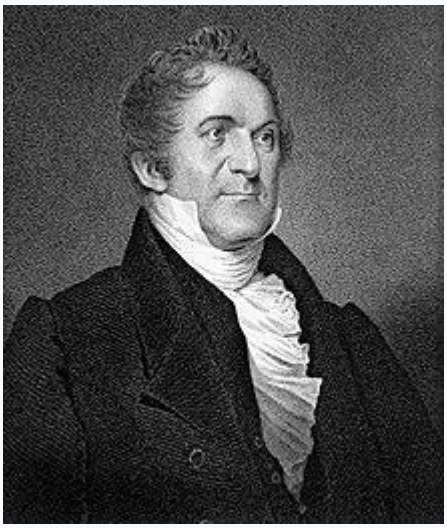
Opinion on the right of the state of Georgia to extend her laws over the Cherokee nation / by William Wirt

William Wirt, attorney for the Cherokee Nation and U.S. Attorney General (1817-1829), sets forth an argument for the right of the Cherokees to their lands east of the Mississippi River and against the extension of the laws of Georgia over the Cherokee territory. Wirt outlines the history of negotiations between the U.S. and the Cherokee Nation to establish the fact that the Cherokee Nation is a sovereign state with its own laws and that it is not within the jurisdiction of the State of Georgia. Wirt goes on to say that Georgia's actions are unconstitutional and in violation of solemn treaties made by the United States.

William Wirt (Attorney General)

From Wikipedia, the free encyclopedia

William Wirt



9th United States Attorney General

In office

November 13, 1817 – March 4, 1829

President	James Monroe
	John Quincy Adams
Preceded by	Richard Rush
Succeeded by	John M. Berrien

United States Attorney for the District of Virginia

In office

1816–1817

President	James Madison
	James Monroe
Preceded by	George Hay
Succeeded by	Robert Stanard

Member of the Virginia House of Delegates from Richmond City

In office

December 5, 1808 – December 4, 1809

Preceded by	John Foushee
Succeeded by	Andrew Stevenson

6th Clerk of the Virginia House of Delegates	
In office	
December 2, 1799 – December 6, 1802	
Preceded by	John Stewart
Succeeded by	James Pleasants
Personal details	
Born	November 8, 1772 Bladensburg, Maryland, U.S.
Died	February 18, 1834 (aged 61) Washington, D.C., U.S.
Political party	Democratic-Republican (Before 1825) Anti-Masonic (1832–1834)
Spouse(s)	Mildred Gilmer (Deceased 1799) Elizabeth Washington Gamble
Signature	

William Wirt (November 8, 1772 – February 18, 1834) was an American author and statesman who is credited with turning the position of United States Attorney General into one of influence. He was the longest serving Attorney General in U.S. history. He was also the Anti-Masonic nominee for president in the 1832 election.

Wirt grew up in Maryland but pursued a legal career in Virginia, passing the Virginia bar in 1792. After holding various positions, he served as the prosecutor in Aaron Burr's trial for treason. He won election to the Virginia House of Delegates in 1808 and was appointed as a United States Attorney in 1816. The following year, President James Monroe appointed him to the position of United States Attorney General. Wirt remained in that office for the next twelve years, serving under Monroe and John Quincy Adams. He continued his law career after leaving office, representing the Cherokee in *Cherokee Nation v. Georgia*.

Though Wirt was himself a former Freemason, the Anti-Masonic Party nominated him for president in 1832. Wirt did not actively campaign for office and refused to publicly speak against Masonry. Nonetheless, the ticket of Wirt and Amos Ellmaker carried the state of Vermont, becoming the first third party presidential ticket to win a state. After the election, Wirt continued to practice law until his death in 1834. Wirt County, West Virginia, is named in Wirt's honor.

