With this extract we close our brief notice of this entertaining little work, and beg leave to recommend it to our readers as a lively and correct description of the details of the process by which the 'woods are bowed beneath the sturdy stroke' of the adventurous emigrant, and the reign of civilisation extended over the vast solitudes of the unexplored wilderness.

ART. VI.—*Speeches on the Indian Bill; viz.—Of Messrs. Frelinghuysen, Sprague, and Robbins, in the Senate of the United States; and of Messrs. Storrs, Huntington, Bates, Everett, and others, in the House of Representatives, in the months of April and May*, 1830. Boston.

Perhaps no question, since the organization of the general government of the United States, has attracted more attention among the thinking members of our community, than the present controversy respecting Indian rights. Other questions have borne a more immediate relation to the present interests of the people. Embargo, war, commerce, the triumph of one political party and the defeat of another, are topics in which the mass of the inhabitants of a free country feel a deep interest, and on which they express their feelings strongly and simultaneously. It cannot be expected, that the condition of a few tribes of secluded Indians should at once claim and secure the sympathies of millions, who are occupied, if not engrossed, by their own pursuits, and who spend little time in contemplating the sufferings of men whom they never saw, or in attempting to redress grievances, which are totally different from any that are likely to be imposed upon themselves. Yet, with all the disadvantages of their situation, the Indians have found many thousands among the most intelligent, virtuous, and honorable of the American people, who would deal justly and faithfully by them, and who would make personal sacrifices of time, labor, and money, to protect and defend their rights. Indeed, so far as the people of the United States understand the subject, and are free from the influence of violent political partialities, their feelings are almost universally favorable to the claims of the Indians. All profess to wish well to the remnants of tribes still among us, and doubtless the great majority, with the qualification just mentioned, are sincere in their professions.

On the subject of the rights of the American aborigines, there has been much loose reasoning, and some quite as loose morality. It will be found, however, that respectable writers have more frequently been led into error by stating extravagant cases, and raising imaginary difficulties, than by examining the foundation of title to lands, or by looking at facts, as they took place on the settlement of this country.

Much of the writing on the subject has been provoked by vehement and sweeping censures of the conduct and policy, pursued by colonists from Europe. The occasion of these censures, it was supposed, could be removed in no other way, than by making out for Europeans a paramount title, partly on the ground of superior civilisation, and partly because they were commonly in the habit of using land for tillage, which was not generally done by the original inhabitants of America.

It is to be remembered, also, that self-interest has always been able to engage advocates to enlarge, fortify, and defend, the pretensions of the whites; while the Indians have had no logicians to expose the sophistry of those, who would make 'the worse appear the better reason;' nor counsel, learned in the law, to study and plead in their behalf; nor historians to gather up and preserve the evidence of acknowledgments in their favor, or of the wrongs they have suffered. Orators they have had, the power of whose eloquence has a thousand times frustrated the schemes of the greedy speculator and the intriguing agent; but these schemes were always renewed and repeated till they became successful. The eloquence, by which they were resisted, was evanescent; but the motives by which they were prompted, never ceased to operate.

The discussions of the last nine months, especially those upon the floor of Congress, have brought before the public, it may be presumed, all the theories upon the subject of Indian rights, that have ever been promulgated. We are not able to mention a political measure, or a legislative act, that exhibited in Congress more decisive proof of elaborate investigation, than appeared in the debates on the bill to provide for the removal of the Indians. In preparing the present article, we have made free use of the materials supplied by these discussions, whenever they appeared to suit our purpose.

The question that presents itself, at the very threshold of the discussion, is, *What were the relative rights of the North American Indians, and of the early discoverers, to the lands of this*

continent? On this question we shall briefly express an opinion. It will be satisfactory to ourselves; though we would by no means enforce it dogmatically upon our readers. When disentangled from all extraneous topics, it is a question on which every honest and intelligent man can easily form an opinion for himself.

We say, then, that the discoverers of America had a right to take possession of such parts of this continent, as they found unoccupied by human beings. This right they derived from the Creator of the world; and it cannot be disputed. But when they found portions, (even if those portions amounted to the whole,) occupied by the original inhabitants, the discoverers had no right to eject the possessors. How is it conceivable, that the mere discovery of a country should give the discoverers a title paramount to the title of natives, whose ancestors had been in possession from time immemorial? The mere statement of the case shows the inherent absurdity of a claim, which has been so often made, that many people seem to think it reasonable.

But, it will be asked, is an Indian to hold possession of a country, merely because he once chased a deer over a tract containing a thousand square miles? Were we disposed to be captious, we should answer this question by asking, whether a ship-master can *take* possession of land by sailing within sight of it? The Indian may as well hold possession in one case, as the ship-master take possession in the other. The fact is, that neither of these acts amounts to a possession.

Let us make this matter a little more practical. We will suppose that an English discovery ship, followed by a little colony, sailed along the coast, from the bay of Fundy to the mouth of Penobscot river; and, finding no inhabitants, landed there and began a settlement. After a few months, an Indian visits the new comers, and tells them that they are occupying his land, to which he can by no means consent. They ask him, by what right he claims the land; where he lives; and what his employments are. He frankly replies, that he claims the land between the Penobscot and the bay of Fundy, because some ten years before he spent a month there in hunting and fishing; that his principal residence is on Connecticut river, where he has a little patch of corn and pumpkins; that he sometimes visits Hudson river and lake Champlain; but that he probably never should have come to the Penobscot

again, unless he had heard of intruders taking possession of his land.

The colonists, if they were kind-hearted and honest men, would hear him patiently, and assure him, that they did not intend to encroach upon any man's land; that he had not made out a title; that he neither had possession of the land, nor had he the slightest pretence for desiring it; that they would not molest him upon Connecticut river, and he must not molest them in their new settlement. If, in such a case, the Indian were to collect his countrymen and make war upon the colony, he would be the aggressor; and the colonists might as properly defend themselves against him, as against any other assailant.

It ought to be said here, that probably no North American Indian was ever so silly, as to make a formal claim, like the one which has been described. The case was stated, in order to answer the question so triumphantly asked by various writers, whether the chasing of a deer over an immense tract of country gives the Indian a right to exclude civilised men from that tract? It is plain enough, that a single hunting excursion is not an actual possession, though it is a great deal more than a mere discovery from a ship's deck; and it would furnish quite as valid an objection to a new settlement by civilised men, as to a new appropriation to purposes of hunting by other Indians.

We do not deny, that there may be cases, where discoverers may be debarred from taking possession of unoccupied lands, on the ground that they might probably be dangerous neighbors. If honest and reasonable fears were entertained on this score, by the original inhabitants in the vicinity, the new comers ought not to complain, if required to give proof, by a just and humane intercourse, of the most upright and honorable intentions. We go upon the assumption, that honest men can always establish a character for honesty; such a character, as that other men, civilised or uncivilised, will not be afraid to trust them. Certainly the inconvenience is much less, that colonists should be obliged to establish a character for themselves, than that the native inhabitants of a country should be obliged to take every adventurer to their bosom, without stopping to ascertain whether he is a viper or not.

We have supposed a case of unoccupied lands. It is believed, however, that very few such tracts were found by the

early discoverers; and that these few were of very small dimensions. The American continent was generally, though sparsely, inhabited; and most of the inhabitants had a permanent residence, within known limits. We will therefore look a little at facts, as they existed on the Atlantic coast, during the seventeenth century. Colonists arrived in rapid succession. The natives were in the actual occupancy of the soil. Their possession was in no sense fictitious, or constructive. There were multitudes of places, which had not been vacant of inhabitants from the times of the remotest tradition. Other places were visited periodically, and regularly, for purposes of hunting. It appears to us, that both these kinds of possession were perfectly good; and that an attempt to divest the natives of their country, thus in their possession, on any plea of discovery, is not only monstrously unjust, but is an insult to the common sense of mankind.

We shall be asked, whether this continent should be left in a state of perpetual wildness, covered with interminable forests, and unsubdued by the labor of man? We simply answer, that the plainest rules of morality forbid us to appropriate to ourselves the property of others without their consent. The question about excluding civilisation from a whole continent is a very imposing one. It proceeds upon the assumption of some vast state necessity, some uncontrollable urgency of the case, which could not be resisted without opposing the manifest designs of Providence, and disregarding the comfort of mankind. But this assumption is altogether a mistake. The natives of America, whenever kindly treated for any length of time, were easily induced to receive European settlers as their friends. The question has no practical application to the natives at all. They did not keep perpetual guard on their shores to drive off new settlers. Many of them felt gratified to have white men come and share their country with them. In short, there was little difficulty in obtaining from the natives an honest and peaceable possession of lands, on every part of the coast. The necessity, therefore, which makes so prominent a figure in all discussions of this subject, never existed. Should the question still be pressed, and should we be required to answer what we would advise, in case a new world should now be discovered, the inhabitants of which should pertinaciously refuse to sell their lands, or to admit strangers, we reply, that no code of political morality

should be introduced into the new world, which was not held to be sound and genuine morality in the old.

If, in the sixteenth and seventeenth centuries, the sovereign of a populous country might take possession of a sparsely settled territory belonging to his neighbor, merely because he could put the land to a better use than his neighbor was inclined to do, Europe might have afforded opportunities enough to carry the principle into practice. Large portions of Prussia, Poland, and European Russia were at that time very thinly inhabited. When such a chapter had been fairly inserted in the law of nations, and had been found convenient in its application to such a power as Russia, it would be quite soon enough to force it upon the natives of America. The Christian powers of Europe made what they called the Law of Nations. Why not first apply their own law to themselves? If it may be forcibly demanded of a community, which has much land and few people, to give a part of its land to a populous neighbor, why not make a great international agrarian law, by which Europe should be parcelled out to the different nations, in a compound ratio, having regard to the number of souls, and the relative productiveness of the land?

Even in our own days, there are many places upon the Eastern continent, where land might be claimed by all the arguments, which are set in such formidable array against the possession of the American Indians. Vattel speaks of 'erratic tribes.' How many hundred erratic tribes of Tartars are there? How many of Arabs? The Tartars (at least many of them), pay no attention to agriculture, and are scarcely more civilised than were the associates of Powhatan, or king Philip.

The fact is, that the great title to land, from the days of Noah to the present time, both in respect to communities and individuals, has been a *lawful occupancy;* that is, an appropriation to one's own use of what previously belonged to nobody; or a possession fairly derived from a previous lawful possessor. The formality of deeds, and covenants, and guaranties, has respect to the evidence of title, and not to the substance of it. Over a great part of the world, indeed, the law of the strongest has been the only governing rule of action. But wherever nations, or individuals, have pretended to respect each other's claims, and to act upon principles of moral rectitude, the title

to property has not been made to depend upon the use to which the possessor applies his property. He must, indeed, so use his own as not to injure his neighbor; but more than this he is not required to do. Nations are not to be asked, whether they gain their subsistence by hunting, pasturage, fishing or agriculture, before it can be determined, whether they have a title to their own country or not. The only question, which an honest man need to put, is, Have you a lawful possession of a country within known boundaries? If this question can be answered in the affirmative, the whole matter of title is forever at rest.

