

# Transcribed Excerpts from U.S. Supreme Court Majority Opinion on Cherokee Nation's Case Against Georgia, January 1831

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

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

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

The 3rd Article of the Constitution describes the extent of the judicial power. The 2nd Section closes an enumeration of the cases to which it is extended, with controversies between a state or the citizens thereof, and foreign states, citizens, or subjects. A subsequent clause of the same section gives the Supreme Court original jurisdiction in all cases in which a state shall be a party. The party defendant may then unquestionably be sued in this Court. May the plaintiff sue in it? Is the Cherokee Nation a foreign state in the sense in which that term is used in the Constitution?

... So much of the argument as was intended to prove the character of the Cherokees as a state, as a distinct political society separated from others, capable of managing its own affairs and governing itself, has, in the opinion of a majority of the judges, been completely successful. They have been uniformly treated as a state from the settlement of our country ...

The acts of our government plainly recognize the Cherokee Nation as a state, and the courts are bound by those acts.

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

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

This argument is imposing, but we must examine it more closely before we yield to it. The condition of the Indians in relation to the United States is perhaps unlike that of any other two people in existence. In the general, nations not owing a common allegiance are foreign to each other. The term foreign nation is, with strict propriety, applicable by either to the other. But the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist nowhere else ... They acknowledge themselves in their treaties to be under the protection of the United States; they admit that the United States shall have the sole and exclusive right of regulating the trade with them and managing all their affairs as they think proper; and the Cherokees in particular were allowed by the Treaty of Hopewell, which preceded the Constitution.

The Indian Territory is admitted to compose part of the United States. In all our maps, geographical treatises, histories, and laws, it is so considered. In all our intercourse with foreign nations, in our commercial regulations, in any attempt at intercourse between Indians and foreign nations, they are considered as within the jurisdictional limits of the United States ...

Their relation to the United States resembles that of a ward to his guardian.

They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants; and address the President as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States that any attempt to acquire their lands or to form a political connection with them would be considered by all as an invasion of our territory and an act of hostility.

The Court has bestowed its best attention on this question and, after mature deliberation, the majority is of opinion that an Indian tribe or nation within the United States is not a foreign state in the sense of the Constitution, and cannot maintain an action in the courts of the United States.