

said as may be sufficient to satisfy the same, together with all the costs and charges of preparing lists, advertising and notifying as aforesaid, and of sale.

SEC. 3. *And be it further enacted*, That the aforesaid tax, including all costs and charges as aforesaid, shall be and remain a lien upon all lands and other real estate on which the same has been assessed, until the tax due upon the same, including all costs and charges, shall have been collected, or until a sale shall have been effected, according to the provision of this act, or of the act to which this is a supplement.

Tax and costs  
a lien on land  
till discharged.

SEC. 4. *And be it further enacted*, That in all cases wherein any tract of land may have been assessed in one assessment, which at the time when such assessment was made, was actually divided into two, or more distinct parcels, each parcel having one or more distinct proprietor or proprietors, it shall be the duty of the collector, to receive in manner aforesaid, from any proprietor or proprietors thus situated, his or their proportion of the tax due upon such tract; and thereupon, the land of the proprietor or proprietors upon which the tax shall have been thus paid, shall be for ever discharged from any part of the tax due under the original assessment.

Tracts parcel-  
led may pay in  
proportion.

SEC. 5. *And be it further enacted*, That in any case in which it may have happened that lands actually belonging to one person, may have been, or hereafter shall be assessed in the name of another, and no sale of the same shall yet have been made, the same proceedings shall be had for the sale of the aforesaid lands, in order to raise the tax assessed in relation to the same, as is provided by the eleventh section of the act to which this is a supplement, in the case of lands assessed, the owner whereof is unknown; and such sale shall transfer and pass to the purchaser, a good and effectual title.

Provision for  
sale of lands  
of persons not  
named correct-  
ly.

1798, ch. 75.

SEC. 6. *And be it further enacted*, That the right of redemption reserved to the owners of lands and tenements sold under this act, or the act to which this is a supplement, shall, in no wise, be affected or impaired: *Provided always*, that the owners of lands which shall thus be sold after the passing of this act, in order to avail themselves of that right, shall make payment or tender of payment within two years from the time of sale, for the use of the purchaser, his heirs or assigns, of the amount of the said tax, costs and charges, with interest for the same, at the rate of twenty-five per cent. per annum.

Right of re-  
demption secur-  
ed under regu-  
lations.

SEC. 7. *And be it further enacted*, That the Secretary of the Treasury shall be and hereby is authorized and empowered, under the direction of the President of the United States, to augment the compensation fixed by law, for the commissioner or for the principal and assistant assessors or either of them, in any division where it shall be found necessary for carrying into effect the act intitled "An act to provide for the valuation of lands and dwelling-houses, and the enumeration of slaves within the United States," so however, as that the commissioner shall in no case receive more than five dollars per day, nor the principal or assistant assessor in any case receive more than three dollars per day, which additional compensation shall be subject to the same rules of settlement as are established by the act last aforesaid.

Secretary of  
the Treasury au-  
thorized to aug-  
ment compen-  
sation of offi-  
cers.

1798, ch. 70.

APPROVED, March 16, 1802.

#### STATUTE I.

CHAP. XIII.—*An Act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers.*(a)

March 30, 1802.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the following boundary

Act of April 29,  
1816, ch. 165.  
Act of March,  
1817, ch. 43.

(a) Regulations of intercourse and trade with the Indians. The 105th section of the act of March 2, 1799, chap. 22, provides that no duties shall be levied on peltries and goods of Indians, brought into the United States.

Act of May 6, 1822, ch. 54.

Boundaries to be established according to treaties, to be marked.

Beginning thereof.

Indian boundary described.