The United States would contend with a very ill grace for the doctrine, that unsettled lands may be seized by those, who need them for the purpose of cultivation. How many millions of the people of France, Germany and Ireland might appropriate to themselves good farms in the States of Indiana, Illinois and Missouri? Why should they not take immediate possession and set up their own forms of government?

It is worse than idle to say, that an uncivilised man has not the same title to property, that a civilised man would have, in the same circumstances. There is not, there never was, a law of nations that explicitly made this distinction. It is admitted, that an Indian has as good a title to his canoe, as an English merchant to his ship. Why not as good a title to his landing-place, his little island, and his wigwam, as an English gentleman to his park and his villa?

When the colonists landed on the American coast, they brought with them charters from the kings of Europe. It may be worth while to spend a few moments in the inquiry, *What were the legitimate uses of these instruments?*

It is very obvious to the attentive reader of history, that the right of discovery was set up by the maritime nations of Europe rather against each other than against the aborigines of America. The master passions of ambition and avarice were excited and inflamed to an astonishing degree; and all the great discovering powers aimed to grasp as much as possible of the new continent. Spain and Portugal could not engross the whole. England and France would come in for a share. In these circumstances, it became gradually established, that one power should not interfere with the settlements of another; and boundaries were agreed upon, within which the subjects of the respective powers might, exclusively of all

other Europeans, carry on their commercial enterprises, and make their respective settlements.

Stipulations of this kind were mutually beneficial. They prevented many collisions, and were neither in themselves, nor in their tendency, injurious to the natives. Still, the adoption of such a course was entirely optional with the discovering powers. Any one of these powers, in accordance with the principles already stated, might take possession of any unoccupied land upon the American continent; or might purchase of the natives any land not previously sold by them to Europeans. How far a possession, thus lawfully obtained, should extend in every direction, would be a matter of sound judgment, or of reasonable construction. The Spaniards were not entitled to be the sole visitors of America, merely because Columbus discovered it. The fact that Henry Hudson entered the river, which now bears his name, furnishes no good reason why new settlers from four different nations might not have obtained lawful possession of Long Island, Connecticut, New Jersey, and the west bank of the Delaware. All that an infant colony could rightfully demand of other infant colonies, was, that they should not plant themselves so near, as to cut off those resources, which were necessary to its existence and its comfort. If there had been no conventional arrangement, therefore, between the sovereigns of Europe, the subjects of any one of these powers might have made settlements upon any unoccupied lands, or upon any lands of which possession could be fairly obtained.

A charter granted by a King of England, for instance, to certain individuals among his subjects, legitimately implied the following things; first, that he would guaranty the territory, which he had granted, against the claims of any other European power; secondly, that he had not granted, and would not grant, the same territory to others of his subjects; and thirdly, that the grantees were to hold the territory, when actually settled, as a part of his realm, under such principles of jurisdiction and legislation, as might be properly applied to other parts of his realm. So much would be fairly and naturally implied in giving and receiving a charter. Specific conditions might be inserted, at the pleasure of the King, which, if assented to, would bind the grantees; provided, however, that the conditions did not invade the inalienable rights of his subjects, nor of any other persons.

But nothing can be more extravagant than to suppose, that the charter of an English king could deprive of their rights the inhabitants of a distant continent; or that their title to land or rivers could be in the slightest degree invalidated by the magical effect of a parchment, signed by a man of whom they never heard, and who knew nothing of the regions which he conveyed, nor of the people by whom these regions were inhabited. Several of the charters conveyed territory bounded by lines of latitude, and extending from the Atlantic to the Pacific; and certainly the King of England had as good a right to take lands from the natives of California as from the natives of Cape Cod. If he could properly drive a Narraganset from his fishing hut, at the mouth of Newport harbor, he might seize the beaver-traps of the Sioux on the head waters of the Mississippi. If he might, by the mere force of his royal prerogative and as the head of a discovering nation, hold a single mile on the Atlantic coast, against the will of the original owners, he might seize and hold the entire continent, so far as the rights of the natives were concerned. To the consequences of such a doctrine we may advert on a subsequent page.

We have spoken of the legitimate meaning and effect of a royal charter. In point of fact, however, the kings of Europe did, in some instances, assert the right to subdue the natives by force, and to appropriate their territory, without their consent, to the uses of the colonists. The King of Spain founded this right solely on the grant of the Pope, as the vicegerent of Christ upon earth. The Kings of England, in the sixteenth century, placed it on the superior claims, which Christians possessed over Infidels. Spain acted in accordance with her principles, and treasured up a fearful amount of guilt and infamy, which will be remembered against her so long as the history of this continent shall be known. It is a pleasing consideration, however, that there were individuals, even in the court of Spain, who utterly disclaimed and rejected these absurd and tyrannical doctrines. Mr. Huntington, in the course of his researches on the Indian question, ascertained, that the civilians and crown lawyers of Spain gave their advice against receiving the Pope's grant; and 'one of the bishops in a treatise dedicated to Charles V., uses this strong language: "The natives of America, having their own lawful kings and princes, and a right to make laws for the good government of their respective dominions, could not be expelled out of them,

nor deprived of what they possess, without doing violence to the laws of God, as well as the laws of nations."

This opinion is so obviously just and reasonable, that it would not seem deserving of particular praise, had it not been pronounced in a period of great superstition, and in opposition to the doctrines, then prevalent, of unbounded ecclesiastical and regal prerogative. But what words can express the indignation of every honorable man, that in the United States, and at the present day, the attempt should be made to prove, by the weakest and vilest sophistries, that the natives of America had no rights, either of territory or government; and that the discovery of a cape, or an island, was a constructive possession of a tract of land extending across the continent?

The charters given by British kings, during the seventeenth and eighteenth centuries, are generally silent respecting the natives. Lands, rivers, and so forth, are granted, in precisely the same manner, as if there had been no inhabitants. This course was very far from being honorable. The rightful occupancy of the Indians should have been explicitly acknowledged, and a fair and lawful manner of purchasing their title should have been prescribed. The very silence of the charters on this subject shows, that the extravagant claims of the sixteenth century were abandoned, as utterly untenable. It shows also, that there was a grasping desire on the part of the European monarchs, which was altogether unjustifiable, and a disposition to leave the Indians to the arts and the cupidity of adventurers. If religious persecution had not driven to these shores some of the best and most honorable men in the world, it is not improbable that serious encroachments would have been made upon the rights of the North American Indians, under color of the royal charters. A few details can be gathered from the early history of this country, which indicate an undue reliance upon these charters; but we have seen no evidence, that the Indians were, in a single instance, deprived of their lands, under any pretence of right to these lands, subsisting in the King of England.

It is true beyond all question, that the early settlers at Plymouth, at Salem, at Saybrook, and, as a general rule, all along the Atlantic coast, purchased the lands upon which they settled, and proceeded in their settlements with the consent of the natives. Nineteen twentieths of the land in the Atlantic

states, and nearly all the land settled by the whites in the western states, came into our possession as the result of amicable treaties. The small portion, claimed by right of conquest, was wrested from the Indians in strenuous war. It was no fictitious or constructive conquest. Every inch of ground was contested; and most of the wars, which issued in acquisition of territory from the Indians, were forced upon our fathers, and were strictly defensive on their part. Some small portions of territory were abandoned by Indians, because they preferred to live at a greater distance from the whites.

In a word, the first settlers of the Anglo-American colonies, and of the Dutch colony on the Hudson, purchased lands of the Indians, or professed to have purchased them, in the most honorable manner. Although doctrines were sometimes asserted in theory, which would have abridged the rights of the Indians, yet we do not find in practice a single demand of territory from them, on the ground that the king of England had granted it to some of his subjects. The practice was all the other way; and every purchase of land from the Indians was made in such a manner, and under such circumstances, as to be a fair and full admission of their *right to sell;* and, of course, an admission of their original title.

At an early period of the settlement of Massachusetts, as we learn from Hutchinson's history, the most ample and explicit declarations were made by our fathers to this effect; viz. that the natives had derived from God a perfect title to their country; that they were subject to their own government, and to no other; and that no human power could divest them of these rights.

Soon after the emigration commenced from Boston and its neighborhood to the banks of Connecticut river, murders were perpetrated by Indians residing not far from Springfield. The governor sent to Mr. Pynchon, the magistrate or leading man of the new settlement, directing that the murderers should be apprehended for trial and punishment. Mr. Pynchon declined obeying the order; and, among other reasons, assigned the fact, that the Indians were not under the jurisdiction of Massachusetts. This fact is stated with admirable clearness, as follows: 'I grant that all these Indians are within the line of the patent; but yet, you cannot say they are your subjects, nor yet within your jurisdiction, till they have fully subjected themselves, (which I know they have not,) and until you have bought their land. Until this be done, they must be esteemed

as an independent, free people.' This passage indicates a discriminating mind and an honest disposition. It is in the true spirit of our declaration of independence, issued more than a hundred years afterwards, in which we asserted, that governments derive 'their just powers *from the consent of the governed.*' In this extreme case of actual murder, committed by Indians near the white settlements, and within the chartered limits of the colony, this magistrate had the candor to admit, that the perpetrators were not amenable to the laws of the whites, because they had never subjected themselves to those laws. The reason was admitted by the governor to be valid. The only method of proceeding against the Indians would have been to demand satisfaction, and, if it should be withheld, and the cause should have been deemed sufficient, to declare war in the last resort.

It is true that the colonists, and sometimes the agents of the government at home, talked to the Indians about the grandeur of the English monarch, the number of his people, the greatness of his power, his willingness to protect his friends, and his ability to punish his enemies. In these discourses, some vague expressions about his sovereignty were doubtless uttered; but always in such a sense, as to lead the natives to think that it was a great benefit to live under the king's protection; that his character was altogether paternal; and that living under his care implied only, that Indians living in this manner were not to join the French or the Spaniards, and were to remain secure in the possession of their lands, liberties, and laws. No instance has met our eye, nor has it been intimated in the late discussions, that any instance can be found, in which an English colony, or an English agent, told the Indians, that they had no right to the lands on which they were born; that the king of England had granted their country; and that they were now subjects of the king, amenable to his laws; all their own laws and customs being abolished by his order. There would have been as little safety as honesty in making such a proclamation, at any period of the colonial history.

