Governor's Message.

EXECUTIVE DEPARTMENT, GEORGIA,
Milledgeville, October 19, 1830.

FELLOW CITIZENS,—The great number of persons who have taken possession of the Cherokee territory in search of gold, in defiance of the authority of the State, to the injury of the public property and the rights of the Indians, has made it necessary that you should be assembled together sooner than the time appointed by law for the meeting of the Legislature.

In the early part of the year, Gold was discovered in great quantities in the Indian lands. The act of 1829 having fixed upon the first of June, as the time when the laws were to be extended over that part of the State, all persons seemed to consider themselves at liberty, in the mean time, to appropriate as much of its mineral riches to themselves as possible. The whole community became very much excited. The profits of those engaged in searching for Gold, were reported to be very great. The love of gain, always one of the strongest passions, became stimulated to excess. All classes of people, but especially the idle and profligate, pressed into the mineral region, with the hope of acquiring great wealth with little labor. The thousands of persons thus collected together, all operated upon by motives which lead to most of the disorders of society, and freed from those restraints which the laws impose upon the evil dispositions of men, exhibited a scene of vicious indulgence, violence and fraud, which would not have been tolerated for a moment if the means could have been used to prevent it. The Indian right of occupancy was wholly disregarded. The Indians themselves were not even permitted to have an equal enjoyment of the riches of the earth, which circumstances had thus for a time made common to all. The Cherokee government, of the importance of which to the Indians so much has been lately said, proved utterly powerless to protect any rights or punish any wrongs. The magnitude of the evil was such, that it became a matter of consideration, whether the Legislature should not be called together to provide for it some proper remedy. At this time the bill for the removal of the Cherokees beyond the Mississippi, was depending before Congress. The Government of the United States was, for the first time, earnestly endeavoring to execute the contract of 1802. The manner proposed was believed to be the only practical one, consistent with humanity to the Indians, and justice to Georgia. Unfortunately for the country, the opposition to the Administration determined to make the proposed removal of the Indians a party question. The facts connected with the subject were found to be so far re-

moved from the knowledge of the people, as to afford ample opportunity for the instruments of party strife to mislead the public judgment. It was considered proper not to call the Legislature together, until the result of this extraordinary struggle in Congress was known. A hope was also entertained, that when the laws of the State went into operation, our citizens would be disposed to respect their authority; and such would probably have been the case, had not a large number of the persons engaged in searching for gold been from other States. Their refusal prevented the obedience of the people of this State. Before information was received of the passage of the Indian bill, the United States' troops had, in the enforcement of the non-intercourse law, removed all persons, whether from this or other States, as intruders upon the Indian lands. Although the most confident opinion was entertained, that the United States' troops had no such authority, its exercise was so beneficial for the time, that no opposition was made to it. The correspondence with the President and War Department, will explain more fully the opinion and policy of the Executive upon this subject.

