

THE CASE OF J. HOWARD PAYNE.

FROM THE MILLEDGEVILLE RECORDER.

Mr. JOHN HOWARD PAYNE, the distinguished American dramatist and scholar, whose seizure and detention by the Cherokee Guard we mentioned some time since, has published to the world his account of the outrage, and we have read it with feelings of the deepest pain and humiliation. For the treatment of this gentleman we shall not attempt to apologize: it is incapable of excuse or extenuation. But this we do insist upon, that, for the misconduct of a few individuals, the whole State shall not be held responsible. And we hasten to strip the transaction of the only thing that could produce such an undesirable effect, by extracting from the long and able report of Mr. Clayton (the chairman of the committee in relation to this guard) that portion of it which relates to the transaction which was adopted by the Legislature now in session, and which, we trust, will be deemed by our fellow-citizens of the Union perfectly exculpatory so far as the people are concerned, as proclaimed by their immediate representatives; and we ask it as a favor of our cotemporaries throughout the United States who may publish Mr. Payne's appeal, to publish with it this condemnatory report of the Representatives of the people of Georgia.

"Your committee greatly regret that they have not all the facts relative to the recent arrest of JOHN HOWARD PAYNE by the Georgia Guard, in such a shape that *implicit credit* might be given to them. They are compelled, then, in the investigation of this branch of the subject, to discard all the *contradictory statements* found in newspapers, and to decide only from such facts as have been legitimately brought before them in the communications of the Governor. It is, however, admitted on all hands that the recent arrest of Mr. Payne was made in the State of Tennessee. Your committee conceive that the guard transcended their power in crossing the line of the State of Georgia to arrest an individual out of the limits of this State. And your committee believe that it was an act of which the sovereign State of Tennessee has just right of complaint against the authorities of Georgia.

"The only testimony before your committee, relative to the arrest of Mr. Payne, will be found in the communication of his Excellency WILLIAM SCHLEY, of the 10th inst. In that communication the Governor says: 'I have received a communication dated the 1st, this instant, from Colonel William N. Bishop, the commander of the Cherokee Guard, informing me that on his return from Milledgeville to Spring Place, in November last, he found John Howard Payne in custody of the Guard; who,' says Colonel Bishop, 'was found engaged in examining and writing papers suspected of some design against the Government.' This admission of the commander of the Guard is sufficient of itself to show the utter recklessness and want of authority in the Guard to make the arrest.

"The fourth article in the amendments to the Federal Constitution is in the following words: '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 warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.'

"Your committee cannot conceive why the foregoing article was placed in the Federal Constitution, unless it was to protect the free citizens of the United States from unnecessary and improper arrest and confinement, and to preserve their papers and writings from the 'searches and seizures' of those who might 'suspect' them to be guilty 'of some crime against the Government.' It appears, then, to your committee, that the Georgia Guard, in the recent arrest of John Howard Payne, trampled under foot the Constitution of the United States. The commander of the Guard says, in the same letter to the Governor, 'I have examined those papers, and find some very improper and indiscreet statements in relation to the President, our Government, and State authorities and agents, both Government and State agents, the Georgia Guard, &c. and many bitter remarks concerning the Cherokee matters; but finally concluded that they were not of such a nature as would justify his being bound over to answer for his offence in our Courts. I therefore, after keeping him a few days under guard, have discharged him.' How long he was kept under guard before the arrival of Col. Bishop at Spring Place, your committee are not informed. Yet it is evident to your committee that the instructions of the late Executive to the Guard in this matter were entirely disregarded; for the Governor's *direct instructions* were, that, whenever individuals were arrested for offences committed against the laws of Georgia, they were immediately to be brought before the civil authorities, to be dealt with as the law directs. But the commander of the Guard says, after examining his papers, and finding him guilty of no offence for which he was answerable in our courts, 'I (the commander of the Guard) kept him in custody a *few days*, and then discharged him.' Your committee would ask, with feelings of mortification, why was he kept in custody ONE MINUTE beyond the time, when it was ascertained that he had committed no offence? Was it to punish him for his 'indiscreet statement in relation to the Georgia Guard?' Perhaps so. But in so doing, the Guard have violated every principle of the Constitution, which guaranties liberty and equal rights to the citizens of this country. They have jeoparded the character and reputation of the State of Georgia abroad, by this act of Vandalism, and will bring down upon the people of the State the inevitable and odious charge of inhospitality to the stranger. Your committee conceive, therefore, that the State of Georgia can only relieve herself from the obnoxious charges and denunciations that will be made upon her, by a firm, decided, and unequivocal disapprobation of the conduct of the Guard in this matter, by the representatives of the people in their legislative capacity. The character and standing which the State of Georgia has always held among her sister States demands that upon this subject she should speak firmly and quickly."