5-28-1878

Letter from the Secretary of the Interior, transmitting, in compliance with a Senate resolution of May 24, 1878, a copy of the memorial of B. F. Overton, Governor of the Chickasaw Nation, praying for a rehearing in the matter of the Chickasaw Nation Permit Law.

45TH CONGRESS, 2d Session. } SENATE. { EX. DOC. No. 87.

LETTER

FROM THE

SECRETARY OF THE INTERIOR,

TRANSMITTING,

In compliance with a Senate resolution of May 24, 1878, a copy of the memorial of B. F. Overton, governor of the Chickasaw Nation, praying for a rehearing in the matter of the Chickasaw Nation permit law.

MAY 28, 1878.—Ordered to lie on the table and be printed.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., May 27, 1878.

SIR: I have the honor to acknowledge the receipt of a resolution of the Senate of the United States adopted on the 24th instant, as follows:

Resolved, That the Secretary of the Interior be, and he is hereby, directed to furnish the Senate with a copy of the memorial of B. F. Overton, governor of the Chickasaw Nation, praying for a rehearing in the matter of the Chickasaw Nation permit law, and not embraced in the Senate Ex. Doc. No. 74, in response to resolution of the 17th ultimo.

And in accordance with the direction therein contained, a copy of the printed memorial is herewith respectfully transmitted.

Very respectfully, your obedient servant,

C. SCHURZ,
Secretary.

The PRESIDENT OF THE SENATE.

PERMIT LAW OF THE CHICKASAW NATION.

WASHINGTON, D. C., *March* 13, 1878.

SIR: On behalf of the Chickasaw Nation, I have the honor to request that you will reconsider your decision made on the 27th of August, 1877, respecting the "permit law" of that nation.

Your conclusion that this law is invalid appears to be based upon the following grounds:

1. That the government of the Chickasaw Nation possesses no power of taxation which is not "*conferred*" by some treaty or statute of the United States; that no power of taxation has ever been "*conferred*" upon the Chickasaw Nation except by article 47 of the treaty of April 28, 1866; and that the conditions precedent and subsequent prescribed in that treaty have never been complied with.

2. That all persons not by birth, adoption, or otherwise citizens or members of either the Choctaw or Chickasaw Nations were excepted from the government and control of the Choctaw and Chickasaw Nations by article 7 of the treaty of June 22, 1855.

3. That by article 43 of the treaty of April 28, 1866, the Chickasaw government is prohibited from expelling persons, not citizens or members of the nation, who are employed as teachers, mechanics, or agriculturists, except for crime committed; and that the Government of the United States is not bound by that article to remove such persons.

I.

I respectfully submit that if your predecessor, in his letter of April 15, 1876, which virtually constitutes the first of the three grounds above stated, meant that these nations had no power of taxation which was not expressly and particularly conferred by treaty or act of Congress, he mistook the law; but if, on the other hand, he meant that their power of taxation had not been recognized either particularly and expressly, or generally and impliedly, by treaty or statute, then he mistook the facts.

For ninety years the Government of the United States has treated with the Indian nations, and it has always *recognized, not conferred* their governmental powers. It is possibly true that the administrative officers of the Government of the United States are authorized to recognize the possession by these nations of only such powers of government as have been generally, or particularly, expressly, or by implication, recognized by treaty or by statute. But the proposition that any of their governmental powers are actually conferred by, or derived from, the United States, is inconsistent with all the treaties and with all the acts of legislation and judicial decisions growing out of, or relating to, such treaties.

Of course I do not mean that in these treaties the particular power of taxation has been singled out and expressly named. That is not true of any of the powers of government. But the right of self-government, in broad and general terms, is recognized. An essential and primary element of that general power is the particular power of taxation. It may be true that barbarous nations do not exercise this power; but then it is also true that they possess it, whether they exercise it or not. And it is furthermore true it is not the policy, any more than the right, of the United States, to compel the Chickasaw Nation to be a barbarous nation.

From the numerous judicial decisions and treaties, recognizing the unrestricted right of self-government as inherent in these nations, and not conferred upon them by the United States, I beg leave to cite the extracts appended to this communication. If they do not recognize the power of taxation as a part of the general power of these nations, I am unable to understand what particular power they do so recognize. I venture to hope that, upon an examination of these treaties and judicial decisions, you will conclude that your predecessor was mistaken in his letter of April 15, 1876, whether he meant that the Indian nations had no power to tax except such as was expressly and particularly conferred by treaty or act of Congress, or meant that no such power had ever, in fact, been recognized by treaty or by statute.

