COMMUNICATIONS.

TO THE EDITORS.

The accompanying opinion of Judge Clayton, of Georgia, involves a question of high importance, which will occupy the attention of Congress at its next session. It also, at present, is under consideration before the Cherokee Board of Commissioners. The main question is, "had the State of Georgia the right to pass laws dispossessing the Cherokees of their lands without the intervention of treaty stipulations between the United States and that nation; and whether the Cherokees, who were driven from their *gold mines* by the authorities of Georgia, are not entitled to indemnity, under the head of '*depredation*,' inserted in the treaty of 1835, and can now make their claim before the Cherokee Board." Another mooted point was, that "*mineral* found in the bowels of the earth did not constitute a species of property belonging to the Indians entitled to protection by the provisions of the treaty." Judge Clayton has decided that *it did belong to the Cherokee nation as much as their forest trees or other property*, until their title to the soil was extinguished by the United States according to law.

This opinion is of deep interest to the Cherokees and citizens of the gold region generally, and will be much sought after, if published. If you will give it a place in the Intelligencer you will confer a great favor.

JUDGE CLAYTON'S OPINION

In the case of the State of Georgia vs. Canatoo, a Cherokee Indian, committed to jail upon a charge of digging gold in that part of the Cherokee nation not as yet ceded, but attached to the county of Gwinnett for the purposes of civil and criminal jurisdiction.

The prisoner was brought up by *habeas corpus*, and his discharge moved for upon three grounds: 1. Defect of commitment; 2. There was no law making the offence criminal; and, 3. If there was, it was contrary to existing treaties, and therefore contrary to the Constitution of the United States

There is no force in the *first* objection, and consequently it needs no consideration. In the *second* the Court admits there is some room to doubt. And here it will take occasion to say that, as this is a very important question, involving rights of the highest character, both in relation to the State and the Indians, and as there should exist the utmost harmony between the *legislative* and *judiciary* branches of the Government, both aiming to discharge with fidelity the high obligations committed to their trust, and seeking to accomplish a common object, the welfare of the community, it will be strictly proper, and evince a becoming respect for the Legislature, for the Court to refer the act back to that body, with its views candidly expressed on both of the last mentioned points, with a hope that such a course may prevent any future collision. And this is considered the most discreet and necessary, as this case, under its present arrangement, is not of such pressing urgency as to require a hasty discussion.

Upon the *second* ground, then, it will be necessary to bring the act of the last Legislature into view. The substance of its caption is, "to take possession of the mines within the Cherokee nation, and to punish any person or persons who may be found *trespassing* upon said mines."

The preamble of the law asserts that the mines "are of right the property of Georgia," and states that "great waste has been committed by the *trespasses* and *intrusions* of numberless citizens of this and other States, in digging, taking, and carrying away large quantities of gold from said mines: *for remedy whereof*, Be it enacted," &c. The first section authorizes the Governor to take possession of the mines, and to employ a force to protect them from all further *trespass*.

The second section appropriates a certain sum of money to carry into effect the foregoing section, and the third section declares that, "for the better securing said mines from *trespass*, if any person or persons shall be guilty of digging for gold, silver, or other metal upon said land, or who shall take from or carry away any gold, silver, or other metal from any of the said mines, *unless authorized by law*, he, she, or they shall be guilty of a misdemeanor, and, upon conviction thereof, shall be sentenced to hard labor in the penitentiary for and during the term of four years.

The fourth and fifth sections inflict a like punishment upon any person who "shall employ any *white man, Indian, negro, or mulatto*, to dig or carry away any gold," and provides that the act is not to be so construed as to confine a slave in the penitentiary.

The sixth section confiscates all slaves and other property employed in trespassing on said mines, and the proceeds of their sale to be paid into the treasury.

