From the Southern Recorder

JUDGE CLAYTON'S OPINION.

THE STATE vs CANATOO,

A CHEROKEE INDIAN.

Committed to jail upon a charge of digging gold on that part of the Cherokee Nation not ceded but attached to the county of Gwinnett for the purposes of civil and criminal jurisdiction.

(CONCLUDED.)

This closes the first view proposed, which was to shew the manner Great Britain respected the Indian title, and creditable as it may and does appear to that Kingly government, it is not more so than that of the Republics of America after the Indians fell to our charge. I proceed to show how Georgia has respected their title since her acquisition of the territory.

She commenced precisely as Great Britain left off, which was to *purchase* by *treaty* a scope of country extending from the upper line of the cession last named to the Currahee mountain. This treaty was made in 1783, and by the authorities of Georgia alone with the Indians. Two years after another Treaty was made by Georgia Commissioners with the Creeks, in which is found this clause, "if any citizen of this State or other person shall attempt to settle or run any of the lands reserved to the Indians for their hunting grounds, such person or persons may be detained until the Governor shall demand him or them." and then he was to be punished in the presence of the Indians. In 1787 the Federal Constitution was formed, the 10th Sec. of the 1st Art. of which declared that "*no State shall enter into any Treaty*," and by the 2d Sec. of the 2d Art it is also declared that the "*President, with the advice and consent of the Senate, (two thirds concurring) shall make all Treaties*." Under this constitution, Georgia believed that she had no longer the right to treat with the Indians for their lands; she always asserted and maintained her right to the jurisdiction and ultimate soil of the country, through very many difficulties which she had with the general government, but yielded the right to that government to purchase off by treaty, for her use, the Indian title to said lands, always conceding that the Indians had a title of which they could not be divested but by fair purchase, and that Georgia had the *pre-emption* right to the same. The first public document where this right of purchase is considered a pre-emption right, is in the Convention of Beaufort between Georgia and South Carolina, in which both parties designate it by that name, to wit: "Georgia cedes to South Carolina, (the lands between Tugaloo and Keowee) all the right, title and claim, which she hath to the government, sovereignty and jurisdiction, in and over the same, and also the right of *pre-emption* of the soil from the native Indians."

In numerous acts of the State, whenever Indians or Indian lands occur, a title of some sort is always acknowledged in the Indians, and that the same must be extinguished by purchase, and that by the U States, since the adoption of the Federal Constitution. It is wonderful to observe the mass of evidence spread through the public records to this effect. For instance, in the act of '93, appropriating lands for the payment of the State troops, it is required that our "Senators and Representatives apply without loss of time for a treaty to be held with such tribes who may claim the right of soil to such lands." In an act amendatory of this act, commonly called the "Yazoo act," where, if all sense of justice to Indian rights could have been forgotten, it would be the very place to find it; yet even here their title was respected, and the Yazoo purchasers were bound to extinguish it through the agency of the General Government by fair purchase; and what is remarkable, in four places of that act, the right of Georgia is expressly called a *pre-emption* right. But this may be considered as not the best authority, and I am so disposed to consider it. I only mention it to shew that men of all descriptions have been disposed to respect the title of the Indians, and that surely less ought not to be expected from an honest community. There is however, an authority that I am sure every body will regard, and it is the memorable act which repealed the Yazoo act, commonly called the rescinding act. This act was drawn up by the late Governor, James Jackson, one among the ablest statesmen and patriots that Georgia ever had. The preamble, which is an able view of Georgia's rights over the Indian territory, and which boldly claims the rights of jurisdiction and soil, justly recognizes a title in the Indians, the right to extinguish which, is only *pre emptive* on the part of the State. Then in the first enacting clause, it declares that the Yazoo act, and the grants issued under it are null and void, "and the territory therein mentioned is also hereby declared to be the sole property of the State, *subject only to the right of treaty of the United States to enable the State to purchase under its pre-emption right, the Indian title to the same.*"

