Ulrich Bonnell Phillips:

THE EXPULSION OF THE CHEROKEES

*Although the reputation of Ulrich Bonnell Phillips is based primarily upon his two studies of slavery—*American Negro Slavery *(1918) and* Life and Labor in the Old South *(1929)—he first received notice as a historian of his native Georgia. His monograph,* Georgia and State Rights, *was awarded the Justin Winsor Prize of the American Historical Association. The selection which follows is from this book. It provides an accurate and useful account of the facts of Cherokee expulsion.*

AT the beginning of the American Revolution the hunting grounds of the Cherokees were conceded to extend from the eastern slopes of the Blue Ridge to the neighborhood of the Mississippi River and from the Ohio River almost as far south as central Georgia. Most of their villages, however, were located in eastern Tennessee and northern Georgia. The settlement of the country by the whites, and the acquisitions of the Indian territory by them, was naturally along the lines of least resistance. That is to say, the Cherokees first ceded away their remote hunting grounds and held most tenaciously to the section in which their towns were situated.

At an early stage in the Revolution a body of militia from the Southern States made a successful attack upon the eastern villages of the Cherokees, who were in alliance with the British. The tribe was at once ready for peace, and signed a treaty with commissioners from Georgia and South Carolina at Dewits Corner, on May 20, 1777, acknowledging defeat at the hands of the Americans, establishing peace, and yielding their title to a section of their lands, lying chiefly in South Carolina.

The Cherokee families which had lived upon the lands conquered now moved westward, extending the settlements of the tribe farther along the course of the Tennessee River. At the same time five new villages were built by the most warlike part of the nation on Chickamauga Creek and in the neighboring district southeast of Lookout Mountain. Before the end of the Revolution the Cherokees were again at war with the Americans, and Gen. Elijah Clarke led an expedition against this settlement on the Chickamauga. The sudden raid caused such terror in the Indian villages that the inhabitants eagerly promised great cessions of land in order to be rid of the invaders. Clarke

U. B. Phillips, "The Expulsion of the Cherokees," from *Georgia & State Rights* (Washington: U.S. Gov. Printing Office, 1902), pp. 66–86. For complete footnotes in this and other selections, see original publications.

made what he called a treaty at Long Swamp, but the agreement was necessarily informal and extra-legal. The fact that it was not followed up by the proper authorities caused Clarke to think that the people had not benefited sufficiently by his exertions. The injury to his feelings in this connection was probably responsible in part for his attempted settlement on Indian lands in 1794.

At the close of the Revolution, the Cherokees ceded to Georgia their claim to a district about the sources of the Oconee, which they held as hunting ground in joint possession with the Creeks. In the territory which the Cherokees retained, the districts near the Georgia settlements were less attractive than the Creek lands to the south. The upland region in the State was being rapidly settled, however, and new lands were in demand. The State made oc-asional attempts between 1785 and 1800 o obtain further cessions. Frequent con-entions were held by commissioners of he United States and the Cherokee hieftains, at some of which representa-ives of Georgia were present. But the ribe held fast to its Georgia lands. By he treaty of Hopewell in 1785 the herokee Nation placed itself under the rotection of the United States and greed to specified boundaries for its rritory, but it made no cession which oncerned Georgia. The agreement of Iopewell was confirmed at a convention n the Holston River in 1791, and again t Philadelphia in 1793, but the boundries on the southeast remained practi-ally unchanged.[1]

The treaty of Philadelphia was rendered necessary by hostilities arising ith the tribe in 1793; the Chickamauga wns, as usual, provoked the unpleasantness on the Indian side, while the settlers on the frontier of North Carolina and Tennessee were quite as much to blame on the side of the whites. Considerable excitement prevailed for several months, and raids were made by each party; but the fact that the Creek country intervened between Georgia and the chief settlements of the Cherokees directed the warlike energies of the tribe to the north and northeast.

After 1795 no considerable portion of the Cherokee Nation was at any time seriously inclined to war. Those of its members who preferred the life of hunters moved away to the Far West, while the bulk of the tribe remaining settled down to the pursuit of agriculture. The chief complaint which Georgia could make of them in later years was that they kept possession of the soil, while white men wanted to secure it for themselves.