The above is an analysis of as much of the law as is necessary for our present purpose. Though the caption is a general one, and applies to all persons, yet it is contended that it refers only to *trespassers*, and that, as the word "*trespass* is a *legal* and *technical* term, it must be received according to its legal meaning." "*Trespass*, (says Blackstone,) as relates to land, signifies no more than an entry on another man's ground without a lawful authority, and doing some damage, however inconsiderable, to his real property." And it matters not whether the person in possession, is "landlord or tenant," whether he has an "absolute or qualified property" in the premises, either has his right of action against the *trespasser*, consequently no man can be a trespasser upon land of which he has the use and possession, or which belongs to him absolutely or for a limited time. Then, applying this doctrine, it is said an Indian cannot be a trespasser upon lands of which it is acknowledged, *by treaty*, he had the full, free, and undisturbed possession.

Again, it is contended that, in aid of the above principle, the preamble of the law is very strong, if not conclusive. It states that great waste has been committed by the *trespasses* and *intrusions*, of whom? Not the Indians, but numberless citizens of this and other States. Now, Indians are not citizens, and never have been so considered. The preamble proceeds to declare "for remedy whereof." What mischief is to be remedied? The *trespasses and intrusions* of "numberless citizens of this and other States upon the mines." Then comes the enacting clause, which states, for the better securing said mines from *trespass*, *all persons* guilty of digging gold shall incur the aforesaid penalty, "*unless authorized by law*" to dig. Now, here is room to contend again that it was *trespass*, in its legal sense, the Legislature intended to punish, and that, as it was well known no one could by any possibility according to existing laws, be "authorized by law" to dig for gold but the Indians, they having the constant and uniform *law* of treaties, as well as the intercourse law of the United States, to protect them in the possession of their unceded lands, the above expression was intended as a saving in their behalf. It has been urged, and some facts stated which occurred at the passage of the law to explain the reason of the above *proviso*, but I presume every knows that courts of justice cannot travel out of the law for explanations of its meaning; it would go to establish the monstrous practice of ascertaining the sense of the Legislature by *oral* testimony, and thereby place the laws of the land in the most dubious and fluctuating condition.

Again, it is asked, if the above section was intended to embrace every person who should dig gold, where was the necessity of the 4th section, which imposes the same penalty upon any person who should employ a white man, Indian, negro, or mulatto to dig gold? If it is contended that these four descriptions of persons were excepted from the penalty of the 3d section, because the white man alluded to was one who should not be a citizen of this or any other State, but who claimed the rights of an Indian as a descendant, and therefore, from greater particularity common to the law, was described as a white man—that to employ him or the Indian should be a crime in the employer; for if it was criminal in them to dig gold, no one can or will believe that they would suffer themselves to be employed in a business that would send them to the penitentiary. And this idea is much strengthened by the fact, that there is an after proviso which exempts slaves from penitentiary confinement, and subjects them to confiscation, as an additional punishment to the employer.

These are the doubts thrown around this law, and the Court is called upon to remember the rule of construction to be found in the English law, which is our law, and which, if it ever existed in any country, ought to exist in this boasted land of liberty, viz: "It was one of the laws of the twelve 'tables of Rome that whenever there was a question between 'liberty and slavery, the *presumption* should be on the side 'of liberty. This excellent principle our law has adopted in 'the construction of penal statutes; for whenever any ambi'guity arises in a statute introducing a *new penalty* or pun'ishment, the decision shall be on the side of lenity and 'mercy; or in favor of right and liberty; or, in other words, 'the decision shall be according to the strict letter in favor 'of the subject. And though the Judges in such cases may 'frequently raise and solve difficulties contrary to the inten'tion of the Legislature, yet no further inconvenience can 'result than that the law remains as it was before the statute. 'And it is more consonant to the principles of liberty that the 'judge should acquit whom the Legislature intended to pun'ish, than that he should punish whom the Legislature in'tended to discharge with impunity." I do believe it was the intention of the Legislature to bring the Indians within the penalty of the law, but I candidly avow I arrive at this belief more from the knowledge of the history of its passage than from the law itself, and that to one entirely unacquainted with that history there would be much ambiguity in its true object.