line, established by treaty between the United States and various Indian tribes, shall be clearly ascertained, and distinctly marked in all such places as the President of the United States shall deem necessary, and in such manner as he shall direct, to wit: Beginning at the mouth of the Cayahoga river on Lake Erie, and running thence up the same to the portage between that and the Tuscaroras branch of the Muskingum; thence, down that branch, to the crossing place above Fort Laurence; thence westwardly to a fork of that branch of the Great Miami river running into the Ohio, at or near which fork stood Laromie's store, and where commences the portage, between the Miami of the Ohio and St. Mary's river, which is a branch of the Miami, which runs into Lake Erie; thence a westwardly course to Fort Recovery, which stands on a branch of the Wabash; thence southwestwardly, in a direct line to the Ohio, so as to intersect that river, opposite the mouth of Kentucky or Cuttawa river; thence down the said river Ohio to the tract of one hundred and fifty thousand acres, near the rapids of the Ohio, which has been assigned to General Clarke, for the use of himself and his warriors; thence around the said tract, on the line of the said tract, till it shall again intersect the said river Ohio; thence down the same to a point opposite the high lands or ridge between the mouth of the Cumberland and Tennessee rivers; thence southeastwardly on the said ridge, to a point, from whence a southwest line will strike the mouth of Duck river; thence, still eastwardly on the said ridge, to a point forty miles above Nashville; thence northeast to Cumberland river; thence up the said river to where the Kentucky road crosses the same; thence to the Cumberland mountain, at the point of Campbell's line; thence in a southwestwardly direction along the foot of the Cumberland mountain to Emory's river; thence down the same to its junction with the river Clinch; thence down the river Clinch to Hawkins's line; thence along the same to a white oak, marked one mile tree; thence south fifty-one degrees west, three hundred and twenty-eight chains, to a large ash tree on the bank of the river Tennessee, one mile below southwest point; thence up the northeast margin of the river Tennessee (not including islands) to the Wild Cat Rock, below Tellico block-house; thence in a direct line to the Militia spring, near the Maryville road leading from Tellico; thence from the said spring to the Chilhowee mountain by a line so to be run as will leave all the farms on Nine Mile creek to the northward and eastward of it, and to be continued along the Chilhowee mountain until it strikes Hawkins's line; thence along the said line to the great Iron mountain; and from the top of which a line to be continued in a southeastwardly course to where the most southern branch of Little river crosses the divisional line to Tugaloo river; thence along the South Carolina Indian boundary to and over the Oconna mountain, in a southwest course to Tugaloo river; thence in a direct line to the top of Currahee mountain, where the Creek line passes it; thence to the head or source of the main south branch of the Oconee river, called the

The acts which are no longer in force, have been: An act to regulate trade and intercourse with the Indian tribes, July 23, 1790, chap. 33.—Expired. An act to regulate trade and intercourse with the Indian tribes, March 1, 1793.—Repealed by act of May 19, 1796, chap. 30. An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, May 19, 1796, chap. 25.—Expired. An act for the preservation of peace with the Indian tribes, January 17, 1800, chap. 5.—Expired. An act supplementary to the "act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," April 22, 1800, chap. 30.—Expired.

The acts now in operation and force, are: An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, March 30, 1802, chap. 13; an act erecting Louisiana into two territories, and providing for the temporary government thereof, March 26, 1804, chap. 38, sec. 15; an act supplementary to the act passed the thirtieth of March, one thousand eight hundred and two, to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, April 29, 1816, chap. 165; an act to provide for the punishment of certain crimes and offences committed within the Indian boundaries, March 3, 1817, chap. 92; an act to amend an act entitled, "An act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers," approved thirteenth March, one thousand eight hundred and two, May 6, 1822, chap. 54; an act to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers, June 30, 1834, ch. 161. Also ch. 162.

Appalachee; thence down the middle of the said main south branch and river Oconee, to its confluence with Oakmulgee, which forms the river Altamaha; thence down the middle of the said Altamaha, to the old line on the said river; and thence along the said old line to the river St. Mary's: *Provided always*, that if the boundary line between the said Indian tribes and the United States shall, at any time hereafter, be varied, by any treaty which shall be made between the said Indian tribes and the United States, then all the provisions contained in this act shall be construed to apply to the said line so to be varied, in the same manner as said provisions apply, by force of this act, to the boundary line herein before recited.

Boundary terminates.

Indian boundary may be varied by treaties and the act to apply.

SEC. 2. *And be it further enacted*, That if any citizen of, or other person resident in, the United States, or either of the territorial districts of the United States, shall cross over, or go within the said boundary line, to hunt, or in any wise destroy the game; or shall drive, or otherwise convey any stock of horses or cattle to range on any lands allotted or secured by treaty with the United States, to any Indian tribes, he shall forfeit a sum not exceeding one hundred dollars, or be imprisoned not exceeding six months. (a)

Line not to be crossed.

Penalty for trespass.

SEC. 3. *And be it further enacted*, That if any such citizen or other person, shall go into any country which is allotted, or secured by treaty as aforesaid, to any of the Indian tribes south of the river Ohio, without a passport first had and obtained from the governor of some one of the United States, or the officer of the troops of the United States, commanding at the nearest post on the frontiers, or such other person as the President of the United States may, from time to time, authorize to grant the same, shall forfeit a sum not exceeding fifty dollars, or be imprisoned not exceeding three months. (b)

No one to go into the Indian country without a passport.