Contents

Biography[edit]

William Wirt was born in Bladensburg, Maryland to a German mother, Henrietta, and a Swiss German father, Jacob Wirt.[1] Both of his parents died before he was eight years old and Jasper Wirt, his uncle, became his guardian. Between his seventh and his eleventh year Wirt was sent to several classical schools and finally to one kept by the Reverend James Hunt in Montgomery County, where he received over the course of four years the chief part of his education. For two years he boarded with Hunt, in whose library he spent much of his time, reading with a keen and indiscriminate appetite. In his fifteenth year the school was disbanded, and his inheritance nearly exhausted.[2]

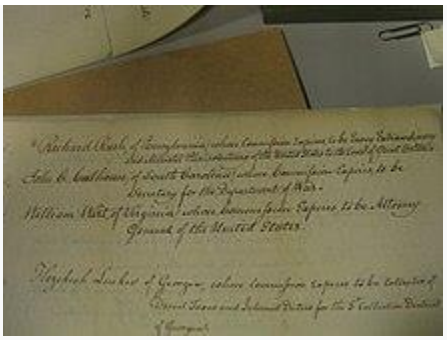
Ninian Edwards (later governor of Illinois) had been Wirt's schoolmate, and Edwards's father, Benjamin Edwards (later a member of Congress from Maryland), thought Wirt had more than ordinary natural ability and invited him to reside with his family as tutor to Ninian and two nephews, offering him also the use of his library for his own studies. Wirt accepted the offer and stayed twenty months, teaching, pursuing his own classical and historical studies, writing, and preparing for the bar.[2]

Career[edit]

Wirt was admitted to the Virginia bar in 1792, and he began practice at Culpeper Courthouse. Wirt had the advantages of a vigorous constitution and a good carriage, but the drawbacks of meager legal equipment, constitutional shyness, and brusque and indistinct speech.[2][3] In 1795, he married Mildred, daughter of Dr. George Gilmer, and moved to Pen Park, where Gilmer lived, near Charlottesville. There he made the acquaintance of many persons of eminence, including Thomas Jefferson and James Monroe. For a time, Wirt took advantage of the hospitality of the country gentlemen and

the convivial habits of the members of the bar so that he was regarded by other attorneys as a *bon vivant,* a fascinating, cheerful and lively, companion, rather than as an ambitious lawyer.[2]

In 1799 his wife died, and he moved to Richmond, where he became clerk of the Virginia House of Delegates, then chancellor of the Eastern District of Virginia, resigning after six months. In 1802, he married Elizabeth Washington Gamble, the daughter of Colonel Robert Gamble of Richmond. In the winter of 1803/04, Wirt moved to Norfolk, but in 1806, wishing for a wider field of practice, returned to Richmond.[2]



Wirt's Attorney General nomination

In 1807, President Thomas Jefferson asked him to be the prosecutor in Aaron Burr's trial for treason.[4] His principal speech, four hours in length, was characterized by eloquent appeal, polished wit, and logical reasoning. It greatly extended his fame. The passage in which he depicted in glowing colors the home of Harman Blennerhassett and "the wife of his bosom, whom he lately permitted not the winds of summer 'to visit too roughly'", as "shivering at midnight on the wintry banks of the Ohio, and mingling her tears with the torrents that froze as they fell", was for many years a favorite piece for academic declamation.[2] Wirt was nicknamed the "Whip Syllabub Genius" by his enemies for the frothy, over-the-top nature of his oratory.[5]

In 1808, Wirt was elected to the Virginia House of Delegates. In 1816 he was appointed U.S. Attorney for the District of Virginia,[6] and in 1817 President James Monroe named him the ninth Attorney General of the United States, a position he held for 12 years, through the administration of John Quincy Adams, until 1829. William Wirt has the record for the longest tenure in history of any U.S. attorney general.[3]

In 1824, Attorney General Wirt argued for the United States against Daniel Webster in *Gibbons v. Ogden* that the federal patent laws preempted New York State's patent grant to steamboat inventor Robert Fulton's successor, Aaron Ogden, of the exclusive right to operate a steamboat between New York and New Jersey in the Hudson River. Wirt argued "that a power in the States to grant exclusive patents, is utterly inconsistent with the power given to the national government to grant such exclusive patents: and hence, that the power given to Congress is one which is exclusive from its nature."[7] Although the *Gibbons* Court declined to decide the question, 140 years later the Supreme Court confirmed Wirt's view in *Sears, Roebuck & Co. v. Stiffel Co.*[8]

