Worcester v. Georgia (1832)

Background
In 1831, the missionary Samuel A. Worcester and several other white Americans were accused in the Gwinnet County Supreme court in the state of Georgia for residing in the Cherokee Nation without a license and "without having taken the oath to support and defend the constitution and laws of the state of Georgia." They were indicted under an 1830 Georgia legislative act titled "an act to prevent the exercise of assumed and arbitrary power by all persons, under pretext of authority from the Cherokee Indians."

Worcester's defended himself by arguing that the Act violated the Constitution, treaties between the US and the Cherokee nation, and the Congressional "act to regulate trade and intercourse with the Indian tribes." Worcester was sentenced to "hard labour in the penitentiary for four years" and the case went to the US Supreme Court. The central question was then whether Georgia had the authority to regulate the intercourse between US citizens and members of the Cherokee Nation. This document presents Chief Justice John Marshall's majority opinion in the case.

Syllabus
SUPREME COURT OF THE UNITED STATES

31 U.S. 515
Worcester v. Georgia

CERTIORARI TO THE SUPERIOR COURT FOR THE COUNTY OF GWINETT IN THE STATE OF GEORGIA

Argued: --- Decided:

A writ of error was issued to "The Judges of the Superior Court for the County of Gwinett in the State of Georgia" commanding them to send to the Supreme Court of the United States the record and proceedings in the said Superior Court of the County of Gwinett, between the State of Georgia, plaintiff, and Samuel A. Worcester, defendant, on an indictment in that Court.

[. . .]

The plaintiff in error was indicted in the Supreme Court for the County of Gwinnett in the State of Georgia,

> "For residing, on the 15th July, 1831, in that part of the Cherokee Nation attached by the laws of the State of Georgia to that County, without a

> license or permit from the Governor of the State, or from anyone authorized to grant it, and without having taken the oath to support and defend the Constitution and laws of the State of Georgia, and uprightly to demean himself as a citizen thereof, contrary to the laws of the said State."

To this indictment he pleaded that he was, on the 15th July, 1831, in the Cherokee Nation, out of the jurisdiction of the Court of Gwinnett County; that he was a citizen of Vermont, and entered the Cherokee Nation as a missionary under the authority of the President of the United States, and has not been required by him to leave it, and that, with the permission and approval of the Cherokee Nation, he was engaged in preaching the gospel; that the State of Georgia ought not to maintain the prosecution, as several treaties had been entered into by the United States with the Cherokee Nation by which that Nation was acknowledged to be a sovereign nation, and by which the territory occupied by them was guaranteed to them by the United States; and that the laws of Georgia under which the plaintiff in error was indicted are repugnant to the treaties, and unconstitutional and void, and also that they are repugnant to the treaties, and unconstitutional and void, and also that they are repugnant to the Act of Congress of March, 1802, entitled "An act to regulate trade and intercourse with the Indian Tribes." The Superior Court of Gwinnet overruled the plea, and the plaintiff in error was tried and convicted, and sentenced "to hard labour in the penitentiary for four years." *Held,* that this was a case in which the Supreme Court of the United States had jurisdiction by writ of error under the twenty-fifth section of the "Act to establish the Judicial Courts of the United States," passed in 1789.

The indictment and plea in this case draw in question the validity of the treaties made by the United States with the Cherokee Indians; if not so, their construction is certainly drawn in question, and the decision has been, if not against their validity, "against the right, privilege, or exemption specifically set up and claimed under them." They also draw into question the validity of a statute of the State of Georgia

> "On the ground of its being repugnant to the Constitution, treaties, and laws of the United States, and the decision is in favour of its validity."

It is too clear for controversy that the Act of Congress by which this Court is constituted has given it the power, and of course imposed on it the duty, of exercising jurisdiction in this case. The record, according to the Judiciary Act and the rule and practice of the Court, is regularly before the Court.

The act of the Legislature of Georgia passed 22d December, 1830, entitled "An act to prevent the exercised of assumed and arbitrary power by all persons under pretext of authority from the Cherokee Indians," &c., enacts that

> "All white persons residing within the limits of the Cherokee Nation on the 1st day of March next, or at any time thereafter, without a license or permit from his Excellency the Governor, or from such agent as his Excellency the Governor shall authorize to grant such permit or license, and who shall not have taken the oath hereinafter required, shall be guilty of a high misdemeanor, and, upon conviction thereof, shall be punished by confinement to the penitentiary at hard labour for a term not less than four years."

The eleventh section authorizes the Governor,

> "Should he deem it necessary for the protection of the mines or the enforcement of the laws in force within the Cherokee Nation, to raise and organize a guard,"

&c. The thirteenth section enacts

> "That the said guard, or any members of them, shall be, and they are hereby, authorized and empowered to arrest any person legally charged with or detected in a violation of the laws of this State, and to convey, as soon as practicable, the person so arrested before a justice of the peace, judge of the Superior, justice of Inferior Court of this State, to be dealt with according to law."