The invention of the cotton gin in 1793 had the effect after a few years of increasing the preference of the Georgians for the warm and fertile Creek lands, over the Cherokee territory which was ill adapted to cotton with the then prevailing system of agriculture. For this reason it was not until all of the Creek lands had been secured for settlement that the State authorities began to make strenuous efforts for the expulsion of the Cherokees. In the intervening years certain moderate steps were taken, which must now engage our attention.

As early as 1803 Thomas Jefferson suggested the advisability of removing all of the southern Indians west of the Mississippi, and in 1809 a delegation of Cherokees, at the instance of the United States Indian agent, Return J. Meigs, made a visit to the Western lands. At that time a considerable part of the Cherokee Nation favored removal, but the matter was postponed. General An-

American State Papers: *Indian Affairs*, I, 83, 24, and 543.

drew Jackson reported, in 1816, that the whole nation would soon offer to move West. When negotiations were made for a treaty in the next year it was found that there was a division of opinion. The Lower Cherokees, who lived chiefly in Georgia, were disposed to emigrate, while the Upper or Tennessee division of the nation preferred to remain and to change from their wild life to the pursuit of agriculture. By the treaty signed at the Cherokee Agency, July 8, 1817, a tract of land was ceded in Georgia, and arrangement was made that such Indian families as so desired might take up new homes in the Far West.[2]

Within the next two years about one-third of the Cherokees moved into the Louisiana Territory; but it happened quite unexpectedly that each section of the nation had altered its disposition, so that a large part of the Upper Cherokees moved away from Tennessee, while most of the Lower Cherokees remained in Georgia. Thus, when a treaty came to be made in 1819, it was found that a large area had been vacated to the north and east, but only a small district could be obtained in Georgia. It further appeared that, owing to the influence of a powerful chief named Hicks, the westward movement had almost completely stopped.[3]

The treaties of 1817 and 1819 provided that the head of any Cherokee family living in the district ceded to the United States might at his option remain in possession of his home, together with 640 acres of land, which should descend to his heirs in fee simple. The Georgia legislature, of course, protested against this provision as violative of the rights of the State, while Congressional committees declared that in so far as the treaty provided for Indians to become citizens, it infringed upon the powers of Congress.[4] The agreement was accordingly modified and the Cherokee family holdings were gradually purchased during the next few years.

Georgia was at this period beginning to grow insistent upon obtaining possession of the Cherokee lands as well as those of the Creeks. In March of 1820, President Monroe requested appropriations from Congress to extinguish by treaty the Indian title to all lands in Georgia. When the Cherokees were officially approached upon the subject in 1823, the council of chiefs replied to the commissioners, Messrs. Campbell and Merriwether: "It is the fixed and unalterable determination of this nation never again to cede one foot more of our land." That part of the tribe which had emigrated had suffered severely from sickness, wars, and other calamities, and the remainder refused to follow them. To emphasize their decision a delegation proceeded to Washington, where they declared to the President that, "the Cherokees are not foreigners, but the original inhabitants of America, and that they now stand on the soil of their own territory, and they can not recognize the sovereignty of any State within the limits of their territory."[5]

It may easily be surmised that the chiefs who delivered this declaration were not full-blooded, wild Indians. As a matter of fact, the average member of the tribe, while not savage, was heavy and stupid; but the nation was

[2] *Indian Affairs*, II, 125 and 129.
Indian Affairs, II, 187, 188, 259, and 462.
. H. Prince, *Laws of Georgia to 1820*, p. 321.

[4] U.S. House Journal, 16th Cong., 1st sess., p. 336. Prince, *Laws of Georgia to 1820*, p. 531.
[5] U.S. House Journal, 16th Cong., 1st sess., p. 315 (Mar. 17, 1820). *Ind[illegible] Affairs*, II, 468 and 474.

under the complete control of its chiefs, who were usually half-breeds, or white men married into the nation. Many of these chiefs were intelligent and wealthy, but their followers continued to live from hand to mouth, with little ambition to better themselves. Each family cultivated a small field, and perhaps received a pittance from the annual subsidy of the United States; but, as a rule, the payments for cessions of land never percolated deeper than the stratum of the lesser chiefs. The attitude of the United States had undergone a great change. Formerly the tribes near the frontiers had been held as terrible enemies, but they had now become objects of commiseration. The policy of the Government had once been to weaken these tribes, but that had given place to the effort to civilize them.[6]

It is remarkable that the United States Government was still inclined to regard the Indian tribes in the light of sovereign nations. The Cherokee delegation was received at Washington in 1824 with diplomatic courtesy, and its representations attended to as those of a foreign power. The Congressional Representatives of Georgia viewed the matter from the standpoint of their State. They accordingly remonstrated with the President, March 10, 1824, against the practice of showing diplomatic courtesy to the Cherokees. They said that too much time had been wasted, while the Indians were further than ever from removal. If a peaceable purchase of the Cherokee land could not be made, they demanded that the nation be peremptorily ordered to remove and suitably indemnified for their pains.