The fifth section of this act declares the right to extinguish the Indian title, or to apply to the General Government for that purpose, is vested in the people and government of this State, and concludes in these explicit terms "*to whom the right of pre-emption to the same belongs subject only to the controlling power of the United States, to authorize any treaty or treaties for, and to superintend the same.*"—This act passed in '96. The next public document in which we find the subject mentioned, is in the Constitution of the State, adopted in the year '98. The 23d section of the 1st art. describes the boundaries of the State, asserts the right of soil and jurisdiction, and concludes by declaring that "no sale of territory of this State, or any part thereof, shall

take place to individuals or private companies, unless a county or counties shall have been first laid off to Indians such territory, and the *Indian rights* shall have been *extinguished* thereto." Words can not be plainer and the obligations they impose can not be higher; for this Court, as well as all officers, are sworn to support it. But this is not all; keeping up and acting entirely in conformity with previous acknowledgments as contained in treaties, acts and the Constitution, the highest evidence of right, we find in a compact with the General Government, called the articles of cession, made in 1802, Georgia stipulating "that the U. States shall at their own expense, extinguish for the use of Georgia, as early as the same can be peaceably obtained on reasonable terms, the Indian title" to the lands left within the State and not sold to the General Government. What title? Surely the title we have been all along tracing down from the earliest settlement of the country, and which we have just seen was called a pre-emption right on the part of the State. I know Georgia has a right to complain that this title has not been extinguished; that it could have been done long ago upon reasonable and peaceable terms. But her complaint is against the General Government. The Indians are no party to this contract. They have not bound themselves by this instrument. They cannot be answerable for the bad faith of one of the contracting parties. Will it be contended, that if the Indians will not sell their lands to the General Government, we will take them by force? Would such a doctrine be countenanced among ourselves? If one citizen were to oblige himself to purchase a tract of land of another citizen, for the benefit of a third, will it be said that this third person may seize the land if its owner do not choose to part with it? If this is answered in the affirmative, and it is insisted upon seriously that a court of justice ought to enforce such an usurped right, then I confess I have nothing more to say. But suppose the General Government never had undertaken to extinguish this right. What then would have been our situation with the Indians? They must live some where. I presume no one is yet prepared to say their throats should be cut to make way for christianized man. Recollect, we would have had no territory beyond the Mississippi to which we could transport them. Recollect too, they are incapable of being incorporated with white men. Will any one maintain, in the face of the strong current of evidence flowing through so many inviolable public documents, which I have just adduced in favor of *their* right, and which so accurately marks our *own*, that it would be just and right, before Heaven, to take their property away without consideration, or to pen them up in such limits as to perish? I cannot believe it. So much for the articles of cession. The next confession of Georgia (and confessions are considered in courts the very best evidence,) is to be found in an able report made in 1819, to the Legislature, in the shape of a petition to the President of the United States, complaining of the treaty of Fort Jackson, and also Calhoun's treaty which had annulled the only treaty that was likely to effect a removal of the Indians, viz., the treaty of 1817, made by Jackson and Meriwether. In this memorial is the following distinct acknowledgment—"The State of Georgia claims a right to the jurisdiction and soil of the territory within her limits. She admits however, that the *right is inchoate*, remaining to be perfected by the United States in the *extinction* of the *Indian title*; the United States, *pro hac vice*, acting as our agents."

This finishes the view in which the Indian title has been respected by the State of Georgia, and brings us to the consideration of the last thing proposed, how it has been settled by the Courts of justice, and this branches into two views.

1st. As settled by the Supreme Court of the U. States and the separate States of the Union —and 2d. as decided by our own Courts.

