HIGHLAND MESSENGER.

VOL. VI.—NO. 40. ASHEVILLE, N. C., FRIDAY, MAY 29, 1846. WHOLE NO. 301.

THOS. W. ATKIN,
EDITOR AND PROPRIETOR.

TERMS OF THE MESSENGER:

Two Dollars and Fifty Cents per annum in advance, or Three Dollars within the year.

No paper will be discontinued except at the option of the Editor, until all arrearages are paid.

Advertisements will be inserted at One Dollar per square for ten lines or less, for the first insertion, and Twenty-five Cents for each continuance.—The number of insertions desired should be marked on the margin, or the advertisement will be continued till forbid, and charged accordingly. Court Orders will be charged at legal rates invariably.

The charge for announcing the name of a candidate for office is $5 cash in advance, or $3 00 if payment be delayed.

Letters to the Editor must come free of postage.

PORTRAIT PAINTING.

THOMAS STEPHEN POWELL,

HEREBY informs the citizens of Asheville and all other persons desiring them, that he will remain here a short time longer, during which, any person desirous of obtaining a second version of himself, or herself, may be supplied at the cheap cost of $15. He finds figures introduced upon the same piece, charged for but $25. No work to be paid for, or taken by the employer unless it gives satisfaction to the same. Inquiries can be made at Mr. M'Dowell's Tailoring Establishment.

May 22 300tf

JUST RECEIVED,

A FRESH and full supply of School Books, such as are used generally in this country, consisting in part of the following, viz:

Comstock's Philosophy, Comstock's Chemistry, Davies' Smith's Arithmetic, Smith's Grammar, Smith's and Mitchell's Series of Geography with Atlas; Bain's Lectures; Davies' Algebra, Davies' Geometry, Adams's Mental Philosophy, Hedge's Logic, Worcester's History, Olney's and Ellery's Common School Readers, No. 1, 2, 3, 4, 5, Spelling Books; Primary Reading Books.

ALSO,

A very handsome Pocket Bible;
Methodist Hymns; Psalms and Hymns;
Christ Harmony; Mason's Cluster,
Southern Harmony, (for Singing Schools)
Plain bound Bibles at 25 cents;
The American Chesterfield; Book of Politeness;
Daughters Own Book;—besides nearly any variety of books usually kept in this country.

ALSO,

A good assortment of Fools Cap and Letter paper; Writing, Sealing Wax, a beautiful assortment; Steel Pens, English Quills, &c., &c.

Also, Bibles will be sold on the most accommodating terms by

PATTON & OSBORN.

May 1, 1846.—297—tf

NOTICE.

There will be a Temperance meeting held in Leicester, on Saturday the 4th day of July next. All persons wishing the Temperance cause success, are cordially requested to attend and render assistance that will be wanted on that day, as our fathers did the 4th of July, Independence in '76. Recorder at the President.

LORENZO D. POTEET, S. C.

May 15, 1846. 299

STATE OF NORTH CAROLINA,
BUNCOMBE COUNTY.

Superior Court of Law—April Term, 1846.

Ordered by Court, that there be an extra Term of the Superior Courts for the County of Buncombe, to be held at the Court house in Asheville, commencing on the 4th Monday in June next, and to continue for one week. Further ordered that publication of the same be made in the Highland Messenger, at Asheville, at the Court House door, and three other places in the County for six weeks.

Witness, J. H. Coleman, Clerk of said Court at office, the 2nd Monday after the 4th Monday in March, A. D. 1846.

J. H. COLEMAN, C. S.

May 15, 1846. Pr. fee $6 6w 299

Sale of Valuable Real Estate.

By virtue of a decree made in the Court of Equity, for Buncombe County, at Spring Term, 1846, in the cause of Said Court pending, wherein, Mary Vance, Administrator of the infant heirs of D. Vance, deceased, Complainant and M. L. Nelson and his wife, Defendants, I shall offer that valuable Mill seat on the adjoining land on Roan's Creek belonging to the Heirs of David Vance, Deceased, to the highest bidder on the 13th of June next. The sale to be made on the premises and in one or more parcels as may then be thought best, on a credit of one, two, three, four and five years, with interest from date. A cash third of the purchase money to be due the first year, and the remainder in equal annual payments, the purchaser or purchasers giving bond and approved security.