The calling the Legislature together at an unusual time, is so inconvenient to the members, and so expensive to the people, that the design of doing so was relinquished, from the belief that it might not be necessary. On the first of June the laws of the State were declared in force over the Cherokee country by public proclamation. A distinct proclamation was at the same time issued, declaring the right of the State to all the gold, and other valuable minerals, in its ungranted lands occupied by the Indians.—The right thus asserted was supposed to be established by the customary laws of all the European nations, who made discoveries, or formed Colonies on this Continent, by the fee simple or allodial title which belongs to the State, to all lands within its limits, not already granted away; and the absence of all right in the Indians, they never having appropriated the mineral riches of the earth to their own use. Immediately after the issuing of this proclamation, a competent and faithful agent was appointed, with directions to preserve the rights, thus asserted, from violation by all the means which the forms of the law and the process of the courts would sanction. This duty was promptly attended to, and although it was known that occasionally many persons were engaged in taking gold, yet it was hoped that the efforts of the agent and the force of the United States' troops, would finally prevail in stopping them, if not entirely, at least so far as to prevent the necessity of resorting to other means: Nor was this opinion changed until it became too late to call a session of the last Legislature. The militia would have been employed in protecting the rights of the State to the gold, and removing those who were trespassing upon that right, if the constitution and laws had given me that authority. The law which attached different portions of the Cherokee Territory to several counties, so as to include the whole within the organized limits of the State, contained no prohibition against white persons mingling with the Indian population, or entering upon the lands occupied by them, neither had any law of the State made it criminal to take minerals from such lands. The gold diggers were, therefore, neither subject to arrest nor any other criminal process. Under such circumstances, if an attempt had been made to remove them by the use of extreme force, should death have ensued, it would have been murder in the actors. If orders had not been given to use that kind of force, the employment of the militia would have been worse than useless. The Governor, however, has no power over the militia, except in cases of insurrection, invasion, or the probable prospect thereof. But if I had been invested with ample authority to have called out the militia, and the intruders had grossly violated the penal statutes, or trespassed upon the acknowledged rights of the State in its posession, yet no appropriation of money had been made by law, by which I could have armed, equipped, and supported, for a single day, a sufficient body of militia to have effected the desired object. Perhaps the public interest would have been advanced, if the Legislature had been called together, as soon as it was discovered that the Executive power was insufficient to protect the public property. One advantage, however, we have the right to expect from the course which has been pursued. All persons every where must be now convinced of the necessity which impels the State to exercise jurisdiction over its Indian territory, not only for the protection of the property of the State, but the rights of the Indians, and that the Cherokee Government, if it had been permitted to exist, would have been wholly incompetent, under present circumstances, to discharge any of the duties for which Governments are organized.

Your attention is requested to be given, as early as possible, to the passage of such law as you may suppose most effectual, for the removal of the persons at present upon the public lands searching for gold, as well as to prevent any future entries thereon for that purpose. Such is the tempting nature of this employment, that highly penal enactments will be necessary to effect this object. Very few would engage in it, if it exposed them to confinement for years in the Penitentiary. As the evil to be prevented is of a great magnitude, and requires an immediate remedy, it will be expedient that the provisions of whatever law you may pass, should be few and of obvious necessity, and operative as soon as possible. No doubt is entertained of the submission of the citizens of this State, to the requirements of any law which may be passed, but, as a great number of the intruders have been from other States, and said to have been of lawless character, and to have evinced the disposition to set at defiance the power of the State, it may be necessary to authorize the use of the militia for its enforcement. The

