

THE STATE
vs.
WORCESTER AND OTHERS. } Habeas Corpus.

THE CASE.

The defendant and five others were in the custody of Col. Sanford, Georgia Commissioner, to whom the writ was directed, to shew the cause of their capture and detention, and who returned upon said writ, that as Commissioner aforesaid, appointed under the act of the State of Georgia, passed on the 22d of December, 1830, entitled "An Act to prevent the exercise of assumed and arbitrary power, by all persons under pretext of authority from the Cherokee Indians, and their laws, and to prevent white persons from residing in that part of the chartered limits of Georgia, occupied by the Cherokee Indians, and to provide a guard for the protection of the gold mines, and to enforce the laws of the State within the aforesaid territory." He had arrested said persons for a violation of said act, and particularly the 7th section thereof, and had brought them to be surrendered to the civil authority to be dealt with as said law directs. Whereupon their discharge was moved for, upon the grounds herein after mentioned. Dougherty and Trippe for the State. Harris, Harden and Underwood for Defendants.

THE OPINION OF THE COURT.

Preparatory to a decision of this case, it will be necessary to bring into view, such parts of the above recited act, as are applicable to the question. The 7th section is in the following words: "That all white persons residing within the limits of the Cherokee Nation, on the first day of March next, or at any time thereafter, without a licence or permit from his Excellency the Governor, or from such agent as his Excellency the Governor, shall authorise to grant such permit or licence, and who shall not have taken the oath hereinafter required, shall be guilty of a high misdemeanor, and upon conviction thereof, shall be punished by confinement in the Penitentiary at hard labor, for a term not less than four years: PROVIDED, that the provisions of this section shall not be so construed, as to extend to any authorized agent or agents, of the government of the United States, or of this State, or to any person who may rent any of those improvements which have been abandoned by Indians, who have emigrated west of the Mississippi." And it provided also, that females and children under age, were not to be effected by the section. The 8th section provides, "That all white persons, citizens of the State of Georgia, who have procured a licence in writing from his Excellency the Governor, or from such agent as his Excellency the Governor, shall authorise to grant such permit or licence, to reside within the limits of the Cherokee Nation, and who have taken the following oath, viz: "I, A. B. do solemnly swear (or affirm as the case may be,) that I will support and defend the Constitution and laws of the State of Georgia, and uprightly demean myself as a citizen thereof so help me God," shall be, and the same are hereby declared, exempt and free from the operation of the 7th section of this act."

The 11th section provides for the appointment of the Commissioner and guard, for the purpose of carrying the act into effect. And the 13th section declares the duty and power of the guard, or any member thereof in arresting persons charged with, or detected in a violation of the laws of the state, within said Nation, and to convey them as soon as practicable before the civil authority to be dealt with as the law directs.

In the prosecution of the defendant's application for a discharge, their Counsel set up two classes of objections to the act under which they are apprehended.

- 1st. That it is contrary to the Constitution of the United States.
 2. That it is contrary to the Constitution of the State of Georgia.
- In the first, upon four grounds, viz:
- 1st. No State shall pass any *ex post facto* law.
 - 2d. The citizens of each state shall be intitled to all privileges and immunities, of citizens in the several States.
 - 3d. No state shall, without the consent of Congress, lay any duty of tonnage, keep troops or ships of war, in time of peace, enter into any agreement or contract with another state, or with a foreign power, or engage in war, unless actually invaded, or in such imminent dangers will not admit of delay.
 - 4th. the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by an oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized.

In the last, upon the following ground, viz.

"No person shall be denied the enjoyment of any civil right, merely on account of his religious principles," and as connected with this ground, the oath required by the statute is a *test oath*, and therefore contrary to the inherent rights of man.

The course of the argument makes it necessary to examine all these points.

1st. It is said that the act is an *ex post facto* law,—in this, that these individuals were residing on the territory at, and before the time of the passage of the act, and contrary to no existing law, and that a residence, innocent at that time, could not be made criminal by the Legislature.

This objection will be made to disappear by a very plain statement. What is an *ex post facto* law? It seems to be agreed on all sides, that it is a law punishing an act, which when committed, was repugnant to no law. In other words, according to the first lesson of every tyro in the legal science, law is a rule of action proscribed for the conduct of men, and consequently regulates all his actions after the passage of the law, and can never be said to be a rule of action to past conduct, or actions existing prior to the law. Is this the fact in relation to the statute before us? When was it passed? On the 22d of Dec. 1830. What residence of these people constitutes the crime? Is it the residence at the time, or before the passage of the act? Candor will dictate a negative answer to this question. When then does the crime of residing in the nation commence? Not until after the first day of March ensuing, the date of the act. How then can it be said, that this is prescribing a rule of action to the past, instead of the future conduct of the citizens? It cannot be.

2d. The citizens of each state shall be entitled to all privileges and immunities of citizens in the several States. It is urged, that the law is not a general one, that it applies to a particular part of the state, and these individuals being citizens of other states, and coming into that territory contrary to no law at the time of their emigration, are now made to perform duties that are not required by the other citizens of Georgia residing in the settled parts of the State. This is not a true construction of the act. Laws are not made to act upon mere territory, but upon people who may occupy that territory, whether one, or one thousand miles square, and if all persons, without discrimination, are to be equally effected by the law so soon as they enter the forbidden land, it is a general law, because it is the whole people sought to be restrained, and not the land. The expression of the law is, not citizens of other states, but *all white persons*, whether citizens of Georgia or elsewhere, who may reside within the limits of the Cherokee Nation on, and after the first of March shall, &c. Now here is no distinction between citizens of this and other States. The moment a citizen of South Carolina comes into Georgia, he is a citizen of Georgia, for all the purposes of enjoying the privileges and immunities resulting from the powers granted by the states to the Federal government, in that sense, he is a citizen of the Union, and consequently a citizen of each state. In reference to the reserved and ungranted powers of the states, he is not a citizen entitled to all the immunities and privileges of the citizens of the state into which he comes, such as voting at state elections, participating in public lands, &c. until he has complied with certain conditions as to residence, imposed by the laws of the state. But without this distinction, these persons cannot complain of the law, for it applies to our own citizens as well as all others, and surely it will not be contended that citizens of other states shall have greater privileges than our own! We will not let our own reside there without obeying the law.