And 1st. As to the Supreme Court. Justice Kent, the ablest American commentator that has appeared, in collecting the decisions of that Court, and consolidating the doctrine on this subject observes, that "the nature of the Indian title to lands lying within the jurisdiction of a State, though *entitled to be respected by all Courts* until it is *legitimately extinguished*, is not such as to be absolutely repugnant to seisen in fee on the part of the Government within whose jurisdiction the lands are situated"—6 Cran. Rep. 87. Judge Johnson in this same case, went farther than the rest of the Court—he enquires, "If the interest in Georgia was nothing more than a *preemptive* right, how could that be called a fee-simple, which was nothing more than a power to acquire a fee simple *by purchase*, when the proprietors should be pleased to sell? And if this ever was any thing more than a mere possibility, it certainly was reduced to that state when the State of Georgia ceded to the U. States, both the power of *pre-emption* and of conquest, retaining for itself only a resulting right, dependant on a purchase or conquest to be made by the United States."

Justice Kent continues, "In the case *Johnson*, vs. *McIntosh*, (Wheat. 543,) it was stated as an historical fact, that on the discovery of this continent by the nations of Europe, the discovery was considered to have given to the government by whose subjects or authority it was made, the *sole right of acquiring the soil* from the natives, (the right of *pre-emption*) as against all other European powers. Each nation claimed the right to regulate for itself, in exclusion of all others, the relation which was to subsist between the discoverer and the Indians." After stating that all the European nations, who had made discoveries in America, assumed the ultimate dominion and claimed the right to grant the soil, "subject to the Indian right of occupancy," he adds, "The U. States adopted the same principle, and their exclusive right to extinguish the Indian title *by purchase* or conquest, and to grant

the soil and exercise such a degree of sovereignty as circumstances required, has never been judicially questioned." He then affirms what I have already stated, that the States within which any of the Indians fell, claimed and exercised the right to govern them, and that they "could transfer their title" to no one but the power claiming the jurisdiction of their territory. "The peculiar habits and character (says our author) of the Indian nations, rendered them incapable of sustaining any other relation with the whites than that of dependence and pupilage. There was no other way of dealing with them than that of keeping them separate, subordinate and dependant, with a guardian care thrown around them for their protection." After mentioning that the rule established to keep the Indians subordinate, to govern and protect them, to prevent them from selling their lands to others, was the best that could be adopted with safety, he states, "this was founded on the pretension of converting the discovery of the country into a conquest, and it is now too late to draw into discussion the validity of that pretension, or the restrictions which it imposes. It is established by numerous compacts, treaties, laws and ordinances, and founded on immemorial usage. The country is colonized and settled, and is now held by that title. It is the law of the land, and no court of justice can permit the right to be disturbed by speculative reasoning on abstract rights." This, he continues, is the doctrine of the Supreme Court, and the United States "have never insisted upon any other claim to the Indian lands than the right of *pre-emption* upon fair terms." It is the view taken by New York in the case of *Goodall and Jackson*. (20 John. Rep. 693) where that State claimed the right of *pre-emption* to the Indian lands within her limits, and held all other purchases void. The Legislature of Virginia in 1799 asserted the same exclusive right of *pre-emption*, and the colonial and State authorities throughout the Union, always negotiated with the Indians within their respective territories. And then in summing up the whole doctrine, he observes, "but while the ultimate right of our American governments to all the lands within their jurisdictional limits, and the exclusive right of extinguishing the Indian title by possession, is not to be shaken, it is equally true, that the *Indian possession* is not to be taken from them or DISTURBED without their *free consent*, by *fair purchase*, except it be by force of arms in the event of a just and necessary war."