Suppose a treaty between the United States and Great Britain to contain provisions like those contained in the subjoined extract from the Indian treaty of 1855, in the following words: "The people of Great

Britain shall be secured in the unrestricted right of self-government and full jurisdiction over persons and property within their limits," excepting certain persons named. And suppose the Government of the United States should claim that by this clause it did not recognize the power of taxation as a part of the governmental power of Great Britain. Such a claim would obviously be groundless, not to say preposterous. But is such a claim any less objectionable in the case of a treaty between the United States and the Choctaw and Chickasaw Nation?

The Supreme Court of the United States, in the opinion appended to this communication, enunciated the following doctrine:

> The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings by ourselves, having each a definite and well-understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense. * * *
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> These articles are associated with others recognizing their title to self-government. The very fact of repeated treaties with them recognizes it; and the settled doctrine of the law of nations is that a weaker power does not surrender its independence, its right to self-government, by associating with a stronger, and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government and ceasing to be a state. Examples of this kind are not wanting in Europe. "Tributary and feudatory states," says Vattel, "do not thereby cease to be sovereign and independent states so long as self-government and sovereign and independent authority are left in the administration of the state." At the present day, more than one state may be considered as holding its right of self-government under the guaranty and protection of one or more allies.
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> In the executive, legislative, and judicial branches of our government we have admitted, by the most solemn sanctions, the existence of the Indians as a separate and distinct people, and as being vested with rights which constitute them a state or separate community; not a foreign, but a domestic community; not as belonging to the confederacy, but as existing within it, and, of necessity, bearing to it a peculiar relation.

Why, then, should the same words mean any less in a treaty between the United States and the Indian nations than in a treaty between the United States and European nations? Is it because the Indians have not in former times levied taxes like European nations? Or is the "unrestricted" self-government of the Indian nations to be restricted to the methods heretofore employed? Is it to be arbitrarily robbed of the elements and possibilities of progress and improvement which necessarily belong to all governments? If similar clauses in a treaty with Great Britain would not exclude such changes of system as progress might bring, why should these clauses in a treaty with the Indian nations have that effect? There can be but one answer. The unrestricted right of self-government and full jurisdiction over persons and property involve the right to make such changes of methods as advancement in civilization or change of circumstances may suggest. Such is the view expressed by the court in the same case, in the following words:

> The exercise of this independent power surely does not become more objectionable as it assumes the basis of justice and the forms of civilization. Would it not be a singular argument to admit that, so long as the Indians govern by the rifle and the tomahawk, their government may be tolerated, but that it must be suppressed so soon as it shall be administered upon the enlightened principles of reason and justice?

If the Chickasaw Nation shall ever adopt such a system of taxation as is suggested in article 47 of the treaty of 1866, it will not have *derived* the power to adopt the system from that article; but will exercise it as a part of the unrestricted power of self-government inherent in the nation, and recognized by the United States in numerous treaties, statutes, and judicial decisions.

I hope you may conclude that by the treaties and judicial decisions cited the United States have recognized the inherent and unrestricted

right of the Indian nations to govern themselves, and that among the powers of self-government so held by the Indians is included the power of taxation. I trust you will not decide that the power of taxation is to be excluded from the governmental powers of these nations, merely because it is a power ordinarily exercised by enlightened, and not by barbarous, nations, but will agree with the Supreme Court that self-government of the Indians "does not become more objectionable, as it assumes the basis of justice and the forms of civilization." I trust that, if you hold the permit law to be a tax law, you will find no objection to its validity in the circumstance that the power of taxation has not been *expressly conferred* upon the Chickasaw government by any treaty with, or statute of, the United States.

II.

Assuming, then, that the power of taxation is inherent in the Chickasaw Nation, as in other nations; that its existence as an essential portion of the general governmental power of that nation has been impliedly recognized by the treaties, statutes, and judicial decisions of the United States for almost one hundred years; and that the want of an express grant of the power of taxation to the Chickasaw government, by treaty or act of Congress, does not affect the validity of the permit law, even though it be regarded as a tax law, I proceed to inquire whether any objection to the validity of the law is to be found in article 7 of the treaty of 1855. That article stands in the following words:

ART. 7. So far as may be compatible with the Constitution of the United States, and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Choctaws and Chickasaws shall be secured in the *unrestricted right of self-government and full jurisdiction* over persons and property within their respective limits; excepting, however, all persons or their property who are not by birth, adoption, or otherwise, citizens or members of either the Choctaw or Chickasaw tribe, and all persons, not being citizens or members of either tribe, found within their limits, shall be considered intruders, and be removed from and kept out of the same by the United States agent, assisted, if necessary, by the military, with the following exceptions, viz: Such individuals as are now, or may be, in the employment of the government, and their families; those peacefully traveling or temporarily sojourning in the country, or trading therein under license from the proper authority of the United States, and such as may be permitted by the Choctaws and Chickasaws, with the assent of the United States agent, to reside within their limits, without becoming citizens or members of either of said tribes. (11 Stats., 612, 613.)