By whom passports to be granted.

Penalty for going into the Indian territory without a passport.

SEC. 4. *And be it further enacted*, That if any such citizen, or other person, shall go into any town, settlement or territory, belonging, or secured by treaty with the United States, to any nation or tribe of Indians, and shall there commit robbery, larceny, trespass or other crime, against the person or property of any friendly Indian or Indians, which would be punishable, if committed within the jurisdiction of any state, against a citizen of the United States: or, unauthorized by law, and with a hostile intention, shall be found on any Indian land, such offender shall forfeit a sum not exceeding one hundred dollars, and be imprisoned not exceeding twelve months; and shall also, when property is taken or destroyed, forfeit and pay to such Indian or Indians, to whom the property taken and destroyed belongs, a sum equal to twice the just value of the property so taken or destroyed: and if such offender shall be unable to pay a sum at least equal to the said just value, whatever such payment shall fall short of the said just value, shall be paid out of the treasury of the United States: *Provided nevertheless*, that no such Indian shall be entitled to any payment out of the treasury of the United States, for any such property taken or destroyed, if he, or any of the nation to which he belongs, shall have sought private revenge, or attempted to obtain satisfaction by any force or violence.

Offences in the Indian territory punishable.

Penalties.

Indians not to be remunerated if they use violence.

SEC. 5. *And be it further enacted*, That if any such citizen, or other person, shall make a settlement on any lands belonging, or secured, or granted by treaty with the United States, to any Indian tribe, or shall

No settlement or survey to be made.

(a) The treaties and laws of the United States contemplate the Indian territory as completely separated from that of the states; and provide that all intercourse with them shall be carried on exclusively by the government of the Union. *Worcester v. The State of Georgia*, 6 Peters' Rep. 515.

(b) The act of the 30th March, 1802, having described what should be considered as the Indian country at that time, as well as at any future time, when purchases of territory should be made from the Indians, the carrying of spirituous liquors into the territory so purchased after March, 1802, although the same should, at the time, be frequented and inhabited by the Indians exclusively, could not be an offence within the meaning of the before mentioned act of Congress, so as to subject the goods of the trader found within those territories, to seizure and forfeiture. *The American Fur Company v. The United States*, 2 Peters, 358.

## Penalties.

Military force may be employed against intruders.

Murder of Indians punishable with death.

Traders who reside must have a license.

Licenses not to exceed two years.

Bond to be given by licensed traders.

License may be recalled for misconduct.

Goods of unlicensed traders forfeited.

Further penalty.

Articles which shall not be purchased from Indians.

## Penalty.

Horses not to be bought or sold without license.

Fifteen days notice before sale of a horse, and description given.

survey, or attempt to survey, such lands, or designate any of the boundaries, by marking trees, or otherwise, such offender shall forfeit a sum not exceeding one thousand dollars, and suffer imprisonment, not exceeding twelve months. And it shall, moreover, be lawful for the President of the United States to take such measures, and to employ such military force, as he may judge necessary, to remove from lands, belonging or secured by treaty, as aforesaid, to any Indian tribe, any such citizen, or other person, who has made, or shall hereafter make, or attempt to make a settlement thereon.

SEC. 6. *And be it further enacted,* That if any such citizen, or other person, shall go into any town, settlement or territory belonging to any nation or tribe of Indians, and shall there commit murder, by killing any Indian or Indians, belonging to any nation or tribe of Indians, in amity with the United States, such offender, on being thereof convicted, shall suffer death.

SEC. 7. *And be it further enacted,* That no such citizen, or other person, shall be permitted to reside at any of the towns, or hunting camps, of any of the Indian tribes as a trader, without a license under the hand and seal of the superintendent of the department, or of such other person as the President of the United States shall authorize to grant licenses for that purpose: which superintendent, or person authorized, shall, on application, issue such license, for a term not exceeding two years, to such trader, who shall enter into bond with one or more sureties, approved of by the superintendent, or person issuing such license, or by the President of the United States, in the penal sum of one thousand dollars, conditioned for the true and faithful observance of such regulations and restrictions, as are, or shall be made for the government of trade and intercourse with the Indian tribes: and the superintendent, or person issuing such license, shall have full power and authority to recall the same, if the person so licensed shall transgress any of the regulations, or restrictions, provided for the government of trade and intercourse with the Indian tribes; and shall put in suit such bonds as he may have taken, on the breach of any condition therein contained.