So much for the decisions of the Federal and other State courts, after adding that at the last term of the Supreme Court, when it virtually decided the jurisdiction in favor of Georgia, it incidentally remarked, that the right of property in the Indians, as to the possession of their lands, would be protected by that Court. I come now to the decisions of our own courts. I presume the celebrated *Reserve* question is well recollected by most persons. There were certain reserves made in favor of a number of the Indians in the treaty made by Meriwether and Jackson in 1817, and also in the one by Calhoun in 1819. The Legislature received those treaties, but determined to reject the Reserves. To that end they ordered a survey of the cession without any respect to the Reserves, and subjected them to a lottery with the other lands. The fortunate drawers of Reserves commenced their actions against the Indians residing thereon, and the question presented was, which title should prevail, the treaty title or the Georgia grant? The question is so plain, that I apprehend there is not one mind in one thousand, at this day, that would entertain a doubt. The decision was, of course, in favor of the treaty, and it was universally approved (out of the immediate interest of the question) by the good people of Georgia, and indeed every where else. The view taken of that case was this, and it continues to be the deliberate opinion of this Court. That the treaty making power is parted with by the States and resides in the General Government according to the limitations and powers granted to that Government in the Federal Constitution, but that all treaties, as well as all laws, must be made, in the language of that instrument, "in pursuance thereof." That the treaty making power can no more exceed the powers of the General Government than the law making power; indeed, it would be absurd in the extreme, to contend that the President and Senate can bind the States "in all cases whatever," and thereby remove all limits from the Federal Government, when Congress, composed of the representatives of the people, cannot do it! Then according to this view, it became necessary to ascertain whether the treaties above mentioned were made "in pursuance of the Constitution." In order to do this, another view became important, and it was this—By the articles of cession already mentioned, made in 1802, the State of Georgia, in addition to the constitutional right of the General Government to make treaties, had actually agreed with that government that it should purchase the lands—making it, in the language of the memorial before referred to, "our agent *pro hac vice*." So far, and no farther as the purchase of the Indian title was concerned, powers could not be more ample. In the first place the government possessed the right to treat under the Constitution, and buy the lands but with Georgia's own money, as it was in the habit of doing for Georgia (and the other States) whenever they wished to acquire Indian lands within their respective limits. In the second place, it had Georgia's special consent, by positive contract, to treat and pay for the lands out of its money; now when the treaty was made and accepted, the whole treaty, *as to the purchase of the lands*, being the extent of the government's agency, must be taken or none. To say that it would take a part of the contract, such as suited Georgia, and reject the balance, was so repugnant to every principle of justice, that it could not be tolerated for one moment. Then, as Georgia had received the treaty, if the General govern-

ment had transcended its powers, the court could not possibly view the matter in any other right than as a waiver of all objections, and that Georgia had made the treaty her own, as though she had the right originally to have entered into it.

Now let us apply these principles to the case before us, and in doing so, two ideas present themselves. First, if these Reserves, which were really nothing more than small portions of the Indian nation set apart for particular tribes, possessing precisely the same nature and condition of the balance of their country, as was proved by an after extinguishment of their title, was decided to be the property of the Indians, who will contend that the State had a right to prevent them from using that property in any manner they please? Who will say, if they had found mines upon their Reserves, that the State could have prohibited them from using them? Who will say it would have been just to have done so and leave the citizens all around these Reserves to do what they pleased with their own lands? Well, if in these Reserves the *land and minerals* are not separated so as to make the latter the property of the State, how do they differ from the rest of the nation? The Indians hold the balance of their lands precisely by a similar title, as has already been shewn, and will be more fully exhibited presently. Suppose one of *those Reserves had remained to this day in the hands* of one of the reservers, unextinguished, does any one believe that the law of the last Legislature would operate upon his land? In the name of every thing that is just and sacred, how can it do so upon lands exactly in the same situation, differing in nothing but the number of the tenants and the extent of the reserves, for they are as effectually reserved to their nation for their own use, by these same identical treaties, as they did the small reserves for the use of individual Indians?

I avail myself of this occasion to state, that these reserves afford a happy illustration of the difference between the State's right of jurisdiction, and the Indian's right of property. If after the Court had awarded to the Indian the private property secured to him by the treaty, in his reserves, he had have applied for the right of jurisdiction also, he would have been answered, no—you fall under the government of the State precisely like all other persons within its limits, be the nature of their titles to lands what it may, or be they citizens or foreigners, black, red or white. And so with regard to the rest of the nation, because as before stated, they are precisely in the same situation as those Reserves, being only a larger scope of country, and a greater number of tenants.