Believing then, as I do, and that the Legislature has perhaps not given the subject that full and deliberate investigation which belongs to courts of justice, and which their supposed knowledge of the Constitution, laws, and treaties of the land, and the constant and familiar use of legal principles in expounding the same enables them to bestow on such questions, I will proceed to present my opinion on the third ground for the future consideration of the Legislature.

In the beginning of this investigation I lay down the following principle: That there never have been but two ways of acquiring Indian lands—by *force* and by *purchase*. I add, history does not furnish a single instance where one foot of Indian lands has ever been taken by *force* by the United States, especially by Georgia; and this redounds greatly to the credit of the settlers of America; for Vattel, (the best writer on natural law,) observes "that the cultivation of the 'soil was an obligation imposed by nature upon mankind, and 'that the human race could not well subsist, or greatly multi'ply, if rude tribes, which had not advanced from the hunter 'state, were entitled to claim and retain all the boundless 'forests through which they may wander. If such people 'will usurp more territory than they can subdue and culti-

'vate, they have no right to complain if a nation of culti- 'vators puts in a claim for a part." [3 Kent's Com. 312, and Vat. b. I, § 81.]

Vattel further adds, "people have not then deviated from 'the views of nature in confining the Indians within narrow 'limits," but praises the moderation of the American settlers for purchasing from the Indians what they had a right to take by force. All that the first discoverers ever claimed was the right of *empire*, and the ultimate right of *dominion* over the territory which they took the possession of in right of their sovereign; and, as against all other nations, this right was rigidly enforced.

This right of empire or of government has been fairly deduced into the State of Georgia, and I consider that question as at rest. The right of *domain* or soil is also in Georgia, but subject to a claim or title of the Indians, which must be extinguished in some way or other before Georgia's absolute right will accrue. The question is, how is this to be extinguished? Is it to be by *force* or *purchase?* If by force, is the Court to understand that the law of the last Legislature is intended to effect that purpose? Is it to be understood that the State renounces the policy pursued by herself, her sister States, and the United States, for the last three centuries, and throws herself upon the original right which Vattel admits she had at the discovery of America, and that, too, where the reason for that right has almost if not entirely ceased? Will the State urge, after greatly advancing in science and civilization, and, what is still better, in the knowledge of just and equal laws, that, by reason of its crowded population, it is unable to "subsist and multiply" without this land; that these "rude tribes have not advanced from the hunter state," and usurp more territory than is necessary for their subsistence, or are not sufficiently confined within "narrow limits?"

This court does not consider this law to be an act of force, but is founded, no doubt, in what the Legislature honestly believed to be a right acquired, somewhere between the first discovery of the country and the passage of the act, either in the force and effect of the laws of Great Britain over that people from whom we obtained the country, or in our own laws, treaties, and compacts, since its acquisition. It is, then, under this view we narrow down the consideration of the question.

And, first, if the Indians have a title to extinguish, what is that title? I shall consider the question under a twofold aspect:

1st. What part or portion of the land have they a right to enjoy under their *title?*

2d. What is the nature and duration of their title?

An idea prevails that the mines and minerals of a country are separate and distinct from the interest of the land, and that the former always belong to the sovereign. Now, nothing is more erroneous, and this mistake has occasioned all the difficulty. I candidly own that I labored under it myself, and granted an injunction with a view to settle the question; but when I came to examine the subject, I found nothing to support such an idea: on the contrary, I found every thing which was calculated to satisfy me I was wrong. Not desiring my own views, by any means, to be considered as authority, I shall speak whenever I can in the language of the law, as given to us by the best and most approved writers. Justice Kent, therefore, says: "It is a fundamental principle 'in the English law, derived from the maxims of the feudal 'tenures, that the King was the original proprietor of all the 'lands in the kingdom, and the true and only source of title. '[2 Black. Com. 51, 53, 86, 105.] In this country we have 'adopted the same principle, and applied it to our Republican 'Government; and it is a settled and fundamental doctrine 'with us that all valid individual title to land within the United States is derived from the grant of our own local Gov'ernments, or from that of the United States, or from the 'Crown, or royal chartered Governments established here 'prior to the Revolution."—[3 Kent's Com. 370, and the authorities there cited.]

