

Connelly
vs.
Woolrich and
Johnson et al.

that of England, at these two trading posts or establishments respectively, yet, will it be contended that the territorial rights, political organization such as it was, or the laws and usages of the Indian tribes, were abrogated—that they ceased to exist when these two European nations began to trade with the aboriginal occupants? In my opinion, it is beyond controversy that they did not—that so far from being abolished, they were left in full force, and were not even modified in the slightest degree in regard to the civil rights of the natives. As bearing upon this point, I cannot do better than to cite the decision of a learned and august tribunal—the Supreme Court of the United States. In the celebrated case of *Worcester against the State of Georgia*, (6th Peters Reports, pages 515–542) Chief Justice Marshall—perhaps one of the greatest lawyers of our times—delivering the judgment of the Court, said:

“America, separated from Europe by a wide ocean, was inhabited by a distinct people, divided into separate nations, independent of each other and of the rest of the world, having institutions of their own, and governing themselves by their own laws. It is difficult to comprehend the proposition, that the inhabitants of either quarter of the globe could have rightful original claims of dominion over the inhabitants of the other, or over the lands they occupied; or that the discovery of either by the other should give the discoverer rights in the country discovered, which annulled the pre-existing rights of its ancient possessors.

“After lying concealed for a series of ages, the enterprise of Europe, guided by nautical science, conducted some of her adventurous sons into this western world. They found it in possession of a people who had made small progress in agriculture or manufactures, and whose general employment was war, hunting and fishing.

“Did these adventurers, by sailing along the coast, and occasionally landing on it, acquire for the several governments to whom they belonged, or by whom they were commissioned, a rightful property in the soil, from the Atlantic to the Pacific; or rightful dominion over the numerous people who occupied it? Or has nature, or the great Creator of all things, conferred these rights over hunters and fishermen, on agriculturists and manufacturers?

“But power, war, conquest, give rights, which, after possession, are conceded by the world; and which can never be controverted by those on whom they descend. We proceed, then, to the actual state of things, having glanced at their origin, because holding it in our recollection might shed some light on existing pretensions.

“The great maritime powers of Europe discovered and visited different parts of this continent at nearly the same time. The object was too immense for any of them to grasp the whole; and the claimants were too powerful to submit to the exclusive or unreasonable pretensions of any single potentate. To avoid bloody conflicts, which might terminate disastrously to all, it was necessary for the nations of Europe to establish some principle which all would acknowledge, and which should decide their respective rights as between themselves. This principle, suggested by the actual state of things, was, ‘that discovery gave title to the government by whose subjects or by whose authority it was