or not the complainants could have made their money on execution had it not been for the mortgage and assignment to the defendant. The jury answered that they could, and the defendant was made personally liable for the whole amount.

Without attempting to decide whether the Territorial legislature had or had not the power to legalize a verdict rendered by three-fourths of a jury, we think the proceedings were erroneous, and the decree must be REVERSED and the cause remanded for further proceedings

IN CONFORMITY WITH THIS OPINION.

THE CHEROKEE TOBACCO.

1. The 107th section of the Internal Revenue Act of July 20, 1868, which enacts that "the internal revenue laws imposing taxes on distilled spirits, fermented liquors, tobacco, snuff, and cigars, shall be construed to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same shall be within a collection district or not," applies to and is in force in the Indian Territory embraced within the Western District of Arkansas, and occupied by the Cherokee nation of Indians, notwithstanding the 10th article of the prior treaty of 1866, between the United States and that nation, by which it was agreed that "every Cherokee Indian and freed person residing in the Cherokee nation shall have the right to sell any products of his farm, including his or her live stock, or any merchandise or manufactured products, and to ship and drive the same to market without restraint, paying any tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian territory."
2. An act of Congress may supersede a prior treaty.

ERROR to the District Court for the Western District of Arkansas; the case involving, first, the question of the intention of Congress, and, second, assuming the intention to exist, the question of its power, to tax certain tobacco in the territory of the Cherokee nation, in the face of a prior treaty between that nation and the United States, that such tobacco should be exempt from taxation.

The case was elaborately argued orally or on briefs, by *Messrs E. C. Boudinot, A. Pike, R. W. Johnson, and B. F.*

Statement of the case in the opinion.

Butler, for the claimants; and by Mr. Akerman, Attorney-General, and Mr. Bristow, Solicitor-General, for the United States.

Mr. Justice SWAYNE stated the case and delivered the opinion of the court.

This is a writ of error to the District Court of the Western District of Arkansas. The case, so far as it is necessary to state it, lies within a narrow compass.

The proceeding was instituted by the defendants in error to procure the condemnation and forfeiture of the tobacco in question, and of the other property described in the libel of information, for alleged violations, which are fully set forth, of the revenue laws of the United States. Elias C. Boudinot, for himself and his copartner, Stand Wattie, interposed, and by his answer submitted, among others, the followng allegations: That the firm were the sole owners of the property described in the libel; that the property was found and seized in the Cherokee nation, outside of any revenue collection district of the United States; that the manufacturing of the tobacco was carried on in the Cherokee nation, and that the manufactured tobacco, raw material, and other property, were never within any collection district, nor subject to the taxes mentioned in the libel, nor were the owners bound to comply with the requirements of the revenue laws of Congress; that the revenue laws were complied with as to all tobacco sold or offered for sale outside of said Indian country, if any such there were; that the claimants are Cherokee Indians by blood, and residents of the Cherokee nation, and they deny that the property had become forfeited as alleged in the libel.

At the trial, the claimants moved the court to instruct the jury that the act of Congress, entitled "An Act imposing taxes on distilled spirits, and for other purposes," approved July 20th, 1868, is not in force in any part of the Indian territory embraced in the Western District of Arkansas; that the 10th article of the treaty of 1866, between the Cherokee nation and the United States, was in full force with reference to the territory of the Cherokee nation; that the

67th section of the act of 1868 requires stamps to be sold only to manufacturers of tobacco in the respective collection districts, and that it gave the claimants no legal right to buy such stamps to place on their tobacco in the Cherokee nation, and that they are not responsible for not having done so. The court refused to give these instructions. The jury found for the United States, and judgment was entered accordingly. The claimants excepted to the refusal of the court to give the instructions asked for, and have brought the case here for review.

The only question argued in this court, and upon which our decision must depend, is the effect to be given respectively to the 107th section of the act of 1868,* and the 10th article of the treaty of 1866, between the United States and the Cherokee nation of Indians.

They are as follows:

"*Section* 107. That the internal revenue laws imposing taxes on distilled spirits, fermented liquors, tobacco, snuff, and cigars, shall be construed to extend to such articles produced anywhere within the exterior boundaries of the United States, whether the same shall be within a collection district or not."

"*Article* 10*th*. Every Cherokee Indian and freed person residing in the Cherokee nation shall have the right to sell any products of his farm, including his or her live stock, or any merchandise or manufactured products, and to ship and drive the same to market without restraint, paying any tax thereon which is now or may be levied by the United States on the quantity sold outside of the Indian territory."

On behalf of the claimants it is contended that the 107th section was not intended to apply, and does not apply, to the country of the Cherokees, and that the immunities secured by the treaty are in full force there. The United States insist that the section applies with the same effect to the territory in question as to any State or other territory of the United States, and that to the extent of the provisions of the section the treaty is annulled.

* 15 Stat. at Large, 167.

Opinion of the court.