SEC. 8. *And be it further enacted,* That any such citizen or other person, who shall attempt to reside in any town or hunting camp, of any of the Indian tribes, as a trader, without such license, shall forfeit all the merchandise offered for sale to the Indians, or found in his possession, and shall, moreover, be liable to a fine not exceeding one hundred dollars, and to imprisonment not exceeding thirty days.

SEC. 9. *And be it further enacted,* That if any such citizen, or other person, shall purchase, or receive of any Indian, in the way of trade or barter, a gun, or other article commonly used in hunting, any instrument of husbandry, or cooking utensil, of the kind usually obtained by the Indians, in their intercourse with white people, or any article of clothing, excepting skins or furs, he shall forfeit a sum not exceeding fifty dollars, and be imprisoned not exceeding thirty days.

SEC. 10. *And be it further enacted,* That no such citizen or other person shall be permitted to purchase any horse of an Indian, or of any white man in the Indian territory, without special license for that purpose; which license, the superintendent, or such other person as the President shall appoint, is hereby authorized to grant, on the same terms, conditions and restrictions, as other licenses are to be granted under this act: and any such person, who shall purchase a horse or horses, under such license, before he exposes such horse or horses for sale, and within fifteen days after they have been brought out of the Indian country, shall make a particular return to the superintendent, or other person, from whom he obtained his license, of every horse purchased by him, as aforesaid; describing such horses, by their colour, height, and other

natural or artificial marks, under the penalty contained in their respective bonds. And every such person, purchasing a horse or horses, as aforesaid, in the Indian country, without a special license, shall for every horse thus purchased and brought into any settlement of citizens of the United States, forfeit a sum not exceeding one hundred dollars, and be imprisoned not exceeding thirty days. And every person, who shall purchase a horse, knowing him to be brought out of the Indian territory, by any person or persons, not licensed, as above, to purchase the same, shall forfeit the value of such horse.

Penalties.

SEC. 11. *And be it further enacted*, That no agent, superintendent, or other person authorized to grant a license to trade, or purchase horses, shall have any interest or concern in any trade with the Indians, or in the purchase or sale of any horse to or from any Indian, excepting for and on account of the United States; and any person offending herein, shall forfeit a sum not exceeding one thousand dollars, and be imprisoned not exceeding twelve months.

Agents of the public not to trade.

SEC. 12. *And be it further enacted*, That no purchase, grant, lease, or other conveyance of lands, or of any title or claim thereto, from any Indian, or nation, or tribe of Indians, within the bounds of the United States, shall be of any validity, in law or equity, unless the same be made by treaty or convention, entered into pursuant to the constitution: and it shall be a misdemeanor in any person, not employed under the authority of the United States, to negotiate such treaty, or convention, directly or indirectly, to treat with any such Indian nation, or tribe of Indians, for the title or purchase of any lands by them held or claimed, punishable by fine not exceeding one thousand dollars, and imprisonment not exceeding twelve months: *Provided nevertheless*, that it shall be lawful for the agent or agents of any state, who may be present at any treaty held with Indians under the authority of the United States, in the presence, and with the approbation of the commissioner or commissioners of the United States, appointed to hold the same, to propose to, and adjust with the Indians, the compensation to be made, for their claims to lands within such state, which shall be extinguished by the treaty.

No purchases from Indians but under treaties.

Misdemeanor to attempt procuring them in any other manner.

How punishable.

Exception as to states making purchases in a certain manner.

SEC. 13. *And be it further enacted*, That in order to promote civilization among the friendly Indian tribes, and to secure the continuance of their friendship, it shall be lawful for the President of the United States, to cause them to be furnished with useful domestic animals, and implements of husbandry, and with goods or money, as he shall judge proper, and to appoint such persons, from time to time, as temporary agents, to reside among the Indians, as he shall think fit: *Provided*, that the whole amount of such presents, and allowance to such agents, shall not exceed fifteen thousand dollars per annum.

President authorized to use means of civilizing the Indians.

Means limited.