The other idea is this. If the treaties just mentioned were accepted by the State under the articles of cession of 1802, and secured to these Reserves by the decision of the Court, the right to *their* reserves, there are other treaties made since 1802, that *guaranty in like manner*, to the nation, all heir lands not ceded to Georgia, and which Georgia has also accepted. I know it is now contended, that notwithstanding the States have yielded to the general government the right to make treaties, and declared that no State shall make treaties, that such power was never meant to apply to the purchase of Indian lands within the limits of the States. This might be safely granted, though a different construction has certainly prevailed throughout the Union, both by the States and the general government, and though Georgia has repeatedly declared otherwise, as I have shewn in three distinct acts, yet, as stated before, Georgia has vested the general government by special contract, and made her the State's agent to purchase these very lands; consequently whatever treaty is made by that government, and received by Georgia, must be binding. In various treaties made prior to the articles of cession, the following stipulation is to be found—"The United States solemnly guarantee to the Cherokee nation, all their lands not hereby ceded." This guarantee is found in the treaty of Holston, in the year '92, and the treaties prior to that time. In the treaty of '98, is found this article—"the treaties *subsisting* between the present contracting parties, are acknowledged to be of full and operating force, together with the construction and usage under their respective articles, and are to continue." And again, in the same treaty, 6th article—"In consideration of the relinquishment and cession hereby made, the United States (will pay so much money and goods) and will continue the *guarantee* of the remainder of the country forever, as made and contained in former treaties." And in the last article of this treaty it is declared that said treaty "shall be considered as additional to, and forming a part of previous treaties, and shall be carried into effect on both sides, WITH ALL GOOD FAITH." These are the pledges prior to the articles of cession, and perhaps by some, it may be said, are not binding upon Georgia. *Now let us see what pledges are made after the year* 1802, the same time when Georgia made the general government an agent to "extinguish the Indian title." In the treaty of 1805, made at Fallen, the very first article declares "all former treaties, which provide for the maintenance of peace and preventing crimes, are on this occasion, recognized and continued in force." Can any thing conduce more to peace than the undisturbed and quiet possession of one's home? Can any thing so much contribute to an opposite consequence than the violation of one's possession? But again, in the 5th article of Jackson's and Meriwether's treaty in 1817, which divided the nation and sent a part across the Mississippi, it is agreed, "that the treaties heretofore between the Cherokee nation and the United States, are to continue in full force with both parts of the nation, and both parts thereof entitled to all the communities and privileges which the old nation enjoyed under the aforesaid treaties." This treaty procured for Georgia all that valuable country in which the counties of Walton, Gwinnett, Hall and Habersham are situated, and of course formed the consideration for the above stipulation, securing to the Indians the provisions of other treaties, one of which provisions was, that the Indians should be *guaranteed* in the balance of their lands not ceded.

Now if Georgia has accepted this treaty, received the land thereby conveyed, and distributed the same to her citizens, can she in good faith violate the *guarantee* solemnly made in that treaty to the Indians? Is this not precisely a similar case to the one decided in favor of the Reserves? Besides a violation of the faith of treaties, the most solemn of all contracts, and so regarded by all civilized nations, it would be a palpable violation of the part of the 10th section of the 1st article of the Federal Constitution which positively forbids the States from passing any "law imparing the obligation of contracts." This is a contract made by Georgia herself, because made by the U. States under her power of attorney, "acting as her agent," ratified by her, and its benefits fully enjoyed on her part!

I have on a former occasion said, and I am yet of the same opinion, that the United States have no right to treat with the Indians on any subject, but such as relates to peace or war, and to commerce, these being the only general relations in which they stand to that government, and as falling within the powers granted in the Constitution. Any thing else the State of Georgia might reasonably object to, but where lands have been ceded as the terms of peace, or ending a war, or preventing future disturbances, or settling claims, the treaties are such as fall strictly within the power of the United States, and so Georgia herself has frequently admitted. Such were all the treaties prior to the articles of cession. And thus believing, how can this Court, under the solemn oath it has taken, evade this explicit injunction contained in the Federal Constitution, to wit—"this Constitution, and the laws of the United States which shall be made in pursuance thereof, and all treaties made or which shall be made, under the authority of the United States, shall be the Supreme law of the land; and the JUDGES in every State shall be bound thereby, any thing in the Constitution or laws of any State to the contrary notwithstanding." I confess, under the immense obligation imposed upon my conscience by this unequivocal direction, I am not prepared to nullify these treaties. We owe it to our own character, at home and abroad; we owe it to justice, we owe it to humanity; but above all, we owe it to our love and veneration for the Federal Constitution, when executed according to its acknowledged powers, to respect these treaties to the extent of securing to the Indians the possession of those lands not parted with by fair purchase, and under their free consent.