Treaties were made with the Indians from the first. Some of them were observed on both sides, with exemplary fidelity. When differences arose, and wars succeeded, the change of feelings and of circumstances was often owing to the improper conduct of individuals. Even war did not always, nor often, prevent a return to a regular diplomatic intercourse. Treaties

were made, in numberless instances, and in every part of the continent, founded on stipulations, which implied as much actual and rightful independence on the part of the Indians, as on the part of the whites.

About the middle of the last century, alliances with the Indians became very important, and were much sought by the English and the French. The terms of these alliances usually were, an engagement of protection, accompanied with presents, made by the European power to the Indians, and the admission of a qualified dependence by the latter. It was never understood, however, that the Indians were to be deprived of their lands without their consent, or that their laws and customs were to be in any manner affected. Before the commencement of the revolutionary war, the policy of Great Britain had become fixed and uniform on this subject. The Indians were not to sell their lands to individuals, nor to the enemies of the king. They were to live under his protection, and to remain secure in the possession of their hunting-grounds and of their independence. Whenever they were disposed to sell their lands, the government alone could purchase; that is, the government, either of the colonies, or of the mother country, as the circumstances of the case might be. This right of pre-emption, and the cognate right of succeeding to the possession of any portion of the country which the Indians might abandon, or where they might become extinct, were claimed by virtue of discovery. All the principal tribes of Indians agreed, by formal stipulations, that they would not alienate their lands, except to the government.

Those who would stretch the right of discovery to such an extravagant extent, as not to leave the Indians any rights at all, allege, that the highest judicial tribunal in this country has decided, that the Indians have the occupancy merely, while the title to the land is in the government. From this statement, the terms of which seem not very favorable to the Indians, it is inferred, that the Indians have not, never had, and never can have, any title to their land; and, as the supreme court is justly and highly respected for the correctness of its decisions, the next inference is, that, in point of morality, there is no danger of encroaching upon Indians, for they have no rights either of person or property. Now in this interpretation of the opinion of the court, there are several great mistakes.

As to the title of the European sovereigns to Indian lands,

as gained by discovery, the court simply declares what were the claims, laws, and practice, of the mother country and the colonies. The claims and the practice were uniform to this extent; viz. that the natives could not sell their lands to foreigners, nor to individual white men. Of course, the government could be the only purchaser, and the only successor to the Indian title. This right of pre-emption and of succession was called by the court *a seizin in fee*, or an ultimate title; it being the only remaining title, after the occupancy of the Indians should cease. The name given to the right of pre-emption could not in any manner affect the claims or the rights of the Indians, so far as the nature and the extent of their occupancy were concerned. The court considered the law to be as above described; and of course all judicial tribunals were bound so to declare it.

Not a few persons have supposed, that the mere recognition of the right of discovery, as above described, was tantamount to a declaration, on the part of the court, that the right of discovery, as claimed by European sovereigns, even in its greatest latitude, was reasonable, equitable, and binding upon the natives. This is a total mistake; and it originated from a misconception of the proper functions of a court of law. Such a court is bound to declare what the law is, and not what it should be. In every well regulated government, the legislative power is kept distinct from the judicial; and in Great Britain and America, this distinction is marked by plain and positive rules. A court can neither make, alter, nor repeal a law; nor does the announcement of a legal doctrine, or of an established usage which the court is bound to recognise, imply that, in the opinion of the court, such doctrine, or such usage, was originally wise and salutary. On the contrary, courts of law are often called to sustain and enforce particular acts of legislation, which the judges would by no means approve, if they were called to act as legislators.

It would be a hard case, indeed, if our judges were required to sanction, with the weight of their private character, as moralists, philanthropists, and Christians, all the laws, which, as parts of our code, they are bound to enforce. And, on the other hand, the laws of the country would be in a curious predicament, if they might be set aside, that is, repealed, by the court, whenever the judges, looking at them as philosophers or legislators, should deem them unwise or inexpedient.

The slave trade furnishes the best possible illustration of the subject. This trade was recognised as a lawful traffic by the highest courts of law in England, for a great length of time; and till it was made unlawful by positive statute. If a case had occurred in this country, (and, for aught we know, cases may have occurred,) it must have been pronounced a lawful traffic here, at any time previously to 1808. The same judges, who must then have sustained it as a legitimate commerce, must now declare it piracy, and sentence a man to be hung for engaging in it; and yet the private opinion of the judge as to its inherent enormity, may not have undergone the slightest change. Let it be understood, then, that the judges of the supreme court have only decided what the law is, respecting the right of pre-emption as founded upon discovery; but that they have not declared what they think would have been the wisest and best manner of regulating this subject originally.

For ourselves, we have no hesitation in declaring, that we consider the supposed right of pre-emption to be an encroachment upon the rights of the Indians. We cannot conceive how the sailing of an English ship in sight of Cape Cod should give the king of England any right to dictate to the Indians in Massachusetts, respecting the sale of their lands. We therefore hold, that these Indians might properly sell their lands to Frenchmen, or Spaniards, although an English vessel had sailed along the coast, and seen it, before the Frenchmen and Spaniards arrived.

Having said this, however, we feel bound to add, that the English government might lawfully prescribe on what terms English subjects should purchase lands of Indians; or it might forbid them to purchase as individuals at all. Great Britain and France might agree, that they would not purchase within certain limits; and such an agreement might be a great convenience to the parties, while the Indians could not justly complain of it. Proceeding one step further, the Indians might stipulate with the powers of Europe, that they would not sell their lands to individuals, but only to the governments respectively, with which the stipulations were made. Conventional arrangements of this sort might tend to peace, and to the promotion of the permanent interests of all parties. Such, very nearly, was the state of things, at the commencement of the revolutionary war.

The opinion, which we have expressed, as to the right of pre-emption, seems to us to be the obvious dictate of reason and honesty. How can one man assume the right of prescribing in what manner another man shall dispose of his own property? And how can there be one rule of morality and honesty for individuals, and another for communities? But we are willing to fortify our opinion a little by authority. About the middle of the last century, an English trader, by the name of Trent, purchased of Indians a large tract of land lying on the Ohio, and delivered them a considerable quantity of goods in payment. The deed was formally executed; and the contract was well understood by the parties. The question arose, whether this was a valid purchase, or not. Counsellor Dagge and Sergeant Glyn, two eminent English lawyers, gave a written opinion in favor of the validity of the purchase. They founded their opinion on the fact, that the Indians were the original possessors and true owners of the land. Of this opinion, dated in 1755, Patrick Henry, Benjamin Franklin, and Edmund Pendleton, gave their written approbation. There could be no question that, so far as the Indians were concerned, the sale was a good one, they not having at that time entered into any stipulation with the government not to sell to individuals. The only question seemed to be, whether Trent was not prohibited, by the regulations of his own government, from taking the grant. This was settled, we believe, (though we have not the authority at hand,) by the formal assent of the government to the transaction.

We have already remarked, that the mere act of buying land of the Indians was, in the circumstances of the case, an acknowledgment of their title. But it is alleged against our ancestors, that they obtained lands of the Indians at so cheap a rate, that it was no purchase at all; that this mode of acquiring lands was tantamount to a declaration, that the Indians had no title, and therefore had no claim to a compensation. These positions have been gravely taken and earnestly defended; and, as perhaps no subject has been more misrepresented and misunderstood, we think it worth while to spend a few moments in considering it.

The first settlers, it is said, gave the Indians for their lands only a few trifling articles, of little cost, and less intrinsic value; therefore the Indians were not admitted to have any title to their lands, and the contract was not binding on either party.

This is a fair specimen of much of the reasoning on the subject.

It seems strange, that the purchasers should plead, that a bargain is not binding on themselves, for the simple reason that they obtained the lands at too cheap a rate. One would think, that the other party could demand to be released from the terms, with a better grace. But is it not a maxim, in all civilised countries, that a man can *give away* his property, unless it be charged with the claims of his creditors? His consent, fairly and deliberately yielded, is all that is necessary to a transfer of his property. In cases where a valuable consideration is necessary, the amount is not material. In a conveyance of a house and land, the consideration is equally valid, whether it be five dollars or fifty thousand.

The great thing to be obtained of the Indians was their *consent* to the settlement of their country by whites. Many fair and honest arguments could be used with them, and were used in fact, to induce them to give their consent. They were treated altogether as reasonable beings, and not as brute animals. In every part of the continent, they showed themselves to be possessed of a very good share of natural sagacity. They were told that the settlement of Europeans among them, or near them, would be much for their advantage; that, in this way, they would have a regular traffic secured, by which they might procure articles of essential value to them; that they would thus greatly improve their condition; that the British king was powerful and would defend them against all foreign nations; that, if they would acknowledge him as their great Father, he would regard them as his children, and protect them against every species of injustice; and especially that their lands should not be taken from them, or settled, without their consent. These declarations, and many more of the same general nature, were made to the Indians, all along the coast. In some instances, they were persuaded by these arguments, much more than by the accompanying presents. They received the whites as brothers; they were proud of them as neighbors and allies. The cases were not few, in which strong personal friendships were formed between the red man and the white; friendships, which were maintained with perfect fidelity during the lives of the parties.

Now it appears to us, that such a consent is binding upon the Indians; and that, if not a farthing of property passed from

one party to the other, the possession of the whites, thus obtained, is good in law, in honor, and in conscience. Indeed, if the whites had been hired to come and settle, and the Indians had given the skins of all the beavers, which they could catch in ten years, as an inducement, the possession of the whites would not be the less lawful on that account; nor would the title of the Indians to their remaining lands be in the least degree invalidated, because they had freely given away a part, with the design of gaining kind and valuable neighbors.

If the Indians had a right to give away their lands, they surely had a right to sell them at a low price. But there was in fact, no reason to complain of the price. The settlers usually gave as much for land as it was then worth, according to any fair and judicious estimate. An Indian would sell a square mile of land for a blanket and a jack-knife; and this would appear to many to be a fraudulent bargain. It would, however, by no means deserve such an appellation. The knife alone would add more to the comfort of an Indian, and more to his wealth, than forty square miles of land, in the actual circumstances of the case. And as to the white purchaser, the land could be of no value to him, till he had made it of value by his own labor. It is matter of history, that the English colonists as a body, so far as they had property, were great losers by their settlement here. They were noble spirited men, and property was not their object; if it had been, they would have been egregiously disappointed. Not one in a hundred could have sold his house and farm, (either ten, fifteen, or twenty years after the settlement,) for as much as they had cost him, at a fair estimate of the labor bestowed, without reckoning any compensation made to the Indian proprietor.