SEC. 14. *And be it further enacted*, That if any Indian or Indians, belonging to any tribe in amity with the United States, shall come over or cross the said boundary line, into any state or territory inhabited by citizens of the United States, and there take, steal or destroy any horse, horses, or other property, belonging to any citizen or inhabitant of the United States, or of either of the territorial districts of the United States, or shall commit any murder, violence or outrage, upon any such citizen or inhabitant, it shall be the duty of such citizen or inhabitant, his representative, attorney, or agent, to make application to the superintendent, or such other person as the President of the United States shall authorize for that purpose; who, upon being furnished with the necessary documents and proofs, shall, under the direction or instruction of the President of the United States, make application to the nation or tribe, to which such Indian or Indians shall belong, for satisfaction; and if such nation or tribe shall neglect or refuse to make satisfaction, in a reasonable time, not exceeding twelve months, then it shall be the duty of such superintendent or other person authorized as aforesaid, to make return

Means of redress prescribed for transgression of Indians.

Party injured loses his remedy if he seeks private revenge or redress.

But this does not exempt the Indian offending from legal apprehension in U. States.

How property is to be paid for.

What courts have jurisdiction in these cases.

Persons crossing the line and going into the Indian country contrary to this act, how to be dealt with.

of his doings to the President of the United States, and forward to him all the documents and proofs in the case, that such further steps may be taken, as shall be proper to obtain satisfaction for the injury: and in the mean time, in respect to the property so taken, stolen or destroyed, the United States guarantee to the party injured, an eventual indemnification: *Provided always*, that if such injured party, his representative, attorney or agent, shall, in any way, violate any of the provisions of this act, by seeking, or attempting to obtain private satisfaction or revenge, by crossing over the line, on any of the Indian lands, he shall forfeit all claim upon the United States, for such indemnification: *And provided also*, that nothing herein contained shall prevent the legal apprehension or arresting, within the limits of any state or district, of any Indian having so offended: *And provided further*, that it shall be lawful for the President of the United States, to deduct such sum or sums, as shall be paid for the property taken, stolen or destroyed by any such Indian, out of the annual stipend, which the United States are bound to pay to the tribe, to which such Indian shall belong.

SEC. 15. *And be it further enacted*, That the superior courts in each of the said territorial districts, and the circuit courts, and other courts of the United States of similar jurisdiction in criminal causes, in each district of the United States, in which any offender against this act shall be apprehended, or, agreeably to the provisions of this act, shall be brought for trial, shall have, and are hereby invested with full power and authority to hear and determine all crimes, offences and misdemeanors, against this act; such courts proceeding therein in the same manner, as if such crimes, offences and misdemeanors had been committed within the bounds of their respective districts; and in all cases where the punishment shall not be death, the county courts of quarter sessions in the said territorial districts, and the district courts of the United States in their respective districts, shall have, and are hereby invested with like power to hear and determine the same, any law to the contrary notwithstanding: and in all cases, where the punishment shall be death, it shall be lawful for the governor of either of the territorial districts where the offender shall be apprehended, or into which he shall be brought for trial, to issue a commission of oyer and terminer to the superior judges of such district, who shall have full power and authority to hear and determine all such capital cases, in the same manner as the superior courts of such districts have in their ordinary sessions; and when the offender shall be apprehended, or brought for trial into any of the United States, except Kentucky or Tennessee, it shall be lawful for the President of the United States, to issue a like commission to any one or more judges of the supreme court of the United States, and the judge of the district in which such offender may have been apprehended or shall have been brought for trial; which judges, or any two of them, shall have the same jurisdiction in such capital cases, as the circuit court of such district, and shall proceed to trial and judgment, in the same manner as such circuit court might or could do. And the district courts of Kentucky, Tennessee and Maine shall have jurisdiction of all crimes, offences and misdemeanors committed against this act, and shall proceed to trial and judgment in the same manner, as the circuit courts of the United States.

SEC. 16. *And be it further enacted*, That it shall be lawful for the military force of the United States to apprehend every person who shall, or may be found in the Indian country over and beyond the said boundary line between the United States and the said Indian tribes, in violation of any of the provisions or regulations of this act, and him or them immediately to convey, in the nearest, convenient and safe route, to the civil authority of the United States, in some one of the three next adjoining states or districts, to be proceeded against in due course of law: *Provided*, that no person, apprehended by military force as aforesaid,

shall be detained longer than five days after the arrest, and before removal. And all officers and soldiers who may have any such person or persons in custody, shall treat them with all the humanity which the circumstances will possibly permit; and every officer and soldier who shall be guilty of mistreating any such person, while in custody, shall suffer such punishment as a court martial shall direct: *Provided*, that the officer having custody of such person or persons shall, if required by such person or persons, conduct him or them to the nearest judge of the supreme or superior court of any state, who, if the offence is bailable, shall take proper bail if offered, returnable to the district court next to be holden in said district, which bail the said judge is hereby authorized to take, and which shall be liable to be estreated as any other recognizance for bail in any court of the United States; and if said judge shall refuse to act, or the person or persons fail to procure satisfactory bail, then the said person or persons are to be proceeded with according to the directions of this act.

