# DECISION

*Of the Convention of Judges, on the rig't of the jurisdiction of the State over the Indians. Question arising in the case of The State vs. George Tassels.*

This is a very grave and important question, which probably never would have been submitted to judicial investigation, but for the political party and fanatical feeling excited during the last session of Congress. When the Indians attending at Washington last winter, and their advocates discovered that the decision of the two Houses would be unfavorable to them, the idea of bringing the question before the Supreme Court was suggested and eagerly seized upon by the deputation of the Cherokees. In consequence of that determination, it is presumed that the plea now under consideration has been interposed. The manner however in which this plea has been interposed, ought not, and it is presumed will have no influence upon its decision. The relations which have existed between the Indian tribes of the American continent and the different European nations who have established colonies in America, and with the colonies themselves, are to be collected from the histories and public acts of those nations, and for the space of about 200 years. During that time, many changes of public opinion and of public conduct towards the Indian tribes have taken place; which changes are strongly marked in the records and proceedings of the different European nations who had colonial establishments in America. Those changes have, however, introduced some uncertainty as to the actual relations which ought to exist, and do actually exist between the governments formed by European descendants and the aboriginal tribes. But the conduct of the crown of Great Britain to the Indian tribes has been less variant. The relation between this State and the Cherokee Indians depends upon the principles established by England towards the Indian tribes occupying that part of North America which that power colonized. Whatever right Great Britain possessed over the Indian tribes is vested in the State of Georgia, and may be rightfully exercised. It is not the duty, nor is it the intention of this Convention to enter into a vindication of the rights exercised by the British crown over the Indian tribes; but if the question is considered open to investigation, no doubt is entertained that the policy adopted by the British crown towards the Indian tribes might be vindicated by reason, sound morality and religion. But this whole question is ably elucidated in the decision of the Supreme Court, in the case of Johnson vs. McIntosh, 8 Wheaton's Report, 543, part of which, this Convention will transcribe into this decision. After stating that discovery gave to the discovering nation an exclusive right to the country discovered, as between them and other European nations, the decision proceeds—"Those relations which were to exist between the discoverer and the natives were to be regulated by themselves. The rights thus acquired being exclusive, no other power could interpose between them. In the establishment of these relations, the rights of the original inhabitants were in no instance entirely disregarded, but were necessarily to a considerable extent impaired. They were admitted to be the rightful occupants of the soil, with a legal, as well as just claim to retain possession of it, and to use it according to their own discretion; but their rights to complete sovereignty as independent nations were necessarily diminished, and their power to dispose of the soil to whomsoever they pleased, was denied by the original fundamental principle, that discovery gave exclusive title to those who made it. While the different nations of Europe respected the right of the natives as occupants, they asserted and claimed the ultimate dominion in themselves, and claimed and exercised as a consequence of this ultimate dominion, a power to grant the soil, while yet in possession of the natives. These grants have been considered by all, to convey a title to the grantees, subject only to the Indian right of occupancy. The history of America from its discovery to the present day, proves, we think, the universal recognition of these principles."

After giving the history of various grants by Great Britain, France and Spain, to lands in the occupancy of Indian tribes, it adds, "Thus all the nations of Europe who have acquired territory in America, have asserted in themselves, and have recognized in others, the exclusive right of the discoverer to appropriate the lands occupied by the Indians." Have the American States rejected or adopted this principle? The decision then proceeds to shew that the United States have adopted the principle, and acted upon it as far as they have acted. The opinion adds "The United States then, have unequivocally assented to that great and broad rule, by which its civilized inhabitants now hold this country. They hold and assert in themselves the title by which it was acquired. They maintain, as all others have maintained, that discovery gave an exclusive right to extinguish the Indian title to occupancy, either by purchase or by conquest, and gave also a right to such a degree of sovereignty, as the people would allow them to exercise." Again, in page 591, the decision proceeds—"However extravagant the pretension of converting the discovery of an inhabited country into conquest may appear; if the principle has been asserted in the first instance and afterwards sustained; if a country has been held and acquired under it; if the property of the great mass of the community originates in it, it becomes the law of the land, and cannot be questioned. So too with us; put to the concomitant principle that the Indian inhabitants are to be considered merely as occupants, to be protected indeed while in peace, in the possession of their lands, but to be deemed incapable of transferring the absolute title to others. However this restriction may be opposed to natural right, and to the usages of civilized nations, yet if it be indispensable to that system under which the country has