Mr. Monroe replied in a message to Congress on March 30 that the United States had done its best in the past to carry out the agreement of 1802, and that the Government was under no obligation to use other means than peaceable and reasonable ones. Governor Troup entered his protest against the message on April 24, urging that Georgia had the sole right to the lands, and denying that the Indians were privileged to refuse when a cession was demanded. The Cherokees, for their part, held to their contention for national rights, appealing to the clause in the Declaration of Independence "that all men are created equal," and reiterating their determination to give up not an inch of their land.[7] As far as concerned results, the Cherokees had the best of the argument. The effort to drive them west was given up for a time.

The delegation returned home to lead their tribesmen still further in the ways of civilization. A Cherokee alphabet was devised by Sequoyah in 1825, a printing press was set up at the capital, New Echota, in the following year, and soon afterward steps were taken to formulate a written constitution for the nation. Meanwhile the Cherokee population was increasing with considerable rapidity. In 1818 an estimate had been made which placed the number east of the Mississippi at 10,000, and it was thought that 5,000 were living on the Western lands. A census was taken in 1825 of the Cherokee Nation in the East. Of native citizens there were numbered 13,563; of white men and women married in the nations, 147 and 73, respectively; of negro slaves, 1,277.

The Cherokee national constitution was adopted in a convention of repre-

[6] Message of Governor Gilmer, Dec. 6, 1830, *Niles's Register*, XXXIX, 339. Cf. Letter of Supt. of Indian Affairs to Sec. of War, Mar. 1, 1826, *Indian Affairs*, II, 658.

[7] *Niles's Register*, XXVI, 100, 103. *Indian Affairs*, III, 476, 502, 736.

sentatives on July 26, 1827. It asserted that the Cherokee Indians constituted one of the sovereign and independent nations of the earth, having complete jurisdiction over its territory, to the exclusion of the authority of any other State, and it provided for a representative system of government, modeled upon that of the United States.[8]

Of course Georgia could not countenance such a procedure. Governor Troup had just worsted President Adams in the controversy over the Creek lands, and the State was prepared at least to hold its own against the Cherokees. The legislature, on December 27, adopted resolutions of no doubtful tenor. After praising Governor Troup for his able and patriotic conduct regarding the Creek lands, the preamble showed that since the agreement of 1802 the Indians had been removed entirely from Ohio, Kentucky, North and South Carolina, Tennessee, and Missouri, from nearly all of Arkansas and Alabama, and that large cessions had been obtained in Mississippi, Illinois, Michigan, and Florida. The resolutions followed: "That the policy which has been pursued by the United States toward the Cherokee Indians has not been in good faith toward Georgia. . . . That all the lands, appropriated and unappropriated, which lie within the conventional limits of Georgia belong to her absolutely; that the title is in her; that the Indians are tenants at her will, . . . and that Georgia has the right to extend her authority and her laws over her whole territory and to coerce obedience to them from all descriptions of people, be they white, red, or black, who may reside within her limits." The document closed with the statement that violence would not be used to secure Georgia's rights until other means should have failed.[9]

When a year had passed with no developments in furtherance of the policy of the State, Governor Forsyth advised the passage of an act to extend the laws of Georgia over the Cherokee territory, but suggested that such law should not take effect until the President should have had time again to urge the Indians to emigrate. The legislature accordingly, by an act of December 20, 1828, carried out its threat of the previous year, enacting that all white persons in the Cherokee territory should be subject to the laws of Georgia, providing that after June 1, 1830, all Indians resident therein should be subject to such laws as might be prescribed for them by the State, and declaring that after that date all laws made by the Cherokee Nation should be null and void.[10]

Before any further legislative steps were taken, a new and unexpected development arose which tended to hasten some early solution of the complex problem. In July, 1829, deposits of gold were found in the northeastern corner of the State, and the news rapidly spread that the fields were as rich as those being worked in North Carolina. As soon a the news was known to be authenti there came a rush of adventurers int the gold lands. In the summer of 183 there were probably 3,000 men fro various States digging gold in Cheroke Georgia. The intrusion of these mine into the Cherokee territory was unla ful under the enactments of three se eral governments, each claiming juri

[8] *Indian Affairs*, II, 651, 652. Royce, *The Cherokee Nation*, p. 241.

