

GOVERNOR'S MESSAGE.

EXECUTIVE DEPARTMENT, GA.

Atledgeville, Nov. 8, 1831.

In obedience to official duty, I proceed to lay before you an account of the transactions of the Executive branch of the Government, during the past year, and to recommend for your consideration, such measures as are deemed beneficial to the State.

The resolutions which were passed immediately previous to the adjournment of your last session, upon the subject of the citation of the Chief Justice of the United States, were carried into effect. The Indian Tassels paid the forfeit of his life according to the demand of the law, which he had violated. A writ of error to stay the proceedings of the Superior Court in that case had been sanctioned by the Chief Justice, and like the citation to the Governor, sent through the Post Office to the officer, whose conduct it was intended to control, thereby evincing the disposition not only to disregard the highest powers of the State, but to trifle with its officers, by attempting to deter them from the discharge of what was necessarily a very responsible and painful duty.

Within a few days after the execution of Tassels, a letter was received from John Ross in which he states, that the Cherokees were about to apply to the Supreme Court of the United States, for an injunction to restrain the State from exercising jurisdiction over them. This letter was accompanied by a printed paper without signature, purporting to be a bill in equity brought by the Cherokee nation against the State of Georgia.

In a previous message to the Legislature, I had expressed the opinion that the State could not consistently with a proper respect for its own sovereign rights, become a party before any court for the determination of the question, whether it had the power of subjecting the people who reside within its acknowledged limits, to the operation of its laws. That opinion having remained unchanged, no official notice was taken of this proceeding. The Supreme Court, however, took jurisdiction of the case, but finally dismissed it upon the ground that the Cherokees were not a foreign nation.

In making this decision, the court thought proper to depart from the discussion of the particular point before it, to express opinions exceedingly disrespectful to this State, injurious to its rights, calculated to thwart the policy of the General Government, and to keep alive the excitement which has arisen out of the conduct of our Indian affairs.

The court affirms, that no case could be better calculated to excite its sympathy, than the conduct of Georgia to the Cherokees; that they have been continually deprived of their lands, until they at present retain no more than is necessary for their comfortable subsistence; that they form a State capable of governing themselves; that the acts of the government recognize them to be a State; and that the courts are bound by those acts, that they have the unquestionable and hitherto unquestioned right to the lands which they occupy, and intimate to them that it will redress their wrongs when the application is made in proper form.

Permit me to call your attention briefly to these several statements of the court.

And what wrong has Georgia done to its Indian people, to call for this extraordinary sympathy of the court? They are in the peaceable possession of their occupant rights. Intruders have been removed from among them by severe penal laws. None of the burdens of Government have been imposed upon them. Instead of being reduced to a remnant of land, not more than sufficient for their comfortable subsistence, they are in the possession of near five millions of acres in this State alone, of which the aborigines do not cultivate more than five thousand. They are indeed becoming more and more destitute. Not however, from want of land, but because their situation is unsuitable for the improvement and happiness of an Indian people.

Is it true that the Cherokees have an unquestionable and hitherto unquestioned right to the land which they occupy? These lands form portions of the territory of the States of North Carolina, Tennessee, Alabama, and Georgia. That portion which is in Tennessee was ceded by North Carolina to the United States, upon the express condition, that it should form a common fund for the benefit of the Union, and be applied to the payment of the public debt. That portion which is in Alabama, was sold to the United States by this State, for a valuable consideration, and before any attempt had been made to extinguish the title of the Indians, or to exercise jurisdiction over them. In consequence of which sale it was made a condition of the admission of the State of Alabama into the Union, that it should disclaim all title to the Indian lands within its limits, the United States declaring by law that it had the sole and exclusive power to dispose of them. The United States has acknowledged that this State has both the right of soil and jurisdiction over that portion which is within its limits.

It is difficult to conceive of any proposition tending to more absurd consequences, than that laid down by the court, that any Indian tribe with which the United States forms contracts, to which the term treaty may be affixed, becomes a nation, capable of governing itself, and entitled to the recognition of the courts, as States. It would bring into being hundreds of States, utterly incapable of self defence, or exercising one attribute of National Sovereignty. If the opinion of the court be correct, then all the territory which was acquired by the original thirteen provincial governments of various Indian tribes, is yet the property of the aborigines, because the treaties by which it was obtained were invalid, not having been made by the King of Great Brit-

tain, who alone had the power of entering into national compacts.