Military not to use violence.

SEC. 17. *And be it further enacted*, That if any person, who shall be charged with a violation of any of the provisions or regulations of this act, shall be found within any of the United States, or either of the territorial districts of the United States, such offender may be there apprehended and brought to trial, in the same manner, as if such crime or offence had been committed within such state or district; and it shall be the duty of the military force of the United States, when called upon by the civil magistrate, or any proper officer, or other person duly authorized for that purpose and having a lawful warrant, to aid and assist such magistrate, officer, or other person authorized, as aforesaid, in arresting such offender, and him committing to safe custody, for trial according to law.

Violators of this law, if found within the U. S. how punishable.

SEC. 18. *And be it further enacted*, That the amount of fines, and duration of imprisonment, directed by this act as a punishment for the violation of any of the provisions thereof, shall be ascertained and fixed, not exceeding the limits prescribed, in the discretion of the court, before whom the trial shall be had; and that all fines and forfeitures, which shall accrue under this act, shall be one half to the use of the informant, and the other half to the use of the United States; except where the prosecution shall be first instituted on behalf of the United States; in which case the whole shall be to their use.

How penalties are to be fixed.

To whose benefit.

SEC. 19. *And be it further enacted*, That nothing in this act shall be construed to prevent any trade or intercourse with Indians living on lands surrounded by settlements of the citizens of the United States, and being within the ordinary jurisdiction of any of the individual states; or the unmolested use of a road from Washington district to Mero district, or to prevent the citizens of Tennessee from keeping in repair the said road, under the direction or orders of the governor of said state, and of the navigation of the Tennessee river, as reserved and secured by treaty; nor shall this act be construed to prevent any person or persons travelling from Knoxville to Price's settlement, or to the settlement on Obed's river, (so called,) provided they shall travel in the trace or path which is usually travelled, and provided the Indians make no objection; but if the Indians object, the President of the United States is hereby authorized to issue a proclamation, prohibiting all travelling on said traces, or either of them, as the case may be, after which, the penalties of this act shall be incurred by every person travelling or being found on said traces, or either of them, to which the prohibition may apply, within the Indian boundary, without a passport.

Trade and intercourse with Indians under circumstances described not forbidden by this act.

SEC. 20. *And be it further enacted*, That the President of the United States be, and he is hereby authorized to cause to be clearly ascertained and distinctly marked, in all such places as he shall deem necessary, and in such manner as he shall direct, any other boundary lines between the

President to cause boundaries to be ascertained and marked.

United States and any Indian tribe, which now are, or hereafter may be established by treaty.

He may take measures to prevent the sale of spirituous liquors to the Indians.

This act to be in force from its date.

Proceedings under not to be affected by act of Feb. 19, 1799, ch. 8.

SEC. 21. *And be it further enacted*, That the President of the United States be authorized to take such measures, from time to time, as to him may appear expedient to prevent or restrain the vending or distributing of spirituous liquors among all or any of the said Indian tribes, any thing herein contained to the contrary thereof notwithstanding.

SEC. 22. *And be it further enacted*, That this act shall be in force from the passage thereof; and so far as respects the proceedings under this act, it is to be understood, that the act, intituled "An act to amend an act, intituled An act giving effect to the laws of the United States within the district of Tennessee," is not to operate. (a)

APPROVED, March 30, 1802.

(a) The decisions of the courts of the United States, on the subject of the Indians, have been :

It was doubted whether a state can be seised in fee of lands subject to the Indian title, and whether a decision that they were seised in fee, might not be construed to amount to a decision that their grantee might maintain an ejectment for them, notwithstanding that title. The majority of the court is of opinion that the nature of the Indian title, which is certainly to be respected by all courts until it be legitimately extinguished, is not such as to be absolutely repugnant to a seisin in fee on the part of the state. *Fletcher v. Peck*, 6 Cranch, 87; 2 Cond. Rep. 308.

