

MR. WIRT TO GOV. GILMER.

Baltimore, June 4th, 1830.

SIR—A just respect for the State of Georgia, and a desire to avoid a misconstruction which might be attended with evil consequences, seem to me to call for a communication which, under other circumstances, might well be deemed officious and intrusive.—The excitement with regard to the Indians within your borders is already so high, and in this state of feeling, measures of the most innocent character are so easily misapprehended and converted into causes of offence, that I persuade myself your Excellency will at least approve the motive of this letter as a measure

of peace.

The Cherokee nation have consulted me, professionally, as to their rights under various treaties with the United States. Among other questions they have asked me whether, under the federal constitution, laws and treaties, the State of Georgia has the right to extend her laws, compulsively, into their nation; and whether this question can or cannot be carried for decision to the Supreme Court of the United States? I am fully aware of the serious import of these questions, and regret exceedingly that they have arisen. I foresee distinctly the disastrous consequences which may be made to flow from giving the controversy this direction: and yet if it be met and conducted with proper temper, as I trust it will, it is quite as apparent that it may prove the means of peace and reconciliation. I have not sought this consultation. It has been cast upon me in the common and regular practice of my profession; and according to my understanding of my professional duties, I am not at liberty to refuse either my advice or services to any one who comes to consult me on his legal rights, and who has nothing more in view than the assertion of those rights according to the course of the laws of the land.

It is my misfortune to differ with the constituted authorities of the State of Georgia, on the question of her power to extend her laws into the Cherokee nation; and the late debates in Congress will have satisfied your Excellency that in this opinion I am not singular, but that I hold it in common with many of the most distinguished lawyers on our continent. We may be wrong: and, as infallibility is not the lot of mortals, those who hold the opposite opinion may possibly be wrong. Fortunately there exists a tribunal before which this difference of opinion may be quietly and peaceably settled, and to this tribunal I think it may be regularly referred. I perceive that in the debates to which I have alluded, a mistaken humanity has been supposed to warp the judgment on one side of this question, and interest on the other. In the Supreme Court of the United States, we shall find a tribunal as impartial and as enlightened as can be expected on this earth; or if partiality can be supposed to find its way into that high tribunal, on any occasion, it is not on such a one as this, that the Cherokee nation have a right to expect it in their favor. To them the courts of the United States are *foreign Courts*, while they are the *domestic tribunals* of the States of the Union.

I have told these people that I am willing to assist them in bringing their rights for final decision before the Supreme Court of the United States, on the condition that they conduct themselves peaceably towards the people of Georgia, and of the United States, and that they make the question purely a question of law for our Courts: but that I will abandon them and their cause on the first aggression by violence on the white people around them which shall be authorized by their nation. It is but justice to add that in those of the nation who have been with me, and who compose the delegation that have been at Washington through the winter, I have not discovered the slightest disposition to violence. They are civilized and well informed men—they wear our dress—speak our language correctly, and their manners indicate all the mildness and much of the culture and courtesy of our own best circles. They assure me that their people at home have abandoned the habits of savage life and subsist by agriculture and the other usual and peaceful pursuits of civilized societies. They profess, and I believe, with entire sincerity, to be willing to make the questions of their rights under their treaties, questions of pure law, for the decision of our own courts; and as I perceive by the reported debate in Congress that a measure of this sort has been anticipated, and that one of your enlightened Senators in that body expressed a strong and without doubt, a sincere conviction that the decision of the judiciary would, if it should ever be asked, be in favor of the right of the State to legislate over the Cherokee nation, I cannot but indulge the hope that in proposing to bring this question before the Supreme Court, I shall have advised a measure rather pleasing than otherwise, to the State of Georgia.

Be this as it may, I cannot reconcile it to my own sense of propriety to have any agency in this affair without apprising your Excellency, frankly and respectfully, of what is intended. I desire to have it distinctly understood, on every hand, that neither these people or their counsel aim at any thing more in this movement, than an open, peaceable and respectful appeal to the opinion of our own courts, the courts of the Union.

Your Excellency will not understand me as asking or expecting that you will take the trouble to answer this letter. My object is single and sincere; it is simply to avoid all appearance of concealment, and all misapprehension or surprise on the part of the State of Georgia, by advising your Excellency fairly and openly, of the measure in contemplation, and by assuring you that there is no other purpose in view than a quiet, peaceable and respectful reference of the questions of law and right in dispute between the State of Georgia and the Cherokee People, to the highest Court of our nation, the Supreme Court of the United States.

Your Excellency will permit me to assure you, farther, that in the future measures which may grow out of this controversy, so far as they shall be under my direction, care will be taken to give as little trouble as possible to the constituted authorities of the State of Georgia, and that the discussion will be conducted with all the respect for that State and its laws which may consist with the proper assertion of what I consider the rights of this unfortunate people.

The decision may be expedited by making a case, by consent, if that course should suit the views of the State of Georgia. It is not asked, however, but suggested merely for your consideration, with an assurance that if to

it should meet your approbation the Cherokees will cheerfully concur in the measure.

The motives which has led me to trouble you with this communication, make it equally proper, I think, that I should submit a copy of it to the President of the United States; and I shall place another copy in the hands of the Cherokee delegation, in order that they may distinctly see and remember the conduct which is expected from their people, and what, alone, they have a right to expect from me. ●

I have the honor to remain, Sir, most respectfully, your obedient servant.

WILLIAM WIRT.

His Excellency **GEORGE R. GILMER,**
Governor of Georgia.