Now, what is land? "In its legal signification, (says 'Coke and Blackstone,) land hath an indefinite extent up'wards as well as downwards. Upwards to 'the sky,' is the 'maxim of the law, and therefore no man may erect any 'building or the like, to overhang another's land; and, down'wards, whatever is in a direct line between the surface of 'any land and the centre of the earth belongs to the owner 'of the surface, as is every day experienced in the mining 'countries. So that the word 'land' includes not only the 'face of the earth, but every thing under it or over it. And 'therefore if a man grants all his lands, he grants thereby all 'his mines of metals, and other fossils, his woods, his waters, 'and his houses, as well as his fields and meadows."—[2 Bl. Com. 18.]

By the foregoing doctrine it will appear that the State, as the "original proprietor" of all the lands, held not only all the *mines* and *minerals*, but every thing else that is included in the term *land*. Originally they have never been separated any more than the woods and waters have been separated from the soil; and I defy the production of any authority to prove the contrary. But, whenever the Crown granted its lands, if it chose to make a reservation of the *mines* and *minerals* upon the face of the grant, it had a right to do so, and from that time they became separate and distinct, and never before. And all the mines and minerals now held by the King of Great Britain, separate from the lands, is by virtue of such reservation at the time of granting his land. This is the case with regard to some of the lead mines of the United States; and this was attempted by an act of Georgia in 1825; but, meeting the decided disapprobation of the people, it was shortly repealed. I have no hesitation in saying that the State holds just as good a title to the Indian lands as it does to their *mines* and *minerals;* that it was by virtue of the former it has any right at all to the latter. They are inseparable. If they were distinct rights while the land is in the possession of the Indians, they would remain so after the State acquires the land from the Indians; for there is nothing in that act that unites them, and a consequence would be that when she granted out her lands to her citizens the mines and minerals would not pass, even though she made no reservation in the grant, and this we all know is not the case.

I have looked in vain for any historical fact, in relation to the settlement and discovery of America, for any reservation of the mines and minerals to the sovereign separate and apart from the territory itself. Indeed there could be no reason for such a distinction; for, as before observed, the *whole empire* and *domain* belonged to the discoverers. No charter proclamation, law, or public document contains any mention of such reservation. I therefore conclude that whatever right the Indians held to their land, they hold the same right to every thing which falls within its legal definition; and this brings us to consider, secondly, the nature and duration of their title.

In considering this head I shall present three views of the subject.

1st. In what manner their title was respected by Great Britain, the discovering nation, and from whom Georgia obtained the country;

2d. In what manner Georgia has respected it since its acquisition; and,

3d. How it has been respected by the courts of justice.