[9] Acts of Georgia General Assembly, 1827, 249. For text of Cherokee constitution see U Executive Document No. 91, 23rd Cong., sess., vol. 3. *Cherokee Phoenix*, Feb. 28, 18

[10] *Athenian*, Nov. 18, 1828. Dawson, *Comp tion of Georgia Laws*, 08. Prince, *Digest the Laws of Georgia* p. 278.

diction over the region. The United States laws prohibited anyone from settling or trading on Indian territory without a special license from the proper United States official; the State of Georgia had extended its laws over the Cherokee lands, applying them, after June 1, 1830, to Indians as well as white men; the Cherokee Nation had passed a law that no one should settle or trade on their lands without a permit from their officials.[11]

A conflict of authorities was imminent, and yet at that time no one of the three governments, nor, indeed, all of them combined, had sufficient police service in the section to check the great disorder which prevailed. The government of Georgia was the first of the three to make an efficient attempt to meet the emergency. Governor Gilmer wrote to the President October 29, 1830, stating that the Cherokee lands had been put under the laws of Georgia, and asking that the United States troops be withdrawn.

General Jackson, whose view of the Indian controversy was radically opposed to that of Mr. Adams, did not hesitate to reverse the policy of the Government. He had already expressed his belief that Georgia had a rightful jurisdiction over her Indian lands, and he lost no time in complying with Mr. Gilmer's request to withdraw his troops. The general assembly of Georgia was called in special session in October for the purpose of making additional laws for the regulation of the gold region. By an act of December 22, 1830, a guard of 60 men was established to prevent intrusion and disorder at the gold mines. By the same act it was made unlawful for any Cherokee council or legislative body to meet, except for the purpose of ceding land, while the same penalty of four years' imprisonment was fixed to punish any Cherokee officials who should presume to hold a court. Not content with this, the legislature enacted by the same law that all white persons resident in the Cherokee territory on March 1, 1831, or after, without a license from the governor of Georgia or his agent, should be guilty of a high misdemeanor, with the penalty provided of not less than four years' confinement in the penitentiary. The governor was empowered to grant licenses to those who should take an oath to support and defend the constitution and laws of Georgia, and uprightly to demean themselves as citizens of the State.[12]

The attitude of the judge of the Georgia superior court, who had most of the Cherokee territory in his circuit, had already been shown in a letter which he, Judge A. S. Clayton, wrote Governor Gilmer June 22, 1830, suggesting a request to the President for the withdrawal of the United States troops. Nine citizens of Hall County had just been brought before him by the Federal troops for trespassing on the Cherokee territory. He wrote: "When I saw the honest citizens of your State paraded through the streets of our town, in the center of a front and rear guard of regular troops, belonging, if not to a foreign, at least to another government, . . . for no other crime than that of going upon soil of their own State, . . . I confess to you I never so distinctly felt, as strong as my feelings have been on that subject, the deep

[11] *Athenian*, August 4, 1829. Georgia *Journal*, September 4, 1830. G. White, *Historical Collections of Georgia*.

[12] *Athenian*, October 19 and 26, 1830. *Niles's Register*, XXXIX, 263. Acts of Georgia Gen. Assem., 1830, p. 114. Prince, *Digest of Georgia Laws to 1837*, p. 279. Georgia *Journal*, January 1, 1831.

humiliation of our condition in relation to the exercise of power on the part of the General Government within the jurisdiction of Georgia."[13]

Three months later Judge Clayton, in a charge to the grand jury of Clarke County, expressed his belief in the constitutionality of the recent extension of Georgia's laws, and his intention to enforce it. He said that he would disregard any interference of the United States Supreme Court in cases which might arise before him from the act of Georgia. "I only require the aid of public opinion and the arm of the executive authority," he concluded, "and no court on earth besides our own shall ever be troubled with this question."[14]

It was with good reason that the State officials were determined if possible to keep the Cherokee questions out of the Federal courts. The policy of Chief Justice John Marshall was known to be that of consolidating the American nation by a broad interpretation of the Federal Constitution, and a consequent restriction of the sphere of the State governments.