ALSO, at the Mills on Ivy, formerly the property of L. H. Hughes, I shall sell the said Mills and one hundred acres of adjoining land, on a credit of one and two years, with interest from date, on the 14th day of June next.—The purchaser giving bond and approved security. To be sold by virtue of the same decree.

I. B. SAWYER, C. & M. E.

May 8, 1846.—4tds 298

Fashionable Tailoring Establishment.

JUST received, a splendid slent of Fashions for Spring and Summer, 1846. I tender my grateful acknowledgments to my friends and customers for past favors, and hope to merit a continuance of their support. I flatter myself from my experience, and the regular correspondence I keep up with the North, to furnish my patrons with the latest and most approved style of fashion. Neat fits, good work, and prompt attention to business will be our motto. These promises made good, and all reasonable demands obeyed. Prices moderate. Shop North East of the Court-house.

One fine pair of crooking shears for sale.

I. Mc. DUNN.

May 8, 1846—tf. 298

CASTINGS.

A quantity of handsome Castings just received at the Cheap Store of

W. WILLIAMS.

They are going off rapidly, call soon or you may not get any.

April 24, 1846.—296—tf.

NOTICE.

The subscriber has taken charge of the Eagle Hotel in Asheville, N. C., formerly kept by James W. Patton, Esq. In taking in charge this large and commodious Establishment, he assures the public that he will give his whole attention to the House, where he will be provided with good servants and hostlers, and well stocked with provisions of all kinds common in the country. GRAIN AND GOOD DRY LOTS FOR DROVERS, &C.

In making this announcement he does not flatter himself with the prospect of increasing the already large patronage the house has, but hopes to keep pace with his predecessor, if he can do this he will be satisfied. In the summer season there will be kept in the Basement of the building, and entirely private, A WELL REGULATED BAR for the accommodation of Travellers and Boarders.

M. W. ALEXANDER.

Asheville, N. C., Jan. 30, 1846.

Valuable Town Property for Sale.

The undersigned will sell, to the highest bidder, on Wednesday, of the Extra Court at Henderson, which is being the 24th day of June next, their valuable possessions in the town of Hendersonville, consisting of

EIGHT-HALF ACRE TOWN LOTS,

Four of which are in one block, forming an entire body of three acres of land, immediately on the South-west corner of the Public Square, and the other four lots immediately back of the first in the same range, forming another block of two acres, having a stream of water passing through it. There is also a commodious and eighty

TWO STORY HOUSE,

with a cellar, at each end, and an entry in the middle; with a Dining room and Kitchen running off of the back of the house, well finished off and new; also, another two story house with a chimney in the middle; all in good and well finished

FRAMED STABLE,

two stories, with stalls conveniently arranged, on the premises, as well fixed and convenient for a Public House, or Private Residence.

A credit of six, twelve, and eighteen months, will be given, by the purchaser giving note and approved security.

For further particulars apply to Benj. King, who will be found on the premises.

ELISHA KING,
BENJ. KING.

May 8, 1846.—2w*pds.

A. T. SILLY
AGENT,

Will attend to the offering of notes at the Bank of Cape Fear in Asheville either for discount or renewal. Persons entrusting him with their business may rely upon its being attended to promptly and carefully and he will in all cases return as soon as possible an account of his transactions.

He begs leave to refer to any of the prominent business men of the place.

Feb. 27, 1846.—tf 288

SUPERIOR DUTCH BOLTING CLOTHS.

Anchor brand—assorted numbers—warranted. Just received and for sale at the lowest rates, by

RANKIN & PULLIAM.

April 24, 1846.—296—tf.