great value of the gold mines, renders it proper that you should not only provide some other means for securing them from trespass, but also to render them profitable to the State. They are found throughout the territory occupied by the Cherokees, but, of the greatest value in the section between the Chestatee and Etowah rivers. That part of the country is so broken and inaccessible, so near the boundary of the State, and the means of enforcing the laws so difficult to be commanded, that neither of those objects can be properly effected, without taking possession of the mines. To do this in such manner as to have them wrought profitably and safely to the State, and at the same time to guard the Indian right of occupancy from violation, it may be necessary to obtain an accurate survey of the whole country. By doing this, those tracts which contain gold may be ascertained, and leases made with more certainty of confining the tenants of such within their bounds, and of distinguishing between the rights granted to the tenants of those tracts which may be occupied by Indians, and those without that incumbrance. This measure may also be necessary to enable the State to ascertain with certainty, the number of the Indians within its limits, the extent of their improvements, the quantity of their unoccupied lands, the places which had been occupied by emigrants, the residence of white persons, and distinguished Chiefs—the location of the towns and their population, with various other information of the same character, all of which must be known, in order that appropriate laws may be passed for the government of our Indian people. No doubt is entertained of the right to survey the entire Cherokee territory, if such measure should be considered expedient. The rights of jurisdiction and soil are essential attributes of government, and were acquired by the State upon the acknowledgment of its independence, sovereignty and territorial limits, by Great Britain. These rights have never been relinquished. For, although the jurisdiction of the States is restricted by the constitution, from operating upon a few specified objects, and persons, yet it is unlimited in all other respects; and the constitution contains a special provision that it shall not be construed to the prejudice of the claims of the States to territory. Various cessions of these rights of soil and jurisdiction over Indian tribes, and the territory which they occupied, have been made by different States, to the United States, by virtue of which it has created territorial governments, and granted the right of soil to individuals. Virginia, Georgia, New York, Massachusetts, Connecticut, N. Carolina and South Carolina, have made such cessions. Ohio, Indiana, Illinois, Tennessee, Alabama and Mississippi, are exercising the powers of government in consequence of such conveyances. Although the whole extent of this country was in the possession of the Indian tribes when the first settlement was made by the Colonists, and most of it has been ceded by the Indians in the form of treaties to the Colonists, or the States, yet not one foot of land is believed to be held by the force of an Indian title. Each State in the Union, as did every Colonial Government, claims to be the proprietor of all the lands within its limits. The courts recognize no title unless it be derived from the State, Colonial, or British Governments. Such is also the doctrine of the Supreme Court. The Indian tribes have no where been considered as forming such communities as could be recognized as Governments, and having the power to act nationally. The principal objection, which has been made to the exercise of the right of soil and jurisdiction by the State over the Cherokees, has been drawn from the phraseology of the treaties between that tribe and the United States. If such treaties were to be considered as compacts between independent nations, as has been asserted, they would be void, so far as they pretended to limit the sovereign rights of the State. But treaties have been made with the Indian tribes, at all times, since the first settlement of this country, without having been considered such instruments as conveyed political power or rights of territory. They have been the expedients by which ignorant, intractable and savage people, have been induced, without bloodshed, to yield up what civilized Governments had the right to possess, by virtue of that command of the Creator delivered to man upon his formation—"be fruitful, multiply, and replenish the earth, and subdue it." So far, therefore, as the United States, our sister States, and foreign Governments are concerned, the rights of jurisdiction and soil are perfect, as exercised by the State over ther Cherokees, and the lands occupied by them. These rights have, however, their correspondent duties. If you subject the Indians to our laws, they have a right to our protection. If the exigencies of the State require that the gold mines in the country occupied by them, should be taken possession of, such exercise of power should not be extended further than the public interest requires. The desire of acquiring land for individual profit, ought not to be the operative motive in directing the policy of the State. It is also due to our own character that we should have a jealous care lest we press the necessity of taking possession of the minerals in the Indian lands beyond what the public interest, the preservation and use of the public property, and the enforcement of our laws, may require. Even the measure of surveying the Cherokee territory, however necessary for the proper administration of the laws, securing the public property from trespass, and protecting the Indians, is on account of the sensitive feelings of the humane, excited as they have been, by the interested and improper statements of political partizans upon the subject of our policy towards the Cherokees, so liable to misconstruction, that it would be magnanimously forbearing, in the Legislature, perhaps wise, to delay the adoption of that measure for the present.

In removing intruders, it will be expedient to consider all white persons such, without regard to their length of residence or the permissions of the Indians. The citizens of this and other States, who have either taken refuge in the Indian country, to escape from the punishment due to their crimes, or connected themselves with their society from unfitness to live in civilized communities, have not thereby acquired any claim upon the State to peculiar privileges. Much of the opposition of the Cherokees, to the extension of the laws of the State over them, and to the offers made by the United States, to induce their reunion with that part of the tribe who have removed to the West of the Mississippi, has proceeded from the influence of these persons. At the same time that we acknowledge that it would be unjust to compel the Indians to leave the country which they have always occupied, yet believing that their removal to the West would be advantageous both to themselves and the people of the State, it is proper that you should take away any extrinsic causes which prevent their voluntary action upon this subject. It may however be just as well as expedient to exempt individuals of good character, from the operation of such a general regulation, upon their taking the oath to support the constitution and laws of the State, or giving other security that they will discharge the duties of citizens of the State. The number of white men residing among the Cherokees, within the limits of the State, are estimated at two hundred and fifty, exclusive of Missionaries, traders and pedlers. About one hundred are living with Indian women: fifty have permits from the Cherokee Chiefs, and one hundred from the Cherokee Agent. Out of the number of fifty-four, whose names, places of residence, and property, are described in a letter from the Agent, twenty-four are possessed of negro slaves.