The Cherokee chiefs had learned to their sorrow that President Jackson readily conceded all that Mr. Adams had struggled to deny to Georgia. The hostile legislation of Georgia had paralyzed the working of the Cherokee constitution. The President admitted the right of the State to survey the Indian lands, to extend its laws over them, and to annul the laws of the Cherokees. He refused to recognize the Cherokee constitution and denied that the nation had any rights as opposed to Georgia. With such cold comfort from the Executive, the chiefs determined to resort to the judicial branch of the Federal Government in a final effort to save their homes from the rapacity of Georgia. . . .

The opinion of the court [in The Cherokee Nation *v.* Georgia], as rendered by Chief Justice Marshall, granted that the counsel for the plaintiffs had established that the Cherokee Nation was a State and had been treated as a State since the settlement of the colonies; but the majority of the court decided that an Indian tribe or nation in the United States was not a foreign state in the sense of the Constitution and could not maintain an action in the courts of the United States. The decision concluded accordingly, "If it be true that the Cherokee Nation have rights, this is not the tribunal in which those rights are to be asserted. If it be true that wrongs have been inflicted and that still greater are to be apprehended, this is not the tribunal which can redress the past or prevent the future. The motion for an injunction is denied."

In a separate opinion Mr. Justice Johnson held that the name "State should not be given to a people so low in grade of organized society as were the Indian tribes. He contended . . . that the United States allotted certa lands to the Cherokees, intending give them no more rights over the te rritory than those needed by hunte concluding that every advance of t Indians in civilization must tend to i pair the right of preemption, which v of course a right of the State of Georg

Mr. Justice Thompson gave a disse ing opinion, in which Mr. Justice St concurred, that the Cherokee Na was competent t in the court

[13] The original of this letter is among the archives in the State Capitol, Atlanta, Ga. (MSS).

[14] *Niles's Register*, XXXVIII, 101.

the desired injunction ought to be awarded.

It was clear that nowhere in the opinion of the court was it stated that the extension of the laws of Georgia over the Cherokee territory was valid and constitutional. This one case had been thrown out of court because no standing in court could be conceded to the plaintiffs. The decision was against the Cherokee Nation for the time being; but it did not necessarily follow that a subsequent decision would bear out the claims of the State of Georgia.

Messrs. Wirt and Sergeant had brought their action against the State of Georgia in the name of the Cherokee Nation only because no promising opportunity for making a personal case had arisen. One of the complaints in the bill for injunction was that the cases where the Georgia laws operated in the Cherokee territory were allowed to drag in the Georgia courts so as to prevent any one of the Cherokee defendants from carrying his case to the United States Supreme Court by writ of error. An attempt had been made to utilize the Tassel case, but the prompt execution of the criminal put an early end to the project. The first case which arose of a character suitable for the purpose of the attorneys was upon the conviction of Samuel A. Worcester for illegal residence in the Cherokee territory. The history of the case was as follows:

The act of the Georgia legislature approved December 22, 1830, which we have noticed, made it unlawful for white persons to reside in the Cherokee territory in Georgia without having taken an oath of allegiance to the State and without a license from the State authorities. This law was directed primarily against the intruding gold miners; but the message of the governor had stated the expediency of considering all white persons as intruders, without regard to the length of their residence or the permission of the Indians. The law was accordingly made one of sweeping application.

There were at the time resident among the Cherokees twelve or more Christian missionaries and assistants, some of them maintained by the American Board of Commissioners for Foreign Missions. These men were already suspected of interfering in political matters and would probably have been made to feel the weight of the law without inviting attention to themselves, but they did not passively await its action. They held a meeting at New Echota December 29, 1830, in which they passed resolutions protesting the extension of the laws of Georgia over the Indians and asserting that they considered the removal of the Cherokees an event most earnestly to be deprecated.[15]

After sufficient time had elapsed for the intruders to have taken their departure, if so disposed, the Georgia guard for the Cherokee territory arrested such white men as were found unlawfully residing therein. Among the number arrested were two missionaries, Messrs. Worcester and Thompson. On writ of habeas corpus they were taken before the superior court of Gwinnett County, where their writ was passed upon by Judge Clayton. Their counsel pleaded for their release upon the ground of the unconstitutionality of the law of Georgia. The judge granted their release, but did so upon the ground that they were agents of the United States, since they were expend-

