

peculiarly cautious in the first exercise of the treaty-making power ; and having ascertained, by a minute comparison, that the important articles of the treaty of Holston, executed less than a year afterwards, are a mere transcript of the first treaty, I proceed now to inquire, *What is the meaning of the treaty of Holston?*

The title and preamble were quoted in my last number. The title begins thus : "*A treaty of peace and friendship.*" What is a treaty ? It is a compact between independent communities, each party acting through the medium of its government. No instrument, which does not come within this definition, can be sent to the Senate of the United States, to be acted upon as within the scope of the treaty-making power.

If the agents of the United States purchase land for a public object, such a purchase is not a treaty. If the State of Virginia, on the application of the United States, cedes a piece of land for a navy yard, or a fort, a compact of this sort is not a treaty. If the state of Georgia cedes to the United States all its claim to territory, enough for two large new states, and the United States agree to make a compensation therefor, such cession and agreement are not a treaty. Accordingly, such negotiations are carried on and completed by virtue of laws of the National and State Legislatures. Of course, compacts of this kind are never called treaties ; and the idea of sending them to the Senate of the United States for ratification, would be preposterous. One of the confederated states is not an independent community ; nor can it make a treaty, either with the nation at large, or with any foreign power. But the Indian tribes and nations have made treaties with the United States during the last forty years, till the whole number of treaties thus made far exceeds a hundred, every one of which was ratified by the Senate before it became obligatory. Every instance of this kind, implies that the Indian communities had governments of their own ; that the Indians, thus living in communities, were not subject to the laws of the United States ; and that they had rights and interests distinct from the rights and interests of the people of the United States, and, in the fullest sense, public and national. All this is in accordance with facts ; and the whole is implied in the single word *treaty*.

Again ; the parties on the banks of the Holston signed a treaty "*of peace.*" It is matter of history, that there had been fighting and bloodshed. These acts of violence were not denominated a *riot*, a *sedition*, a *rebellion* ; they constituted a *war*. The settlement of the difficulty was not called a *pardon*, an *amnesty*, a *suppression* of a riot, a *conviction*, a *punishment* ; it was called a *peace*. Nor is it said here, as in the treaty of Hopewell, that the United States "*give peace.*" There is, in the title and preamble, every indication of perfect equality between the parties. In point of fact, the whites were, at that moment, much more desirous of peace than the Cherokees were.

This is also a treaty of "*friendship,*" which implies, that the Cherokees were not only a substantive power, capable of making peace and declaring war, but that, after the treaty was executed, they were expected to *remain in the same state*. It was not a surrendry of their national existence, but the establishment of amicable relations to remain ;