic," the same country being then in the ownership of several distinct, sovereign, and independent nations of Indians, and amongst them the Cherokee Nation.

The foundation of this charter, the bill states, is asserted to be the right of discovery to the territory granted; a ship manned by the subjects of the king having,

about two centuries and a half before, sailed along the coast of the western hemisphere, from the fifty-sixth to the thirty-eighth degree of north [p4] latitude, and looked upon the face of that coast without even landing on any part of it.

This right, as affecting the right of the Indian nation, the bill denies, and asserts that the whole length to which the right of discovery is claimed to extend among European nations is to give to the first discoverer the prior and exclusive right to purchase these lands from the Indian proprietors, against all other European sovereigns, to which principle the Indians have never assented, and which they deny to be a principle of the natural law of nations or obligatory on them.

The bill alleges that it never was claimed under the charter of George the Second that the grantees had a right to disturb the self-government of the Indians who were in possession of the country, and that, on the contrary, treaties were made by the first adventurers with the Indians by which a part of the territory was acquired by them for a valuable consideration, and no pretension was ever made to set up the British laws in the country owned by the Indians. That various treaties have been, from time to time, made between the British colony in Georgia; between the State of Georgia, before her confederation with the other States; between the confederate States afterwards; and, finally, between the United States under their present Constitution and the Cherokee Nation, as well as other nations of Indians, in all of which the Cherokee Nation and the other nations have been recognized as sovereign and independent States possessing both the exclusive right to their territory and the exclusive right of self-government within that territory. That the various proceedings from time to time had by the Congress of the United States under the articles of their confederation, as well as under the present Constitution of the United States, in relation to the subject of the Indian nations confirm the same view of the subject.

The bill proceeds to refer to the treaty concluded at Hopewell on the 28th November, 1785, "between the commissioners of the United States and headmen and warriors of all the Cherokees;" the treaty of Holston of the 22d July, 1791, "between the president of the United States by his duly authorized commissioner, William Blount, and the chiefs and warriors of the Cherokee Nation of Indians," and the additional [p5] article of 17th November, 1792, made at Philadelphia by Henry Knox, the secretary at war, acting on behalf of the United States; the treaty made at Philadelphia on the 26th June, 1794; the treaties between the same parties made at Tellico 2d October, 1790; on the 24th October, 1804; on the

25th October, 1805, and the 27th October, 1805; the treaty at Washington on the 7th January, 1806, with the proclamation of that convention by the president, and the elucidation of that convention of 11th September, 1807; the treaty between the United States and the Cherokee Nation made at the city of Washington on the 22d day of March, 1816; another convention made at the same place, on the same day, by the same parties; a treaty made at the Cherokee agency on the 8th July, 1807; and a treaty made at the city of Washington on the 27th February, 1819,

all of which treaties and conventions were duly ratified and confirmed by the Senate of the United States, and became thenceforth, and still are, a part of the supreme law of the land.

By those treaties, the bill asserts, the Cherokee Nation of Indians are acknowledged and treated with as sovereign and independent States, within the boundary arranged by those treaties, and that the complainants are, within the boundary established by the treaty of 1719, sovereign and independent, with the right of self-government, without any right of interference with the same on the part of any State of the United States. The bill calls the attention of the court to the particular provisions of those treaties, "for the purpose of verifying the truth of the general principles deduced from them."

The bill alleges, from the earliest intercourse between the United States and the Cherokee Nation, an ardent desire has been evinced by the United States to lead the Cherokees to a greater degree of civilization. This is shown by the fourteenth article of the treaty of Holston, and by the course pursued by the United States in 1808, when a treaty was made giving to a portion of the nation which preferred the hunter state a territory on the west of the Mississippi in exchange for a part of the lower country of the Cherokees; and assurances were given by the president that those who chose to remain for the purpose of engaging in the pursuits of agricultural and civilized life in the country they occupied might rely "on the [p6] patronage, aid, and good neighbourhood of the United States." The treaty of 8th July, 1817, was made to carry those promises into effect, and, in reliance on them, a large cession of lands was thereby made; and in 1819, on the 27th February, another treaty was made, the preamble of which recites that a greater part of the Cherokee Nation had expressed an earnest desire to remain on this side of the Mississippi, and were desirous to commence those measures which they deem necessary to the civilization and preservation of their nation, to give effect to which object without delay, that treaty was declared to be made, and another large cession of their lands was thereby made by them to the United States.

By a reference to the several treaties, it will be seen that a fund is provided for the establishment of schools, and the bill asserts that great progress has been made by the Cherokees in civilization and in agriculture.

