From the Cherokee Phœnix.

THE CHEROKEE NATION,

vs.

THE STATE OF GEORGIA.

JANUARY TERM, 1831.

Opinion of the Supreme Court of the United States, delivered by Mr. Chief Justice Marshall, on a motion of the Cherokee Nation for a writ of injunction and subpœna against the State of Georgia.

This bill is brought by the Cherokee Nation, praying an injunction to restrain the State of Georgia from the execution of certain laws of that state, which, as alleged, go directly to annihilate the Cherokees as a political society, and to seize, for the use of Georgia, the lands of the nation which have been assured to them by the United States in solemn treaties repeatedly made and still in force.

If courts were permitted to indulge their sympathies, a case better calculated to excite them can scarcely be imagined. A people once numerous, powerful, and truly independent: found by our ancestors in the quiet and uncontrolled possession of an ample domain, gradually sinking beneath our superior policy, our arts and our arms, have yielded their lands by successive treaties, each of which contains a solemn guarantee of the residue, until they retain no more of their former extensive territory than is necessary to their comfortable subsistence. To preserve this remnant the present application is made.

Before we can look into the merits of the case, a preliminary inquiry presents itself. Has this Court jurisdiction of the cause?

The third article of the constitution describes the extent of the judicial power. The second section closes an enumeration of the cases to which it is extended, 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 party defendant may then unquestionably be sued in this court. May the plaintiff sue in it? Is the Cherokee Nation a foreign state in the sense in which that term is used in the constitution?

The council for the plaintiffs have maintained the affirmative of this proposition with great earnestness and ability. So much of the argument as was intended to prove the character of the Cherokees as a state, as a distinct political society, separated from others, capable of managing its own affairs and governing itself, has, in the opinion of a majority of the judges, been completely successful. They have been uniformly treated as a state from the settlement of our country. The numerous treaties made with them by the United States recognize 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 been enacted in the spirit of these treaties. The acts of our Government plainly recognize the Cherokee nation as a state, and the courts are bound by those acts.

A question of much more difficulty remains. Do the Cherokees constitute a foreign state in the sense of the Constitution?

Their counsel have shown conclusively that they are not a state of the Union, and have insisted that individually they are aliens, not owing allegiance to the U. States. An aggregate of aliens composing a state must, they say, be a foreign state. Each individual being foreign, the whole must be foreign.

This argument is imposing, but we must examine it more closely before we yield to it. The condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence. In the 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 no where else.

The Indian territory is admitted to compose a part of the United States. In all our maps, geographical treaties, history, and laws, it is so considered. In all our intercourse with foreign nations, in our commercial regulations, in any attempt at intercourse between Indians and foreign nations, they are considered as within the jurisdictional limits of the United States, subject to many of those restraints which are imposed upon our own citizens. They acknowledged themselves in their treaties to be under the protection of the United States; they admit that the United States have the sole and exclusive right of regulating the trade with them, and of managing all their affairs as they think proper, and the Cherokees in particular were allowed by the treaty of Hopewell, which preceded the constitution, "to send a deputy of their choice, whenever they think fit, to Congress." Treaties were made with some tribes by the State of New York, under a then unsettled construction of the confederation, by which they ceded all their lands to that state, taking back a limited grant to themselves, in which they admit their dependence.

Though the Indians are acknowledged to have an unquestionable and heretofore unquestioned right to the lands they occupy until that right shall be extinguished by a voluntary cession to our government, yet 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.