The law extending the jurisdiction of the State over the Indians, contains no provision prohibiting white persons from entering upon their lands. The Indians will be exposed to continual vexation and disturbance, unless their rights are so secured as to enable them to obtain certain redress for their violation. Hitherto intruders have been kept off their lands by the force of the General Government. However justifiable the exertion of this power may have been formerly, it cannot be continued any longer, consistently with the right of jurisdiction which has been assumed by the State. It becomes therefore an imperative duty to afford to the Cherokees by your enactments, the same protection from intrusion, which they formerly received from the United States.

It is also due to our Indian people that that provision in the law of 1829 should be repealed, which prevents Indians, and the descendants of Indians, from being competent witnesses in the courts of the State, in cases where a white man is a party. The present law exposes them to great oppression, whilst its repeal would most probably injure no one. Attempts have been made to strip them of their property by forged contracts, because of the impossibility of defending their rights by the testimony of those who alone can know them. And although the moral feelings of our frontier community has been too correct to permit such infamous proceedings to effect their ends, yet the character of our legislation for justice, requires that the rights of these department people should not be exposed to such danger. Our Judges are qualified to determine upon the competency of witness, and our Juries to weigh their credibility.

That part of the law of 1829, which disannulled all the laws and ordinances of the Cherokee Government, has been entirely disregarded by the Indians. The chiefs have continued to meet together as a Legislative body, have passed laws, and carried on all the operations of Government in the same manner as if they really were the representatives of an independent nation. I have had no authority to prevent such conduct, because the law which repealed all their ordinances and punished their chiefs for any act done for the purpose of preventing emigration, attached no penalty for any other exercise of power. Although ambition is not more censurable, when exhibited by an Indian, than a white man, and the situation of the Cherokee tribe rendered it but natural that a strong effort should be made, by those who had by their wealth and intelligence obtained the absolute control over it to retain their power, yet it is not therefore the less proper that the State should compel them, by the use of the necessary authority, to desist from their pretensions. They have had sufficient notice to do so. Further delay would but encourage disobedience. Instead of making their legislative, judicial or other pretended acts of government treasonable, the milder punishment of the Penitentiary will probably be an ample guard against any future ambitious purposes.

The passage of the Indian bill by Congress, created a strong hope that through the means which was thereby placed at the disposal of the President, the state would be relieved from the embarrassing difficulties which have so long harrassed it, arising out of its relations with the Cherokees. As yet our expectations have been disappointed.—The Indians have refused to listen to any terms offered by the President for their removal, or even to meet him at his request for the purpose of consultation. They have addressed a memorial to the people of the United States, complaining of the oppression of Georgia, and the faithlessness of the administration of the General Government. They have been persuaded, that the Cherokee tribe is an independent foreign nation, and that the Supreme Court will sustain it in assuming sovereign powers, and the State of Georgia be restrained from enforcing its Laws upon them. I have received a formal notice, a copy of which it is understood has been served upon the President of the United States, of the intended application to the Supreme Court for this purpose. The

correspondence of the Executive Department upon this subject is submitted to you. Whatever difference of opinion there may exist among good men, as to the policy of removing the Indians, all must agree in condemning this effort to enlist the Supreme Court in the violent party question which now agitates the whole Union. The State never can become a party before any court for the determination of the question, whether it has the right of subjecting the people who reside within its acknowledged limits to the operation of its laws.