TABLE CUTLERY, POCKET, & PENKNIVES

The largest and finest stock we ever had the pleasure of exhibiting, at the most reduced prices.

RANKIN & PULLIAM.

April 3, 1846.

CORN, WHEAT, OATS.

Feathers, Wool, Beeswax and Tallow, received in exchange for Goods, by W. WILLIAMS.

March 6. tf

MEDICAL NOTICE.

DR. C. H. FREEMAN, would respectfully tender his professional services to the citizens of Western North Carolina in the various branches of his Profession, but especially in the cure of Cancers and Ulcers of long standing which have hitherto been pronounced incurable. Dr. Freeman has a number of certificates of cures performed by him, that place the matter beyond doubt that he can cure any Cancer in from four to six days, while there are several persons now in Buncombe County, to whom reference is made, who will cheerfully testify to the fact of his having performed radical cures. He may be consulted at his residence on Bear Creek, three miles from Col. Chunn's Bridge, on the West side of French Broad River, or by letter Post paid directed to Lapland Post Office, Buncombe County, N. C.

Dr. Freeman would visit Patients any where in North or South Carolina, Georgia and Tennessee, and would receive patients at his own house, where they would have the advantage of his medical attendance until a cure was perfectly effected. His charges will at all times be moderate and in proportion to the services rendered.

Refer to Col. HODGE RAYNS,
J. M. RICH, Esq.
LITTLETON PARHAM,
Buncombe Co., N. C.

May 1, 1846 —4m. 297

VALUABLE LANDS
AT
AUCTION.

I WILL sell, as Trustee, to the highest bidder, on the 28th of July next, at the Court House in Marion, McDowell county, N. C., the splendid tract of land formerly owned by Charles Carson, containing upwards of 300 acres of Bottom Land in a high state of cultivation, lying on both sides of the Catawba river, adjoining Pleasant Gardens. On the place is a good Merchant Mill, and a suitable seat for a Saw Mill. The uplands adjoining are very extensive, and a great deal of it fine upland. It will be sold in one tract, and is regarded as unequalled in fertility, the most simple share, combining more advantages than any other tract to the size of it, in the western part of North Carolina. Every effort has been made to redeem it, but failing, has placed in market an estate that will not perhaps for ages be offered again.

A portion of the purchase money may be required down, but terms will be as accommodating as possible to punctual purchasers. Particulars made known on day of sale.

T. C. CARSON.

April 24, 1846.—296—ds.

BANK AGENCY.

JAMES P. HARDY, Asheville, N. C.,

Will attend to the offering of Notes either for discount or renewal, at the Branch of the Bank of Cape Fear at this place, and will make the settlements and payments upon Notes each returning day. The mail facilities from this place to every part of the country are such that notes may be sent and the money received by mail with but little if any risk. The most prompt attention will be given to all such business confided to my care, and an accurate account rendered in every instance, while my charges will be moderate.

Feb. 20, 1846.—tf. 287

SADDLES, SADDLES,

A large lot just received unusually low for cash.

RANKIN & PULLIAM.

April 3, 1846.

Southern Harmony.

A large stock of the above work just received and for sale cheap. Merchants and others desiring it, can be furnished by the dozen.

THOS. W. ATKIN.

May 8, 1846.

RIO COFFEE,

10,000 pounds of best Rio coffee just received and at the lowest rates.

RANKIN & PULLIAM.

April 3, 1846.—tf. 293

Office of Literary Board,
APRIL, 4th, 1846.

At a meeting of the Board this day it was *Resolved*, That the sum of **Forty thousand Six hundred and twenty-two Dollars, 50-100,** ($40,622 50) in part of the nett income of the Fund for the support of Common Schools, during the current year, be now distributed among the Several Counties of the State, in proportion to their Federal Population.

W. H. W. COWLES, A. GRAHAM,
Prest. ex officio, Literary Board.

Plain and Fancy
BOOK AND JOB PRINTING
executed with Neatness, and at very
Reduced Prices,
AT THE OFFICE OF THE MESSENGER,
WHERE EVERY VARIETY OF
Letter Press Printing
WILL BE DONE AT THE SHORTEST NOTICE, AND ON THE MOST ACCOMMODATING TERMS.