(*For remainder see second page.*)

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Before I leave this branch of the subject, I will suggest a fact which goes to illustrate, under another aspect, the foregoing reasoning. The last Legislature passed an act to survey the Cherokee nation and distribute it by lottery in the manner heretofore pursued, with this exception, that the improvements of Indians falling within any of the lots, should be reserved to them, and that the fortunate drawers of such lots should not be entitled to a grant for the same, or in any manner "remove, or attempt to remove the Indians from their said improvements," until the General Assembly shall enact to the contrary, or said Indians or their descendants shall voluntarily abandon such improvements. Now a question naturally arises, what kind of a title have these reservees, under said act? In sinking a well upon their premises or in ploughing their fields, if they should turn up a piece of gold and appropriate it to their own use, would they be obnoxious to the law, which makes it criminal to dig gold in the Cherokee nation? If they would not, where is the difference between that case, and their condition in the nation? They would hold their reserves under no better title than they now hold the nation. The act only reduces their title from a tenancy in *common* to one in *severalty*, and the quantity from a large to a small amount, and surely whatever right they would have in the last case, is precisely the same which belongs to the first, for the operation of the act does not in the smallest degree change the nature of their title. It is still a title by occupancy, without limit as to its duration, unless the State chooses to end it by force.

Let me now to consider the only argument that has been advanced to sustain the State, in the course she has taken. It is this—the Indians hold their lands by the mere title of *occupancy*—the fee simple is in the State, and therefore having the reversionary interest, she can restrain the Indians from injuring the free-hold, or in other words, from committing waste. If this be true, she can also prevent them from cutting timber beyond what is necessary for absolute use, and from doing many things, which in legal language is called waste; working mines comes within that definition, and is of no higher injury to the freehold than any other species of waste. But the truth is, the Indian title of occupancy assimilates itself to no principle of the English law which gives the right to stay waste as it is called. It is analogous to no estate, upon condition, which involves the relation of landlord and tenant, remainder man or reversioner, and these are the only three characters who can restrain the tenant from committing waste. It must be a particular estate to which there is a definite limit, certain as to the time of expiration, which will entitle the owner of the freehold to sustain the commission of waste. We all know what the renting of lands means; it does not fall under this head. It is not every reversionary interest in lands that will give the right to restrain the tenant from committing waste. It is a well known fact that the State, as the source of all title, has a reversionary interest in every foot of land she grants out to her citizens; for if they die without heirs and intestate, their lands revert to the State by virtue of the *escheat* law. Now under this remote expectant interest, no one will contend the Legislature could restrain the good people of the State from digging gold on their lands. The State does not hold in remainder, for remainder "is defined to be an estate *limited*, to take effect and be enjoyed after another estate is *determined*. There must be a *particular estate* created, certain and determinate, as for years, for life, or in tail, and *remainder* being a relative term, implies that a part has been previously disposed of, for where the *whole* is conveyed at once, there cannot possibly exist a remainder; but the interest granted, whatever it may be, will be an estate in possession."—2 Black. 165. Every one must perceive that this relation does not exist between Georgia and the Indians. "An *estate in reversion* is the residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him."—2 Black. 175. Sir Edward Coke describes a reversion to be the returning of land to the *grantor* or his heirs, after the grant is over. Now it is equally clear that this estate does not apply to the case of the Indians; for instead of Georgia's being the grantor and limiting a particular estate, to the Indians, which is to have a specific duration, the very reverse is *true*. *The Indians are the original grantors*, and reserve to themselves in the grant, to wit, the treaties, an interest which is unlimited as to time, and not to end without their consent. These are all the estates which can by any possibility be made to bear upon the question, and it may with great confidence be asserted, that none other can be found. Their occupant title is unlimited as to duration, and to them is, to all intents and purposes, the same as a fee-simple; they do not care what it is called, if you do not take it away by force, and will suffer them to retain the use and possession of it till they choose to part with it upon their free and voluntary consent. But we frequently attach wrong ideas to particular terms, and if it is understood by the term occupancy, that it is such a title as will justify Georgia in removing the Indians whenever she pleases, nothing can be more erroneous; for according to the legal signification of occupancy, as understood in the English law, they will have a right to retain their land until they voluntarily abandon or sell it. Mr. Blackstone in describing the title *to lands* by occupancy, says it "is the taking possession of those things which before belonged to nobody. This as we have seen is the true ground and foundation of all property, or of holding those things in severalty, which by the law of nature, unqualified by that of society, were common to all mankind. But when once it was agreed that every thing capable of ownership should have an owner, natural reason suggested, that he who could first declare his intention of appropriating any thing to his own use, and, in consequence of such intention, actually took it into possession, should thereby gain the absolute property of it"—2 Black. 258. There is now no title by occupancy in England, and never was but one instance, and that is now virtually destroyed by statute. The case of the Indians in America comes the nearest to it of any we know of, hence it is so called, and applying it to the definition above laid down, it is a much more stubborn title than is usually conceived. We have seen also, that the first discoverer, G. Britain chose so to consider it, and imposed no other condition or restriction upon it than the right of *preemption* on her part. This has been followed up by Georgia, by the other States, and by the U. States, so that as far as human action and decision can confirm and settle a question, this is at rest.