15 *Athenian*, January 25, 1831. White, *Historical Collections of Georgia*, p. 139.

ing the United States fund for civilizing the Indians. Governor Gilmer then sent inquiries to Washington to learn whether the missionaries were recognized agents of the Government. The reply was received that as missionaries they were not governmental agents, but that Mr. Worcester was United States Postmaster at New Echota. President Jackson, upon request from Georgia, removed Mr. Worcester from that office in order to render him amenable to the laws of the State. The *Cherokee Phoenix*, the newspaper and organ of the nation, expressed outraged feelings on the part of the Indians at the combination of the State and Federal executives against them.

The governor wrote Mr. Worcester, May 16, advising his removal from the State to avoid arrest. May 28, Col. J. W. A. Sandford, commander of the Georgia Guard, wrote each of the missionaries that at the end of ten days he would arrest them if found upon Cherokee territory in Georgia. Notwithstanding their address to the governor in justification of their conduct, they were arrested by the guard, the Rev. Samuel A. Worcester, the Rev. Elizur Butler, and the Rev. James Trott, missionaries, and eight other white men, for illegal residence in the territory. Their trial came on in the September term of the Gwinnett County superior court. They were found guilty, and on September 15 were each sentenced to four years' confinement at hard labor in the State penitentiary. But a pardon and freedom were offered to each by the governor on condition of taking the oath of allegiance or promising to leave the Cherokee territory. Nine of the prisoners availed themselves of the executive clemency, but Worcester and Butler chose rather to go to the penitentiary, intending to test their case before the Supreme Court.[16]

On the occasion of their second arrest the missionaries had been taken into custody by a section of the Georgia Guard, commanded by a subordinate officer, Colonel Nelson. During the journey from the scene of the arrest to the place of temporary confinement the treatment of the prisoners was needlessly rough, extending in the cases of Messrs. Worcester and McLeod to positive harshness and violence. These two clergymen complained to the head of their missionary board of having been put in shackles, and of other indignities. The State government condemned the severity of the guard, and ordered an inquiry made into Nelson's conduct. That officer explained that his course of action had been rendered necessary by the unruly character of his prisoners. The controversy was practically closed by the retort of the Rev. Mr. McLeod that Colonel Nelson's statements were false and his conduct villainous.[17]

The cases of Worcester and Butler, who refused the governor's conditions for pardon, were appealed to the United States Supreme Court, from which a writ of error was issued on October 27, 1831.

Wilson Lumpkin, who had become governor of Georgia, submitted to the legislature on November 25, 1831, copies of the citations of the United States Supreme Court to the State of Georgia to appear and show cause why the judgments which had been made against Worcester and Butler should not be set aside. With the documents went a mes-

16 White, *Historical Collections of Georgia*, p. 140. *Niles's Register, XL*, 296. Georgia *Journal*, Sept. 29, 1831.
17 Georgia *Journal*, Oct. [illegible]1831, and Dec. 5, 1831.

sage: In exercising the duties of that department of the government which devolves upon me, I will disregard all unconstitutional requisitions, of whatever character or origin they may be, and, to the best of my abilities, will protect and defend the rights of the State, and use the means afforded me to maintain its laws and constitution."

The legislature on December 26 adopted resolutions upholding the constitutionality and the soundness of policy in the recent enactments of the State, declaring that it had become a question of abandoning the attempt to remove the Indians or of excluding from residence among the nation of white persons whose efforts were known to be in opposition to the policy of the State. Regarding the citation received, the legislature resolved, "That the State of Georgia will not compromit her dignity as a sovereign State, or so far yield her rights as a member of the Confederacy as to appear in, answer to, or in any way become a party to any proceedings before the Supreme Court having for their object a revisal or interference with the decisions of the State courts in criminal matters."[18]

The hearing on the writ of error in Worcester's case came up before the Supreme Court during the course of the year 1832. . . . The conclusion was reached that "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. . . . The act of the State of Georgia, under which the plaintiff was prosecuted, is consequently void, and the judgment a nullity. It is the opinion of the court that the judgment of the Georgia county superior court ought to be reversed and annulled." The case of Butler *v.* Georgia, similar in all respects to that of Worcester, was in effect decided in the same manner by the opinion rendered in Worcester's case.