They have established a constitution and form of government, the leading features of which they have borrowed from that of the United States, dividing their government into three separate departments, legislative, executive and judicial. In conformity with this constitution, these departments have all been organized. They have formed a code of laws, civil and criminal, adapted to their situation, have erected courts to expound and apply those laws, and organized an executive to carry them into effect. They have established schools for the education of their children, and churches in which the Christian religion is taught; they have abandoned the hunter state and become agriculturists, mechanics, and herdsmen; and, under provocations long continued and hard to be borne, they have observed with fidelity all their engagements by treaty with the United States.

Under the promised "patronage and good neighbourhood" of the United States, a portion of the people of the nation have become civilized Christians and agriculturists, and the bill alleges that, in these respects, they are willing to submit to a comparison with their white brethren around them.

The bill claims for the Cherokee Nation the benefit of the provision in the Constitution that treaties are the supreme law of the land, and all judges are bound thereby; of the declaration in the Constitution that no State shall pass any law [p7] impairing the obligation of contracts, and avers that all the treaties referred to are contracts of the highest character and of the most solemn obligation. It asserts that the Constitutional provision that Congress shall have power to regulate commerce with the Indian tribes is a power which, from its nature, is exclusive, and consequently forbids all interference by any one of the States. That Congress have, in execution of this power, passed various acts, and, among others, the act of 1802, "to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers." The objects of these acts are to consecrate the Indian boundary as arranged by the treaties, and they contain clear recognitions of the sovereignty of the Indians, and of their exclusive right to give and to execute the law within that boundary.

The bill proceeds to state that, in violation of these treaties, of the Constitution of the United States, and of the Act of Congress of 1802, the State of Georgia, at a session of her Legislature held in December in the year 1828, passed an act, which received the assent of the Governor of that State on the twentieth day of that month and year, entitled,

An act to add the territory lying within this State and occupied by the Cherokee Indians, to the counties of Carroll, De Kalb, Gwinett, Hall, and Habersham, and to extend the laws of this State over the same, and for other purposes.

That afterwards, to-wit in the year 1829, the Legislature of the said State of Georgia passed another act, which received the assent of the Governor on the 19th December of that year, entitled,

An act to add the territory lying within the chartered limits of Georgia, now in the occupancy of the Cherokee Indians, to the counties of Carroll, De Kalb, Gwinett, Hall, and Habersham, and to extend the laws of this State over the same, and to annul all laws and ordinances made by the Cherokee Nation of Indians, and to provide for the compensation of officers serving legal processes in said territory, and to regulate the testimony of Indians, and to repeal the ninth section of the Act of 1828 on this subject.

The effect of these laws, and their purposes, are stated to be to parcel out the territory of the Cherokees; to extend all the laws of Georgia over the same; to abolish the Cherokee laws, and to deprive the Cherokees of the protection of their laws; [p8] to prevent them, as individuals, from enrolling for emigration, under the penalty of indictment before the State courts of Georgia; to make it murder in the officers of the Cherokee government to inflict the sentence of death in conformity with the Cherokee laws, subjecting them all to indictment therefor, and death by hanging; extending the jurisdiction of the justices of the peace of Georgia into the Cherokee territory, and authorising the calling out of the militia of Georgia to enforce the process; and finally, declaring that no Indian, or descendant of any Indian, residing within the Cherokee Nation of Indians shall be deemed a competent witness in any court of the State of Georgia, in which a white person may be a party, except such white person resides within the said nation.

All these laws are averred to be null and void because repugnant to treaties in full force, to the Constitution of the United States, and to the Act of Congress of 1802.

The bill then proceeds to State the interference of President Washington for the protection of the Cherokees, and the resolutions of the Senate in consequence of his reference of the subject of intrusions on their territory. That, in 1802, the State of Georgia, in ceding to the United States a large body of lands within her alleged chartered limits and imposing a condition that the Indian title should be peaceably extinguished, admitted the subsisting Indian title. That cessions of territory have always been voluntarily made by the Indians in their national character, and that cessions have been made of as much land as could be spared, until the cession of 1819,

when they had reduced their territory into as small a compass as their own convenience would bear, and they then accordingly resolved to cede no more.

The bill then refers to the various applications of Georgia to the United States to extinguish the Indian title by force, and her denial of the obligations of the treaties with the Cherokees, although, under these treaties, large additions to her disposable lands had been made, and states that Presidents Monroe and Adams, in succession, understanding the articles of cession and agreement between the State of Georgia and the United States in the year 1802 as binding the United States to extinguish the Indian title so soon only as it could be done peaceably and on reasonable terms, refused themselves to apply force to these complainants [p9] or to permit it to be applied by the State of Georgia to drive them from their possession, but, on the contrary, avowed their determination to protect these complainants by force, if necessary, and to fulfil the guarantee given to them by the treaties.

The State of Georgia, not having succeeded in these applications to the Government of the United States, have resorted to legislation, intending to force, by those means, the Indians from their territory. Unwilling to resist by force of arms these pretensions and efforts, the bill states that application for protection, and for the execution of the guarantee of the treaties, has been made by the Cherokees to the present President of the United States, and they have received for answer "that the President of the United States has no power to protect them against the laws of Georgia."