It might be curious to ask these scrupulous men, who say that the Indians ought to have received a greater price for their lands, *How the proper standard could be fixed?* Our ancestors were not prophets. They were not certain but that their settlements would fail, as other settlements had failed before. If they should succeed, the settlers could not tell what the intermediate difficulties would be; nor how many reverses must be experienced before they should be successful. But suppose they had been assured, when Boston was settled by the pilgrims in 1630, that lands on Ann-street would sell for ten pounds an acre in 1670; that lands on Washington-street, between Summer and Bedford-streets, would rise to the same value before

1700; that lands in the west part of the peninsula would be taken up for building-lots soon after 1800; and that the site of an insurance-office in State-street would be sold for fifteen pounds a square foot in 1825. How would all this affect the price, which they were bound to offer to the Indians? By which of these prices were they to regulate their offers? These facts, seen with absolute certainty beforehand, would not have proved that the land, on which Boston has been since built, was worth a farthing in 1630.

There are millions of acres of land in the Carolinas, which would not at this moment be accepted as a gift; and yet, as a planter of credit and character assured the writer of this article, much of this land will produce, with very little labor, one hundred and fifty bushels of sweet potatoes to the acre. Two hundred years hence, it will probably bring a hundred dollars an acre. Perhaps some of those kind-hearted gentlemen, who think that our ancestors dealt hardly by the Indians, in giving them so small a price for their lands, would like to purchase some of the best tracts on the Columbia river; or, if they prefer an inland district, some of the best intervals near the head waters of the Yellow Stone. These tracts are now in the possession of Indians, and if any man thinks he ought to give the same price for them, as he would be obliged to give the present owners of lands on the Connecticut, or the Susquehanna, for an equal number of acres, he can doubtless act accordingly. The probability is, that within two hundred years, every acre of land in North America, which shall then be capable of cultivation, will command a good price.

Dr. Dwight has, somewhere in his travels, perfectly vindicated our ancestors from any just imputations on this subject. Among other facts, he mentions the following—One of the first settlers of Northampton, a few years after the settlement began, and the Indian title was extinct, made a bargain, in which it was left optional with the other party to take five shillings or several hundred acres of land in that town—the money being deemed a fair equivalent for the land, which was then the undisputed property of a white man. The whole matter is summed up by Dr. Dwight, in the very sensible and forcible remark, that land in America, when our fathers first came hither, '*was like water, too abundant to be the subject of price.*'

Perhaps it will be asked, if land was so abundant as not to

be the subject of price, how could there be any title to it? and why might it not be taken from the possessors without their consent? We answer, that the abundance of a thing has nothing to do with the title to it. A man worth a million of money has as good a title to the last dollar as to the first, though a very small part is necessary for the comfortable support of his family. The master of a foreign vessel, anchoring in the river Thames, fills his water-casks without asking permission, or making compensation. Does it follow, that the waters of the Thames are of no value to the British people, and that the government has no jurisdiction over that river? When this continent was first settled, a few square miles of land were of little consequence to the Indians; but it does not follow, that after all the most eligible parts of the continent have passed into the possession of the whites, the small remnants of good land now inhabited by the original proprietors are without value to them; much less, that they have no title to their land, because it is alleged to have been formerly of no value. The reason why land, in the possession of Indians, was formerly of little value, has long ceased to exist. Then, if they sold a tract, they had interminable regions remaining; now, they have not enough left to enable them to keep their community separate from the whites. As the quantity in their possession has diminished, its value has become enhanced as a matter of course. But neither the diminution of quantity, nor the enhancement of value, has any thing to do with the validity of the title.

Unless we greatly deceive ourselves, the candid reader of the preceding pages will agree with us in the following conclusions; viz.

That the original possessors of this continent had a perfect title to such parts of it as were in their actual possession, when it was discovered by Europeans;

That whether this title were recognised or not by English kings, or English courts of law, it should now be allowed in the fullest manner, by every correct moralist and every statesman;

That although discovery gave a right to take possession of unoccupied parts of this continent, it gave no right whatever to dispossess the natives of any lands, which were known to be theirs, whether used for hunting, fishing, pasturage, mining, agriculture, or any other purpose;

That the consent of the natives was necessary, before the whites could take lawful possession of Indian lands;

That although the kings of Europe might agree among themselves as to the limits within which they would purchase lands of the Indians, and might prescribe to their subjects, respectively, the manner in which purchases should be made; yet that the Indians were not bound by any of these measures, till they had voluntarily assented to them;

That the Indians, like all other people, are competent to bind their respective communities by compacts or treaties;

That, whatever doctrines may have been asserted in theory, the practice of the early settlers, and of those who succeeded them, were based upon the foregoing principles; and

That, previously to the American revolution, the right of the Indians to the peaceable occupation of their own country, till they should voluntarily relinquish it, was fully admitted by the government of the mother country and of the colonies, and was sustained by the deliberate opinion of some of the ablest men of the age.

But if we were to admit, that Indians had no right to their own lands when this continent was discovered, and that they were to be considered as without the pale of human society, and to be hunted down as buffaloes and bears, it by no means follows, that their character and relations would remain the same, after the white settlers had entered into friendly engagements with them. This, in point of fact, was always done by the settlers, at the earliest practicable moment. The language of the whites to the Indians was, 'we are brethren, children of the same Almighty Lord and Father of all. We have come to do you good. We wish to live in peace with you. As you have much land, will you not grant us a little, and admit us into your neighborhood?' The Indians answered, though sometimes with hesitation and fear, 'you may settle by our side, and you may have land within certain limits.' Compacts of this kind were made between the first settlers and the Indians, along the whole line of the Atlantic coast. From the moment, in which they were made, whatever the respective rights of the parties might have been previously, the question of lawful title should have been considered as forever settled. The Europeans had chosen to regard the red men as human beings, and not as buffaloes and bears. They had addressed them as reasonable beings, and found them accessible

to motives, and susceptible of love and hatred, hope and fear, gratitude and generosity. They had proposed friendly relations, and their proposal had been accepted. They had admitted a title in the original possessors, by accepting grants from them; and, by agreeing upon limits, they acknowledged the title of the Indians to all lands not purchased from them. No conclusion can be safer, or more unquestionable than that the bare assignment of limits between communities, with the declaration, reciprocally made, *the land on this side belongs to us, on the other side to you,* is an acknowledgment of a perfect title.

Not only is this the natural meaning of the act, but, in the first settlements of this country, it was often and solemnly *expressed* as the meaning; and no other meaning was ever assigned to it. Now with what face could the colonists, after having obtained a settlement in this manner, turn round upon the Indians, and say, 'you had no right to the land you granted to us; and you have none to the remainder? We shall take the whole.'

When the revolutionary war commenced, the colonists had reason to be apprehensive, that the Indians would be employed against them by the mother country. To the Indians our fathers were no strangers. Their modes of warfare, their history, their competency to enter into contracts, their claims to territory, were well known. With this perfect knowledge of their rights and their character, the first Congress, more than a year before the declaration of independence, directed 'proper talks to be prepared for the several tribes of Indians, with a view to engage their continued friendship, and their neutrality in the unhappy dispute with Great Britain.' In September, 1775, a treaty with the Six Nations was reported to Congress, and various resolutions were passed, all having for their object the maintenance of friendship with the Indian tribes, as independent sovereignties. In March, 1776, it was resolved, 'that Indians should not be employed as soldiers, in the armies of the United Colonies, before the tribes to which they belong should, in a national council, held in the customary manner, have consented thereunto; nor then, without the express approbation of Congress.' A more honorable stand could not have been taken by this most illustrious body. The national rights of the Indians were acknowledged in the fullest and yet the most delicate manner. Congress was not willing that

tribes should be exposed to retaliation and injury, on account of the acts of individuals; nor that they should be drawn into a war without time for deliberation, or without their consent.

In October, 1777, it was resolved, 'that it be earnestly recommended to the President and Assembly of the State of Georgia to use their utmost exertions to cultivate peace and harmony with the *Indian nations*.' The next year, a treaty was formed with the Delaware Indians, by which the parties bound themselves to perpetual peace and friendship, and to an alliance offensive and defensive. The United States 'guarantied to the Delaware nation all its territorial rights, in the fullest and most ample manner, as it hath been bounded by former treaties, as long as the said Delaware nation shall hold fast the chain of friendship.' Here is an instance of a solemn guaranty to an Indian nation, given in the extremest crisis of our nation's peril, and therefore under circumstances, which rendered it doubly sacred.

The transactions of the revolutionary Congress, in relation to the Indians, were very numerous; and they were all regulated by the principle, that Indian tribes were distinct communities, and had a perfect right to their territory, and to their own forms of government.

By the articles of confederation, all public intercourse with the Indian tribes was made a national concern; and the several States thus relinquished to the United States the right of making treaties with these tribes.

In 1785, the treaty of Hopewell was formed between the United States and the Cherokees. By this compact, peace was made, boundaries were fixed, and permanent relations established between the parties. The Cherokees consented to come under the protection of the United States, and of no other sovereign. Prisoners were exchanged; and it was agreed that no future acts of retaliation should take place, unless in the event of a manifest violation of this treaty; and then, not till after a demand of justice, and a declaration of hostilities. Intruding whites were abandoned to the Indians to be punished according to their discretion; and criminals, taking refuge in the Indian country, were to be delivered up to the United States for punishment.

From a mere reference to these topics it is manifest, that the national character of the Cherokees was admitted in the fullest sense; and that there was an implied guaranty of their

territory, inasmuch as definite boundaries were fixed, and white men were forbidden to transgress them. Against this treaty North Carolina and Georgia protested, on the ground that it was an exercise of power by the United States, not confided to them by the articles of confederation. The whole difficulty arose from different constructions given to the following sentence, in one of the articles: 'The United States, in Congress assembled, shall have the sole and exclusive right of regulating the trade and managing all affairs with the Indians, not members of any of the States, *provided* that the legislative right of any State within its own limits be not infringed or violated.' The 'affairs' of the Indians here intended are shown by contemporary history and legislation to have been their public affairs, or their intercourse with the whites. There is not the slightest reason to suppose, that it had any reference to the laws, customs and usages of the Indians among themselves. Some of the Indian tribes had been broken up, or dissolved, and the individuals were either settled among the whites, or wandered about without any fixed residence. By 'Indians, not members of any of the States,' were probably intended all the tribes, which remained upon their original territory, and in their original independence. The exact meaning of the proviso it seems not very easy to ascertain. It may have been this: viz. that it was not the design of the parties to these articles to restrain the legislative right of any State in regard to the Indians, but rather to leave the proper extent of this right to be afterwards ascertained. In point of fact, the several States had never exercised any right of legislation over Indians residing within fixed limits, upon their original territory. This had not been done, even in the oldest States, in reference to any considerable body of Indians, though several communities of this kind had been surrounded by white settlements, and were clearly included within the external limits of States. By every sound rule of construction, a *proviso* should not be so interpreted as to make the principal clause inoperative, unless such an interpretation be unavoidable. But as the chartered limits of the several States embraced all the territory within the United States, it is evident, that the framers of the articles of confederation must have supposed, that there were Indians within the United States, not members of the several States, nor subject to State legislation. As a controversy existed, in regard to the disposition, which

should be made of unappropriated lands, it is probable that much difficulty was experienced in framing the article now under consideration. Mr. Madison, in the Federalist, declared it to be 'obscure and contradictory,' and expressed his gratification that nothing like it had been introduced into the constitution.

