

THE CHEROKEE GOLD MINES.—It appears that a collision has taken place between the Executive and Judicial authorities of Georgia, which shows conclusively, if further illustrations were wanted, the extent to which the former is determined to carry the doctrine of the nullification of treaties into practice, without the fear of impeachment before his eyes. According to the account given in the *Georgia Athenian*, an Indian named Canatoo was arrested by the guard for digging gold in his own nation, and confined in Walton jail. He was brought up, by habeas corpus, before the Superior Court of Walton County, Judge Clayton presiding. His counsel moved for his discharge on three grounds;—first, for defects in the warrant and commitment; secondly, that the act prohibiting digging gold contemplated only intruders and others, and not the Indians; and thirdly, that, if it did mean to include them, it was unconstitutional. After a long argument, the court said the question was an important one; that the two first grounds were probably untenable, but that the third required serious consideration. And they were so much impressed with the strength and truth of the argument on this third point,—which was simply that treaties must not be violated, that they permitted the Indian to go at large, on his own recognisances; postponing a final decision, out of respect, as it is said, to the legislature. But Gov. Gilmer has not the same respect for a co-ordinate branch of the government, the Judiciary to wit, as will be seen by the subjoined letter. Well may the *Georgia Journal*, the official paper, say that it ‘deeply regrets’ this collision. It may, however, be the fact, as the report is imperfect, that no judicial decision has been *finally* made, and that the Governor merely intends to coerce one, if he can, in favor of his own *unconstitutional* construction or support of an unconstitutional enactment. It was urged that if the Indians had the right to dig gold on their own soil, they might delegate that right to others. But Judge Clayton, according to the report, denied this inference, which it strikes us may reasonably be denied, under all the circumstances. But the truth is, that when, under the high sanction of the highest executive authority, the faith of treaties is regarded as naught, and the rights of a people not powerful enough to sustain themselves by the strong arm, are left to the mercy of avarice and speculation, it is absurd to attempt to reconcile the difficulties which will arise, with the principles of either law or logic.

EXECUTIVE DEPARTMENT,

Milledgeville, Sept. 20, 1831.

Sir:—I have just learned that the Judge of the Western Circuit has decided that the law for the protection of the mines in the territory occupied by the Cherokees is void, and has discharged an Indian from confinement who had been arrested by the Guard for its violation. As the effect of this decision will be to create the opinion among the Indians, that they are now licensed to plunder the State of this valuable property I have thought it proper to give you express instructions to defend it, that you may be justified in pursuing that course.

I have no doubt but that the Legislature has the authority to take possession of the mines, and the constitutional right to pass laws to protect them from trespass. By the law which has been passed, the Governor is directed to take possession of the mines, and to cause all persons to be arrested who may attempt to violate that possession. The special object of your appointment, and the organization of the guard under your command, was to enable the Governor to obey these requirements. You are not an officer connected with the Judiciary Department, but the agent whom the Legislature has authorized the Executive to employ, to perform a public service which was imposed by law, upon that department.

You will therefore arrest every person who may be found attempting to take away any gold from the mines. You will give general information in the Cherokee country of the determination of the Executive Department to enforce the laws so as to prevent if possible the necessity of making any arrests.

The peaceful acquisition of our Indian territory, and the preservation of the rights of the State may depend essentially upon your prudence and firmness in executing the duty which has been assigned you.

Very Respectfully, Yours, &c.

GEORGE R. GILMER.

Col. JOHN W. A. SANFORD.