The bill proceeds to refer to the act of Congress of 1830 entitled "An act to provide for an exchange of lands with the Indians residing in any of the States or territories, and for their removal west of the Mississippi." The Act is to apply to such of the Indians as may choose to remove, and by the proviso to it, nothing contained in the Act shall be construed as authorising or directing the violation of any existing treaty between the United States and any of the Indian tribes.

The complainants have not chosen to remove, and this, it is alleged, it is sufficient for the complainants to say; but they proceed to state that they are fully satisfied with the country they possess; the climate is salubrious; it is convenient for commerce and intercourse; it contains schools in which they can obtain teachers from the neighbouring States, and places for the worship of God, where Christianity is taught by missionaries and pastors easily supplied from the United States. The country, too,

is consecrate in their affections from having been immemorially the property and residence of their ancestors, and from containing now the graves of their fathers, relatives, and friends.

Little is known of the country west of the Mississippi, and, if accepted, the bill asserts it will be the grave not only of their civilization and Christianity, but of the nation itself.

It also alleges that the portion of the nation who emigrated [p10] under the patronage and sanction of the President in 1808 and 1809, and settled on the territory assigned to them on the Arkansas river, were afterwards required to remove again, and that they did so under the stipulations of a treaty made in May 1828. The place to which they removed under this last treaty is said to be exposed to incursions of hostile Indians, and that they are

engaged in constant scenes of killing and scalping, and have to wage a war of extermination with more powerful tribes, before whom they will ultimately fall.

They have therefore, decidedly rejected the offer of exchange. The bill then proceeds to state various acts under the authority of the laws of Georgia in defiance of the treaties referred to, and of the Constitution of the United States, as expressed in the act of 1802, and that the State of Georgia has declared its determination to continue to enforce these laws so long as the complainants shall continue to occupy their territory.

But while these laws are enforced in a manner the most harassing and vexatious to your complainants, the design seems to have been deliberately formed to carry no one of these cases to final decision in the State courts, with the view, as the complainants believe and therefore allege, to prevent any one of the Cherokee defendants from carrying those cases to the Supreme Court of the United States by writ of error for review under the twenty-fifth section of the act of Congress of the United States, passed in the year 1789, and entitled "An act to establish the judicial courts of the United States."

Numerous instances of proceedings are set forth at large in the bill. The complainants expected protection from these unconstitutional acts of Georgia by the troops of the United States, but notice has been given by the commanding officer of those troops to John Ross, the principal chief of the Cherokee Nation, that "these troops, so far from protecting the Cherokees, would cooperate with the civil officers of Georgia in enforcing their laws upon them." Under these circumstances, it is said that it cannot but be seen that, unless this court shall interfere, the complainants have but these alternatives: either to surrender their lands in exchange for others in the western wilds of this continent, which would be to seal at once the doom of their civilization, Christianity, and national [p11] existence; or to surrender

their national sovereignty, their property, rights and liberties, guarantied as these now are by so many treaties, to the rapacity and injustice of the State of Georgia; or to arm themselves in defence of these sacred rights, and fall, sword in hand, on the graves of their fathers.

These proceedings, it is alleged, are wholly inconsistent with equity and good conscience; tend to the manifest wrong of the complainants; and violate the faith of the treaties to which Georgia and the United States are parties, and of the Constitution of the United States. These wrongs are of a character wholly irremediable by the common law, and these complainants are wholly without remedy of any kind except by the interposition of this honourable Court.

The bill avers that this Court has, by the Constitution and laws of the United States, original jurisdiction of controversies between a State and a foreign state, without any restriction as to the nature of the controversy; that, by the Constitution, treaties are the supreme law of the land. That, as a foreign state, the complainants claim the exercise of the powers of the Court of protect them in their rights, and that the laws of Georgia, which interfere with their rights and property, shall be declared void, and their execution be perpetually enjoined.

The bill States that John Ross is "the principal chief and executive head of the Cherokee Nation," and that, in a full and regular council of that nation, he has been duly authorised to institute this and all other suits which may become necessary for the assertion of the rights of the entire nation.

