Cherokee Nation v. *State of Georgia*

John Marshall

OVERVIEW

The Cherokee Native Americans declared themselves to be an independent nation and appealed to the United States Supreme Court to restrain the state of Georgia from striking down their laws and title to their lands in the northwest portion of the state. Chief Justice John Marshall's opinion in the 1831 *Cherokee Nation* v. *State of Georgia* decision is excerpted here.

GUIDED READING As you read, consider the following questions:

- How does Justice Marshall's decision lead one to believe that he is sympathetic toward the Cherokee?
- How does Marshall describe the relationship between the Cherokee and the United States?

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." . . .

. . . 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. . . .

Though the Indians are acknowledged to have an unquestionable and, heretofore, unquestioned right to the lands they occupy until that right shall be extinguished by a voluntary cession to our government, yet it may well be doubted whether those tribes which reside within the acknowledged boundaries of the United States can, with strict accuracy, be denominated foreign nations. They may more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title independent of their will, which must take effect in point of possession when their right of possession ceases. Meanwhile, they are in a state of pupilage. 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. . . .

. . . Be this as it may, the peculiar relations between the United States and the Indians occupying our territory are such that we should feel much difficulty in considering them as designated by the term "foreign state" were there no other part of the Constitution which might shed light on the meaning of these words. But we think that in construing them, considerable aid is furnished by that clause in the 8th Section of the 3rd Article, which empowers Congress to "regulate commerce with foreign nations, and among the several states, and with the Indian tribes."

In this clause they are as clearly contradistinguished by a name appropriate to themselves from foreign nations as from the several states composing the Union. They are designated by a distinct appellation; and as this appellation can be applied to neither of the others, neither can the appellation distinguishing either of the others be in fair construction applied to them. The objects to which the power of regulating commerce might be directed are divided into three distinct classes: foreign nations, the several states, and Indian tribes. When forming this article, the Convention considered them as entirely distinct. . . .

. . . We perceive plainly that the Constitution in this article does not comprehend Indian tribes in the general term "foreign nations"; not, we presume, because a tribe may not be a nation but because it is not foreign to the United States. . . .

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. . . .

The motion for an injunction is denied.