

DOMESTIC.

Communication of the Governor of Georgia, in compliance with the request of the House of Representatives, communicating the information in the possession of the Executive, together with his views in relation to the Cherokee Nation, and the immediate survey and occupancy of the Cherokee Lands.

EXECUTIVE DEPARTMENT,
Willedgeville, Dec. 1, 1831. }

To the House of Representatives :

GENTLEMEN,—Having been called on by your resolution of this date, requesting me to appear before your branch of the General Assembly, any information in my possession, "in relation to the Cherokee nation, and which might have an influence on the policy of the measure of the immediate survey and occupancy of the Cherokee lands, which has not heretofore been communicated, together with any views of the Executive, upon the subject, which that Department may think proper to make known ;"

In answer thereto, I submit the following, as the result of long reflection, on the important subject referred to.

It is believed that a crisis has arrived, in which we cannot permit the course of our policy, in relation to the Cherokee part of Georgia, to remain in its present perplexed and extraordinary condition, without jeopardizing the interest and prosperity, if not the peace and safety of the State.

Circumstances within the recollection of our whole people, imperiously demanded the extension of the laws and jurisdiction of our State, over our entire population and territory. This step has been taken, and cannot be retraced. The State cannot consent to be restricted in the exercise of her constitutional rights. It is now too late for us to theorize on this subject ; we are called upon to act ; the public functionaries of the State stand pledged to their constituents, and the world, to sustain the ground which they have taken.

It is our constitutional right, and moral duty, forthwith to interpose, and save that part of our State from confusion, anarchy, and perhaps from bloodshed.

The question of the right of the State to jurisdiction, seemed for a time to have been settled. Our laws were in regular, unmolested operation over our entire territory : our rights appeared to be no longer controverted ; and the responsibility for existing evils was devolving on ourselves.

But new and unexpected difficulties are arising out of the imbecility of our own measures, and the selfishness of some of our citizens.—

It has been thought that some of our most distinguished citizens have thrown almost insuperable obstacles in the way of a speedy termination of our Indian difficulties. The laws heretofore enacted, for the maintenance of the jurisdiction of the State over that portion of our territory, and for the government of all persons residing therein, it must now be admitted, have failed to accomplish all that was desired and expected, by the friends of these measures. The defects of our laws have been evinced by their practical operation. It is believed, that any attempt to establish a salutary civil government, over a country containing nearly five millions of acres of land, while destitute of the materials to administer the law must from the nature of things, prove in a great measure abortive. A few thousand half civilized men, both indisposed, and incompetent to the faithful discharge of the duties of citizenship, and scattered over a territory so extensive, can never enjoy the inestimable blessings of civil government.

Whatever may be the nominal character of our legislation, we cannot govern the country under consideration, with honor to our character and benefit and humanity to the Indians, until we have a settled, freehold, white population, planted on the unoccupied portion of that territory, under the influence of all the ordinary inducements of society, to maintain a good system of civil government.

Our government over that territory, in its present condition, in order to be efficient, must partake largely of a military character, and consequently must be more or less arbitrary and oppressive in its operations. If the present system be continued, it is important, that ample powers should be afforded to the Executive, to regulate the conduct and control the operations, of the agents employed to administer the government, in that part of the State : but it is doubtful, even with this power, whether any vigilance and energy on the part of the Executive, can wholly prevent injustice and oppression being committed on the Indians, and at the same time maintain the laws inviolate.

If Georgia were at this day to relinquish all right, title and claim, to the Cherokee country, what would be its situation? The impotency and incompetency of the Cherokees to maintain a regular government, even for a few months, perhaps for a few weeks, would at once be demonstrated. The country would speedily be over-run, chiefly by the most abandoned portions of society from all quarters. The gold mines would hold out an irresistible temptation to all such characters. The existence alone of the rich gold mines, utterly forbids the idea of a state of quiescence on this all engrossing subject.

Our true situation and motives on this question are still misunderstood, and often misrepresented, by those at a distance. In order to appreciate our policy, our true situation must be understood. I will not attempt to enumerate the wrongs, embarrassments, and perplexities, which this State has encountered by what I am constrained to deem, the impertinent intermeddling of "busy bodies." Officious persons of various descriptions have unfortunately succeeded, in inducing our Indian people to believe, that we are their enemies and oppressors, and in alienating their affections from us. These various intermeddlings hastened the crisis, which compelled the

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State to the course, which she has taken : and the day must speedily arrive, when all the heart-burnings on this subject must be put to final rest. The combined and combining influences now in operation, against the character, interest, peace, and prosperity of the state cannot be much longer deplored in silent inaction : nor ought we to place any reliance on inefficient measures. Unfounded calumny and prejudice, kept at a distance, may be endured : but domestic and household enemies produce unceasing disquietude and danger.