Another difficulty equally embarrassing would arise out of our relations with the Cherokees themselves. A few years ago, the United States removed a portion of that tribe to the West of the Mississippi, and placed them upon the public land, and have since made several treaties with them. Which is now the Cherokee nation, the Indians who reside on the lands of the United States, or those within Georgia? But whatever obligations the United States may have incurred by its contracts with the Cherokees, it has no constitutional authority to limit or in any manner alter the territorial rights, which belonged to this State, when it became a member of the Union.

Upon no subject has there been more misrepresentation than in relation to the government of the Cherokees, and the civilization of the people of that tribe. Upon examination it will be found that the aboriginal people are as ignorant, thoughtless and improvident as formerly, without any of the spirit and character which distinguished them when war was their employment, and their support derived from the forest. That none of them in this State, with the exception of one family, have acquired property, or been at all benefitted by the improvements which have been made by others among them. That the Chiefs, the President of the Council, the Judges, Marshal and Sheriffs, and most other persons concerned in the administration of the Government, are the descendants of Europeans, and many of them citizens of this and the adjoining States: and that the Indians instead of living under their own simple usages and customs, have been compelled to submit to a system of laws and police, wholly unsuited to their condition.

Immediately after the law was passed authorizing the formation of a guard, forty mounted men were organized under the direction of active and intelligent commanders, and stationed within the territory occupied by the Cherokees, with orders to prevent trespasses upon the Gold Mines, to suppress the authority of the Indian Chiefs, and to remove all white men from among the Cherokees, who did not obtain licenses to continue their residence as required by law. This duty has been performed in a manner which has reflected great credit on the guard and its commanders, and rendered the most essential service to the State. The difficulty of removing lawless persons from the mines, proved to be greater than had been at first anticipated, and was only overcome by the use of the most vigorous measures. The Mines are however situated so far apart from each other, that it has been found impossible to prevent occasional trespasses upon them. This can only be prevented by having them worked under the authority of the State.

An unexpected difficulty has been placed in the way of an efficient protection of the mines, by the decision which has been lately made by the Judge of the Western circuit, that the law which renders it penal for Indians to dig for gold is unconstitutional. It having been made the special duty of the Governor, to take possession of the mines, and to defend them from trespass, and having no doubt about the constitutionality of the law, I considered myself compelled to obey its requirements. Orders were accordingly given to the guard, to arrest all persons who might attempt to dig for gold, leaving it to the judiciary officers to commit or discharge as they might think proper. These orders have as yet prevented intrusions. This will not however continue to be the case, if it should be ascertained that the law may be violated with impunity. There is also reason to apprehend, that the decision of the court has thrown an almost insuperable obstacle in the way of the efforts, which are now making by the United States, to induce the Cherokees to emigrate.

Of the white men who have been residing among the Cherokees, two hundred and three have taken the oath to support the Constitution and laws of the State, and received licenses to continue their residence. A most obstinate and perverse opposition has been made to the authority of the State, by certain persons representing themselves to be religious Missionaries, and particularly those who have acted under the direction of the Board of Foreign Missions in Boston. Although some sectarian zeal was for the moment excited through various misrepresentations of the conduct of the government towards these men, it soon passed away, when it was discovered that they had been as actively opposed to the policy of the General Government, as to the enforcement of the laws of Georgia; that they had been treated with great forbearance; and that they were the mere instruments in the hands of others, of promoting and extending party strife. It is an honorable distinction that belongs to our country, that its citizens are neither proscribed for their religious opinions, nor protected by them from punishment for crime. Twelve persons have been convicted for illegal residence, and sentenced to confinement in the Penitentiary. They have all been pardoned upon the condition that they would not again offend against the laws, except two of the agents of the Boston Board, who refused to be the subjects of Executive clemency, upon such terms.

The enforcement of the Cherokee laws, has been completely suppressed within this State. No disposition has however been evinced on the part of the Indians, to become members of our community. The mass of the people are indeed not prepared for it, and would no doubt have long since accepted the offers of the U. S. Government, to give them possession of a territory to the West of the Mississippi, in exchange for their present occupant rights, but for the controlling influence of a class among them, almost exclusively made up of the descendants of the whites; and even that class would perhaps before this time have consented to remove, but for the support and encouragement which they have received from different parts of

our country, and the importance which their leaders have acquired, by being made the instruments of exciting the people to oppose the measures of their government, and directing the popular resentment against those who administer it. The State owes it to itself, to put an end to this state of things, so far as it can be done consistently with the rights of the aborigines.