I concede that, notwithstanding their possession of the power of taxation, as a part of their general power of self-government, if this treaty stipulation deprived them of the right to enact the particular statute known as the permit law, they are bound by the agreement, and the permit law, whether it is or is not a tax law, must be held null and void. But it seems to me that there is no repugnancy between this stipulation of the treaty and the permit law. That part of article 7 which precedes the exception is a renewed recognition of inherent rights which the United States had *often recognized before*, but never, either at the making of this treaty or at any other time, pretended to *confer* upon the Choctaw and Chickasaw nations. The exception itself is a limitation of these rights, which limitation could only be made by treaty. And whatever is not by the exception clearly taken out of the general power recognized by the preceding clause must remain a part of that power.

If the effect of the exception were to stipulate that the Choctaw and Chickasaw nations should have *no jurisdiction whatever* over persons not citizens or members of the tribes, I do not see how it could impair

the right of the Chickasaw legislature to enact the permit law. The provision of that law is that no citizen of a State or Territory shall reside in the Chickasaw Nation as an employé of a Chickasaw without an annual permit from the Chickasaw government, for which the sum of $25 is payable in each case. The enforcement of this law does not seem to me to be an exercise of *any jurisdiction* in any such sense as that in which the word jurisdiction is used in the treaty, or in which it is ordinarily used. It would not seem to be an exercise of jurisdiction in any such sense, or in any just sense, over subjects of the empire of China, to forbid their entry into the United States without permits from your government. It would not be an exercise of jurisdiction over a British subject to compel him to pay the ordinary import duty on his property, and tonnage tax upon his ship, on landing in the United States.

Foreign sovereigns and their ambassadors are exempt from the jurisdiction of your government. Is it an exercise of jurisdiction over an ambassador to compel him, as a condition of residence in your country, to observe the rules imposed upon ambassadors by the law of nations? Would it be an exercise of such jurisdiction for the sergeant-at-arms of the Senate or House of Representatives to remove an ambassador from the House or Senate for disorderly behavior? When Mr. Justice Miller repressed disorderly conduct on the part of Dom Pedro, in the Supreme Court, was there an exercise of jurisdiction over the Emperor of Brazil?

If, then, the enforcement of the permit law can, in any sense, be called the exercise of *any jurisdiction* whatever, it does not seem to be the exercise of any jurisdiction which may be fairly said to be comprehended within the meaning of the term used in the treaty.

But, then, the effect of the exception in article 7 is not to stipulate that the Indian governments shall have no jurisdiction whatever over persons not citizens or members of their tribes. The stipulation is that the Choctaw and Chickasaw Nations shall not have *full jurisdiction* over persons not citizens, or members of their tribes. The enactment of the permit law does not seem to me to involve an exercise of the full jurisdiction prohibited by this treaty. It certainly is not *in itself* an exercise of *full jurisdiceion* over all persons concerned. Nor is it in fact accompanied or followed by the exercise of *full jurisdiction* over these persons.

If it is an assertion of jurisdiction, in any sense or to any extent, it certainly is not an assertion of full jurisdiction to compel a foreign ambassador, as a condition of the use of your mails, to procure a permit in the form of a postage-stamp; or to require him, as a condition of remaining in your country, to observe the rules imposed upon ambassadors by the law of nations; or to compel him, as a condition of entering the halls of your supreme legislature or Supreme Court, to observe the rules imposed upon visitors by those bodies. Is it any more an assertion of *full jurisdiction* over white persons by the Chickasaw Nation to compel them, as a condition of entering the Territory, to procure a permit from the Chickasaw Government?

The persons in question are not obliged to enter the Chickasaw Nation. They can remain without, and so avoid the necessity of obtaining the permits. Nor is there any obligation resting on the Indian government to admit persons who desire to be employed by individual Indians, or whom individual Indians desire to employ. Nowhere in the treaties can any clause be found imposing any such obligation. And this brings me to the third ground on which your decision rests.

III.

I respectfully submit that no obligation to admit such persons is imposed by article 43 of the treaty of 1866. That article is framed in the following words:

ART. 43. *The United States promise and agree* that no white person, except officers, agents, and employés of the government, and of any internal improvement company, or persons traveling through, or temporarily sojourning in, the said nations, or either of them, *shall be permitted to go into said Territory*, unless formally incorporated and naturalized, by the joint action of the authorities of both nations, into one of the said nations of Choctaws and Chickasaws, according to their laws, customs, or usages; but *this article is not to be construed* to affect parties heretofore adopted, or *to prevent* the employment temporarily of white persons, who are teachers, mechanics, or skilled in agriculture, or to prevent the legislative authorities of the respective nations from authorizing such works of internal improvement as they may deem essential to the welfare and prosperity of the community, or be taken to interfere with or invalidate any action which has heretofore been had, in this connection, by either of the said nations.