In June 1830, a delegation of Cherokee led by Chief John Ross selected Wirt on the urging of Senators Webster and Frelinghuysen to defend Cherokee rights before the U.S. Supreme Court. Wirt argued, in *Cherokee Nation v. Georgia*, that the Cherokee Nation was "a *foreign nation* in the sense of our constitution and law" and was therefore not subject to Georgia's jurisdiction. Wirt asked the Supreme Court to void all Georgia laws extended over Cherokee territory on the grounds that they violated the U.S. Constitution, United States–Cherokee treaties, and United States intercourse laws. Although the Court determined that it did not have original jurisdiction in this case, the Court held open the possibility that it yet might rule in favor of the Cherokee. Wirt therefore waited for a test case to again resolve the constitutionality of the laws of Georgia. On March 1, 1831, Georgia passed a law aimed at evicting missionaries, who were perceived as encouraging the Cherokee resistance to removal from Cherokee lands. The American Board of Commissioners for Foreign Missions, an interdenominational missionary organization, hired Wirt to challenge the new law. On March 3, 1832, the decision in *Worcester v. Georgia*, authored by Chief Justice John Marshall, held that the Cherokee Nation was "a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves or in conformity with treaties and with the acts of Congress".

Societies[edit]

During the 1820s, Wirt was a member of the Columbian Institute for the Promotion of Arts and Sciences, which included as members former presidents Andrew Jackson and John Quincy Adams and many prominent men of the day, including well-known representatives of the military, government service, medical and other professions.[9]

Wirt was also an honorary member of the American Whig–Cliosophic Society[10] and associated with the Delphian Club.[11]

Later life and Presidential run[edit]

After leaving his position as attorney general, Wirt settled in Baltimore, Maryland. He became a candidate for President in 1832, nominated by the Anti-Masonic Party. This party held the first ever national nominating convention in the U.S history on September 11, 1830 in Philadelphia establishing the tradition. The date was chosen to commemorate the fourth anniversary of the Morgan Affair. However, no candidate was agreed upon.[12]:54 The actual nomination occurred a year later during the second convention in Baltimore.[13] On September 28, 1831, Wirt became a presidential candidate after the fifth ballot.[12]:61 Amos Ellmaker became his running mate. Wirt is the only person from Maryland to ever become a presidential candidate who won any electoral votes.[14]

Wirt was, in fact, a former Freemason.[12]:63 He had taken the first two degrees of Freemasonry in Jerusalem Lodge #54 Richmond, Virginia becoming a *fellow craft*, or second degree, mason.[15] Wirt wrote in his acceptance letter to the nominating convention that he found Freemasonry unobjectionable and that in his experience many

Masons were "intelligent men of high and honourable character" who would never choose Freemasonry above "their duties to their God and country".[16]

Historian William Vaughn wrote, "Wirt was possibly the most reluctant and most unwilling presidential candidate ever nominated by an American party."[12]:65 After being selected Wirt started to regret his nomination and distanced himself from actual campaigning. He admitted later, "In the canvass I took no part, not even by writing private letters, which, on the contrary, I refused to answer whenever such answers could be interpreted into canvassing for office."[12]:66 In private conversations Wirt criticized Masonry for alleged intent to create international order ruled from Europe, but refused all Antimasonic attempts to make his sentiments public.[12]:66 He hoped for enthusiastic national support to an electoral alliance between Anti-Masons and National Republicans that would overpower the Jacksonian Democrats. When his expectations did not materialize, he wrote in frustration about his presidential aspirations: "What the use ... it neither breaks my leg nor picks my pocket."[12]:67 In the election, Wirt carried Vermont with seven electoral votes, becoming the first candidate of an organized third party to carry a state, and he remains the only presidential candidate so successful who came from Maryland.[14] When *The Providence American* newspaper suggested that Wirt could run again in 1836, he quickly declined.[12]:69

In 1833, Wirt became involved with his son-in-law in establishing a German immigrant colony in Florida on lands that he bought but never inspected personally; this business venture failed.[17]

Wirt practiced law until his death. He fell sick on February 8, 1834, in Washington, D.C., where he attended the proceedings of the Supreme Court. His biographer John P. Kennedy wrote that the early diagnosis of a cold was followed by identifying the symptoms of erysipelas or St. Anthony's fire.[18]:366–367 He died on February 18, 1834.

Wirt's last rites were attended by President Jackson and members of his cabinet; John Quincy Adams read eulogy address in the House of Representatives.[19] William Wirt was buried in Congressional Cemetery in Washington, D.C.

The house he occupied in Richmond from 1816 to 1818, known as the Hancock-Wirt-Caskie House, was listed on the National Register of Historic Places in 1970.[20][21][22]

Published works[edit]

William Wirt Monument, Congressional Cemetery, Washington D.C.