ALSO

BLANKS, INVITATION CARDS, NAMES, ELECTION TICKETS, BLANK NOTES OF HAND, HAT TIPS, WAITER AND SADDLE TICKETS, GOODS BILLS, OR ALL SIZES, WAY BILLS, HORSE AND JACK BILLS, &c.,

PRINTED WITH NEATNESS AND DESPATCH

Books, Catalogues, Circulars, Manuals, Cards, Labels and Ball Tickets

Printed in superior style.

MANUFACTURED TIN-WARE

Of Superior quality, riveted and warranted not to leak. For sale either in small or large quantities,

RANKIN & PULLIAM.

April 3, 1846.

The Shoemakers.

By John G. Whittier.

Ho! workers of the old time styled
The gentle Craft of Leather!
Young brother of the ancient guild,
Stand forth once more together!
Call out again your long array,
In the olden merry manner!
Once more on gay St. Crispin's day
Fling out your blazoned banner!

Rap, rap upon the well worn stone
How falls the polished hammer!
Rap, rap! the measured sound has grown
A quick and merry clamor.
Now shape the sole; now deftly curl
The grassy vamp around it,
And bless the while the bright-eyed girl
Whose gentle fingers bound it!

For you along the Spanish Main
A hundred keels are ploughing:
For you the Indian on the plain
His lasso coils is throwing:
For you in deep glens with hemlock dark
The woodman's fire is lighting:
For you upon the oak's grey bark
The woodman's axe is smiting.

For you from Carolina's pine
The resin gum is stealing,
For you the blue-eyed Florentine
Her silken skein is reeling:
For you the shaggy goat-herd roams
His rugged Alpine ledges:
For you round Albyn's shepherd homes
Bloom England's thorny hedges!

The foremost still by day or night
On mosted mound or heather,
Where e'er the need of trampled right
Brought to king and peer together,
Where the free burghers from the wall
Defied the mail-clad master,
Than yours at Freedom's trumpet call,
No craftsmen rallied faster!

Let fopling's sneer, let fools deride,
Ye heed no idle scorner,
Free hands and hearts are still your pride,
And duty done your honor.
Ye dare to trust for honest fame
The jury time empannels,
And leave to truth each noble name
Which glorifies your annals.

Thy songs, Han Sach are living yet,
In strong and hearty German,
And Bloomfield's lay and Gifford's wit,
And the rare sense of Sherman;
Still from its book, a mystic seer,
The soul of Behmen teaches,
And England's prelacy still shakes to hear
Of Fox's leathern breeches.

The foot is yours; wherever it falls
It treads your work wrought leather,
On earthen floor in marble halls,
On carpet or on heather.
Still the sweetest chaunt is found
Of matron grace or vestal's,
As Hebe's foot here and there round
Among the old celestials!

Rap, rap! your stout and bloff brogan,
With footsteps slow and weary,
May wonder where the sky's blue span
Shuts down upon the Prairie.
Your slippers shine on Beauty's foot,
By Saratoga's fountain,
Or lead, like snow-flakes falling mute,
The dance on Catskill mountain!

The red brick to the mason's hand,
The brown earth to the tiller's
The shoe in yours shall wealth command
Like fairy Cinderella's!
As they who shunned the household maid,
Behold the crown upon her,
So all shall see your toil repaid
With hearth and home and honor!

Then let the toast be freely quaffed
In warm red and brimming:
"All honor to the good old craft,
Its merry men and women!"
Call out again your long array
In the old time pleasant manner;
Once more on gay St. Crispin's day
Fling out his blazoned banner!

Improved Mode of "Popping the Question."—A bashful lover, a short time since, not having the courage requisite for proposing direct, took up the young lady's cat, and said, "pussy, may I have your mistress?"—It was answered by the lady: who said, "say, yes, pussy."