I submit that this article does not prohibit the expulsion by the Chickasaw government of white persons employed as teachers, mechanics, or agriculturists by individual Indians. The article does not touch upon the *duty of the Chickasaws* to receive such persons, or their power to remove them. It merely pledges the United States to prevent the entrance of white persons into the Territory, with certain indicated exceptions, and declares that *the obligation so assumed by the United States shall not "prevent* the employment temporarily of white persons who are teachers, mechanics, or skilled in agriculture." It nowhere provides, nor purports to provide, that such persons *shall be admitted.* What it does provide is that *its own stipulation shall not exclude* such persons. It neither binds the United States to remove them, nor forbids the Indians to exclude them. It leaves the question of their admission or exclusion to the operation of other rules or laws.

To be sure, this article does not *confer* upon the Chickasaw Nation the power to enact a permit law, or to exclude those who seek to enter the Territory in defiance of its provisions. But that is not the question. The question is whether it *prohibits* the enactment of such a law or the exclusion of such persons by the Chickasaw government. And that it does not purport to do. If, then, they had this power before, and independently of, the treaty of 1866, it was not taken away by that treaty. That they had the power to prevent the entry of white teachers, mechanics, and agriculturists, and to forbid or regulate their employment, before the treaty of 1866, is very clear; indeed, before the treaty of 1866, such persons were interdicted persons in the Chickasaw country. They fell within the class declared "intruders" in article 7 of the treaty of 1855. The Government of the United States was itself, by the terms of that article, bound to remove them, *unless* they were permitted to remain by the Choctaw and Chickasaw governments, with the consent of the United States Indian agent. And as there is nothing in article 43 of the treaty of 1866 to compel the Chickasaws to admit such persons, so is there nothing of the kind in article 7 of the treaty of 1855, or in any other treaty.

In article 7 of the treaty of 1855, the United States promise to remove certain intruders. From this class of "intruders" there is, in that article, no exception of persons employed as teachers, mechanics, or farmers, by individual Indians, *unless* such persons are permitted by the Indian governments, with the consent of the United States Indian agent, to reside in the nation. In article 43 of the treaty of 1866, the United States do not, according to your construction of that article,

promise to remove those whites who are employed as teachers, mechanics, or farmers, by individual Indians, even though they are so employed in disregard of the authority of the Indian governments. Now, it seems to be assumed that because the United States in the first case *did promise* to remove these people, therefore the Chickasaws were divested of their own right to do that; and in the latter case that because the United States *did not promise* to remove them, therefore the Chickasaws were divested of their right to remove them. Evidently these assumptions cannot both be correct. I think they are both erroneous. I think that the *promise*, or *want of a promise*, on the part of the United States to remove these persons involves no implied prohibition of their removal by the Chickasaws themselves.

I think the Government of the United States would be slow to concede that an arrangement by which it should undertake to capture and punish cattle-thieves in Mexico would, by implication, exempt Mexico from the obligation to capture and punish those offenders; as certainly Mexico would be slow to concede that she was by such treaty deprived of her right to capture and punish them.

I am equally at a loss to see how a promise by the United States to exclude or remove offenders from the Chickasaw Nation could deprive the Chickasaw government of the right to do it. Nor is it any easier for me to see how a want of a promise of this kind on the part of the United States could deprive the Chickasaw Nation of its rights in the premises.

It is not a case in which the maxim that the specification of one thing excludes another has any applicability. It would be as reasonable to invoke that maxim to show that a promise, on the part of one government, to desist from piracy, or slave-trading, bound another government to persist therein; or that a treaty stipulation, binding China to restrict her emigration to the United States, excluded the exercise of the power of self-protection in that regard by the United States.

There are certain considerations which render a re-examination of your decision of the highest importance to the Chickasaws and other Indian nations. Those nations, on account of their geographical position and the value of their lands and mines, are exposed to the machinations of swarms of covetous whites, who are as fertile in resources as they are unprincipled in character. It would be difficult for a government of the most enlightened white men to sustain itself if it were embarrassed by the presence of a horde of such men within its territorial limits, over whom it could exercise no jurisdiction. To these Indian governments the perplexities and difficulties which result from the license afforded to bad men by your decision will be well-nigh intolerable. There are already in our midst many persons who are in league with our greedy enemies to ruin our governments; and with the connivance of these persons swarms of so-called laborers will invade our country, to defy our laws, and bring misfortune and misery upon our people and disgrace upon our government. The people of the United States, when they reproach us for permitting our country to become an asylum for outcasts, and our government to become turbulent, disorderly, and weak, may forget that it is the Government of the United States which compels our country to become and remain the asylum for their scoundrels, and deprives us of the power of governing them while they live in our midst.