The bill then proceeds in the usual form to ask and answer to the allegations contained in it, and

that the said State of Georgia, her Governor, Attorney General, judges, magistrates, sheriffs, deputy sheriffs, constables, and all other her officers, agents, and servants, civil and military, may be enjoined and prohibited from executing the laws of that State within the boundary of the Cherokee territory, as prescribed by the treaties now subsisting between the United States and the Cherokee Nation, or interfering in any manner with the rights of self-government possessed by the Cherokee Nation within the limits of their territory, as defined by the treaty; that the two laws of Georgia before mentioned as having been passed in the years [p12] 1828 and 1829 may, by the decree of this honourable Court, be declared unconstitutional and void; and that the State of Georgia, and all her officers, agents, and servants may be forever enjoined from interfering with the lands, mines and other property, real and personal, of the Cherokee Nation, or with the persons of the Cherokee people, for or on account of anything done by them within the limits of the Cherokee territory; that the pretended right of the State of Georgia to the possession, government, or control of the lands, mines, and other property of the

Cherokee Nation within their territory may, by this honourable Court, be declared to be unfounded and void, and that the Cherokees may be left in the undisturbed possession, use, and enjoyment of the same, according to their own sovereign right and pleasure, and their own laws, usages, and customs, free from any hindrance, molestation, or interruption by the State of Georgia, her officers, agents, and servants; that these complainants may be quieted in the possession of all their rights, privileges, and immunities, under their various treaties with the United States; and that they may have such other and farther relief as this honourable Court may deem consistent with equity and good conscience, and as the nature of their case may require.

On the day appointed for the hearing, the counsel for the complainants filed a supplemental bill, sworn to by Richard Taylor, John Ridge, and W. S. Coodey of the Cherokee Nation of Indians, before a justice of the peace of the county of Washington in the district of Columbia.

The supplemental bill states that, since their bill, now submitted, was drawn, the following acts, demonstrative of the determination of the State of Georgia to enforce her assumed authority over the complainants and their territory, property, and jurisdiction have taken place.

The individual, called in that bill Corn Tassel and mentioned as having been arrested in the Cherokee territory under process issued under the laws of Georgia, has been actually hung in defiance of a writ of error allowed by the Chief Justice of this Court to the final sentence of the Court of Georgia in his case. That writ of error, having been received by the Governor of the State, was, as the complainants are informed and believe, immediately communicated by him to the Legislature of the [p13] State, then in session, who promptly resolved, in substance, that the Supreme Court of the United States had no jurisdiction over the subject, and advised the immediate execution of the prisoner under the sentence of the State Court, which accordingly took place.

The complainants beg leave farther to state that the Legislature of the State of Georgia, at the same session, passed the following laws, which have received the sanction of the Governor of the State.

An act to authorize the survey and disposition of lands within the limits of Georgia, in the occupancy of the Cherokee tribe of Indians, and all other unlocated lands within the limits of the said State, claimed as Creek land; and to authorize the Governor to call out the military force to protect surveyors in the discharge of their duties; and to provide for the punishment of persons who may prevent or attempt to prevent any surveyor from performing his duties, as pointed out by this act, or who shall wilfully cut down or deface any marked trees, or remove any landmarks which may be made in pursuance of this

act; and to protect the Indians in the peaceable possession of their improvements, and of the lots on which the same may be situate.

Under this law, it is stated that the lands within the boundary of the Cherokee territory are to be surveyed, and to be distributed by lottery among the people of Georgia.

At the same session, the Legislature of Georgia passed another act, entitled "An act to declare void all contracts hereafter made with the Cherokee Indians, so far as the Indians are concerned," which act received the assent of the Governor of the State on the 23d of December, 1830.

The Legislature of Georgia, at its same session, passed another law, entitled "An act to provide for the temporary disposal of the improvements and possessions purchased from certain Cherokee Indians and residents," which act received the assent of the Governor of the State the 22d December 1830.

At its same session, the Legislature of Georgia passed another law, entitled

An act to prevent the exercise of assumed and arbitrary power by all persons under pretext of authority from the Cherokee Indians and their laws, and to prevent white persons from residing within that part of the chartered [p14] limits of Georgia occupied by the Cherokee Indians, and to provide a guard for the protection of the gold mines, and to enforce the laws of the State within the aforesaid territory.

At the same session of its Legislature, the State of Georgia passed another act, entitled

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

The supplemental bill further states the proceedings of the Governor of Georgia, under these laws, and that he has stationed an armed force of the citizens of Georgia at the gold mines within the territory of the complainants, who are engaged in enforcing the laws of Georgia. Additional acts of violence and

injustice are said to have been done under the authority of the laws of Georgia, and by her officers and agents, within the Cherokee territory.

The complainants allege that the several legislative acts, herein set forth and referred to, are in direct violation of the treaties enumerated in their bill, to which this is a supplement, as well as in direct violation of the Constitution of the United States, and the act of Congress passed under its authority in the year 1802, entitled, "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers."

They pray that this supplement may be taken and received as a part of their bill; that the several laws of Georgia herein set forth may be declared by the decree of this Court to be null and void, on the ground of the repugnancy to the Constitution, laws, and treaties set forth above, and in the bill to which this is a supplement; and that these complainants may have the same relief by injunction and a decree of peace, or otherwise, according to equity and good conscience, against these laws as against those which are the subject of their bill as first drawn. [p15]