Wirt's earliest work was *Letters of the British Spy*, which he first contributed to the Richmond *Argus* in 1803, and which won immediate popularity. The letters are chiefly studies of eloquence and eloquent men, are written in a vivid and luxuriant style, and may be regarded, in spite of the exceptional excellence of "The Blind Preacher", as rather a prophecy of literary skill than its fulfilment. They were soon afterward issued in book form (Richmond, 1803; 10th ed., with a biographical sketch of the author by Peter H. Cruse, New York, 1832).[2]

In 1808 Wirt wrote for the Richmond *Enquirer* essays entitled *The Rainbow*, and in 1810, with Dabney Carr, George Tucker, and others, a series of didactic and ethical essays, entitled *The Old Bachelor*, which, collected, passed through several editions (2 vols., 1812). These papers treat of female education, Virginian manners, the fine arts, and especially oratory. An essay from this collection, "Eloquence of the Pulpit", a vigorous and passionate protest against coldness in this genre, has been singled out for praise.[2]

In October 1826, Wirt delivered before the citizens of Washington a discourse on the lives and characters of the ex-presidents John Adams and Thomas Jefferson, who had died on 4 July of the same year (Washington, 1826). The London *Quarterly Review*, in a paper on American oratory several years afterward, pronounced this discourse "the best which this remarkable coincidence has called forth". In 1830 Wirt delivered an address to the literary societies of Rutgers College, which, after its publication by the students (New Brunswick, 1830), was republished in England, and translated into French and German.[2]

His other publications are:

- *The Two Principal Arguments in the Trial of Aaron Burr* (Richmond, 1808)
- *Sketches of the Life and Character of Patrick Henry* (Philadelphia, 1817)[23] This work has been severely criticized both for its hero worship and its style, the subject of the biography having been regarded by many as a creation of Wirt rather than Patrick Henry.[2] The book contained the supposed text of some of Henry's speeches, many of which had never been published. Some historians have since speculated that some of Henry's phrases that have since become famous, such as "Give me Liberty, or give me Death!", were fabricated by Wirt for this book. Even Wirt's contemporary Thomas Jefferson shelved his copy of the biography under fiction.[3]
- *Address on the Triumph of Liberty in France* (Baltimore, 1830)
- *Letters by John Q. Adams and William Wirt to the Anti-Masonic Committee for York County* (Boston, 1831)

Wirt had the distinction of being regarded for many years as the chief man of letters in the South.[3]

https://en.wikipedia.org/wiki/William_Wirt_(Attorney_General)

ATTORNEY GENERAL: WILLIAM WIRT

Artist:
Charles Bird King
Download image
William Wirt
Ninth Attorney General 1817-1829

Born in Bladensburg, Maryland, on November 8, 1772, **Wirt** was educated in private schools, and for a time worked as a private tutor. He studied law and was admitted to the bar in 1792. He practiced law privately for a few years, became clerk of the Virginia House of Delegates in 1800, and in 1802 was chancellor of the Eastern District of Virginia. In 1807, President Jefferson appointed him prosecuting attorney in the trial of Aaron Burr. President Monroe appointed Wirt Attorney General in 1817. He also served in the cabinet of President John Quincy Adams until 1829. At that time he moved to Baltimore and practiced law until his death on February 18, 1834.

Wirt wrote several books during his life, including *Letters of a British Spy* (1803) and *Sketches of the Life and Character of Patrick Henry* (1817).

About the Artist: Charles Bird King (1785-1862)
King was born in Newport, Rhode Island. He studied under Edward Savage in New York City, and then in London under Benjamin West from 1805 to 1812. Returning to America, he spent several years in Philadelphia and Baltimore before settling in the District of Columbia where he made his home until his death. King is especially noted for his portraits of American Indians. In 1857 King painted Attorney General Wirt's portrait.

