

Latimer v. Poteat ^[1]

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by Peter Graham Fish, 2006

The case of *Lessees of Margaret Latimer & Others v. William Poteat* was heard by Supreme Court chief justice John Marshall and district judge [Henry Potter](#) ^[2] at the May 1833 term of the U.S. Circuit Court for the District of North Carolina. An ejectment action by Pennsylvanian Latimer and her North Carolina lessees for removal of William Poteat from 49,920 acres in western North Carolina raised two issues. One questioned the validity of a 1783 law enacted by the then-sovereign state reserving specified lands "to the [Cherokee Indians](#) ^[3] and their nation forever." The other questioned whether the involved land granted by the state to William Cathcart in 1796, and subsequently transferred to Latimer, fell within the boundaries of that reserved to the Cherokees as determined by a series of treaties, made supreme by the U.S. Constitution (Article VI) to state laws, and related surveys.

Acting against a backdrop of massive forced migration authorized by the Indian Removal Act signed by President [Andrew Jackson](#) ^[4] in 1830, Marshall refused to charge the jury that North Carolina had repealed by implication the 1783 law. An exhaustive analysis of the treaties of Hopewell (1785), Holston (1791), and Tellico (1798) led him to endorse the boundary lines thus fixed. His doubts about the accuracy of the Hawkins-Pickens survey line embodied in the Tellico Treaty failed to dissuade the jury from giving judgment in favor of the possessor-defendant Poteat, who asserted title under the Cherokee claim. The Supreme Court hesitatingly affirmed the circuit court's decision five years after Marshall's death.

Reference:

John P. Roche and Stanley B. Bernstein, eds., *John Marshall: Major Opinions and Other Writings* (1967).

Additional Resources:

Graham, William A. "Discourse in Memory of the Life and Character of the Hon. Geo. E. Badger, delivered by William A. Graham, of Orange, (By request of the Bar of Wake County,) at Raleigh, July 19th, 1866." in *The Papers of William Alexander Graham* Volume VII 1866-1868. Raleigh [N.C.]: North Carolina Department of Cultural Resources, Division Of Archives and History. 1984. <https://digital.ncdcr.gov/Documents/Detail/papers-of-william-alexander-graham-1866-1868-v.7/2691382?item=2820916> ^[5] (accessed August 28, 2012).

William A. Graham to David L. Swain, Hillsboro, [N.C.], June 1st., 1866. in *The Papers of William Alexander Graham* Volume VII 1866-1868. Raleigh [N.C.]: North Carolina Department of Cultural Resources, Division Of Archives and History. 1984. <https://digital.ncdcr.gov/Documents/Detail/papers-of-william-alexander-graham-1866-1868-v.7/2691382?item=2820360> ^[6] (accessed August 28, 2012).

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Authors:

[Fish, Peter G.](#) ^[10]

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