For this purpose I would specially recommend, that you pass laws requiring under adequate penalties, all the Cherokees who have received reservations in fee, or been paid for their improvements, and who have again settled upon the lands occupied by the tribe within this State, to remove therefrom.

The law for surveying the Cherokee Territory, into sections and districts, has been executed without difficulty. One of the Surveyors (Benjamin H. Sturges.) failed to perform the duty assigned him. His bond remains to be sued upon for the return of the public money, which he received and has not accounted for.

The Territory surveyed has been organized by the election of two Justices of the Peace and two Constables in each Section. These means however are entirely inadequate for the execution of the laws, or the preservation of order. The formation of a county to be composed of all the Territory occupied by the Cherokees within the State, and which now form parts of the Counties of Carroll, DeKalb, Gwinnett, Hall and Habersham, is perhaps a necessary measure to give protection to the rights of the people, and bring into subordination those of the Cherokees who may otherwise disregard the authority of the Government.

The Agent who was appointed to rent the possessions relinquished by Indian Emigrants, has performed that service. According to his report the number of the Lessees are ninety-six, and the rent contracted to be paid for the year, seven thousand six hundred and six dollars.

Any attempt to remove the Cherokees during the pendency of their application to the Supreme Court, was considered useless. The opinions expressed by the Court in making its decision, and the use which was made of them, rendered it highly improbable that the General Government could treat successfully with the Chiefs. From information derived from various sources, I was convinced that the Cherokees could not under existing circumstances be removed except by individuals and families. Letters were accordingly addressed to the President and Secretary of War, urging the adoption of this plan, and the right of the State to have the Indians removed from within its limits independently of the success or propriety of the general policy of the U. States, as an act of justice arising from the contract of 1802. You will perceive in the President's answer, his strong desire to gratify the wishes of the State. Through some oversight in the War Department, the necessary instructions were not made out for opening the offices of emigration, until the present distinguished head of that Department came into office. You will find in the papers which are laid before you, the fullest evidence that the President is now using all the means placed at his command to induce the Cherokees peaceably to relinquish their occupant rights. There is little doubt but that success will be the result of his measures if supported in the proper manner by the authorities of this State. Permit me particularly, to recommend, that you pass resolutions authorizing the President to grant reservations in fee of such qualities of land, as may be amply sufficient for their support, to all the Cherokees who are actual cultivators of the soil to any extent, and who may desire to remain within the State and subject to its laws, upon consideration that the United States Government will pay to the State a reasonable valuation therefor.

The law which was passed at your last session, for the survey and distribution of the Cherokee lands, was not to be carried into effect until the title of the Cherokees was extinguished by the President, or until further legislation. As the Indian title has not as yet been extinguished, it will be necessary for you to determine whether any, or what further legislation shall be had upon this subject. Permit me most respectfully to express the opinion, that the condition upon which that law was to go into operation, ought not to be repeated. If it should, and the Cherokee lands distributed according to its provisions, the effect would be, to deprive our Indian population entirely of their possessions without their consent and without any equivalent. The character of the State, the interest of the Union, respect for public opinion, and the rights of the Indians, forbid that so gross an act of injustice should be committed.

Although the rights of soil and jurisdiction are attributes of sovereignty which belonged to the State when it became independent, and with which it has never parted, and in the exercise of which it cannot be constitutionally controlled by the United States, it does not follow that those rights authorize the State to place the Indians beyond its protection, or to take from them their possessions, to be distributed exclusively among another portion of its population.

Copies of Resolutions passed by the Legislatures of several of the States, upon subjects of general concern, are laid before you. Your attention is particularly called to those from Massachusetts and Connecticut, charging this State with the design of dissolving the Union, because of its expressed determination not to permit the Supreme Court to control its jurisdiction over crimes committed within its limits. It is much to be regretted that the prejudices and unfriendly feelings which have already been excited among the people of different sections of our country, by jarring and local interests, should be embittered by unnecessary intermeddling of one State with the affairs of another. In what Georgia has done, and what Massachusetts and Connecticut condemn, others have only perceived their

the fixed resolve of the State to sustain its constitutional rights. Georgia has claimed no right to nullify (in the verbiage of the day) the Acts of the General Government, and only demands an exemption from attempts to control its authority whilst exercised upon such subjects as are within its exclusive jurisdiction.