The unfortunate remnant of Cherokee Indians remaining in Georgia, ought now to consider themselves the admitted charge of our peculiar care : and if possible, we ought, as their friends and benefactors, to preserve and cherish them. They ought not forcibly to be dispossessed of their homes, or driven from the land of their fathers : they ought to be guarded and protected in the peaceable enjoyment of a sufficient portion of land, to sustain them with their families, in their present abodes, so long as they may choose to remain : and their rights and property should be as well secured from all lawless depredations, as those of the white man. It would be as cruel, as unjust, to compel the Aborigines to abandon the graves of their fathers : but in the present extraordinary state of things, it would be visionary to suppose, that the Indian claim can be allowed to this extensive tract of country,—to lands on which they have neither dwelt, nor made improvements.

Principles of natural law, and abstract justice have often been appealed to, to shew, that the Indian Tribes within the territorial limits of the states, ought to be regarded as the absolute owners and proprietors of the soil they occupy.

All civilized nations have acknowledged the validity of the principles appealed to ; with such modifications, and interpretations of these principles, as the truth of history has verified, especially in the settlement of this country. The foundations of the states which form this Confederacy, were laid by civilized, and Christian nations ; who considered themselves instructed in the nature of their duties, by the precepts and examples contained in the sacred Volume, which they acknowledged as the basis of their religious creed and obligations. To go forth, subdue, and replenish the earth, were considered divine commands. Whether they were right or wrong, in their construction of the sacred text, whether or not, their conduct can be reconciled with their professed objects, it cannot be denied, that possession, actual or constructive, of the entire habitable part of this continent, was taken by the natives of Europe : and that it was divided out, and held by them, originally, by the right of discovery, as between themselves, and by the rights of discovery and conquest, as against the aboriginal inhabitants.

The English colonies and plantations were settled and governed, under various charters, and instructions, issued by the crown to individuals or companies ; and notwithstanding that the paramount sovereignty was reserved in all the charters, to the mother-country ; yet in the grant of the absolute property in the soil, there was no reservation of any part of it to the natives ; who were left to be disposed of, as the proprietors might think fit and proper.

Humanity, and the religious feeling of the early adventurers in America, connected with the consideration of the power and immense numbers of the native races, and their savage mode of warfare, laid the foundation of the policy adopted in this country, towards the Indians. The practical comment to be found in the acts of all the governments of North America, evinces very little regard for the elementary doctrines of theoretical writers on this subject. One of the expedients resorted to, by the early settlers in this country as a fundamental principle of policy towards the Indians was, to appear to do nothing which concerned them, either in appropriating their lands, or in controlling their conduct, without their consent. But instances have occurred, and will again occur, in which the interests of civilized communities have demanded, and will again demand a departure from this seeming liberal policy. It is believed that many of the acts of the colonial, as well as of the state governments, will maintain the great fundamental principle, that within the territorial limits of the Colonies or States, the ancient possession of the Indians conferred on them no rights, either of soil or sovereignty.

The rigour of the rule for their exclusion from these rights has been mitigated in practice, in conformity with the doctrines of those writers on natural law, who, while they admit the superior right of the agriculturist over the claims of savage tribes in the appropriation of wild lands, yet, upon the principle that the earth was intended to be a provision for all mankind, assigned to those tribes such portions as, when subdued by the arts of the husbandman, may be sufficient for their comfortable subsistence. The General Court of Massachusetts, in 1633, declared, " That the Indians had the best right to such lands as they had actually subdued and improved." The government of that Colony at the same time asserted its right to all the residue of the lands within its chartered limits, and actually parcelled them out by grant, among the white inhabitants ; leaving to these the discretionary duty of conciliating the Indians, by purchasing their title. The General Assembly of Virginia asserted the unrestricted right of a conqueror ; and at the same time conceded, what the principles of natural law were supposed to require, when, in 1658, it enacted, " That for the future no land should be patented, until fifty acres had first been set apart to each warrior, or head of a family belonging to any tribe of Indians in the neighbourhood." No respectable jurist has ever gravely contended, that the right of the Indians to hold lands, could be supported in the courts of the country, upon any other ground than the grant or permission of the sovereignty, or State in which

such lands are situated. It is believed, that no title to lands, that has ever been investigated in any of the courts of the States, or of the United States, has been admitted to depend on any Indian deed or relinquishment, except in those cases, where grants had been previously made to individual Indians, to hold in fee simple, either by the state, or colonial governments.