The protest of North Carolina and Georgia was referred to a committee of Congress. An elaborate report was made in support of the power of the general government, as it had been exercised in the treaty of Hopewell; and that treaty went into full effect.

It should be understood, that these two States did not assume the positions now taken, that Indian tribes are not competent to make treaties; that treaties made with them are not binding; and that the several States may extend their laws over the Indians without their consent. The controversy was on the single point, whether treaties should be made with the Indian tribes by the United States; or by separate States with the tribes within their respective chartered limits. The State of Georgia was particularly desirous to make contracts with the Indians for the acquisition of their lands, without any restraint from the United States. But the committee of Congress, to whom the protest was referred, argued, that all public relations with the Indians are strictly a national concern; and that, as the nation was called upon to conduct wars with the Indians, it was necessary that treaties should be made under no other authority than that of the United States.

When the constitution was formed, the treaty-making power was expressly given to the general government, and expressly inhibited to the several States. By the same instrument, Congress was invested with power 'to regulate commerce with foreign nations, and among the several States, and with the Indian tribes.' All treaties then in existence, and all treaties, which should be made thereafter, were declared to be the supreme law of the land, paramount to all State laws and constitutions. No dispensing power was given to any branch of the government, nor to all the branches united. The reason is obvious. No treaty can be dispensed with, or set aside, by one of the parties. If the terms of a treaty are burdensome, relief must be sought by negotiation. There is no other way, except by an appeal to arms.

When the meaning and effect of treaties come under judicial

investigation, the courts of the United States are the tribunals, to which this duty is assigned by the constitution. Hence an opinion has arisen, and has sometimes been expressed by gentlemen of respectability, that the supreme court of the United States might declare a treaty void, on the ground that it is unconstitutional. But the court is invested with no such power. It might as well declare one part of the constitution void, on the ground that it is inconsistent with some other part, as a treaty void, because it transcends the powers of government. It must be taken for granted, that the framers of our constitution made a plan, the parts of which are not inconsistent with each other. At any rate, if there be an inconsistency, the people of the United States must remove it. In like manner, if the President and Senate make a treaty, it must be taken for granted that they have not transcended their powers. The treaty-making power involves all the high attributes of sovereignty. The framers of the constitution manifestly intended to lodge this power in safe hands. If they committed a mistake, the people can, by an amendment of the constitution, make a different disposition of it. Treaties are, in their nature, transactions of a higher character, than constitutions of internal government. The whole human family is interested in securing the faithful observance of engagements between nations; and this interest greatly increases, if one of the parties be weak and the other strong. Such nations as England, France, Russia, and the United States, can take care of their own interests; but, if the sanctity of treaties is to be violated, how is it possible that the weak should ever be protected?

Questions as to the *meaning* of treaties may often arise; and they must often be decided, so far as they affect individuals, at least, by some tribunal known to the laws. But to say that a particular branch of the government of one nation can *set aside* a treaty, in which another nation is interested, is altogether preposterous. Were a question to arise between France and England, as to the validity of a treaty, would England be satisfied with having the matter decided by the French court of cassation, or France with a judgment of the court of king's bench in Westminster-Hall?

One of the first objects of attention, after the organization of the general government under the constitution, was our public relations with the Indians. With the Creeks, occupying the region which now forms the central and south-western parts of

the state of Georgia, no national treaty had then been made. They stood in a very threatening posture, in the vicinity of white settlements. They, with the aid of the neighboring tribes, could bring fourteen thousand warriors into the field. A quarter of that number would have been sufficient to keep the new settlers in a state of consternation, through an extent of five hundred miles on the frontier.

During the first session of the first congress under the constitution, viz. on the twenty-second of August, 1789, the President of the United States, attended by General Knox, came into the Senate, and laid before that body a statement of facts, proposing several questions for their advice and consent. Among these questions was the following: 'Whether the United States shall solemnly guaranty to the Creeks their remaining territory, and maintain the same, if necessary, by a line of military posts?' This question was answered by the Senate in the affirmative; and necessary funds were ordered, at the discretion of the President.

In pursuance of this advice and consent of the Senate, three distinguished men were appointed commissioners to treat with the Creeks; but, for reasons which we are not able to state, the negotiation was not successful. The next year, twenty-four Creek chiefs were induced to visit New-York, which was then the seat of government. A treaty was here negotiated by the secretary of war, under the immediate eye of General Washington. It was authenticated with uncommon solemnity, and appears to have been ratified by a unanimous vote of the Senate. The fifth article is in these words: 'The United States solemnly guaranty to the Creek nation all their lands within the limits of the United States, to the westward and southward of the boundary described by the preceding article.' It is impossible for any fair and honorable mind to doubt as to the meaning of this stipulation; and therefore we will not detain our readers with any remarks upon it.

On the 11th of August, 1790, General Washington, as President of the United States, transmitted to the Senate a special message, on the subject of our relations with the Cherokees. This was four days after the treaty with the Creeks was signed, during which interval it had been ratified. In the message, the treaty just formed was alluded to as 'the main foundation of the future peace and prosperity of the south-western frontier.' The President insists, however, upon the necessity of having

'the treaties with the other tribes in that quarter *faithfully performed* on our part.' He reminds the Senate, that the Cherokees, by the treaty of Hopewell, had placed themselves under the protection of the United States; that the whites had subsequently intruded upon the Indians; and that Congress, in September, 1788, had forbidden such unwarrantable intrusions. He announces his determination to exert the powers intrusted to him by the constitution, in order to carry into faithful execution the treaty of Hopewell, and concludes his communication with the following question: 'Shall the United States stipulate solemnly to guaranty the new boundary, which may be arranged?' The Senate, by a resolution in almost the same words as the question, 'advised and consented solemnly to guaranty the new boundary.'

The President followed this advice; and the treaty of Holston was formed, July 2, 1791, by the seventh article of which, 'the United States solemnly guaranty to the Cherokee nation all their lands not hereby ceded.' The treaty of Holston is the basis of all subsequent negotiations. In the first treaty of Tellico, which was formed under the administration of the elder Adams, the United States stipulate, that they 'will continue the guaranty of the Cherokee country forever, as made and contained in former treaties.' Regular treaties, negotiated by commissioners with full powers, and all duly ratified by the Senate, were made with the Cherokees during every administration, down to that of Mr. Monroe, inclusive. There are fifteen of these most formal and solemn compacts. During all the period which has intervened since the date of the treaty of Hopewell, there has been constant intercourse with these tribes, by letters from the President and the war department, and by agents residing among the Indians, as organs of communication with them. All these transactions have been in accordance with the principles announced by General Washington, and recognised by his successors. The Indians were always made to understand, that their territory was to remain inviolate, unless they freely consented to part with it.

The intercourse-laws have all proceeded upon the same principles. Intrusion upon Indian lands is forbidden under heavy penalties, which are graduated according to the design of the intruder. Those acts which would indicate ownership, or which would alarm the Indians with the apprehension of a claim, are visited with peculiar severity. In the treaties, and

in the laws, there are numerous provisions in relation to inferior subjects, which imply that the Indians had a government of their own, that was to continue permanently; and there is not a syllable, which has the most distant implication that the United States, or any separate state, claimed, or ever would claim, the right of legislating over the Indians, or exercising any power over them, not expressly given in the treaties. The last compact with the Cherokees, except one, was negotiated by General Jackson in 1817. The preamble states, that a part of the Cherokees wished to remove beyond the Mississippi, and a part wished to remain. The design of the transaction was to promote the views of both parties, and to give both an 'assurance of our patronage, our aid, and good neighborhood.' It was expressly stated, that those who remained were desirous of 'beginning the establishment of fixed laws and a regular government.'

Mr. Calhoun negotiated the last treaty with the Cherokees, in 1819. The preamble declares, in effect, that the Cherokees as a body wished to remain on the land of their fathers, with a view to their national preservation. It is implied, that the treaty was made to secure that distinct object. By the fourth article, a permanent school fund is created, which is expressly appropriated 'to diffuse the benefits of education among the Cherokee nation *on this side of the Mississippi.*' The next article extends the intercourse-law over the Cherokees, as a permanent protection; which, therefore, can never be repealed, as to the Cherokees, without their consent.

We have thus drawn a hasty outline of the principal stipulations, by which the integrity of the Cherokee country is guarantied, and the rights of the inhabitants secured. What other community is there on earth, that can show so many muniments erected for its defence, within the short period of forty-five years? What other community can show such a current of public transactions, all running with an irresistible tide in the same direction, and without meeting with any obstacle, that could make even a ripple? With what other people have the United States ever entered into stipulations, after so much consideration, and under circumstances of the same solemnity? The father of his country, soon after he was inducted into the office of chief magistrate of the United States, distinctly inquired of the Senate, whether they would advise him to offer a solemn guaranty of their country to the Creeks. Being answered in the affirmative, the guaranty was made as soon after-

wards as a treaty could be negotiated. A year had elapsed, however, and the Senate was called upon to ratify the guaranty, which it had advised. This was done unanimously. The President then began a similar course in regard to the Cherokees. The same guaranty was proposed, given, and ratified; and, during the progress of these transactions, another year had elapsed. Thus, during the first Congress under the federal constitution, the question of guaranty was distinctly before the Senate, at least four times; and it was indirectly before that body, when commissioners were appointed; and probably on other occasions. The Senate was composed, in great part, of the very men, who had been members of the convention, by which the constitution was formed. It is incredible, that they should mistake the meaning of that instrument, on so important a subject. The same guaranty has been implicitly ratified in every subsequent compact. The terms of the stipulations are perfectly intelligible, so that there is no room for doubt, or cavil. If the United States are not bound by these engagements, how is it possible for a nation to bind itself? and how is it possible for a weak party to know, whether its rights are to be protected, or not? or rather, how much reason is there to fear, that a weak party has no rights, and that the law of force must always prevail?