Worcester v. Georgia

From Wikipedia, the free encyclopedia

Worcester v. Georgia	
Supreme Court of the United States	
Argued February 20, 1832 **Decided March 3, 1832**	
Full case name	*Samuel S. Worcester v. State of Georgia*
Citations	31 U.S. 515 (*more*) 6 Pet. 515; 8 L. Ed. 483
Case history	
Prior	Plaintiff convicted in Gwinnett County, Georgia by the Georgia Superior Court (September 15, 1831)
Subsequent	None
Holding	
Worcester's conviction is void because states have no criminal jurisdiction in Indian Country.	
Court membership	
Chief Justice	

John Marshall	
Associate Justices	
William Johnson · Gabriel Duvall Joseph Story · Smith Thompson John McLean · Henry Baldwin	
Case opinions	
Majority	Marshall, joined by Johnson, Duvall, Story, Thompson
Concurrence	McLean
Dissent	Baldwin
Laws applied	
U.S. Const. art. I	

Worcester v. Georgia, 31 U.S. (6 Pet.) 515 (1832), was a landmark case in which the United States Supreme Court vacated the conviction of Samuel Worcester and held that the Georgia criminal statute that prohibited non-Native Americans from being present on Native American lands without a license from the state was unconstitutional.

The opinion is most famous for its *dicta*, which laid out the relationship between tribes and the state and federal governments. It is considered to have built the foundations of the doctrine of tribal sovereignty in the United States.

Contents

Background[edit]

Samuel Austin Worcester was a missionary to the Cherokee, translator of the Bible, printer, and defender of the Cherokee's sovereignty. He collaborated with Elias

Boudinot in the American Southeast to establish the *Cherokee Phoenix*, the first Native American newspaper.

During this period, the westward push of European Americans/European-American settlers from coastal areas was continually encroaching on Cherokee territory, even after they had made some land cessions to the US government. With the help of Worcester and his sponsor, the American Board, they made a plan to fight the encroachment by using the courts. They wanted to take a case to the U.S. Supreme Court to define the relationship between the federal and state governments, and establish the sovereignty of the Cherokee nation. Hiring William Wirt, a former U.S. Attorney General, the Cherokee argued their position before the U.S. Supreme Court in *Georgia v. Tassel* (the court granted a writ of error for a Cherokee convicted in a Georgia court for a murder occurring in Cherokee territory, though the state refused to accept the writ) and *Cherokee Nation v. Georgia* (1831) (the court dismissed this on technical grounds for lack of jurisdiction).[1] In writing the majority opinion, Chief Justice Marshall described the Cherokee Nation as a "domestic dependent nation" with no rights binding on a state.[2]

Worcester and eleven other missionaries met and published a resolution in protest of an 1830 Georgia law prohibiting all white men from living on Native American land without a state license.[2] While the state law was an effort to restrict white settlement on Cherokee territory, Worcester reasoned that obeying the law would, in effect, be surrendering the sovereignty of the Cherokee Nation to manage their own territory. Once the law had taken effect, Governor George Rockingham Gilmer ordered the militia to arrest Worcester and the others who signed the document and refused to get a license.[1]

After two series of trials, all eleven men were convicted and sentenced to four years of hard labor at the state penitentiary in Milledgeville. Nine accepted pardons, but Worcester and Elizur Butler declined their pardons, so the Cherokee could take the case to the Supreme Court. William Wirt argued the case, but Georgia refused to have a legal counsel represent it, because the state believed the Supreme Court did not have authority to hear the case.[3]

Decision[edit]

Chief Justice John Marshall laid out in this opinion that the relationship between the Indian Nations and the United States is that of nations. He reasoned that the United States, in the character of the federal government, inherited the legal rights of The Crown. Those rights, he stated, included the sole right to negotiate with the Indian nations of North America, to the exclusion of all other European powers. This did not include the rights of possession to their land or political dominion over their laws. He acknowledged that the exercise of conquest and purchase can give political dominion, but those are in the hands of the federal government, and individual states had no authority in American Indian affairs. Georgia's statute was therefore invalid.