The extraterritorial power of every legislature being limited in its action to its own citizens or subjects, the very passage of this act is an assertion of jurisdiction over the Cherokee Nation, and of the rights and powers consequent thereto.

The principle

> "that discovery of parts of the continent of America gave title to the government by whose subjects, or by whose authority it was made, against all other European governments, which title might be consummated by possession,"

acknowledged by all Europeans because it was the interest of all to acknowledge it, gave to the nation making the discovery, as its inevitable consequence, the sole right of acquiring the soil and making settlements on it. It was an exclusive principle which shut out the right of competition among those who had agreed to it, not one of which could annul the previous rights of those who had not agreed to it. It regulated the right given by discovery among the European discoverers, but could not affect the rights of those already in possession, either as aboriginal occupants or as occupants by virtue of a discovery made before the memory of man. It gave the exclusive right to

purchase, but did not found that right on a denial of the right of the possessor to sell.

The relation between the Europeans and the natives was determined in each case by the particular government which asserted and could maintain this preemptive privilege in the particular place. The United States succeeded to all the claims of Great Britain, both territorial and political, but no attempt, so far as it is known, has been made to enlarge them. So far as they existed merely in theory, or were in their nature only exclusive of the claims of other European nations, they still retain their original character, and remain dormant. So far as they have been practically exerted, they exist in fact, are understood by both parties, are asserted by the one, and admitted by the other.

Soon after Great Britain determined on planting colonies in America, the King granted charters to companies of his subjects who associated for the purpose of carrying the views of the Crown into effect, and of enriching themselves. The first of these charters was made before possession was taken of any part of the country. They purport generally to convey the soil, from the Atlantic to the South Sea. The soil was occupied by numerous and warlike nations, equally willing and able to defend their possessions. The extravagant and absurd idea that the feeble settlements made on the seacoast, or the companies under whom they were made, acquired legitimate power by them to govern the people, or occupy the lands from sea to sea, did not enter the mind of any man. They were well understood to convey the title which, according to the common law of European sovereigns respecting America, they might rightfully convey, and no more. This was the exclusive right of purchasing such lands as the natives were willing to sell. The Crown could not be understood to grant what the Crown did not affect to claim, nor was it so understood.

Certain it is that our history furnishes no example, from the first settlement of our country, of any attempt, on the part of the Crown, to interfere with the internal affairs of the Indians farther than to keep out the agents of foreign powers who, as traders or otherwise, might seduct them into foreign alliances. The King purchased their lands when they were willing to sell, at a price they were willing to take, but never coerced a surrender of them. He also purchased their alliance and dependence by subsidies, but never intruded into the interior of their affairs or interfered with their self-government so far as respected themselves only.

The third article of the treaty of Hopewell acknowledges the Cherokees to be under the protection of the United States of America, and of no other power.

This stipulation is found in Indian treaties generally. It was introduced into their treaties with Great Britain, and may probably be found in those with other European powers. Its origin may be traced to the nature of their connexion with those powers, and its true meaning is discerned in their relative situation.

The general law of European sovereigns respecting their claims in America limited the intercourse of Indians, in a great degree, to the particular potentate whose ultimate right of domain was acknowledged by the others. This was the general state of things in time of peace. It was sometimes changed in war. The consequence was that their supplies were derived chiefly from that nation, and their trade confined to it. Goods, indispensable to their comfort, in the shape of presents, were received from the same hand. What was of still more importance, the strong hand of government was interposed to restrain the disorderly and licentious from intrusion into their country, from encroachments on their lands, and from the acts of violence which were often attended by reciprocal murder. The Indians perceived in this protection only what was beneficial to themselves -- an engagement to punish aggressions on them. It involved practically no claim to their lands, no dominion over their persons. It merely bound the Nation to the British Crown as a dependent ally, claiming the protection of a powerful friend and neighbour and receiving the advantages of that protection without involving a surrender of their national character.

This is the true meaning of the stipulation, and is undoubtedly the sense in which it was made. Neither the British Government nor the Cherokees ever understood it otherwise.

The same stipulation entered into into with the United States is undoubtedly to be construed in the same manner They receive the Cherokee Nation into their favour and protection. The Cherokees acknowledge themselves to be under the protection of the United States, and of no other power. Protection does not imply the destruction of the protected. The manner in which this stipulation was understood by the American Government is explained by the language and acts of our first President.

So with respect to the words "hunting grounds." Hunting was, at that time, the principal occupation of the Indians, and their land was more used for that purpose than for any other. It could not, however, be supposed that any intention existed of restricting the full use of the lands they reserved.

To the United States, it could be a matter of no concern whether their whole territory was devoted to hunting grounds or whether an occasional village and an occasional cornfield interrupted, and gave some variety, to the scene.

These terms had been used in their treaties with Great Britain, and had never been misunderstood. They had never been supposed to imply a right in the British Government to take their lands or to interfere with their internal government.