The judgment for which the Cherokees had so long been hoping was thus finally rendered; but they rejoiced too soon if they thought that by virtue of it their troubles were at an end. Governor Lumpkin declared to the legislature, November 6, 1832, that the decision of the court was an attempt to "prostrate the sovereignty of this State in the exercise of its constitutional criminal jurisdiction," an attempt at usurpation which the State executive would meet with the spirit of determined resistance. He congratulated himself that the people of Georgia were unanimous in "sustaining the sovereignty of their State."[19]

The unchanged attitude of Georgia boded ill for the hopes of the Cherokees. But the position of the Federal Executive rendered the situation desperate in the last degree for those Indians who were still determined not to give up their homes. President Jackson simply refused to enforce the judgment of the Supreme Court. He intimated that now that John Marshall had rendered his decision, he might enforce it. Of course the chief justice had no authority beyond stating what he thought right in the case. Worcester and Butler remained at hard labor in the Georgia penitentiary, and the Cherokee chiefs began at length to realize that no recourse was left them against the tyranny of the State.

As far as the two missionaries were concerned, they felt that their martyrdom had been sufficiently long, and adopted the course of conciliating the State in order to secure their liberation. They informed the attorney-general of Georgia on January 8, 1833, that they had instructed their counsel to prosecute their case no further in the Supreme Court. Appreciating the change in their attitude, Governor Lumpkin pardoned both of them January 10 on the same conditions that he had offered them some months before, and ordered their release from prison.[20]

Most of the people of Georgia approved of the pardoning of Worcester and Butler under the circumstances, but that action of the governor found many critics among the ultramontanists. A meeting of citizens of Taliaferro County, which lay in the center of the hothead section, resolved, on April 23, 1833, with only one dissenting vote, "That the executive of Georgia, in the case of the missionaries, did, by his conduct, sacrifice the dignity of the State and prove himself incapable of sustaining her honor. . . . Resolved, further, that there is no one so well qualified to repair the tarnished honor of the State as our patriotic fellow-citizen, George M. Troup."

The attacks upon Mr. Lumpkin grew so strong that in view of his prospective candidacy for a second term as governor his friends saw fit to publish the various documents and considerations which had led to the release of the two missionaries.[21]

In the course of the year 1834 a final tilt occurred between the State of Georgia and the Cherokee Nation, supported by the Supreme Court. . . . A citation of the Supreme Court, dated October 28, 1834, summoned the State of Georgia to appear and show cause why the error shown in the writ of error in the case of James Graves, tried and convicted of murder, should not be corrected. On November 7 Mr. Lumpkin sent a copy of the citation to the legislature, stating that it constituted a third attempt to control the State in the exercise of its ordinary criminal jurisdiction. "Such attempts, if persevered in," he said, "will eventuate in the dismemberment and overthrow of our great confederacy. . . . I shall . . . to the utmost of my power, protect and defend the rights of the State." The legislature adopted resolutions which it considered appropriate to the occasion, referring to the "residuary mass of sovereignty which is inherent in each State . . . in the confederacy."[22] Graves was executed in due time, according to the sentence of the Georgia court.

The case of Graves was superfluous so far as it concerned the status of the Cherokee Nation. The fiasco of the decision in Worcester's case established the permanent triumph of Georgia's policy, and rendered it only a question of a very few years when the Indians would be driven from their territory within the limits of the State.

As far as regards the Federal Executive, the government of Georgia stood upon the vantage ground, after 1827, which it had won by its victory over Mr. Adams. General Jackson approved of the contention of the State, and from the time of his inauguration used his influence for the removal of the Indians. In a message of December 8, 1829, he stated, in reply to the Cherokee protest against the extension of Georgia laws over them, that the attempt by the Indians to establish an independent

[18] *Niles's Register*, XLI, 313. Acts of Georgia General Assembly, 1831, pp. 259, 268.

[19] *Niles's Register*, XLIII, 206.

[20] *Southern Recorder*, January 17, 1833.

[21] *Niles's Register*, XLIV, 202 and 359.