Marshall's language in *Worcester* may have been motivated by his regret that his earlier opinions in *Fletcher v. Peck* and *Johnson v. M'Intosh* had been used as a justification for Georgia's actions. Joseph Story considered it similarly, writing in a letter to his wife dated March 4, 1832: "Thanks be to God, the Court can wash their hands clean of the iniquity of oppressing the Indians and disregarding their rights."[4]

Enforcement[edit]

Samuel Worcester

In a popular quotation that is believed to be apocryphal, President Andrew Jackson reportedly responded: "John Marshall has made his decision; now let him enforce it!"[5][6] This quotation first appeared twenty years after Jackson had died, in newspaper publisher Horace Greeley's 1865 history of the U.S. Civil War, *The American Conflict*.[6] It was, however, reported in the press in March 1832 that Jackson was unlikely to aid in carrying out the court's decision if his assistance were to be requested.[7] In an April 1832 letter to John Coffee, Jackson wrote that "the decision of the Supreme Court has fell still born, and they find that they cannot coerce Georgia to yield to its mandate."[5][8] In a letter in March 1832, Virginia politician David Campbell reported a private conversation in which Jackson had "sportively" suggested calling on the Massachusetts state militia to enforce the order if the Supreme Court requested he intervene, because Jackson believed Northern partisans had brought about the court's ruling.[8]

The Court did not ask federal marshals to carry out the decision.[9] *Worcester* thus imposed no obligations on Jackson; there was nothing for him to enforce.[10][11] Under the Judiciary Act of 1789, Supreme Court cases were to be remanded back down to the lower court for final execution of the Supreme Court's judgment. The Supreme Court could only execute the final judgment in cases where the lower court failed to act on the Supreme Court's directive.[12] Shortly after the Supreme Court's ruling had been issued in

March 1832, the court recessed for the term, and would not convene again for the following term until January 1833.[13][14]

The Supreme Court's March 3, 1832, ruling ordered that Samuel Worcester and Elizur Butler be freed from prison.[15] On March 17, Worcester's lawyers petitioned the Georgia court to release Worcester, but the court refused.[15] Over the following months, Worcester's lawyers petitioned the newly elected governor of Georgia, Wilson Lumpkin, to offer an unconditional pardon, but Lumpkin declined on the basis that the federal government was overstepping its authority.[16] At the same time, the federal government, under Secretary of War Lewis Cass, began an intensive campaign to secure a removal treaty with the Cherokee nation, which would render the Supreme Court decision and Worcester's continued political imprisonment inconsequential.[17] On November 6, Lumpkin delivered his annual message to the Georgia state legislature, announcing he would continue to resist the Supreme Court's decision:

"The Supreme Court of the United States . . . have, by their decision, attempted to overthrow the essential jurisdiction of the State, in criminal cases . . . I have, however, been prepared to meet this usurpation of Federal power with the most prompt and determined resistance."[18][15]

Wilson Lumpkin, Governor of Georgia, 1831-35

Eighteen days later, on November 24, the state of South Carolina issued an Ordinance of Nullification, a separate attempt to defy federal authority.[15] This began a series of events known as the Nullification Crisis. In an effort to isolate Georgia from South Carolina, the Jackson administration changed course in their approach to the *Worcester* decision. Secretary of War Lewis Cass, U.S. Senator John Forsyth of Georgia, incoming Vice-President Martin Van Buren, and Van Buren's political allies of the Albany Regency began to lobby Lumpkin to offer a pardon, citing the probability that a removal treaty with the Cherokees could be achieved once Worcester and Butler were released from prison.[19] To sustain his states' rights position, Lumpkin stipulated that Worcester and Butler had to petition for the pardon with an admission they had violated state law. The two missionaries at first refused, because the Supreme Court decision

had ruled they had not broken any law. The two decided to continue their appeal once the Supreme Court convened in early 1833.[20]

The national situation began to deteriorate in December. On December 8, Andrew Jackson issued a Nullification Proclamation, denouncing nullification in South Carolina, declaring secession to be unconstitutional, and proclaiming the United States government would resort to force if South Carolina did not back down.[21][22] Further entreaties by Georgia politicians and representatives of the federal government convinced Worcester and Butler of the risk to the Cherokee nation if Georgia were to join South Carolina's attempt at secession. Worcester and Butler began to reconsider their appeal to the Supreme Court.[23]

On December 22, Georgia repealed the law that had put Worcester and Butler in prison, allowing them to petition for a pardon without having to take an oath to leave the state of Georgia or Cherokee land.[24] On January 8, 1833, the missionaries petitioned for their pardon, but it did not contain an admission they had broken state law, and Lumpkin believed its wording was insulting to the state of Georgia. Representatives for both sides negotiated for a new letter to be drafted by the missionaries, which was delivered to Lumpkin the following day. In the final letter, Worcester and Butler appealed to the "magnanimity of the State" of Georgia to end their prison sentences.[25] On January 14, Lumpkin issued a general proclamation,[26] not a formal pardon.[27] Worcester and Butler were freed from prison.[28]