1st. We have already shown that the discovering nation had a right to take *by force a part* of the country, such as would strictly answer the exigency making such force necessary, but that nothing would justify the taking the *whole* of the country and leaving its inhabitants to perish. That though they might be confined in "narrower limits," yet there were some limits to which they would have a right under the laws of nature, free from the right of force. Whether they are now within those limits it is not my intention to inquire, though it is well worthy of human consideration, especially as they are receding from the "hunter life," which originally justified the seizure of their lands, and approaching the agricultural condition, which brings them within the "curse" of their Creator, and entitles them in common with the rest of mankind to a portion of the earth for their support. But Great Britain never took one foot of their land by *force:* she chose the rather to adopt a more enlarged and liberal policy; and waiving the right as admitted by Vattel, resulting, as he said, from a "celebrated question to which the discovery of the new world had principally given rise," and was therefore a new doctrine in the law of nations; she reposed herself upon the law as it stood previous to this new principle, and took the country subject to the right of conquest. This right, as every one knows, confers upon the conqueror only the *empire* and the *unappropriateddomain;* but private property is sacred. It is true, the Indians did not hold their lands in private right, that they enjoyed them in common; but Great Britain, greatly to the praise of her justice and humanity, chose to respect them in that light, and consequently we find in a statement of the Province of Georgia, in 1740, sent home to the Trade Office in London, that not an "Englishman was settled within that district when the first 'colony of Georgia arrived. The country was then all 'covered with woods. Mr. Oglethorpe agreed with the In'dians, and *purchased* of them the limits mentioned in the 'treaty." Except the charters which granted all Georgia to Oglethorpe and his company, this is the first instrument or compact between the whites and the Georgia Indians; and what does it imply? Does it not incontestably show some kind of right in the Indians? If Savannah and the surrounding country was bought, is it not proof that the seller had title? And if he had title to that which was sold, did he not retain a title to that which he did not sell? If, before Oglethorpe landed, while Georgia "was then all covered with woods," and in the exclusive possession of the Indians, they had mines which they used, or might have used, that did not fall within the cession made to Oglethorpe, does any one believe that he could, by virtue of this treaty, there being no other instrument in the way, have restrained the Indians from the use of those mines? I think no one can answer in the affirmative. Then from that day to this where is the treaty that is upon any other footing? If the Indians had the right then, when have they lost it? Oglethorpe, with his ceded territory and with his company under King's charter, was as much the government of Georgia as that now is under the present Constitution; and if he could not divest the Indians of their right to dig gold on their lands not ceded to him, how can Georgia do it now with no higher right, indeed with precisely a similar right? We have only to carry Georgia's present Government back to that time, and leave out all the treaties we have had with the Indians since, and we have precisely the question above stated. Deriving our right from Great Britain, we do not pretend to claim any better title than she had, unless, indeed, it is the genius of Republics to be more grasping than Monarchies—a principle I trust that never will be admitted. The above reasoning, then, shows a time when the Indians had a right to the gold found on their land. If they have lost that right, it is certainly incumbent on the party who says he has acquired it to show the deed by which it has passed. I confess I have looked for it in vain.

The next public and distinct evidence of respect for the Indian title on the part of Great Britain is to be found in the King's proclamation of 1763. It is as follows:

"Whereas it is just and reasonable, and essential to our interest, that the several nations or tribes of Indians with whom we are connected, and who live under our protection, should not be molested or disturbed in the possession of such parts of our dominions and territories, *as, not having been ceded or purchased by us*, are reserved to them as their hunting grounds, we do, therefore, declare it to be our royal will and pleasure that no Governor of any of our colonies do presume for the present, and until our further pleasure be known, to *grant warrant of survey* or *pass patents* for any lands beyond the heads or sources of any of the rivers which fall into the Atlantic ocean, or upon any lands whatever, which, not having been ceded to or purchased by us, as aforesaid, are reserved to the said Indians or any of them."

The next clause of this proclamation further defined the reserved lands to the Indians, and forbade all persons from either purchasing or settling within the same, and further required all persons who had inadvertently seated themselves upon lands which had not been ceded or purchased, forthwith to remove themselves from such settlements. And then he concludes in the following just and emphatic language:

"To the end that the Indians may be convinced of our justice and determined resolution to remove all reasonable cause of discontent, we do, with the advice of our Privy Council, strictly enjoin and require that no private person do presume to make any purchase from the said Indians; but that if at any time any of the said Indians should be inclined to dispose of the said lands the same shall be purchased only *for us*, in our name, at some *public meeting* or assembly of the said Indians, to be held for that purpose, by the Governor of our colony within which they shall lie."

Here, then, we do most clearly perceive that Great Britain forever relinquished the idea, whether founded in right or not, of taking Indian lands *by force*, and that she as clearly substituted in its place the right, and no other, of *pre emption*. In this proclamation the *pre emption right* most obviously originated, was the only one claimed by Great Britain while the country remained hers, and was continued, as we shall hereafter see, by Georgia down to a very late period.