Although the first efforts of the President to extinguish the Indian title have not proved successful, yet the promptness with which they have been made, and the unreserved manner in which our rights have been acknowledged, require of the State the fullest confidence in the present administration upon this subject. It may be expected that the contract of 1802 will now be honestly executed, if the neglect of former administrations, and the opposition to this, has not rendered it impossible. Both, policy on our part, and respect for the Government, demand that we should wait patiently, without acting, the result of the exertions of the President in using the means provided by Congress for that purpose. If unfortunately for us, he should fail entirely, it will be proper for the State to look no longer to the contract of 1802, for the extinguishment of the Indian title to its lands—But to exercise its own powers for the management of its own internal concerns.

One of the means used by the General Government to execute the contract of 1802, has been by paying individual Cherokees the full value for their improvements and possessions upon their emigration. These improvements and possessions when thus paid for, become the property of the State. Upon application to the War Department, I have received a schedule of the names of the emigrants from this State, with an account of the improvements left by them, and their value, copies of which are laid before you. It is important that these improvements should be placed in the possession of citizens of this state as early as possible, not only for the purpose of preserving them for future disposition, but as the means of more readily enforcing the Laws upon the Cherokees. As it is probable that the President will find that the appropriation made at the last session of Congress for the removal of the Indians, may be more successfully expended to effect that object, by operating upon individuals, families and towns, than upon the whole tribe through their Chiefs, it will therefore be proper that you should prescribe some general regulations, by which the places left by the emigrants may be immediately occupied by citizens of the State. Many of the houses which have been left the emigrants have been taken possession of by other Indians. Authority ought to be given to remove such occupants in a summary way. Others were destroyed by order of the principal Cherokee Chief, John Ross, under circumstances of the most savage cruelty to our people, who were in possession. The jurisdiction of the State had not at that time been extended over the Cherokees. The copy of my letter to the war department upon this subject accompanies this Message.

The decision of the President, upon the right claimed by the State to the immediate possession of a considerable tract of country, now in the occupancy of the Cherokees, but which was formerly owned by the Creeks, has been less favorable than we might have anticipated, from the clearness of the testimony which was submitted to him. The Secretary of War, in a letter upon this subject, states, that the Commissioners appointed by the President to examine into the facts, in relation to that claim, had reported in favor of a line beginning at the Shallow Ford, on the Chattahoochee, and running South Westwardly, along the ridge as represented in a Map which he had transmitted to the Executive Department, and that the President had confirmed the report and ordered the Cherokees to be removed from the land so assigned to the State. This Map accompanies the other papers submitted to you upon this subject. The report of Gen. Coffee alluded to in the letter from the Secretary of War, was not received until a short time since, and then without being accompanied by the decision of the President. Upon examining the report, it was ascertained that General Coffee had never seen any part of the testimony which was taken by order of the last Legislature. A letter was immediately addressed to the President, through the then acting Secretary of War, requesting a re-examination of General Coffee's report, and the evidence which was transmitted to him from this department.

The tract of land from which the Cherokees have been removed, by order of the President, is supposed to contain 464,646 acres, and now subject to be disposed of in such manner as you may think expedient.—The great object to be effected by the State, in the appropriation of its lands, is the increase of its population, and the excitement of its people to industry, and the accumulation of wealth. The lottery system which has been hitherto adopted, is believed to have been better calculated to attain these ends than the disposition by public sale. In an unimproved country, where capital is scarce, interest high, and every trade and employment demand labor and wealth, the surplus money in the possession of the people, can be expended more usefully by them, in improving the lands, and otherwise adding to the riches of the country, than if drawn from them to be placed in the public Treasury.—It has always been found more difficult to restrain improper expenditures arising from a full Treasury, than to obtain through the powers which belong to the Government, the means which may be really required for public purposes. It is reported that there are valuable gold mines in the lands to be disposed of. The public interest requires that the lots of land which contain gold, should

be exempted from distribution by lottery–The spirit of speculation which the disposition of the lands by lottery is calculated to excite, has always been the greatest objection to that system. The knowledge that the lands contained valuable mines of Gold, would increase that spirit to the most injurious extent. The community would become highly excited, by the hope of acquiring great wealth, without labor. The morals of the country would be in danger of corruption, from the temptation which would be held out by law, to the commission of innumerable frauds. Regular industry and economy would for some time be suspended by restless idleness, and imaginary, as well as real, and unnecessary expenditures. In most instances, even the successful owners of the rich prizes would not be really benefited. Prodigality is the usual result of riches, suddenly and easily obtained. Mines are like the accumulation of the people's money in the public Treasury. The Government should manage them for general and not for individual advantage. If they should prove exceedingly profitable, the State would thereby be enabled to relieve the people from taxation, improve all the roads, render its rivers navigable, and extend the advantages of education to every class of society.