To Make Blacking.—Put one gallon of vinegar into a stone jug, add one pound of ivory black, well pulverized, half a pound of loaf sugar; half an ounce of oil of viterol, and one ounce of sweet oil: incorporate the whole by stirring. This is a blacking of very great merit.

In a certain town, not more than fifty miles from Boston, as the clergyman was holding forth, in his usual drowsy manner, one of his aged hearers, probably influenced by the narcotic qualities of the discourse, fell into a doze. The preacher happening to use the words, *What is the price of all earthly pleasures?* the good old man, who kept a small store, thinking the inquiry respected some kind of merchandize, immediately answered, *Seven and sixpence a dozen, Sir, in cash, or eight shillings in barter.*

The Crops.—We are assured by our country friends, that there never was a better prospect for a plentiful grain harvest, than is now. Rain has been desirable; the indications are, that we will have it for a day or two.—*Camden Journal.*

ARGUMENT
OF
WILLIAM H. THOMAS,
IN SUPPORT OF
THE RIGHT OF THE CHEROKEE INDIANS
REMAINING IN
THE STATE OF NORTH CAROLINA
TO
THE LANDS GRANTED TO THEM IN FEE SIMPLE
BY THAT STATE AN INK
AND
SHOWING THAT THOSE LANDS WERE NOT CONVEYED TO
THE UNITED STATES UNDER THE TREATY OF 1835.
CONTAINING, ALSO,

A proposition to relinquish, for the benefit of the States of North Carolina and Tennessee, all their interest in those lands, on condition that an equitable portion of the moneys stipulated to be paid by the United States to the Cherokee people be paid to them.

So early as the year 1783, the State of North Carolina, while a sovereign State, with a view of preventing further intrusion upon the lands claimed by the Cherokee Indians within the limits of her charter, granted them the fee simple title; which grant, contained in the act of 1783, is in the following words:

"*And be it further enacted*, That the Cherokee Indians shall have and enjoy all that tract of land bounded as follows, to wit: Beginning on the Tennessee, where the southern boundary of this State intersects the same nearest the Chickamawgo towns, thence up the middle of the Tennessee and Holstein to the middle of French Broad river to the mouth of Big Pigeon river, thence up the same to the head thereof, thence along the dividing ridge between the waters of Pigeon river and Tuckasejah river to the southern boundary of this State; and that the lands contained within the aforesaid bounds shall be and are hereby *reserved* unto the said Cherokee Indians and their nation *forever*; anything herein to the contrary notwithstanding."—(See page 2.)

By the 8th article of the treaty of 1817, and the 2d article of the treaty of 1819, a reservation of 640 acres was granted to a Cherokee by the name of Eochella, which was located upon the lands ceded under the last mentioned treaty. The cession contained a part of the land included in the grant made by the State in 1783, as represented by a dotted line on the map annexed. Subsequently the State of North Carolina sold the lands that had been previously granted to Eochella, to Joseph Welch, who took forcible possession. An action was brought in the name of Eochella, for the recovery of the reservation, which was finally decided in his favor by the Supreme Court of the State. In that decision, which will be found in the 3d volume of Hawk's Reports, page 163, the court says: "By the act of 1783, ch. 185, it is declared that the Indians shall have and enjoy all the tract of land therein described, and that it is reserved to them and their nation forever. The effect of this grant was to vest the land in the nation in *fee simple*. It conveyed to them a definite and specific right, according to which they could no longer be considered as tenants at sufferance; but as holding under the faith of the State and the guaranty of the declaration of rights."

"It is true that no individual had a distinct portion alloted to him, which he might protect from aggressions, and on that account the legislature has made it penal to trespass on the land; but the right of the legislature to make the grant cannot be doubted; and it is not less clear that it must enure to the benefit of the tribe as long as they *subsist upon it*, and their *title* is not *surrendered* by their own consent.