The acts of assembly of North Carolina, passed between the years 1783 and 1789, avoid all entries, surveys, and grants of land set apart for the Cherokee Indians, and no title can be acquired to those lands. *Danforth's Lessee v. Thomas*, 1 Wheat. 155; 3 Cond. Rep. 524.

The boundaries of the reservation made by the laws of North Carolina, have been altered by treaties with the Indians; but it seems that the mere extinguishment of their title does not subject the land to entry, unless expressly authorized by the legislature. *Ibid*.

The condition of the Indians, in relation to the United States, is perhaps unlike that of any other two people in existence. In general, nations not owing a common allegiance, are foreign to each other. The term foreign nation, is with strict propriety applicable by either to the other. But the relation of the Indians to the United States, is marked by peculiar and cardinal distinctions, which exist no where else. *The Cherokee Nation v. The State of Georgia*, 5 Peters, 1.

The Indians are acknowledged to have an unquestionable, and heretofore an unquestioned right to the lands they occupy, until that right shall be extinguished by a voluntary cession to the government. It may well be doubted, whether those tribes which reside within the acknowledged boundaries of the United States, can with strict accuracy be denominated foreign nations. They may more correctly, perhaps, be denominated domestic dependent nations. They occupy a territory to which we assert a title, independent of their will, which must take effect in point of possession, when their right of possession ceases; meanwhile they are in a state of pupillage. Their relations to the United States resemble 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. *Ibid*.

The treaties and laws of the United States, contemplate the Indian territory as completely separated from that of the states; and provide that all intercourse with them shall be carried on exclusively by the government of the Union. *Worcester v. The State of Georgia*, 6 Peters, 515.

The Indian nations had always been considered as distinct, independent political communities, retaining their original natural rights, as the undisputed possessors of the soil, from time immemorial; with the single exception of that imposed by irresistible power, which excluded them from intercourse with any other European potentate, than the first discoverer of the coast of the particular region claimed: and this was a restriction which those European potentates imposed on themselves, as well as on the Indians. The very term "nation," so generally applied to them, means "a people distinct from others." The constitution, by declaring treaties already made, as well as those to be made, to be the supreme law of the land, has adopted and sanctioned the previous treaties with the Indian nations, and, consequently, admits their rank among those powers who are capable of making treaties. The words "treaty" and "nation" are words of our own language, selected in our diplomatic and legislative proceedings, by ourselves; having each a definite and well understood meaning. We have applied them to Indians, as we have applied them to other nations of the earth. They are applied to all in the same sense. *Ibid*.

One uniform rule seems to have prevailed in the British provinces in America, by which Indian lands were held and sold, from their first settlement, as appears by their laws; that friendly Indians were protected in the possession of the lands they occupied, and were considered as owning them by a perpetual right of possession in the tribe or nation inhabiting them, as their common property, from generation to generation, not as the right of the individuals located on particular spots. Subject to this right of possession, the ultimate fee was in the crown, and its grantees; which could be granted by the crown or colonial legislatures, while the lands remained in possession of the Indians; though possession could not be taken without their consent. *Mitchell v. United States*, 9 Peters, 711.

Individuals could not purchase Indian lands without permission or license from the crown, colonial governors, or according to the rules prescribed by colonial laws; but such purchases were valid with such license, or in conformity with the local laws: and by this union of the perpetual right of occupancy with the ultimate fee, which passed from the crown by the license, the title of the purchaser became complete. *Ibid*.

Indian possession or occupation was considered with reference to their habits and modes of life; their hunting grounds were as much in their actual possession, as the cleared fields of the whites; and their rights to its exclusive enjoyment in their own way, and for their own purposes, were as much respected, until they abandoned them, made a cession to the government, or an authorized sale to individuals. In



CHAP. XV.—*An Act making a partial appropriation for the support of government, during the year one thousand eight hundred and two.*

STATUTE I.

April 2, 1802.

[Obsolete.]  
Appropriation.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the sum of one hundred thousand dollars, to be paid out of any monies in the treasury, not otherwise appropriated, shall be, and the same hereby is appropriated towards defraying the expenditure of the civil list, including the contingent expenses of the several departments, during the year one thousand eight hundred and two.