It is admitted by some, that were it not for other obligations, by which the United States are bound to the several members of the Union, these treaties with the Indians would hold us as a nation. They suppose, that the obligations to the several states are prior to these treaties with the Indian tribes. But, after all that has been said and written on this subject, we have not seen the slightest evidence, that there are any incompatible obligations. Every treaty with every Indian tribe may, unless we are greatly mistaken, be fulfilled to the very letter; and yet no engagement, either express or implied, now in existence between the United States and any separate state, or any community, or individual, would be in the least danger of violation.

The claims of Georgia, under the compact of 1802, are supposed to form the strongest case of incompatible obligations; and we admit that these claims have been so represented, as to puzzle some intelligent minds. If fairly stated, however, they furnish no occasion for doubt or embarrassment, on the part of the general government, or of complaint on the part of Georgia.

It is contended, by the advocates of Georgia, that the declaration of independence, sustained by the revolutionary war, and confirmed by the peace of 1783, vested in that state all the rights of the British king to the land within its chartered limits; and that the United States have guarantied to each state all its rights of territory and government. The United States were, therefore, at the date of the treaty of Hopewell, bound to Georgia by an obligation incompatible with the terms of that treaty. This being the case, the first obligation must remain inviolate, and compensation must be made for the violation of the second.

Upon this statement, we cannot help remarking, that, if true, it is a most humiliating one. The articles of confederation were considered and adopted by the wisest men, whom the country was able to send to Congress, in the brightest period of our history. Our relations with the Indians were fixed by the same men, at the same period. Both subjects were in the highest degree interesting to the whole country. On the course which should be pursued toward the aborigines, depended in a considerable degree our national character, and the freedom of the frontier from the terrible and protracted calamity of an Indian war. And yet, with all these mighty interests at stake, they entered deliberately into clashing and contradictory engagements. If they did this, they must have made false representations to the Indians, on subjects of vital importance. They must have pretended to exercise powers which they did not possess; and, under the pretence of giving an equivalent, which they had no power to give, and for the loss of which they cannot make indemnity, must have obtained, from the poor, deluded, suffering Indians, terms of great value to the United States, and especially to the people on the frontier.

It is a great mistake, however, to suppose, that the worthies of the revolution committed an error so little in accordance with their general character, and of such disastrous issue to the Indian nations. Nothing but the most positive stipulations, absolutely irreconcilable to each other, should make us willing to admit the existence of such an error. We need not be alarmed for the reputation of our most eminent statesmen. There is not even an apparent discrepancy between the stipulations, either express or implied, of the states among themselves, and their united stipulations, as one party, with the Indians as another.

As to the succession of Georgia to the rights of the British

king, it was settled before the revolution, that the King could not take actual possession of Indian lands for the use of his subjects, except in pursuance of treaties made with Indians; and as to the confederated states guarantying to each state the right of taking lands from the Indians by force, because these lands lay within the chartered limits of a state, the direct contrary was expressly provided. The United States were invested with the treaty-making power, under the confederation, as well as under the constitution; and this power was often and solemnly applied to the Indian nations. The confederated states, and not any one of their number, sustained a national character. Wars with the Indians were, and must be, sustained at the national expense. Treaties of peace and limits must of course be made by the nation.

Besides, the United States never admitted, that the separate states were entitled to what were called the crown lands; that is, the lands still remaining in the possession of the Indians, and reserved by royal proclamation for their continued occupancy. So far from guarantying the Indian lands to Georgia, the confederated states maintained, that whatever claim the whites had to these lands,—the claim to extinguish the Indian title by amicable purchase,—belonged to the United States, and not to Georgia. The claim was resisted by that state, and was finally put to rest by the compact of 1802.

In this compact, the cessions are mutual, or reciprocal. Georgia cedes to the United States all her 'right, title, and claim' to lands west of a certain line; and the United States cede to Georgia all their 'claim, right, or title' to lands east of the same line. The lands, which were thus ceded by Georgia to the United States, now constitute the states of Alabama and Mississippi. The cession was made on certain conditions; and among these conditions is an engagement, 'that the United States shall, at their own expense, extinguish, for the use of Georgia, as early as the same can be peaceably obtained, upon reasonable terms, the Indian title to the county of Talasse, and so forth, and to all the other lands, in the state of Georgia.' This is the stipulation, which is mainly insisted on, as imposing upon the United States the obligation of obtaining, at all hazards, the Cherokee lands for the use of Georgia. But the bare reading of the clause is sufficient to show, that the obligation is conditional. The title was to be extinguished '*peaceably*,' and 'on *reasonable terms*.' Of course, the Indians had the ac-

knowledged power of keeping their country forever, if they pleased; and this would give Georgia no cause of complaint against them, or against the United States. In fulfilment of that stipulation, however, the general government has purchased the Indian country, as fast as the original proprietors would sell. In this process, the whole Creek territory, within the chartered limits of Georgia, has been obtained for the use of that state, and is now settled by its inhabitants. Portions of the Cherokee territory have also been ceded, so that twenty millions of acres, in the whole, have come into the possession of Georgia, since the execution of the compact. About five millions of acres still remain in the possession of the Cherokees, over which territory and all its possessors, Georgia claims the right of extending her laws.

Not only is the engagement with Georgia conditional, but the very terms of the conditions are inconsistent with the use of any means, but those of persuasion and argument. The Indian '*title*' is acknowledged as in existence, and is to be '*extinguished*,' before the lands can be obtained for the use of Georgia. Previously to that time, the United States had made no fewer than five treaties with the Cherokees, and two with the Creeks; and it was perfectly well known to the parties, that treaties were the only means, by which the Indian title could be extinguished.

In the very paragraph of the compact which contains the stipulation, it is stated, by way of description and recital, that 'the President of the United States has directed that a *treaty* should be held with the Creeks;' and, in a previous paragraph, the United States engage to open a land-office, 'for the disposition of the vacant lands thus ceded, to which the *Indian title* has been, or may *hereafter* be, extinguished.' It thus appears, that the very instrument, under which Georgia has pressed her claim, shows most conclusively, that no means of violence were to be used; that all public intercourse with the Indians was to be held by the United States; and that Georgia was to have no agency, direct or indirect, in extinguishing the Indian title.

There is another remarkable passage in the same instrument,—a passage inserted for the purpose of protecting the Indians in their rights, during all future time. Georgia made it an express condition, that any new state to be formed upon the ceded territory should conform to the articles, (one ex-

cepted,) of the 'ordinance for the government of the territory north-west of the Ohio.' Among these articles, to which such new state should conform, is one, of which the following sentence constitutes a part: 'The *utmost good faith* shall always be observed towards the Indians; their lands and property shall never be taken from them *without their consent;* and in their *property, rights, and liberty,* they never shall *be invaded or disturbed,* unless in just and lawful wars, authorised by Congress; but laws founded in justice and humanity shall, from time to time, be made for preventing wrongs being done to them, and for preserving peace and friendship with them.'

When the compact here under consideration was adopted and confirmed by the legislature of Georgia, the act declares, that the deed of cession is 'fully, absolutely and amply, ratified and confirmed, *in all its parts;* and is hereby declared to be binding and conclusive on the said state, her government and citizens, forever.'

Thus Georgia, in the most solemn manner, bound herself not to sanction any invasion or disturbance of the Indians in their rights, and secured the imposition of the same obligation upon new states afterwards to be formed. Consequently, when Mississippi and Alabama were admitted into the Union, the ordinance of 1787, containing the passage above cited, was expressly adopted by each of these states, as the indispensable condition of its admission.

In December, 1827, not three years ago, Georgia, by an act of her legislature, asserted the right of taking possession of the Cherokee country by force. She declared, that the Indians were tenants at her will, that she wanted their lands, and *would have them.*

It is not our intention, after all that has been said, to spend any words upon the reasonableness of this claim. There may be some use, however, in stating briefly, in how many ways, and for what length of time, Georgia has bound herself not to assert it.

1. Oglethorpe, the founder of the colony, and all his associates, went upon the ground that the Indians had a right to their own lands. He solicited permission to settle at Savannah; and every foot of territory, which he and his successors gained, was gained by treaties and defined by known boundaries. The engagements were numerous and positive, that whites should not intrude upon any lands, which the Indians had

not sold. The general intercourse between the parties stood entirely upon this basis. The colonists came as friends of the Indians. In this character alone, and with a view to the permanent benefit of the Indians, did they plead for the cession of lands. For many years after the first settlement, they might have been cut off, in a single day, by the natives. In 1763, a treaty was formed at Augusta, in the negotiation of which, the governors of Georgia, the two Carolinas, and Virginia, and the King's superintendent of Indian affairs, were associated. All the southwestern tribes were represented, and their right to their own lands was in the strongest manner implied. Thus, in the infancy of the colony, and during forty-three years before the declaration of independence, the treaties, and the daily intercourse, were all in favor of the rights of the Indians.

2. In the course of the revolutionary war, various negotiations were held between the Cherokees, and the authorities of Georgia. A treaty was formed at De Witt's Corner, in 1777, by commissioners duly empowered by the States of South Carolina and Georgia, and by Indian councils. The whole aspect of the transactions is that of negotiations between independent powers, capable of binding themselves and their posterity. After the close of the war, several other treaties were made between the Cherokees and Georgia, acting as an independent State. All these treaties were negotiated upon the same basis as the preceding ones.

3. Georgia was one of the confederated States; and, during the existence of the confederation, the treaty of Hopewell was formed. Georgia remonstrated against it on the single ground, that it belonged to her, as a separate State, to treat with Indians occupying a part of the land within her chartered limits. She did not object to the great principles of the treaty; that is, a definite boundary and an implicit guaranty. Congress was not convinced by her remonstrance. On the contrary, a proclamation was issued by Congress, in 1788, to enforce the treaty of Hopewell; and preparations were made to march troops from the Ohio to defend the Cherokees against intruders, according to the stipulations of that instrument. In 1790, General Washington, in the second year of his presidency, declared the treaty to be in force, and expressed his determination to execute it. Thus, as a confederated State, was Georgia bound by this treaty with the Indians, as truly and firmly as by the peace of 1783 with Great Britain.

4. The federal constitution provides, that all treaties previously 'made,' and all which should be made thereafter, shall be 'the supreme law of the land.' The treaty of Hopewell was then in existence. In the language of Mr. Bates,

'Georgia, by adopting the Constitution, agreed, at least, to *this treaty*. Nor is there the slightest foundation for the suggestion, that she did not intend to affirm this treaty. Let it be recollected, that this treaty was not only uniformly called a treaty, and known as such, but of all other treaties, this was most likely to be distinctly in view. 1st. Because it was the subject of her remonstrance to Congress in 1786. 2d. Because the boundary to which it related had been a matter of perpetual dispute between her and the United States; and, 3d. Because, when she adopted the Constitution, the proclamation of Congress was then before the people, requiring submission to this very treaty, and calling upon the army to enforce it against the citizens of Georgia. Of all subjects, therefore, which Georgia had openly and fully in view, this was the most prominent, made so by the important contemporaneous events which affected that State individually. But, independent of all this, it is enough that it was then deemed a treaty, and, as such, was made the supreme law of the land.' p. 239.