"If this grant required confirmation, it has received it in the most ample manner by the treaty of Hopewell, (1785,) made under the authority of the United States, and by the treaty of Holstein, (1791,) by which the lands not ceded by the Cherokee nation are solemnly guaranteed to them."

"It is clear and indisputable, that by the act of 1783, and the construction which was subsequently given to it by the supreme court of the State, that the fee simple, as well as the usufructuary interest in the lands which are described in the recited grant, vested in the Indians from and after its date. The next inquiry is, how these lands became the exclusive property of that portion of the tribe that resided upon them. At the date of the grant referred to, the Cherokee tribe consisted of seven clans, which most probably were the descendants of the same number of families. These seven clans embraced about fifty towns or settlements, each of which was governed by a chief who was denominated the father of the town, and the union between the chiefs of the different towns extended no further than to objects in which all the tribes or clans were interested, such as declaring war, making peace, and concluding treaties. The Cherokees, in course of time, in consequence of occupying a high country, at and near the terminations of the Smoky mountain and Blue Ridge, and also a low country adjoining thereto in the valley of the Mississippi, became divided into two divisions, (one denominated the upper, and the other the lower towns,) which led to a division of the lands for the separate use of each portion of the nation, by the common consent of the tribes, and the approval of the President of the United States, as is shown by the recital of the transaction in the book of Indian treaties, page 209. It is there stated: "Whereas, in the autumn of the year one thousand eight hundred and eight, a deputation from the *upper* and *lower* Cherokee towns, duly authorized by their nation, went on to the city of Washington, the first named to declare to the President of the United States their anxious desire to engage in the pursuits of Agriculture and civilization in the country they occupied, and to make known to the President of the United States the impracticability of inducing the nation at large to do this, and to request the establishment of a *division line* between the upper and lower towns, so as to include all the waters of the Hiwassee river to the *upper town*.

"The deputies from the lower towns, to make known their desire to continue the hunter life, and also the scarcity of game where they now live, and under these circumstances their wish to remove across the Mississippi river on some vacant lands of the United States: And whereas the President of the United States, after maturely considering the petitions of both parties, on the ninth day of January, A. D. one thousand eight hundred and nine, including other subjects, answered these petitions as follows: 'The United States, my children, are the friends of both parties, and as far as can be reasonably done, they are willing to satisfy the wishes of both. Those who remain may be assured of our *patronage*, our *aid* and *good neighborhood*. Those who wish to remove are permitted to send an exploring party to reconnoitre the country on the waters of the Arkansas and White rivers.'"

Thus, a *permanent divisional* line was established along the *ridge* which divided the waters of the Hiwassee river from those of the Hightower. By this allotment the lands included in the grant made by the State of North Carolina, in the year of 1783, were set apart for the exclusive use and permanent residence of the Upper Towns, or North Carolina Indians.

The remaining question to be considered is, have the North Carolina Indians conveyed their interest in those lands to the United States? It is true that the State of North Carolina, acting upon a supposition that the lands she granted to the Indians, by the act of 1783, had been conveyed to the United States by the Treaty of 1835, surveyed and sold to her citizens most of the valuable lands included in her present limits, for near five hundred thousand dollars. It is also true that the State of Tennessee, acting upon a similar supposition, made sale of that portion of the land contained in the grant of 1783, which was included in her chartered limits; and it is probable that she received a larger sum than those in the State of North Carolina sold for. As the titles of the citizens, in both these States, to lands which they have purchased and improved, must depend upon the title of the United States as derived from the treaty of 1835, it is necessary to examine if the lands in question were, or were not, conveyed to the United States by the cession contained therein.