The sixth and seventh articles stipulate for the punishment of the citizens of either country who may commit offences on or against the citizens of the other. The only inference to be drawn from them is that the United States considered the Cherokees as a nation.

The ninth article is in these words:

> "For the benefit and comfort of the Indians, and for the prevention of injuries or oppressions on the part of the citizens or Indians, the United States, in Congress assembled, shall have the sole and exclusive right of regulating the trade with the Indians and managing all their affairs as they think proper."

To construe the expression "managing all their affairs" into a surrender of self-government would be a perversion of their necessary meaning, and a departure from the construction which has been uniformly put on them. The great subject of the article is the Indian trade. The influence it gave made it desirable that Congress should possess it. The commissioners brought forward the claim with the profession that their motive was "the benefit and comfort of the Indians and the prevention of injuries or oppressions." This may be true as respects the regulation of their trade and as respects the regulation of all affairs connected with their trade, but cannot be true as respects the management of their affairs. The most important of these is the cession of their lands and security against intruders on them. Is it credible that they could have considered themselves as surrendering to the United States the right to dictate their future cessions and the terms on which they should be made, or to compel their submission to the violence of disorderly and licentious intruders? It is equally inconceivable that they could have supposed themselves, by a phrase thus slipped into an article on another and mere interesting subject, to have divested themselves of the right of self-government on subjects not connected with trade. Such a measure could not be "for their benefit and comfort," or for "the prevention of injuries and oppression." Such a construction would be inconsistent with the spirit of this and of all subsequent treaties, especially of those articles which recognise the right of the Cherokees to declare hostilities and to make war. It would convert a treaty of peace covertly into an act annihilating the political existence of one of the parties. Had such a result been intended, it would have been openly avowed.

This treaty contains a few terms capable of being used in a sense which could not have been intended at the time, and which is inconsistent with the practical construction which has always been put on them; but its essential articles treat the Cherokees as a nation capable of maintaining the relations of peace and war, and ascertain the boundaries between them and the United States.

The Treaty of Holston, negotiated with the Cherokees in July, 1791, explicitly recognising the national character of the Cherokees and their right of self-

government, thus guarantying 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.

To the general pledge of protection have been added several specific pledges deemed valuable by the Indians. Some of these restrain the citizens of the United States from encroachments on the Cherokee country, and provide for the punishment of intruders.

The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the States, and provide that all intercourse with them shall be carried on exclusively by the Government of the Union.

The Indian nations had always been considered as distinct, independent political communities retaining their original natural rights as 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, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and consequently admits their rank among the 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.

Georgia herself has furnished conclusive evidence that her former opinions on this subject concurred with those entertained by her sister states, and by the Government of the United States. Various acts of her legislature have been cited in the argument, including the contract of cession made in the year 1802, all tending to prove her acquiescence in the universal conviction that the Indian nations possessed a full right to the lands they occupied until that right should be extinguished by the United States with their consent; that their territory was separated from that of any State within whose chartered limits they might reside by a boundary line established by treaties; that, within their boundary, they possessed rights with which no state could interfere; and that the whole power of regulating the intercourse with them was vested in the United States.

In opposition to the 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, are 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 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 titled 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 recognising their title to self-government. The very fact of repeated treaties with them recognises 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 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 feudal 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 to self-government under the guarantee 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.

The act of the State of Georgia under which the plaintiff in error was prosecuted is consequently void, and the judgment a nullity.

The acts of the Legislature of Georgia interfere forcibly with the relations established between the United States and the Cherokee Nation, the regulation of which, according to the settled principles of our Constitution, is committed exclusively to the Government of the Union.

They are in direct hostility with treaties, repeated in a succession of years, which mark out the boundary that separates the Cherokee country from Georgia; guaranty to them all the land within their boundary; solemnly pledge the faith of the United States to restrain their citizens from trespassing on it; and recognise the preexisting power of the Nation to govern itself.

They are in equal hostility with the acts of Congress for regulating this intercourse and giving effect to the treaties.

The forcible seizure and abduction of the plaintiff in error, who was residing in the Nation with its permission and by authority of the President of the United States, is also a violation of the acts which authorize the Chief Magistrate to exercise his authority.

Will these powerful considerations avail the plaintiff in error. We think they will. He was seized and forcibly carried away while under guardianship of treaties guarantying the country in which he resided and taking it under the protection of the United States. He was seized while performing, under the [p521] sanction of the Chief Magistrate of the Union, those duties which the humane policy adopted by Congress had recommended. He was apprehended, tried, and condemned under colour of a law which has been shown to be repugnant to the Constitution, laws, and treaties of the United States. Had a judgment liable to the same objections been rendered for property, none would question the jurisdiction of this Court. It cannot be less clear when the judgment affects personal liberty and inflicts disgraceful punishment -- if punishment could disgrace when inflicted on innocence. The plaintiff in error is not less interested in the operation of this unconstitutional law than if it affected his property. He is not less entitled to the protection of the Constitution, laws, and treaties of his country.

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