In all the treaties made with the Indians on the part of Great Britain that Government evinced a studious care to make it appear to the world that all its purchases were fair and just. In the last treaty, made in 1773, with the Cherokee and Creek Indians, there is a remarkable instance of this anxiety. After stating in the preamble that the Indians, in a full, free, and voluntary manner, desire to cede the lands therein mentioned for the purpose of paying their debts to the traders, and that it will be a great favor rendered them to purchase the same, the Indians say: "We do hereby solemnly declare that we do fully and clearly understand every 'part of this treaty and cession, it having been fully explained 'and interpreted to us, and that the same is made at our own 'request and for our own benefit and advantage." This treaty was for all that fine country above Little river up to the Cherokee corner.

Before I leave this branch of the subject I will suggest a fact, which goes to illustrate, under another aspect, the foregoing reasoning. The last Legislature passed an act to survey the Cherokee nation and distribute it by lottery in the manner heretofore pursued, with this exception, that the improvements of Indians falling within any of the lots should be reserved to them, and that the fortunate drawers of such lots should not be entitled to a grant for the same, or in any manner to "remove or attempt to remove the Indians from their said improvements," until the General Assembly shall enact to the contrary, or said Indians or their descendants shall voluntarily abandon such improvements. Now a question naturally arises, what kind of a title have these *reservees* under said act? In sinking a well upon their premises or in ploughing their fields, if they should turn up a piece of gold and appropriate it to their own use, would they be obnoxious to the law which makes it criminal to dig gold in the Cherokee nation? If they would not, where is the difference between that case and their condition in the nation? They would hold their reserves under no better title than they now hold the nation. The act only reduces their title from a tenancy in *common* to one in *severalty*, and the quantity from a large to a small amount; and surely whatever right they would have in the last case is precisely the same which belongs to the first, for the operation of the act does not in the smallest degree change the nature of their title. It is still a title by occupancy, without limit as to its duration, unless the State chooses to end it by force.

I come now to consider the only argument that has been advanced to sustain the State in the course she has taken. It is this: The Indians hold their lands by the mere title of *occupancy*—the fee simple is in the State; and, therefore, having the reversionary interest, she can restrain the Indians from injuring the freehold, or, in other words, from committing waste. If this be true, she can also prevent them from cutting timber beyond what is necessary for the absolute use, and from doing many things which in legal language is called waste. Working mines comes within that definition, and is of no higher injury to the freehold than any other species of waste. But the truth is, the Indian title of occupancy assimilates itself to no principle of the English law, which gives the right to stay waste, as it is called. It is analogous to no estate, upon condition, which involves the relation of landlord and tenant, remainder man, or reversioner, and these are the only three characters who can restrain waste. It must be a particular estate to which there is a definite limit, certain as to the time of expiration, which will entitle the owner of the freehold to sustain the commission of waste. We all know what the renting of land means; it does not fall under this head. It is not every reversionary interest in lands that will give the right to restrain the tenant from committing waste. It is a well known fact that the State, as the source of all title, has a reversionary interest in every foot of land she grants out to her citizens; for if they die without heirs and intestate, their lands revert to the State by virtue of the escheat law. Now, under this remote expectant interest, no one will contend the Legislature could restrain the good people of the State from digging gold on their lands. The State does not hold in remainder; for remainder "is defined to be an estate *limited* to take effect and 'be enjoyed after another state is *determined*. There must 'be a *particular estate* created, certain and determinate, as 'for years, for life, or in tail; and *remainder*, being a relative 'term, implies that a part has been previously disposed of; 'for, where the *whole* is conveyed at once, there cannot possibly exist a remainder; but the interest granted, whatever 'it may be, will be an estate in possession." [2 Black. Com. 165.] Every one must perceive that this relation does not exist between Georgia and the Indians. "An *estate* in *reversion* is the residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him." [2 Black., 175.] Sir Edward Coke describes a reversion to be the returning of land to the *grantor*, or his heirs, after the grant is over. Now it is equally clear that this estate does not apply to the case of the Indians; for, instead of Georgia's being the grantor, and limiting a particular estate to the Indians, which is to have a specific duration, the very reverse is true. The Indians are the original grantors, and reserve to themselves in the grant, to wit, the treaties, an interest which is unlimited as to time, and not to end without their consent. These are all the estates which can by any possibility be made to bear upon the question; and it may with great confidence be asserted that none other can be found. Their occupant title is unlimited as to duration, and to them is to all intents and purposes the same as a fee simple. They do not care what it is called, if you do not take it away by force, and will suffer them to retain the use and possession of it till they choose to part with it upon their free and voluntary consent. But we frequently attach wrong ideas to particular terms, and if it is understood by the term *occupancy* that it is such a title as will justify Georgia in removing the Indians whenever she pleases, nothing can be more erroneous; for, according to the legal signification of occupancy, as understood in the English law, they will have a right to retain their land until they voluntarily abandon or sell it. Mr. Blackstone, in describing the title *to land* by occupancy, says "it is taking the possession of those things which before belonged to nobody." This, as we have seen, is the true ground and foundation of all property, or of holding those things in severalty which, by the law of Nature, unqualified by that of society, were common to all mankind. But when once it was agreed that every thing capable of ownership should have an owner, "natural reason suggested that he who could first declare his intention of appropriating any thing to his own use, and, in consequence of such intention, actually took it into possession, should thereby gain the absolute property of it" [2 Black. 258.] There is now no title by occupancy in England, and never was but one instance, and that is now virtually destroyed by statute. The case of the Indians in America comes the nearest to it of any we know of; hence it is so called, and applying it to the definition above laid down, it is a much more stubborn title than is usually conceived. We have seen also that the first discoverer, Great Britain, so chose so to consider it, and imposed no other condition or restriction upon it than the right of *pre emption* on her part. This has been followed up by Georgia, by the other States, and by the United States; so that, as far as human action and decision can confirm and settle a question, this is at rest.