The constitution also provides, that treaties shall be made by the general government, and shall not be made by separate States; so that, by acceding to the constitution, Georgia bound herself in advance, as did every other State, to abide by every treaty which should be proclaimed as a treaty, by the competent authority of the nation. How is it possible, that this power could have been lodged in other hands, than those of the nation? And how can it be contended, for a moment, that every State is not bound by these highest acts of national sovereignty?

5. During the thirteen years, which intervened, between the organization of the federal government and the compact of 1802, seven treaties were formed between the United States and the Indian nations residing within the chartered limits of Georgia. The two first of these treaties, one with the Creeks, the other with the Cherokees, contain the articles of solemn guaranty, which have so often been mentioned. It is believed, that all these treaties received the unanimous approbation of the Senate. No advocate of Georgia has asserted, so far as we have been able to learn, that a single Senator of Georgia withheld his assent from any of these treaties. The treaty of

Holston, containing the guaranty of the Cherokee country, was never made the subject of complaint in any form. The treaty of Tellico, in which the guaranty was declared to be *forever*, was negotiated by George Walton, an eminent citizen of Georgia, in honor of whom she has lately called a county by his name. Preceding treaties are, in this document, recognised as in force, 'together with the *construction* and *usage* under the respective articles; and *so to continue*.'

6. It has been shown at large, that by the compact of 1802, Georgia acknowledged the validity of treaties, and looked to them as the only legitimate method of extinguishing the Indian title.

7. Since the compact of 1802, ten treaties have been made by the United States with the Cherokees, and six with the Creeks; all in accordance with the principles of previous treaties. It is not intimated, that any senator from Georgia, or from any other State, objected to their ratification. By these treaties Georgia obtained possession of Indian lands, nearly equal in extent to all New England, except Maine.

8. All the constituted authorities of Georgia, including her Governors, legislators, Senators in Congress and Representatives, have uniformly, down to the year 1827, admitted the validity of treaties with Indians. The legislature and the delegation from that State in Congress, were in the habit of urging the United States to make new treaties with the Cherokees and Creeks. In 1819, the Senate and House of Representatives of Georgia addressed a memorial to the President of the United States, in which it is declared, that 'the State of Georgia claims a right to the jurisdiction and soil of the territory within her limits. *She admits*, however, that the right is *inchoate*, remaining to be perfected by the United States, in the *extinction of the Indian title*.' In 1825, the Governor of Georgia, now a Senator in Congress, commanded obedience to a treaty with the Creeks, as the supreme law of the land. The last commissioners, who attempted to treat with the Cherokees, (both of them citizens of Georgia), announced in writing, that the United States alone could negotiate with the Indian nations, or extinguish the title to their lands.

In these various ways has Georgia, during the whole period of her existence, from 1733 to 1827, acknowledged the necessity of obtaining the Indian territory by amicable treaties. All her eminent statesmen,—all her constituted authorities,—have

united in the expression of this opinion, and in acting according to it. How is it possible, that a State should ever be bound, if Georgia is not bound by these transactions? If England were bound to France by stipulations, which could be supported by a thousandth part as much evidence as exists on this subject, and should refuse to acknowledge the obligation, the whole civilised world would denounce her as regardless of her faith. Yet, so many plausible words have been used, and there has been so much parade of reasoning on the subject of State rights, and conflicting powers, that some respectable and honorable men have been misled. The scene is distant from the northern States. A dimness is cast over the whole subject, in many minds, as to the condition and rights of Indians living in the woods.

We have thought it might be useful, therefore, to change the scene, and to state a case perfectly parallel, though relating to a different tribe, and a different State, in order to make the matter so plain, that it cannot be misunderstood.

Let us suppose, then, that one of the New England tribes of Indians, the Mohegans, for instance, were found on the arrival of the pilgrims, in possession of all the territory now contained in Massachusetts; that they permitted the first settlers to land, and received them as friends; and that they made new cessions of territory, as the settlements were extending. The whites encroached, difficulties arose, and wars succeeded; yet peace was repeatedly made, on equal terms, and by the establishment of a known boundary. This was the progress of things, we will suppose, till the commencement of the revolutionary war, when the Mohegans, having placed themselves under the protection of Great Britain, and being persuaded by agents of the mother-country, took up arms against the colonies.

We will proceed with the supposition, as though it were history, and without further interruption.

In 1777, Massachusetts held a negotiation with the Mohegans, by commissioners with full powers, when a peace was made and boundaries were fixed. Other treaties were made between the State and the tribe in 1783 and in subsequent years. Massachusetts, being a member of the confederation, a treaty was made with the Mohegans by the United States, in 1785, by which peace was established, prisoners were exchanged, reciprocity was observed on other important points, and an implicit

guaranty of territory was given. Massachusetts protested against this treaty, on the ground that she alone ought to negotiate with Indians occupying a part of her chartered limits, but not denying the right of the Mohegans to their own country and government. Congress was not in the least moved from its purpose by this protest; but held that the United States had the sole power, by the articles of confederation, of making treaties with Indian nations, situated as the Mohegans then were. In 1788, Congress issued a proclamation against intruders with the express object of enforcing the treaty.

After the adoption of the federal constitution, General Washington declared the treaty of 1785 to be in force, and that he should use all the powers intrusted to him by the constitution to have it maintained with good faith. At the moment of making this declaration, he sent a special message to the Senate, proposing this question: 'Does the Senate advise and consent solemnly to guaranty to the Mohegans the lands which they occupy?' To which the Senate (the members from Massachusetts being present), unanimously answer in the affirmative. A treaty was formed in the year 1791, between the United States and the Mohegans, by which Connecticut river was made the eastern boundary of the Indian country, which then embraced what is now the western part of Massachusetts, the southern part of Vermont, the northwestern corner of Connecticut, and the part of New York which lies east of the Hudson river. In this treaty, 'the United States *solemnly guaranty to the Mohegan nation* all their lands not hereby ceded.' Many stipulations are made, and, among the rest, the Mohegans engage, that they will not form any treaty with a separate State. They grant to the United States the privilege of a road from Albany to Springfield, and permit boats to navigate the Housatonic river. The United States promise to give them implements of husbandry, that they may become herdsmen and cultivators, and with a view to their permanent attachment to their soil. The United States also engage, that, if any citizen of the United States shall go into the Mohegan country and commit a crime there, or do an injury to a peaceable Indian, such citizen shall be punished by the courts of the United States, in the same manner as if a similar crime had been committed within the jurisdiction of Massachusetts, or within any territorial district of the United States. The Mohegans, on their part, agree to deliver up for

punishment any of their people, and any who take refuge in their nation, who have committed trespasses upon neighboring whites; and, in consequence of the various stipulations in their favor, they agree to be under the protection of the United States, and of no other sovereign whatever.

This treaty was ratified by the Senate unanimously, no member from Massachusetts, Connecticut, New York, or Vermont making any objection; and Massachusetts never having objected to the guaranty of 1791, down to the present day.

Seven years afterwards, another treaty was made with the Mohegans, negotiated by an eminent citizen of Massachusetts, acting as a commissioner of the United States, which expressly extends the guaranty of the Mohegan country forever.

Massachusetts having long had claims to western lands, which the United States would not acknowledge, a compact is formed between that State and the United States, in 1802. By this compact, Massachusetts cedes to the United States all her claim to the western lands, accepting as an equivalent a large sum of money and an engagement that the United States would extinguish the Mohegan title as soon as it could be done 'peaceably, and on reasonable terms;' several clauses in the compact implying, that the title was to be extinguished by treaty with the Indians, and that the treaty was to be made between them and the United States, Massachusetts having no agency in any such transaction.

After this compact, ten treaties were made between the United States and the Mohegans, all with the acquiescence of Massachusetts, and some of them at her solicitation. By these treaties, she acquired lands of the Mohegans, till their territory, so far as Massachusetts is concerned, was reduced to what lies west of the counties of Franklin, Hampshire and Hampden, where the Mohegan nation still remains, upon the ground derived from the immemorial occupancy of preceding generations. In one of these treaties, the Mohegans granted to the United States the privilege of a road, which should pass through their country from Rutland, Vermont, to Litchfield, Connecticut. In another it was stipulated, that the agent of the United States, residing among the Indians for their benefit, might cultivate land for a field and garden, so long as he should reside there in that capacity. In the last of these treaties but one, a treaty negotiated by the individual, who is now President of the United States, provision was

made for the permanent residence of the Indians upon their hereditary possessions, and all preceding treaties were confirmed; and the very last, negotiated by the individual, who is now Vice-President of the United States, is declared to be formed for the preservation of the Mohegan nation; provision is made in it for a permanent school fund, to be expended in the country now occupied by that nation; and the intercourse-law of the United States is permanently pledged for the protection of the Mohegans against the whites.

In the war of 1812, the Mohegans sent a larger proportion of warriors than any State in the Union, according to their numbers, volunteering their services under the banners of the United States. They fought by the side, and under the orders, of the commander, who is now President of the United States. Some of their bravest and best men fell on the field of battle; and those, who survived, were cheered and applauded as faithful allies, and generous disinterested friends, fully deserving the guaranty, which they had received.

The State of Massachusetts, however, importunately presses the United States to extinguish the Mohegan title. The legislature all the while acknowledges, that treaties must be made by the United States, before the title can be extinguished. The Governor of Massachusetts, in 1825, proclaims treaties with the Mohegans to be the supreme law of the land. The Representatives in Congress from Massachusetts, as late as the spring of 1827, leave upon the records a formal protest against a law, which assumed that a certain treaty with Indians was void on account of fraud. The reason assigned by these Representatives was, that a treaty was an instrument of so high a character, that rights vested immediately on its execution, and it could not be set aside, even by a subsequent treaty, and for manifest corruption.

In the mean time, while these treaties, and laws for their execution, were carried into effect with the universal acquiescence of the rulers and people of every State in the Union, the Mohegans were making rapid improvements in civilisation. The Secretary of War (Mr. Crawford), whom we will suppose to be an eminent citizen of Massachusetts, and afterwards the idol of that State, took the lead in promoting the best interests of the natives. He wrote an official letter to invite the co-operation of benevolent societies with the government in measures for the intellectual and moral improvement of the Indians.