Considering the narrowness of the questions to be decided, a remarkable wealth of learning and ability have been expended in their discussion. The views of counsel in this court have rarely been more elaborately presented. Nevertheless, the case seems to us not difficult to be determined, and to require no very extended line of remarks to vindicate the soundness of the conclusions at which we have arrived.

In *The Cherokee Nation* v. *Georgia*,* Chief Justice Marshall, delivering the opinion of this court, said: "The Indian territory is admitted to compose a part of the United States. In all our geographical treatises, histories, and laws it is so considered." In *The United States* v. *Rogers*,† Chief Justice Taney, also speaking for the court, held this language: "It is our duty to expound and execute the law as we find it, and we think it too firmly and clearly established to admit of dispute that the Indian tribes residing within the territorial limits of the United States are subject to their authority, and where the country occupied by them is not within the limits of one of the States Congress may, by law, punish any offence committed there, no matter whether the offender be a white man or an Indian." Both these propositions are so well settled in our jurisprudence that it would be a waste of time to discuss them or to refer to further authorities in their support. There is a long and unbroken current of legislation and adjudications, in accordance with them, and we are aware of nothing in conflict with either. The subject, in its historical aspect, was fully examined in *Johnson* v. *McIntosh*.‡ In the 11th section of the act of the 24th of June, 1812, it was provided "that it shall be lawful for any person or persons to whom letters testamentary or of administration shall have been or may hereafter be granted by the proper authority in any of the United States or the *territories thereof* to maintain any suit," &c. In *Mackey* v. *Coxe*,§ it was held that the Cherokee country was a territory of the United States, within the meaning of this act. The 107th

* 5 Peters, 17.
† 4 Howard, 572.
‡ 8 Wheaton, 574.
§ 18 Howard, 103.

section of the act of 1868 extends the revenue laws only as to liquors and tobacco over the country in question. Nowhere would frauds to an enormous extent as to these articles be more likely to be perpetrated if this provision were withdrawn. Crowds, it is believed, would be lured thither by the prospect of illicit gain. This consideration doubtless had great weight with those by whom the law was framed. The language of the section is as clear and explicit as could be employed. It embraces indisputably the Indian territories. Congress not having thought proper to exclude them, it is not for this court to make the exception. If the exemption had been intended it would doubtless have been expressed. There being no ambiguity, there is no room for construction. It would be out of place.* The section must be held to mean what the language imports. When a statute is clear and imperative, reasoning *ab inconvenienti* is of no avail. It is the duty of courts to execute it.† Further discussion of the subject is unnecessary. We think it would be like trying to prove a self-evident truth. The effort may confuse and obscure but cannot enlighten. It never strengthens the pre-existing conviction.

But conceding these views to be correct, it is insisted that the section cannot apply to the Cherokee nation because it is in conflict with the treaty. Undoubtedly one or the other must yield. The repugnancy is clear and they cannot stand together.

The second section of the fourth article of the Constitution of the United States declares that "this Constitution and the laws of the United States which shall be made in pursuance thereof, and all treaties which shall be made under the authority of the United States, shall be the supreme law of the land."

It need hardly be said that a treaty cannot change the Constitution or be held valid if it be in violation of that in-

* United States *v.* Wiltberger, 5 Wheaton, 95.

† Mirehouse *v.* Rennel, 1 Clark & Finelly, 527; Wolff *v.* Koppel, 2 Denio, 372.

strument. This results from the nature and fundamental principles of our government. The effect of treaties and acts of Congress, when in conflict, is not settled by the Constitution. But the question is not involved in any doubt as to its proper solution. A treaty may supersede a prior act of Congress,* and an act of Congress may supersede a prior treaty.† In the cases referred to these principles were applied to treaties with foreign nations. Treaties with Indian nations within the jurisdiction of the United States, whatever considerations of humanity and good faith may be involved and require their faithful observance, cannot be more obligatory. They have no higher sanctity; and no greater inviolability or immunity from legislative invasion can be claimed for them. The consequences in all such cases give rise to questions which must be met by the political department of the government. They are beyond the sphere of judicial cognizance. In the case under consideration the act of Congress must prevail as if the treaty were not an element to be considered. If a wrong has been done the power of redress is with Congress, not with the judiciary, and that body, upon being applied to, it is to be presumed, will promptly give the proper relief.

Does the section thus construed deserve the severe strictures which have been applied to it? As before remarked, it extends the revenue laws over the Indian territories only as to liquors and tobacco. In all other respects the Indians in those territories are exempt. As regards those articles only the same duties are exacted as from our own citizens. The burden must rest somewhere. Revenue is indispensable to meet the public necessities. Is it unreasonable that this small portion of it shall rest upon these Indians? The frauds that might otherwise be perpetrated there by others, under the guise of Indian names and simulated Indian ownership, is also a consideration not to be overlooked.

We are glad to know that there is no ground for any im-

* Foster & Elam *v.* Neilson, 2 Peters, 314.