Very respectfully, your obedient servant,

B. F. OVERTON,
Governor Chickasaw Nation.

Hon. CARL SCHURZ,
Secretary of the Interior.

[*Extracts from judicial decisions and treaties.*]

Worcester *v.* The State of Georgia, 6 Pet., 556.—Opinion by Chief Justice Marshall:

This treaty, thus explicitly recognizing the national character of the Cherokees and their right of self-government; thus guaranteeing their lands, assuming the duty of protection, and of course pledging the faith of the United States for that protection, has been frequently renewed, and is now in full force. (p. 556.)

All these acts, and especially that of 1802, which is still in force, manifestly consider the several Indian nations as distinct political communities, having territorial boundaries within which their authority is exclusive, and having a right to all the lands within those boundaries, which is not only acknowledged, but guaranteed by the United States. (p. 557.)

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial, with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate than the first discoverer of the coast of the particular region claimed; and this was a restriction which those European potentates imposed on themselves as well as on the Indians. The very term nation, so generally applied to them, means a people distinct from others. The Constitution, by declaring treaties already made, as well as those to be made, the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among those powers who are capable of making treaties. The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves, having each a definite and well-understood meaning. We have applied them to Indians, as we have applied them to the other nations of the earth. They are applied to all in the same sense. (pp. 559, 560.)

In opposition to this original right, possessed by the undisputed occupants of every country, to this recognition of that right, which is evidenced by our history, in every change through which we have passed, is placed the charters granted by the monarch of a distant and distinct region, parceling out a territory in possession of others whom he could not remove, and did not attempt to remove, and the cession made of his claims made by the treaty of peace.

The actual state of things at the time, and all history since, explain these charters; and the King of Great Britain, at the treaty of peace, could cede only what belonged to his crown. These newly-asserted titles can derive no aid from the articles so often repeated in Indian treaties, extending to them, first, the protection of Great Britain, and afterwards that of the United States. These articles are associated with others recognizing their title to self-government. The very fact of repeated treaties with them recognizes it, and the settled doctrine of the law of nations, that a weaker power does not surrender its independence—its right to self-government—by associating with a stronger and taking its protection. A weak state, in order to provide for its safety, may place itself under the protection of one more powerful, without stripping itself of the right of government and ceasing to be a state. Examples of this kind are not wanting in Europe. "Tributary and feudatory states," says Vattel, "do not thereby cease to be sovereign and independent states so long as self-government and sovereign and independent authority are left in the administration of the state." At the present day, more than one state may be considered as holding its rights of self-government under the guarantees and protection of one or more allies.

The Cherokee Nation, then, is a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter, but with the assent of the Cherokees themselves, or in conformity with treaties and with the acts of Congress. The whole intercourse between the United States and this nation is, by our Constitution and laws, vested in the Government of the United States. (pp. 560, 561.)

It must be admitted that the Indians sustain a peculiar relation to the United States. They do not constitute, as was decided at the last term, a foreign state, so as to claim the right to sue in the Supreme Court of the United States; and yet, having the right of self-government, they, in some sense, form a state. In the management of their internal concerns they are dependent on no power. They punish offenses under their own laws, and, in doing so, they are responsible to no earthly tribunal. They make war and form treaties of peace. The exercise of these and other powers gives to them a distinct character as a people, and constitutes them, in some respects, a state, although they may not be admitted to possess the right of soil. (p. 581.)

The language used in treaties with the Indians should never be construed to their prejudice. If words be made use of which are susceptible of a more extended meaning than their plain import, as connected with the tenor of the treaty, they should be considered as used only in the latter sense. To contend that the word "allotted," in reference to the land guaranteed to the Indians in certain treaties, indicates a favor conferred, rather than a right acknowledged, would, it would seem to me, do injustice to

the understanding of the parties. How the words of the treaty were understood by this unlettered people, rather than their critical meaning, should form the rule of construction. (p. 582.)

By numerous treaties with the Indian tribes, we have acquired accessions of territory of incalculable value to the Union. Except by compact, we have not even claimed a right of way through the Indian lands. We have recognized in them the right to make war. No one has ever supposed that the Indians could commit treason against the United States. We have punished them for their violation of treaties, but we have inflicted the punishment on them as a nation, and not on individual offenders among them as traitors.