APPROVED, April 2, 1802.

either case their rights became extinct, the lands could be granted disencumbered of the right of occupancy, or enjoyed in full dominion by the purchasers from the Indians. Such was the tenure of Indian lands by the laws of Massachusetts, Connecticut, Rhode Island, New Hampshire, New York, New Jersey, Pennsylvania, Maryland, Virginia, North Carolina, South Carolina and Georgia. *Ibid.*

Grants made by the Indians at public councils, since the treaty at Fort Stanwick's, have been made directly to the purchasers, or to the state in which the land lies, in trust for them, or with directions to convey to them; of which there are many instances of large tracts so sold and held; especially in New York. *Ibid.*

It was an universal rule, that purchases made at Indian treaties, in the presence, and with the approbation of the officer under whose direction they were held by the authority of the crown, gave a valid title to the lands; it prevailed under the laws of the states after the revolution, and yet continues in those where the right to the ultimate fee is owned by the states, or their grantees. It has been adopted by the United States, and purchases made at treaties held by their authority, have been always held good by the ratification of the treaty, without any patent to the purchasers from the United States. This rule in the colonies was founded on a settled rule of the law of England, that by his prerogative, the king was the universal occupant of all vacant lands in his dominions, and had the right to grant them at his pleasure, or by his authorized officers. *Ibid.*

When the United States acquired and took possession of the Floridas, the treaties which had been made with the Indian tribes, before the acquisition of the territory by Spain and Great Britain, remained in force over all the ceded territory, as the laws which regulated the relations with all the Indians who were parties to them, and were binding on the United States, by the obligation they had assumed by the Louisiana treaty, as a supreme law of the land, which was inviolable by the power of Congress. They were also binding as the fundamental law of Indian rights; acknowledged by royal orders, and municipal regulations of the province, as the laws and ordinances of Spain in the ceded provinces, which were declared to continue in force by the proclamation of the governor in taking possession of the provinces; and by the acts of Congress, which assured all the inhabitants of protection in their property. It would be an unwarranted construction of these treaties, laws, ordinances and municipal regulations, to decide that the Indians were not to be maintained in the enjoyment of all the rights which they could have enjoyed under either, had the provinces remained under the dominion of Spain. It would be rather a perversion of their spirit, meaning and terms, contrary to the injunction of the law under which the court acts, which makes the stipulations of any treaty, the laws and ordinances of Spain, and these acts of Congress, so far as either apply to this case, the standard rules for its decision. *Ibid.*

The treaties with Spain and England, before the acquisition of Florida by the United States, which guaranteed to the Seminole Indians their lands according to the right of property with which they possessed them, were adopted by the United States; who thus became the protectors of all the rights they had previously enjoyed, or could of right enjoy under Great Britain or Spain, as individuals or nations, by any treaty, to which the United States thus became parties in 1803. *Ibid.*

The Indian right to the lands as property, was not merely of possession, that of alienation was concomitant; both were equally secured, protected and guaranteed by Great Britain and Spain, subject only to ratification and confirmation by the license, charter or deed from the governor representing the king. Such purchases enabled the Indians to pay their debts, compensate for their depredations on the traders resident among them to provide for their wants; while they were available to the purchasers as payment of the considerations which at their expense had been received by the Indians. It would have been a violation of the faith of the government to both, to encourage traders to settle in the province, to put themselves and property in the power of the Indians, to suffer the latter to contract debts, and when willing to pay them by the only means in their power, a cession of their lands, withhold an assent to the purchase, which by their laws or municipal regulations, was necessary to vest a title. Such a course was never adopted by Great Britain, in any of her colonies, nor by Spain in Louisiana or Florida. *Ibid.*

The laws made it necessary, when the Indians sold their lands, to have the deeds presented to the governor for confirmation. The sales by the Indians transferred the kind of right which they possessed; the ratification of the sale by the governor, must be regarded as a relinquishment of the title of the crown to the purchaser; and no instance is known where permission to sell has been "refused, or the rejection of an Indian sale." *Ibid.*

The colonial charters, a great portion of the individual grants by the proprietary and royal governments, and a still greater portion by the states of the Union after the revolution, were made for lands within the Indian hunting grounds. North Carolina and Virginia to a great extent paid their officers and soldiers of the revolutionary war by such grants, and extinguished the arrears due the army by similar means. It was one of the great resources which sustained the war, not only by those states, but by other states. The ultimate fee, encumbered with the right of Indian occupancy, was in the crown previous to the revolution, and in the states of the Union afterwards, and subject to grant. This right of occupancy was protected by the political power, and respected by the courts, until extinguished, when the patentees took the unencumbered fee. So the supreme court and the state courts have uniformly held. Clark v. Smith, 13 Peters, 195.