It will be recollected that at the August term 1830 of Clark Court, I delivered a charge to the grand jury, in which I mentioned that it was my fixed determination to enforce the laws of Georgia in the Cherokee nation. I told them of the illiberal interference of other States in this question; that they had reproached us with cruelty, fraud, and injustice to the Indians, and said, even in Congress, that it was our intention to oppose by legislation, to persecute by legal prosecutions, and finally destroy the Indians to obtain their lands. I concluded that charge by saying, "let us falsify the prophecies that have been made as to the treatment which the 'Indians are to receive at our hands by exercising towards 'that unfortunate people the utmost kindness, justice, and 'humanity. Their rights must be respected. To the Indians I will say, they have nothing to dread, as far as they 'are concerned, either from the character of our laws or their 'mode of administration; for if *we* can live under them *they* 'surely can, and no distinction shall be made in their execution." In the name of every thing that is holy in religion, is lovely in charity, that is sacred in justice and dear to freedom, let not this be an idle faithless pledge. "Justice (says Vattel) is the 'basis of all society, the sure bond of all intercourse." All nations are then strictly obliged to cultivate justice with respect to each other, to observe it scrupulously, and carefully to abstain from every thing that would violate it. Every one ought to render to others what belongs to them, to respect their rights, and to leave them in the peaceable enjoyment of them. The elegant historian, Doctor Ramsey, has said, "universal justice is universal interest." The most enlarged happiness of one people by no means consists in the degradation or destruction of another; it would be more glorious to civilize one tribe of savages than to expel or exterminate a score. Instead of invading their rights, promote their happiness, and give them no reason to curse the folly of *their* fathers, who suffered *yours* to set down upon a soil which the common parent of us both had previously assigned

to them." In this strong sentiment of justice, all good men must concur, I am persuaded; it is one which Georgia, slandered as she has been, will not feel herself authorized to disobey. But to consign a weak and defenceless race to the scourge of slavery by day and the gloom of a dungeon by night, far from their country and their friends, for no other crime than that of taking gold from their own land and the land of their fathers, is not only a departure from this heaven-directed principle, but will incur the condemnation of all civilized nations, if it do not provoke the curse of a much higher tribunal.