In the executive, legislative, and judicial branches of our government, we have admitted, by the most solemn sanctions, the existence of the Indians as a separate and distinct people and as being vested with rights which constitute them a state or separate community—not a foreign, but a domestic community—not as belonging to the confederacy, but as existing within it, and, of necessity, bearing to it a peculiar relation. (p. 583.)

Much has been said against the existence of an independent power within a sovereign state; and the conclusion has been drawn that the Indians, as a matter of right, cannot enforce their own laws within the territorial limits of a State. The refutation of this argument is found in our past history. That fragments of tribes, having lost the power of self-government, and who lived within the ordinary jurisdiction of a State, have been taken under the protection of the laws, has already been admitted. But there has been no instance where the State laws have been generally extended over a numerous tribe of Indians, living within the State, and exercising the right of self-government, until recently.

The exercise of this independent power surely does not become more objectionable as it assumes the basis of justice and the forms of civilization. Would it not be a singular argument to admit that, so long as the Indians govern by the rifle and the tomahawk, their government may be tolerated, but that it must be suppressed as soon as it shall be administered upon the enlightened principles of reason and justice?

Are not those nations of Indians who have made some advances in civilization better neighbors than those who are still in a savage state? And is not the principle as to their self-government, within the jurisdiction of a State, the same. (pp. 589, 590)?

The residence of Indians, governed by their own laws, within the limits of a State, has never been deemed incompatible with State sovereignty until recently. And yet, this has been the condition of many distinct tribes of Indians since the foundation of the Federal Government. (p. 591.)

It has been shown that the treaties and laws referred to come within the due exercise of the constitutional powers of the Federal Government; that they remain in full force, and, consequently, must be considered as the supreme laws of the land. These laws throw a shield over the Cherokee Indians. They guaranteed to them their rights of occupancy, of self-government, and the full enjoyment of those blessings which might be attained in their humble condition. But, by the enactments of the State of Georgia, this shield is broken in pieces, the infant institutions of the Cherokees are abolished, and their laws annulled. Infamous punishment is denounced against them for the exercise of those rights which have been most solemnly guaranteed to them by the national faith. (p. 595.)

Indian tribes are states, in a certain sense, though not foreign states or States of the United States, within the meaning of the second section of the third article of the Constitution, which extends the judicial power to controversies between two or more States, between a State and citizens of another State, between citizens of different States, and between a State or the citizens thereof and foreign states, citizens, or subjects. They are not states within the meaning of any one of those clauses of the Constitution, and yet, in a certain domestic sense, and for certain municipal purposes, they are states, and have been uniformly so treated since the settlement of our country and throughout its history, and numerous treaties made with them 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 by Congress in the spirit of those treaties, and the acts of our government, both in the executive and legislative departments, plainly recognize such tribes or nations as states, and the courts of the United States are bound by those acts. (Holden *v.* Joy, 17 Wallace, 242.)

TREATY WITH THE DELAWARES, SEPTEMBER 17, 1778.

ARTICLE 2. That a perpetual peace and friendship shall from henceforth take place and subsist between the contracting parties aforesaid through all succeeding generations; and if either of the parties are engaged in a just and necessary war with any other nation or nations, that then each shall assist the other in due proportion to their

abilities, till their enemies are brought to reasonable terms of accommodation; and that, if either of them shall discover any hostile designs forming against the other, they shall give the earliest notice thereof, that timeous measures may be taken to prevent their ill effect. (7 U. S. Stats., 13.)

TREATY WITH THE WYANDOTS, JANUARY 21, 1785.

ARTICLE 5. If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands allotted to the Wyandot and Delaware nations in this treaty, except on the lands reserved to the United States in the preceding article, such person shall forfeit the protection of the United States, and the Indians may punish him as they please. (7 U. S. Stats., p. 17.)

TREATY WITH THE CHEROKEES, NOVEMBER 28, 1785.

ARTICLE 5. If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the lands westward or southward of the said boundary, which are hereby allotted to the Indians for their hunting-grounds, or having already settled, and will not remove from the same within six months after the ratification of this treaty, such person shall forfeit the protection of the United States, and the Indians may punish them or not as they please: *Provided, nevertheless,* That this article shall not extend to the people settled between the fork of French Broad and Holstein rivers, whose particular situation shall be transmitted to the United States in Congress assembled for their decision thereon, which the Indians agree to abide by. (7 U. S. Stats., 19.)

TREATY WITH THE WYANDOTS, JANUARY 19, 1789.

ARTICLE 9. If any person or persons, citizens or subjects of the United States, or any other person not being an Indian, shall presume to settle upon the lands confirmed to the said nations, he and they shall be out of the protection of the United States, and the said nations may punish him or them in such manner as they see fit. (7 U. S. Stats., 30.)