It will be necessary for you to provide by law, for carrying into effect, so much of the seventh section of the first article of the constitution, as requires that an accurate enumeration of the people should be made at the end of every seven years after the first enumeration. In doing this, special provision will be required for taking the Census of those counties to which the Cherokee Territory has been attached, at least so far as relates to the Indians. It is very desirable to have as minute information as possible, of their entire numbers, as well as the number of the different classes among them, such as the number of white men who are natives, those who are not natives, the number of the white women, of the half breeds, of the slaves, and of the Indians. It may also be important to ascertain the location of all those persons, and the extent of their cultivated, cleared and enclosed land.

Among the bills presented for signature on the day of the termination of the last session of the legislature, was one for the incorporation of the town of Decatur. After a full consideration of its provisions, I was of the opinion that the corporate powers granted by it, were inconsistent with the Constitution. I was therefore constrained to enter my dissent to its becoming a law. I have done so with less reluctance, because it is understood that my opinion but follows the decision of the judiciary department. My objections accompany this message.

According to the request of the Legislature, commissioners were appointed to examine and report upon the claims of C. C. Birch, to compensation beyond his contract price for building the addition to the State House. The report of the Commissioners, allowing the contractor a part of his charges, was not confirmed, for reasons assigned fully in the written opinion which accompanies the papers upon that subject.

The compilation of the laws and resolutions from 1820 to 1829, inclusive, by William C. Dawson, Esq. has been examined and approved. The number of copies required to be printed has been contracted for, and will be ready for distribution by the month of June next. The committee appointed to examine this compilation, say, in their report, "It is worthy of observation, that from 1800 to 1809, inclusive, there were only 486 laws, and but few resolutions, passed by the Legislature, and from 1810 to 1819, inclusive, there were 708 laws and 291 resolutions, while during the last ten years, we find there were 1477 laws and 695 resolutions." The cause of this great increase of Legislation, and the consequences which follow from it, are well worthy of your fullest consideration. Much the larger portion of the compilation is made up of resolutions imposing no obligation upon the people, and the object of passing which has long since been answered or ceased to exist, and of private, local and temporary laws, in which the community have little or no concern.

Much expense would be saved, as well as the public convenience greatly advanced, by excluding such matter altogether from future compilations. It is singularly surprising, that a people jealous of their political privileges, as the people of Georgia are, should be so regardless of the rights which those privileges are intended to secure. All the forms of a Free Government are of no other value than as guards thrown around the people, to secure the continued enjoyment of the natural and civil rights which belong to them as individuals. These rights can scarcely be so called unless they are clearly defined by the laws, and protected from violation by a faithful and intelligent judicial administration. If this be true, it becomes us to enquire whether our laws are so enacted as to be certainly known, and so administered, as to secure to each citizen the same judgments. By far the largest portion of the decisions of our courts, are results drawn from the common and statute laws of England; and yet no judge can give a satisfactory answer to the question, what part of the statute and common law of England is in force in this State. By the law of 1784, all the acts, clauses, and parts of acts, of the provincial Legislature, that were in force on the 14th of May, 1776, the common law of England, and such of the statute laws as were usually in force in the province, were declared to be in force, so far as they were not contrary to the constitution, laws, and form of Government then established in the State.—This law is still unaltered. It is impossible to determine by its provisions, what decisions of the courts of England are to be considered as common law here, or ascertain what statutes of England were *usually* in force in the province of Georgia.

Concluded next week.