[22] *Niles's Register*, XLVII, 190. Georgia Senate *Journal*, 1830, p. 139. Acts of Georgia General Assembly, 1834, p. 337.

government in Georgia and Alabama would not be countenanced by the President. During 1829 and 1830 his agents were urging the Cherokee chiefs to make a cession and at the same time persuading individual tribesmen to move west. In the latter year he threw open the lands vacated by the piecemeal removal for disposition by Georgia, but ordered a stop to the removal of the Cherokees in small parties with the purpose of building up a strong cession party within the tribe east of the Mississippi.[23]

The State government was not unmindful of its advantageous position. In 1831 the legislature directed the governor to have all the unceded territory in the State surveyed, and to distribute the land among the citizens of the State by the land-lottery system. An act of December, 1834, authorized the immediate occupation of the lands thus allotted, hough it gave the Indians two years n which to remove from their individıal holdings.[24]

President Jackson persisted in his atempts to persuade the Cherokees to emove in a body. Early in 1834 it was iscovered that a treaty party was deeloping in the nation. This party sent delegation to Washington, which gned a preliminary treaty looking to cession, but John Ross, the principal ief of the nation, protested, May 29, 34, with such a show of support by e great bulk of the nation that the eaty failed of ratification.[25]

The division among the Cherokee ders had at length opened a way for

the final success of Georgia's efforts. In February, 1835, two rival Cherokee delegations appeared at Washington, with John Ross at the head of the orthodox party and John Ridge as the leader of the faction in favor of emigration. John Ridge, Major Ridge, Elias Boudinot, and other chiefs had finally come to see the futility of opposition to the inevitable, and were ready to lead their people westward. The Ridge party signed a treaty of cession on March 14, which required the approval of the whole Cherokee Nation before becoming effective; but in a council of the Cherokees, held at Running Waters in June, Ross succeeded in having the treaty rejected.[26]

The maneuvering of the two factions in the following months engendered ill-feeling among the Cherokees and strengthened the position of Georgia. In December, 1835, a council was called by United States commissioners to meet at New Echota. The meeting was a small one, because of the opposition of the Ross party; but on December 29 a treaty was signed with the chiefs attending which provided for the cession of all the remaining Cherokee lands east of the Mississippi River for $5,000,000 and lands in the West. The Ross party protested against the treaty, but were not able to prevent its ratification at Washington.[27]

The news of the definitive ratification served only to increase the discontent among the Indians. A confidential agent of the Secretary of War reported, September 25, 1837, that upon investigation he found that the whole

Athenian, December 22, 1829. Message of vernor Gilmer, *Niles's Register*, XXXIX, 339.
yce, *The Cherokee Nation*, p. 261.
Acts of Ga. Gen. Assem., 1831, p. 141. Acts Ga. Gen. Assem., 1834, p. 105. Prince, *Dit of Georgia Laws to 1837*, p. 262.
Royce, *The Cherokee Nation*, p. 275.

26 White, *Historical Collections of Georgia*, p. 143. Royce, *The Cherokee Nation*, p. 279. *Southern Banner*, Apr. 16 and June 18, 1835.
27 Acts of Ga. Gen. Assem., 1835, p. 342. *Niles's Register*, XLIX, 343.

Cherokee Nation was irreconcilable to the treaty and determined that it should not bind them.[28]

Public sentiment throughout the United States, especially among the opponents of the Administration, became deeply stirred with sympathy for the Indians. Within the halls of Congress Webster, Clay, and Calhoun were vigorous in their condemnation of the New Echota treaty.[29] President Van Buren was so influenced by this torrent of remonstrance and criticism as to suggest to the governors of Georgia, Alabama, Tennessee, and North Carolina, on May 23, 1838, that an extension of not more than two years be allowed in which the Cherokees might move away. Mr. Gilmer, who had again become governor of Georgia, replied, on May 28, that he could give the plan no sanction whatever. He feared that the suggestion was the beginning of another attack upon the sovereignty of the State, and declared his determination to take charge of the removal in person if the Federal Government should fail in its duty.[30]

There was, however, to be no further contest. General Scott had already arrived in the Cherokee country to direct the removal. He issued a proclamation, May 10, 1838, that every Cherokee man, woman, and child must be on their way west within a month. On May 18 John Ross made a last ineffectual offer to arrange a substitute treaty. The emigration was at once pushed forward, and on December 4 the last party of the Cherokees took up their westward march.

28 Royce, *The Cherokee Nation*, p. 286.
29 Benton, *Thirty Years' View*, I, 625. Royce, *The Cherokee Nation*, p. 290.

30 Gilmer, *Georgians*, pp. 240 and 538.