With all of these facts and examples before us, taken in connection with the extraordinary state of our Indian affairs, will any citizen of Georgia hesitate, upon the question of advancing or receding? To stand still, will in effect be, to recede—to recede, is to abandon our rights, and tacitly admit our incompetency to sustain our constitutional government, within our limits. Our laws now in operation, for the maintenance of our authority, and the preservation of order, over our Cherokee lands, must necessarily be temporary; the expense alone of the present system is a burthen which cannot be permitted to continue long. The present state of things in the Cherokee country, it is believed, is strengthening the adversaries of Georgia, at home and abroad. In order to secure and protect the Indians in their abodes, and their property of every kind under our laws, their individual and separate possessions ought to be defined by actual surveys; in accomplishing which, it will be least expensive, and most compatible with the views of the state (as provided by the act of the Legislature at its last session,) to survey the entire country.

Until we have a population planted upon the unoccupied portion of this Territory, possessed of all the ordinary inducements of other communities, to sustain our laws and government; our present laws providing for the government of this part of the state, should not only be continued; but ample power should be afforded, to enforce obedience to their requirements. To effect this object, the Executive should be vested with full power, promptly to control the agents who have been, or may be selected, to maintain the authority of the laws in that portion of the state.

I never can consent to be considered among the number of those, who disregard the interests, rights, or claims of the Cherokee Indians. Georgia would still forbear, if any hope remained, that her embarrassments could be terminated by negotiation or investigation of any kind; but the present posture of affairs furnishes no satisfactory assurance of a successful issue to these injurious embarrassments and difficulties, and the state would be responsible for the evils that might ensue. I would recommend no course, which might tend, in the slightest degree to weaken the just claims of the Cherokee Indians to full indemnity and remuneration from the government of the U. States, for all guarantees made by that government to the Indians, to lands within the limits of Georgia.

As a member of the Federal Union, we should duly consider the obligations of the U. States to the Cherokees. Whether a treaty or compact be made with one of the states of the Union, or with a dependent and subject community; the faith of the Nation should not be disregarded. While the antecedent engagements of the U. States to Georgia, are entitled to precedence in their observance; yet, as far as possible, the Cherokees should be compensated for any failure on the part of the United States, literally to comply with their stipulations to that people. That being done, there remains no just cause of complaint. The first duty of every government is, to protect the rights, and promote the prosperity of its own members. Yet, the rights and interests of others, of whatever character or condition, are not to be wantonly restricted, nor in any case wholly disregarded. But the principle cannot be sustained by any fair course of reason or authority, that the United States can in justice, be bound to violate its relations or compacts with Georgia, as one of the states of the Union, or the rights of this state as a third party, for the mere consideration of performing an after obligation, or secondary duty to the Indians.

Regardless of the pretensions of others, I yield to none, in my respect, friendship, and veneration, for our present, patriotic Chief Magistrate of the Union. He has, upon every fit occasion, manifested an unceasing disposition to better the condition of the Indians; and at the same time to relieve the states from this embarrassing portion of their population. In an especial manner, he has manifested his deep sense of the wrongs brought upon Georgia, by the want of good faith on the part of the Federal Government; and has fearlessly advocated the rights of Georgia to the full extent of her claims. Therefore, every consideration of duty and justice, requires our cordial support of the President, in all measures emanating from him, which may not be deemed incompatible with paramount duties.

In conformity with the views herein submitted, I would respectfully recommend to the General Assembly, an immediate survey of the Cherokee Territory. After completing the survey of the country, (unless it shall become indispensable to the interest and peace of the state to act differently,) I would yet pause for a time, and endeavour to maintain our present, unpleasant, expensive, and embarrassing situation, in the hope, that better counsels may then prevail among the Indians, and that those who govern them, may yield to such measures, as will obviously promote their real and lasting interest.

But should circumstances render it indispensable, to take possession of the unoccupied Territory, we can then sustain the Indians in their homes, protect them in their rights, and save them from that cruelty and oppression, which have too often been the inheritance of this unfortunate people,—in the confidence, that their claims to the territory thus occupied by Georgia, will be extinguished by the Federal Government, in compliance with the compact of 1802.

WILSON LUMPKIN.