† Taylor *v.* Morton, 2 Curtis, 454; The Clinton Bridge, 1 Walworth, 155

putation upon the integrity or good faith of the claimants who prosecuted this writ of error. In a case not free from doubt and difficulty they acted under a misapprehension of their legal rights.

JUDGMENT AFFIRMED.

Mr. Justice BRADLEY (with whom concurred Mr. Justice DAVIS), dissenting.

I dissent from the opinion of the court just read. In my judgment it was not the intention of Congress to extend the internal revenue law to the Indian territory. That territory is an exempt jurisdiction. Whilst the United States has not relinquished its power to make such regulations as it may deem necessary in relation to that territory, and whilst Congress has occasionally passed laws affecting it, yet by repeated treaties the government has in effect stipulated that in all ordinary cases the Indian populations shall be autonomies, invested with the power to make and execute all laws for their domestic government. Such being the case, all laws of a general character passed by Congress will be considered as not applying to the Indian territory, unless expressly mentioned. An express law creating certain special rights and privileges is held never to be repealed by implication by any subsequent law couched in general terms, nor by any express repeal of all laws inconsistent with such general law, unless the language be such as clearly to indicate the intention of the legislature to effect such repeal. Thus it was held by the Supreme Court of New Jersey in *The State* v. *Brannin*,* that whilst the provisions of a city charter, it being a municipal corporation, may be repealed or altered by the legislature at will, yet a general statute repealing all acts contrary to its provisions will not be held to repeal a clause in the charter of such a municipal corporation upon the same subject-matter and inconsistent therewith. The same point is decided in numerous other cases. For example, when a railroad charter, subject to repeal,

* 3 Zabriskie, 484.

exempted the company from all taxation except a certain percentage on the cost of its works, it was held that this exemption was not repealed by a subsequent general tax law, enacting that all corporations should be taxed for the full amount of their property as other persons are taxed, and repealing all laws inconsistent therewith. But where the repealing clause in the general law repealed all laws inconsistent therewith, whether general or *local* and *special*, it was held that it did repeal the special exemption.* In every case the intent of the legislature is to be sought, and in the case of such special and local exemptions the general rule for ascertaining whether the legislature does or does not intend to repeal or affect them, is to inquire whether they are expressly named; if not expressly named, then whether the language used is such, nevertheless, as *clearly to indicate* the legislative intent to repeal or affect them.

In the case before the court, I hold that there is nothing to indicate such a legislative intent. The language used is nothing but general language, imposing a general system of requirements and penalties on the whole country. Had it been the intent of Congress to include the Indian territory, it would have been very easy to say so. Not having said so, I hold that the presumption is that Congress did not intend to include it.

The case before us is, besides, a peculiar one. The exempt jurisdiction here depends on a solemn treaty entered into between the United States government and the Cherokee nation, in which the good faith of the government is involved, and not on a mere municipal law. It is conceded that the law in question cannot be extended to the Indian territory without an implied abrogation of the treaty *pro tanto*. And the opinion of the court goes upon the principle that Congress has the power to supersede the provisions of a treaty. In such a case there are peculiar reasons for applying with great strictness the rule that the exempt jurisdiction must be expressly mentioned in order to be affected.

* The State *v.* Minton, Ib. 529.

This view is strengthened by the fact that there is territory within the exterior bounds of the United States to which the language of the 107th section of the recent act can apply, without applying it to the Indian territory, to wit, the territory of Alaska. And it does not appear by the record that there are not other districts within the general territory of the United States which are in like predicament.

The judgment, according to these views, ought to be reversed.

The CHIEF JUSTICE, and NELSON and FIELD, JJ., did not hear the argument.

BANK v. CARROLLTON RAILROAD.

1. A party coming into the right of a partner, whether by purchase from such partner (no matter how broad the language of the conveyance may be) or as his personal representative, or under an execution or commission of bankruptcy, comes into nothing more than an interest in the partnership, which cannot be tangible, made available, or be delivered but under an account between the partnership and the partner.
2. Where a complainant's right is thus only an equity to share in the surplus, if any, of the firm property after settlement of the partnership accounts, the proper bill is a bill for such a settlement. Such bill will not lie unless all the partners are made parties defendant.
3. Although in general a bill in chancery will not be dismissed for want of proper parties, the rule resting as it does upon the supposition that the fault may be remedied, and the necessary parties supplied, does not apply when this is impossible, and whenever a decree cannot be made without prejudice to one not a party. In such a case the bill must be dismissed. Hence in a case where if all the partners were made parties to the bill, the court in which the bill was filed would, from the character of its jurisdiction (which was confined to persons resident within particular districts, which one of the partners here was not), be without any jurisdiction of the controversy, the bill must be dismissed.
4. A bill for a settlement of partnership accounts which, without charging fraudulent confederacy, shows that it is filed not against all the original partners, but against one of them (yet remaining in the administration of the firm concerns), and persons who have succeeded to the rights