It will be recollected that at the August term, 1830, of Clark Court, I delivered a charge to the Grand Jury in which I mentioned that it was my fixed determination to enforce the laws of Georgia in the Cherokee nation. I told them of the illiberal interference of other States in this question—that they had reproached us with cruelty, fraud, and injustice to the Indians, and said even in Congress, that it was our intention to oppose by legislation, to persecute by legal prosecutions, and finally destoy the Indians, to obtain their lands. I concluded that charge by saying, "let us falsify the prophecies that have been made as to the treatment which the Indians are to receive at our hands, by exercising towards that unfortunate people the utmost kindness, justice and humanity. Their rights must be respected. To the Indians I will say, they have nothing to dread, as far as they are concerned, either from the character of our laws or their mode of administration—for if we can live under them, *they* surely can, and no distinction shall be made in their execution." In the name of every thing that is holy in religion, that is lovely in charity, that is sacred in justice and dear to freedom, let not this be an idle, faithless pledge. "Justice (says Vattel) is the basis of all society, the sure bond of all intercourse. All nations are then strictly obliged to cultivate justice with respect to each other, to observe it scrupulously, and carefully to abstain from every thing that would violate it. Every one ought to render to others what belongs to them, to respect their rights, and to leave them in the peaceable enjoyment of them." The elegant historian, Dr. Ramsey, has said, "universal justice is universal interest. The most enlarged happiness of one people by no means consists in the degradation or destruction of another; it would be more glorious to civilize one tribe of savages than to expel or exterminate a score. Instead of invading their rights, promote their happiness and give the wise reason to curse the folly of *their* fathers who suffered yours to set down upon a soil which the common parent of us both had previously assigned to them." I this strong sentiment of justice, all good men must

concur, and I am persuaded, it is one which Georgia, slandered as she has been, will not feel herself authorized to disobey. But to consign a weak and defenceless race to the scourge of slavery by day, and the gloom of a dungeon by night, far from their country, and their friends, for no other crime than that of taking gold from their own land and the land of their fathers, is not only a departure from this heaven directed principle, but will incur the condemnation of all civilized nations, if it do not provoke the curse of a much higher tribunal.