To determine upon that question, the following inquiries are necessary to be made. Did the Cherokees, who were parties to the treaty, possess any of the attributes of sovereignty, and as a body politic possessing these powers become a party to the treaty? Or did they, as private individuals in a state of *duresse*, sign the treaty for the benefit of themselves and a majority of the tribe who were similarly situated, who, under the circumstances, might come in and partake of its advantages? A majority of the tribe resided at that time in the lower town, within the chartered limits of the State of Georgia, where the treaty was concluded. But prior thereto, that State by the acts passed by her legislature, had extended her laws over the Cherokees, and not only annihilated their government, but, by the statutes referred to, prohibited them from assembling in council to enact laws, or to attempt to enforce those which had previously been enacted, making the latter a penal offence, punishable on conviction with confinement in the penitentiary. And at the time the treaty was concluded, a part of the Cherokees were in prison for violating those laws, and some of the signers to the treaty had been released from confinement but a short time. Not only were the Cherokees in Georgia, at the time the treaty was concluded, deprived of all their political rights, and subjected to the laws passed by the State, but by those laws their lands had been surveyed, and granted by the State to her citizens, as is shown by the 18th article of the treaty.

While it must be conceded that the Cherokees who were parties to the treaty acted only in the capacity of private individuals, and did not claim to possess any political power, it is equally true that they were the very best men in the nation, and, before their government ceased to exist, held important offices under it, and had as much right to claim to be chiefs as any Cherokees in that part of the nation.

John Ross and those associated with him, who claimed to be the constituted authorities of the nation, possessed no political power whatever, agreeably to the constitution and laws of the nation, even if they had remained in force; and Ross, and many of those who claimed to be chiefs, were citizens of the U. S., having become citizens under the treaty of 1819, and, by promising to remain permanently on the lands ceded to the United States, were given fee-simple titles to reservations which, in value, were much more than their share of the common property of the nation. Subsequently they sold the reservations they had promised to reside permanently on, and moved on the unsold lands of the nation, but after being made citizens of the United States, they could not expatriate themselves by removing into the nation within the limits of the United States; and at one time, John Ross, during the existence of the Cherokee government, was both chief of the nation and postmaster, holding the latter office under a commission received from the United States.

The official correspondence furnishes further proofs that the Cherokees, who concluded the treaty, admitted that the Cherokee government had prior to its conclusion, ceased to exist, and that the government of the United States had ceased to recognize any government among the Cherokees. In a letter signed by John Ridge and S. Watie, addressed to the commissioner who concluded the treaty on the part of the United States, (Rev. John F. Schermerhorn,) they say: "Previous to the extension of the laws of Georgia, Alabama, Tennessee, and North Carolina, over our nation, our government was elective according to a constitution. This *government ceased in* 1830, and no elections have been held since; and all the *members* of that *government, chiefs, members of Committee*, and *council*, became *private individuals*." (See Sen. Doc. No. 120, p. 529.)

John Ridge was probably as well informed as any man in the nation, and in his opinion, the chiefs that signed the treaty of 1835 were, from the time the laws of the States were extended over them, private individuals, and void of political power. As a further proof that the chiefs who signed the treaty, as well as the council that approved it, were at the time destitute of any government of their own, and subject to the laws of Georgia, Maj. Ridge and John Ridge, who have since fallen by the hands of assassins, in their letter to President Jackson, say: "The Georgia laws, which deny us our *oaths*, are thrown aside; and notwithstanding the *cries* of our people, and protestation of our innocence and peace, the lowest classes of the white people are flogging the Cherokees with *cow hides, hickories*, and *clubs*. We are not safe in our houses; our people are assailed by day and night by the rabble. Even justices of the peace and constables are concerned in this business. This barbarous treatment is not confined to men, but the *women are stripped* and *whipped* without mercy." (See Sen. Doc. No. 120, p. 608.)

In a letter to President Jackson, which bears date December 1, 1835, signed by Major Ridge, Elias Boudinot, (the latter also has since been murdered by assassin,) and ten other Cherokees, they say: "The undersigned chiefs, who are in favor of removing west, would address you as guardian of the Indians. At this crisis of our affairs, when *we have ceased to exist in our national capacity*, we can look to no one to protect the rights of the poorer class of our people, and save them from the miseries which seem to await them from utter extermination, except our political father to whom we trust we can look with confidence for aid and protection." (See Sen. Doc. 120, p. 490.)