Two days later, on January 16, President Andrew Jackson sent a message to Congress requesting the military power to put down the South Carolina insurrection. This request would be granted in the form of the Force Bill.[28] Worcester and Butler were criticized by supporters of the Nullification effort, accusing them of aiding Jackson's effort to inaugurate war against South Carolina.[29]

On January 19, Worcester and Butler arrived back at New Echota, the capital of the Cherokee Nation.[30] In February, they sent a letter to the *Missionary Herald*, explaining that their abandonment of the Supreme Court case was "not . . . from any change in our views, but on account of changing circumstances".[31]

Continue to the next page:

Supreme Court Rulings

THE CASE

OF

THE CHEROKEE NATION

against

THE STATE OF GEORGIA;

ARGUED AND DETERMINED AT

THE SUPREME COURT OF THE UNITED STATES,

JANUARY TERM 1831.

WITH

AN APPENDIX,

Containing the Opinion of Chancellor Kent on the Case; the Treaties between the United States and the Cherokee Indians; the Act of Congress of 1802, entitled 'An Act to regulate intercourse with the Indian tribes, &c.'; and the Laws of Georgia relative to the country occupied by the Cherokee Indians, within the boundary of that State.

BY RICHARD PETERS,
COUNSELLOR AT LAW.

Philadelphia:
JOHN GRIGG, 9 NORTH FOURTH STREET.
1831.

Cherokee Nation v. Georgia (1831)

The Cherokee Nation filed suit against Georgia, seeking a federal injunction against laws passed by the State. In December of 1828, the State of Georgia passed a set of laws that violated the rights of Cherokee people on their land. The Cherokee petitioners, including John Ross and former attorney general William Wirt, claimed that the Georgia laws "go directly to annihilate the Cherokees as a political society." (3) Wirt argued before the Supreme Court that the Cherokee Nation was a "Separate Foreign Nation" under the U.S Constitution and therefore, was not to be subjected to the Georgia laws.

The Supreme Court heard the case but did not rule based on the merits. Instead, determined that the Cherokee did not possess standing. Chief Justice Marshall wrote the majority opinion claiming that Article III of the Constitution does not identify Native Americans to be a foreign power. He specifically writes, "Their relation to the United States resembles that of a ward to his guardian. They look to our government for protection; rely upon its kindness and its power; appeal to it for relief to their wants' and address the President as their great father. They and their country are considered by foreign nations, as well as by ourselves, as being so completely under the sovereignty and dominion of the United States that any attempt to acquire their lands or to form a political connection with them would be considered by all as an invasion of our territory and an act of hostility" (3). The Cherokee Nation's injunction is denied. However, the Supreme Court would change its opinion the following year.

Worcester v. Georgia

In 1830, the state of Georgia passed a law that prohibited white men from living on Native American land without a license. Samuel Worcester, a white missionary, violated the law and was arrested by the state. He was then sentenced to four years of labor inside a penitentiary. William Wirt again argued the case in front of the Supreme Court. Worcester claimed that Georgia did not have the authority to extend its laws and regulations into Cherokee land; that the Constitution gave Congress that power.

The Court held that the state of Georgia did not have the right to regulate the "intercourse of citizens of its state and the Cherokee Nation" (4). Chief Justice Marshall wrote the majority opinion of the Court. In stark contrast from his opinion in *Cherokee Nation v. Georgia,* Marshall identifies the Cherokee as a sovereign nation. He writes, "the Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights as the undisputed possessors of the soil." (4) And that despite being under the protection of the United States, "protection does not imply the destruction of the protected." (4) Chief Justice Marshall concludes his opinion by asserting that, "The Cherokee Nation, then, is a distinct community occupying its own territory…in which the laws of Georgia can have no force, and which the citizens of Georgia have no right to enter but with the assent of the Cherokees themselves, or in conformity with treaties and with the acts of Congress." (4) This opinion, however, is essentially ignored by the state of Georgia and President Jackson. Georgia legislature continues to pass laws that targeted the Cherokee and other tribes. In 1838, in spite of the Supreme Court's ruling, the Cherokee are forced from their land and relocated west.

http://projects.leadr.msu.edu/youngamerica/exhibits/show/cherokeenation/scotusrulings