TREATY WITH THE CREEKS, AUGUST 7, 1790.

ARTICLE 6. If any citizen of the United States, or other person not being an Indian, shall attempt to settle on any of the Creeks' lands, such person shall forfeit the protection of the United States, and the Creeks may punish him or not, as they please. (7 U. S. Stats., 36.)

TREATY WITH THE CHEROKEES, JULY 2, 1791.

ARTICLE 8. If any citizen of the United States, or other person not being an Indian, shall settle on any of the Cherokees' lands, such person shall forfeit the protection of the United States, and the Cherokees may punish him or not, as they please. (7 U. S. Stats., 40.)

TREATY WITH THE WYANDOTS, ETC., AUGUST 3, 1795.

ARTICLE 6. If any citizen of the United States, or other white person or persons, shall presume to settle upon the lands now relinquished by the United States, such citizen or other person shall be out of the protection of the United States; and the Indian tribe on whose land the settlement shall be made may drive off the settler, or punish him in such manner as they shall think fit; and, because such settlements, made without the consent of the United States, will be injurious to them, as well as to the Indians, the United States shall be at liberty to break them up and remove and punish the settlers, as they shall think proper, and so effect that protection of the Indian lands hereinbefore stipulated. (7 U. S. Stats., 52.)

TREATY WITH THE CHOCTAWS, SEPTEMBER 27, 1830.

ARTICLE 4. The government and people of the United States are hereby obliged to secure to the said Choctaw Nation of red people the jurisdiction and government of all the persons and property that may be within their limits west, so that no Territory or State shall ever have a right to pass laws for the government of the Choctaw Nation of red people and their descendants, and that no part of the land granted them shall ever be embraced in any Territory or State; but the United States shall forever secure said Choctaw Nation from and against all laws, except such as from time to time may be enacted in their own national councils, not inconsistent with the Constitution, treaties, and laws of the United States, and except such as may and which have been

enacted by Congress to the extent that Congress, under the Constitution, are required to exercise a legislation over Indian affairs. (7 U. S. Stats., pp. 333, 334.)

SAME TREATY.

ARTICLE 5. The United States hereby covenant and agree that the lands ceded to the Cherokee Nation in the foregoing article shall in no future time, without their consent, be included within the territorial limits or jurisdiction of any State or Territory; but they shall secure to the Cherokee Nation the right, by their national councils, to make and carry into effect all such laws as they may deem necessary for the government and protection of the persons and property within their own country, belonging to their people, or such persons as have connected themselves with them: *Provided, always*, That they shall not be inconsistent with the Constitution of the United States, and such acts of Congress as have been or may be passed regulating trade and intercourse with the Indians; and also, that they shall not be considered as extending to such citizens and Army of the United States as may travel or reside in the Indian country, by permission, according to the laws and regulations established by the government of the same. (7 U. S. Stats., 481.)

TREATY WITH THE CREEKS AND SEMINOLES, JANUARY 4, 1845.

ARTICLE 1. The Creeks agree that the Seminoles shall be entitled to settle in a body, or separately, as they please, in any part of the Creek country; that they shall make their own town regulations, subject, however, to the general control of the Creek council, in which they shall be represented; and, in short, that no distinction shall be made between the two tribes in any respect, except in the management of their pecuniary affairs, in which neither shall interfere with the other. (9 U. S. Stats., 821.)

TREATY WITH THE CHEROKEES, AUGUST 6, 1846.

ARTICLE 2. No one shall be punished for any crime or misdemeanor except on conviction by a jury of his country, and the sentence of a court duly authorized by law to take cognizance of the offense. And it is further agreed all fugitives from justice, except those included in the general amnesty herein stipulated, seeking refuge in the Territory of the United States, shall be delivered up by the authorities of the United States to the Cherokee Nation for trial and punishment. (9 U. S. Stats., 872.)

TREATY WITH THE CHOCTAWS AND CHICKASAWS, JUNE 22, 1855.

ARTICLE 4. The government and laws now in operation, and not incompatible with this instrument, shall be and remain in full force and effect within the limits of the Chickasaw district until the Chickasaws shall adopt a constitution and enact laws superseding, abrogating, or changing the same. And all judicial proceedings within said district, commenced prior to the adoption of a constitution and laws by the Chickasaws, shall be conducted and determined according to existing laws.