Not only did the Cherokees, who, as private individuals, became a party to the treaty of 1835, regard their government at an end, and that the tribe had ceased to exist in its national capacity; but the President of the United States seems to have entertained the same opinion. The Commissioners of Indian Affairs, in a letter to John Ross and others, says: "The President has ceased to recognise any *existing government* among the Cherokees." (See Sen. Doc. No. 120, p. 132.)

Having shown that the Cherokee nation had ceased to exist prior to the conclusion of the treaty, and the Cherokees who were a party to it acted only in the capacity of private individuals, who had become subjects of the State by the extension of her laws, by applying a few of the principles laid down in Vattel's law of nations, it will be seen that the Cherokees of Georgia were incapable of making any treaty or entering into any other contract with the government of the United States whereby they could have conveyed the lands granted to the North Carolina Cherokees by the act of 1783.

Vattel defines a nation to be "a body politic or society of men united together for the purpose of promoting their mutual safety and advantage, by their combined strength." * * "And that it governs itself by its own laws."

"But a *people that has passed under the dominion* of another is no longer a State, and can no longer avail itself directly of the law of nations." (See chapter 1, page 2.) "The *preservation* of a nation consists in the duration of the political associaiton by which it is formed. If a period is put to this association, the nation or State no longer subsists, though the individuals that compose it still subsist. In case of real subjugation to a foreign power, the citizens who do not approve this change are not obliged to submit to it; they ought to be permitted to sell their effects and retire elsewhere. For my having entered into a *society* does not oblige me to follow *its fate*, when it *dissolves itself*, in order to submit to a foreign *dominion*. I submitted to the society as it then was, to live in that society as the member of a sovereign *State*, and not in *another*; I am bound to obey it while it *remains a political society*; but when *it divests itself* of that quality in order to receive *its laws of another State*, it breaks the band of *union* between its *members*, and *releases them from foreign obligations*." (See section 195, page 94.)

It has been shown in the preceding that the Cherokee Indians, at the time the treaty was concluded in 1835, had, by passing under the *laws of the States, ceased to exist as a nation*, and agreeably to the laws of nations, were incapable of making any treaty binding upon the individuals of which the nation had been composed without their *consent*.

It has never been contended that the Cherokees of North Carolina were present, or even represented, at the council held by the Cherokees of Georgia, at the time the treaty was concluded. This fact is established by the report of the commissioner who negotiated it on the part of the United States. In his report to the Secretary of War, bearing date the 30th of December, the next day after the treaty was concluded, he says "the chiefs of the North Carolina Indians did not attend here"—at the place the treaty was concluded.—(See Senate document No. 120, page 495.)

The question therefore resolves itself into this: could the Cherokees of Georgia, by an agreement entered into while in a state of *duresse*, acting as private individuals or denizens of the State, convey to the United States the lands owned and occupied by the Cherokees in North Carolina, which had been granted to them by the State, and in which they held the fee simple title, not as derived from their tribe, but, as the supreme court of the State has decided, under the guaranty of the State, without their consent, and without even making mention in the conveyance of any intention to convey the lands which had become the private property of the North Carolina Indians? The cession of lands, as contained in the treaty of 1835, is in the following words: "Art. 1. The Cherokee nation hereby cede, relinquish, and convey to the United States all the lands owned, claimed, or possessed by them east of the Mississipi river."

From the indefinite wording of the cession it is obvious that the commissioner acting on the part of the United States did not know that the State of North Carolina had granted the fee simple title to the lands within her limits to the Cherokees residing upon them; and supposing that the only interest, the nation had in the lands to be ceded was the usufructuary interest, made use of the same words as are usually made use of in treaties with Indian tribes to convey an interest of that description. And if he had known the nature of the title by which the North Carolina Indians held their lands, he must have known that the words used in the cession conveyed nothing more, even if the Cherokees had possessed the power competent to treat, than the usufructuary interest owned by the tribe.—