From him the first impulse was received toward the support and establishment of schools, by the General Government, for the instruction of Indian children. Various efficient causes of improvement were in operation; and the Mohegans formed a regular republican government, upon the best models.

All these things were perfectly well known to the inhabitants of all the northern States. If a gentleman was travelling from Boston to Albany, he knew he was to pass through the Mohegan nation. He did pass through it. He knew when he crossed the limits. He saw the natives at work on their farms. He lodged at their houses. He visited their schools. He spent the Sabbath with them, and engaged with them in the most solemn ordinances of public worship. He read their newspaper, which was sent weekly into all parts of the United States. They told him what their relations with the United States were, and that they were accurately and minutely described in treaties. They added, that, in the execution of these treaties, white intruders had been repeatedly driven off, by the armed force of the United States.

The people of Albany, of Northampton, of Hartford, and of Rutland, came into the Mohegan nation, to witness the improvement of the Indian pupils; and the teachers returned these visits. All the people knew what the Mohegan nation was, and what its rights were, as solemnly guarantied by the United States. Not a State in the Union had its limits more exactly known, or its separate existence more positively guarantied.

But, while things were in this condition, Massachusetts suddenly resolves, in December, 1827, that she has waited long enough for the Mohegan lands; that, as she cannot get them by negotiation, she has a right to take them by force; that she will not resort to violence, however, till other means shall have failed; that the Mohegans never had any right to their country; that they are the tenants at will of Massachusetts; that their lands belong to her; that the King of England gave them to her two hundred years ago; and that she wants the Mohegan lands, and will have them. These things Massachusetts solemnly declares, before the world, in the year 1827, by resolutions adopted in both branches of her legislature; and she directs her governor to send a copy to the President of the United States, which duty was faithfully performed.

The next year, 1828, Massachusetts extends her laws over

the Mohegans; and annexes all that part of their territory, which lies within her chartered limits, to the counties of Franklin, Hampshire and Hampden. She enacts at the same time, that no Mohegan, nor any descendant of a Mohegan, shall be either a party or a witness in a court of justice.

These measures she follows up, in 1829, by enacting, that if any Mohegan chief shall attempt to prevent the people of the tribe from emigrating, he shall be liable to imprisonment four years; and if any member of the tribe shall endeavor to prevent any chief from selling the whole Mohegan country, he shall be imprisoned not less than four years, nor more than six years.

When the civilised world begins to express astonishment at these remarkable doings, Massachusetts bestirs herself to produce arguments in justification; and her arguments are these.

1. She alleges, that the American aborigines were in a state of nature, when New England was first settled from Europe, and men in a state of nature can neither be entitled to property, nor to the protection of law; from whence she infers, that the Mohegans may justly be driven from their patrimonial inheritance, although they are not in a state of nature, but have lived by her side under the protection of international and municipal law, for two hundred years.

2. She alleges that, according to Vattel, erratic tribes, savages in the hunter state, may be required to give up a *part* of their lands to their more civilised neighbors for cultivation; therefore the Mohegans, who are not an erratic tribe, and not in the hunter state, but herdsmen and cultivators, may justly be ejected from *all* their lands, which they have derived from their ancestors, which they have neither forfeited nor sold, and which have been guarantied to them for ever by the United States.

3. She says, that it is an established principle, that barbarians should yield to civilised men; and therefore the Mohegans, who are not barbarians; who have demeaned themselves peaceably towards the United States for the last forty years; who have learned to read and write; who have a printed language of their own, and send forth a newspaper weekly, shall leave their native land and seek a residence elsewhere.

Not appearing to be altogether satisfied with these reasons, Massachusetts says, that she is to be the only judge of her own limits; that she shall defend her exclusive right to her own territory; and that writers of pamphlets, and reviews, have

no business to meddle with her affairs: that, therefore, she is not bound by her assent to the constitution of the United States, which says, that the meaning and effect of treaties and laws are to be decided by the courts of the United States; nor by her own compact of 1802, which admits the Indian title, and prescribes the manner in which it is to be extinguished, if extinguished at all. In short, she declares roundly, that she will interpret all her obligations for herself, without asking the opinion of any one; or, in other words, that her present inclination is her only rule of duty.

Mutato nomine, de te
Fabula narratur.

This rapid sketch of supposed history is a faithful exhibition of the actual conduct of Georgia; though it is by no means so strong an exhibition, as a fuller statement would make it. How is it possible to doubt, that the south-western tribes of Indians, living on lands which they derived from their fathers, and within limits acknowledged and guarantied by the separate States and the United States, have a perfect original right, and a perfect right by compact, to the continued occupancy of their country, as long as they please to occupy it?

Those who urge the removal of the Indians say, that such a measure would be greatly for their advantage. Our limits do not permit us to enter at large into this question of utility. If the Indians remove to better their condition, it is manifest that their removal should be voluntary. They should have time to consider the subject. No threats should be used. They should have abundant opportunity to examine the country, to which they are to be removed. The territory allotted to each tribe should be designated, and the title made clear. It should be rendered certain, that they can be protected in their new residence, from the encroachments of lawless whites. If all this can be done, and the Indians, with an intelligent regard to their own welfare, uninfluenced by threats, or bribes, or false statements, shall voluntarily remove, there is probably not a man in the country, who would object to it.

Before a reflecting and benevolent man will take the responsibility of advising the Indians generally to remove, he will examine the subject thoroughly; and will gain satisfaction on several topics, some of which are the following.

In the first place, it should be ascertained, that there is good

land enough, at the disposal of the United States, for the accommodation of all the tribes to be removed. The land should not only be capable of cultivation ultimately, but should now be in such a condition, that Indians can live comfortably and contentedly upon it. But a large tract of territory, which would answer this description, must be extremely valuable hereafter; much more valuable, than the remnants of their hereditary possessions, to which some of the tribes are reduced, and to which others might consent to reduce themselves, if they could rest secure in the guaranty of the United States.

In order to be certain as to the quality of the land, and to what extent it is habitable, accurate surveys should be made by competent and responsible agents; and ample opportunity should be given to the Indians to explore their future habitation for themselves.

Again; it should be made to appear clearly, that the Indians are to enjoy security in their new place of residence. This can be done in no other way, than by showing, in the most decisive manner, that they are to be protected where they now are. If they cannot be thus protected, it is futile to talk about protection any where. If they may now be dispossessed of their original inheritance, because they are within the chartered limits of states, they may hereafter be driven from the lands which they shall receive as a grant from the General Government, because they will then be within the national limits of the United States. The General Government can do no more, in regard to securing a title to the Indians, than the several States have done repeatedly. If these engagements of States, sanctioned, and most solemnly guarantied, by the United States, prove utterly insufficient to protect the Indians, how can the acts of the General Government alone afford any solid ground of confidence? Constitutional scruples now exist in one shape. Twenty years hence they will exist in some other shape; and, in whatever shape they exist, they may be made the pretext for taking Indian lands, unless compacts are to be executed according to the intention of the parties, clearly expressed in the compacts themselves.

Beside a guaranty of territory, these Indian tribes, before they remove, should have good reason to rely upon the protection of the United States against mischievous white intruders. For various reasons, which there is not room here to specify, the emigrant Indians will be much more exposed to

renegados from civilised communities, than they are on the land of their fathers. The country to be allotted to the tribes, which shall remove, is much easier of access, than the present Cherokee nation. Steam-boats, with hundreds of intruders, can ascend the Arkansas into the heart of the Indian country. They will be allured thither by the money, which will be distributed for annuities, salaries, and rations. The victims of their rapacity will be numerous, and crowded together. The more easily the Indians yield to temptation, the less sympathy will be felt for them. The more protection they need, the less will they receive. Already, the emigrants, though comparatively few in number, experience these evils. The Cherokees of the Arkansas, who have removed only a hundred miles, have been terribly annoyed by dealers in whiskey since their removal. The reason is, that the emigrants were expected to receive a considerable sum of money from the United States, and greedy speculators were on the spot to profit by it.

If we may judge by a reference to the known principles of human nature, or by what has taken place already, we cannot suppose, that agents of the United States among the Indians will be men of sufficient virtue, intelligence, and public spirit, to make vigorous and persevering opposition to all the intrigues of self-interest; and unless this is done, the emigrant Indians will be destroyed.

If all the preliminaries can be fixed to the satisfaction of the Indians, and of the disinterested and intelligent portion of the American people, a removal may properly be commenced. But even in this case, the process should be gradual. Let the first trial be made by a small tribe, with great caution, and under the most favorable auspices. If this should prove successful, the larger tribes would have more confidence in the plan, and the government and people of the United States would see the need, and the benefits, of continued caution and vigilance.

There is no need of haste. Indeed, there is no apology for it. One of the Senators of Georgia said in his place, towards the close of the debate on the Indian bill, that *Georgia had a very inconsiderable interest in this question.* The friends of the Indians knew this perfectly well before; but they did not expect so distinct an avowal from such a quarter. One of the Representatives in Congress from Georgia, said, in private conversation, that *there is no necessity for removing the Indians.* No well-informed man can doubt the correctness of this re-

mark. How, then, can the people of the United States justify to themselves, or to the world, a course of measures, which is not called for by any exigency, which appears inconsistent with the most obvious principles of fair dealing, and which, as many of the best and wisest men among us fully believe, will bring upon the Indian tribes either a speedy or a lingering ruin, and upon ourselves the deep and lasting infamy of a breach of faith?

The volume of speeches before us is a most interesting one. Some of the discussions may appear dry to those, who are not accustomed to elaborate investigations. But there are passages of high eloquence in several of the speeches; and we may say, what can very rarely be said in a similar case, that not a single argument of a doubtful character is relied upon, in favor of the Indians. All the main positions are not defensible merely; they are absolutely unassailable. The book and the separate speeches should be extensively circulated.

ART. VII.—*Studies in Poetry. Embracing Notices of the Lives and Writings of the Best Poets in the English Language, a copious Selection of Elegant Extracts, a short Analysis of Hebrew Poetry, and Translations from the Sacred Poets: designed to illustrate the Principles of Rhetoric, and teach their Application to Poetry.* By GEORGE B. CHEEVER. Boston. 1830.

If we may form a judgment of the estimate in which poetry is at this time held, from the general practice of the professors of the art, we shall certainly be led to believe, that its voice is as little regarded, as that of wisdom. All the great living masters of the lyre appear to have laid it by, in order to labor in a lower, though perhaps a more productive field. It is now about fifteen years since Scott, finding his poetical popularity on the wane, and doubtless a little dismayed by the portentous brilliancy of another ascending star, gave up all his powers to a different department of literature, with a vigor and success, that leave us little reason to murmur at the change. Campbell had forsaken the field much earlier, to employ himself in celebrating the merits of those, whom the world had reasona-