ARTICLE 7. So far as may be compatible with the Constitution of the United States and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Choctaws and Chickasaws shall be secured in the unrestricted right of self-government and full jurisdiction over persons and property within their respective limits, excepting, however, all persons with their property who are not by birth, adoption, or otherwise citizens or members of either the Choctaw or Chickasaw tribes, and all persons, not being citizens or members of either tribe, found within their limits shall be considered intruders, and be removed from and kept out of the same by the United States agent (assisted, if necessary, by the military), with the following exceptions, viz: Such individuals as are now or may be in the employment of the government, and their families; those peacefully traveling or temporarily sojourning in the country, or trading therein under license from the proper authority of the United States; and such as may be permitted by the Choctaws or Chickasaws, with the assent of the United States agent, to reside within their limits without becoming citizens or members of either of said tribes. (11 U. S. Stats., 612, 613.)

TREATY WITH THR CREEKS AND SEMINOLES, AUGUST 7, 1856.

ARTICLE 15. So far as may be compatible with the Constitution of the United States, and the laws made in pursuance thereof, regulating trade and intercourse with the Indian tribes, the Creeks and Seminoles shall be secured in the unrestricted right of self-government, and full jurisdiction over persons and property within their respective limits; excepting, however, all white persons, with their property, who are not, by adoption or otherwise, members of either the Creek or Seminole tribe; and all persons

not being members of either tribe, found within their limits, shall be considered intruders, and be removed from and kept out of the same by the United States agents for said tribes, respectively (assisted, if necessary, by the military), with the following exceptions, viz: Such individuals, with their families, as may be in the employment of the Government of the United States; all persons peaceably traveling or temporarily sojourning in the country, or trading therein under license from the proper authority of the United States; and such persons as may be permitted by the Creeks or Seminoles, with the assent of the proper authorities of the United States, to reside within their respective limits, without becoming members of either of said tribes.

ARTICLE 25. The Creek laws shall be in force and continue to operate in the country herein assigned to the Seminoles, until the latter remove thereto, when they shall cease and be of no effect. (11 U. S. Stats., 703, 704, 705.)

TREATY WITH THE SEMINOLES, MARCH 21, 1866.

ARTICLE 7. The Seminole Nation agrees to such legislation as Congress and the President may deem necessary for the better administration of the rights of person and property within the Indian Territory: *Provided, however,* That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs. (14 U. S. Stats., 758.)

TREATY WITH THE CHOCTAWS AND CHICKASAWS, APRIL 28, 1866.

ARTICKE 7. The Choctaws and Chickasaws agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice and the protection of the rights of person and property within the Indian Territory: *Provided, however,* Such legislation shall not in anywise interfere with or annul their present tribal organization, or their respective legislatures or judiciaries, or the rights, laws, privileges, or customs of the Choctaw and Chickasaw Nations respectively. (14 U. S. Stats., 771.)

ARTICLE 38. Every white person who, having married a Choctaw or Chickasaw, resides in the said Choctaw or Chickasaw nation, or who has been adopted by the legislative authorities, is to be deemed a member of said nation, and shall be subject to the laws of the Choctaw and Chickasaw Nations, according to his domicile, and to prosecution and trial before their tribunals, and to punishment according to their laws, in all respects as though he was a native Choctaw or Chickasaw.

ARTILLE 45. All the rights, privileges, and immunities heretofore possessed by said nations, or individuals thereof, or to which they were entitled under the treaties and legislation theretofore made and had in connection with them, shall be, and are hereby, declared to be in full force, so far as they are consistent with the provisions of this treaty. (14 U.S. Stats., 779, 780.)

TREATY WITH THE CREEKS, JUNE 14, 1866.

ARTICLE 10. The Creeks agree to such legislation as Congress and the President of the United States may deem necessary for the better administration of justice, and the protection of the rights of person and property within the Indian Territory: *Provided, however,* That said legislation shall not in any manner interfere with or annul their present tribal organization, rights, laws, privileges, and customs. (14 U. S. Stats., 788.)

TREATY WITH THE CHEROKEES, JULY 19, 1866.

ARTICLE 5. The inhabitants electing to reside in the district described in the preceding article, shall have the right to elect all their local officers and judges, and the number of delegates, to which, by their numbers, they may be entitled in any general council, to be established in the Indian Territory under the provisions of this treaty, as stated in article 12; and to control all their local affairs, and to establish all necessary police regulations and rules for the administration of justice in said district not inconsistent with the constitution of the Cherokee Nation or the laws of the United States: *Provided,* The Cherokees residing in said district shall enjoy all the rights and privileges of other Cherokees who may elect to settle in said district, as hereinbefore provided, and shall hold the same rights and privileges, and be subject to the same liabilities, as those who elect to settle in said district under the provisions of this treaty: *Provided, also,* That if any such police regulations or rules be adopted which, in the opinion of the President, bear oppressively on any citizen of the nation, he may suspend the same. And all rules and regulations in said district, or in any other district of the nation, discriminating against the citizens of other districts, are prohibited, and shall be void. (14 U. S. Stats., 800, 801.)