

but, it implies also, in the strongest manner, that the sovereign power of the Cherokees over their territory was unquestionable. The word "*cede*" is the most common and operative word, in all transfers of territory from one nation to another. Unless explained and limited, it conveys the right of sovereignty. Thus, in cessions of small portions of land to the general government, for navy yards, &c. the several States are in the practice of *reserving* certain rights; such as the right of entering to apprehend criminals, &c. implying that the word *cede* would, *ex vi termini*, convey to the general government *all* the rights of sovereignty. But no party can convey what it does not possess; and it would have been absurd for the United States to ask and accept a cession, without admitting that the Cherokees had power to make one. This article expressly declares that the agreement was entered into, the cessions made, and the compensation given "to extinguish forever all claims of the Cherokee nation" to the lands thus ceded. The Cherokees are acknowledged, then, to have had claims, not cancelled by war,—not swept away by the superior force of the United States,—never before surrendered: claims, which the solemn sanction of treaties was deemed necessary to extinguish.

"ART. 5. It is stipulated and agreed that the citizens and inhabitants of the United States shall have a free and unmolested use of a road from Washington district to Mero district, and the navigation of the Tennessee river."

This is another very curious provision, if we are to believe that the Cherokees are merely tenants at will, and the people of the United States the rightful owners. But upon the only tenable ground, viz. that the Cherokees had a perfect title to the soil, with undoubted rights of sovereignty over it, the article is intelligible and reasonable. The people of the United States wanted a free passage through a particular part of the Cherokee territory; and, as the parties now sustained amicable relations, such a passage was granted by a treaty stipulation.

ART. 6. It is agreed on the part of the Cherokees, that the United States shall have the sole and exclusive right of regulating their trade."

By the constitution of the United States it had been provided, that Congress should have power to regulate commerce "with the Indian tribes." This policy had been pursued in the treaty of Hopewell, and was doubtless chosen wisely, and with a view to benefit the Indians. It was not binding upon them, however, till they voluntarily consented to it.

"ART. 7. The United States solemnly guaranty to the Cherokee nation all their lands not hereby ceded."

This is the most important article in the treaty. The Cherokees had yielded some of their natural rights. They had agreed not to treat with any foreign power. They had committed the regulation of their trade to the United States. They had admitted the United States to participate in the navigation of the Tennessee; and had granted a free passage through a certain part of their country to the citizens of the United States. They had ceded a portion of their territory.

On the other hand, the United States engaged to protect the Cherokees, to promote their civilization, as will hereafter be seen, and especially, to *guaranty the integrity and inviolability of their territory*. In a world full of outrage, fraud, and violence, it is a great advantage for a weak state to obtain the solemn guaranty of a powerful neighbour, that its rights and sovereignty shall be safe. All this is implied by a guaran-