

A VINDICATION

OF THE HON. AUGUSTIN S. CLAYTON,
Against the aspersions of George R. Gilmer, as contained in his Sketches of Georgia.

To the People of Georgia.—The reputation of your public men, who have served you in the council or the field, is a common heritage, and I claim the privilege of vindicating the character of one whose memory is cherished with affection, and whose virtues are a never-failing source of admiration. In the exercise of this right I feel that I am doing justice alike to the living and the dead. I scorn to plead the sanctified immunities of the grave; I ask no indulgence to the feelings of those who survive; I challenge the strictest scrutiny into his every act, whether official or private; I appeal to his cotemporaries at the bar or in the councils of the nation, to speak out, if they know any thing which attaches to his fame, and I call up the records to protect the consistency of his character and the integrity of his life.

I have had placed in my hands a book entitled "Sketches of some of the First Settlers of Upper Georgia, of the Cherokees, and the Author," by George R. Gilmer, containing, among other things, a wilful, wanton, and malignant attack upon the character and integrity of Judge Clayton. It is my purpose in this vindication to show the meanness of the assassin and the misrepresentations to which he has resorted. As to the book I have but little to say; and if the author had confined himself to telling that his wife "gave him a salutation worth more than all the shaking of hands and plaudits which he had received from the listeners and lookers-on" when he made a speech in Congress, with which *he himself* was very much pleased; or how "Mr. Adams took occasion to speak of him in the most flattering terms, when he took out his great-grand-father's watch, and held it up to the Speaker, and bowed out of the hall of the House of Representatives," and announced that his right of representing the people of Georgia had terminated; or of the "mockingbird that flew against his window" when everybody thought he was going to die; or to the collection of "minerals, Indian pipes, idols, amulets, lances, and arrow-heads" which adorn his domicile—it would have passed as the innocent garrulity of an old man without the benefit of experience. But as he has thought to assail and impugn the motives of others, he must bear the consequences which truth and justice exact in their defence.

His attack upon Judge Clayton is three-fold: first, his intelligence as a lawyer; second, he endeavors to create the impression that, in his judicial character, when the controversy between the Cherokees and the State of Georgia was being discussed, he favored the General Government, and not the State; and thirdly, he insinuates that his mind was influenced to this course by the relationship which existed between him and Mr. Wirt, who was the attorney of the Cherokees before the Supreme Court of the United States. As to the first, I have no disposition to discuss in this controversy other than incidental; with regard to the last two, I will show to the satisfaction of every honest man their utter and complete futility.

To have a proper understanding of the points, it will be well to state that, while Mr. Gilmer was governor of Georgia, he received some time in the month of June, 1830, a letter from Wm. Wirt, informing him that "the Cherokee nation had consulted him professionally as to their rights under their various treaties with the United States, and, among other questions, whether the State of Georgia had a right to extend her laws compulsively into their nation; and suggesting to his excellency that "the decision may be expedited by making a case by consent, if that course should suit the views of the State of Georgia." The governor declined, without expressing much indignation or exhibiting much courtesy, the proposition, which he thought proceeded from dishonorable motives. That I may do him justice, I give his own words: "No one knows better than yourself that the governor would grossly violate his duty and exceed his authority by complying with such a suggestion, and that both the letter and the spirit of the powers conferred by the Constitution upon the Supreme Court forbid its adjudging such a case." All this happened in 1830; in 1854, the same year with the publication of Barnum's Biography, his biography appears, and informs us that he "never felt so indignant as he did upon reading Mr. Wirt's letter." To understand why, he gives the following reasons, page 354 of his book:

"Mr. Wirt's first wife was my kinswoman, the daughter of Dr. George Gilmer, of Albemarle, the brother of my grandfather. Mr. Wirt was poor, unknown, and undistinguished, when Dr. Gilmer took him into his house, gave him his daughter, and introduced him into the society of his friends—then the best in that part of the country of his residence. Soon after the death of his first wife, Mr. Wirt removed to Richmond, and then to Norfolk, and was in danger of being utterly ruined by dissipation, when he again prospered by marrying the daughter of Col. Gamble, of Richmond, my wife's first cousin. My wife lived with Mr. Wirt's family in Richmond when she was a little girl going to school. Mr. Wirt had been so great a favorite with my own family friends, that he was named for his executor by my grandfather Gilmer. His niece, a young lady who had resided with him during the life of his first wife, was, after Dr. Gilmer's death, taken into his house by my wife's father, Mr. Gratman, with whom she remained until her marriage with Mr. Dabney Minor. All these circumstances induced me to believe that Mr. Wirt expected that his

age, high standing, and intimate relationship with my family friends, would induce me to do at his request what I would refuse to another. A fee of twenty thousand dollars was certainly a very urgent inducement to every means of success."

I pass over the fact, that while he considered a dishonorable proposition had been made to him upon the presumption that they were of the same family, and that he never felt so indignant in his life at receiving the letter, not one word of indignation is expressed in his answer. I refer to this passage in his biography to show how low that man's mind must be who suspects that Mr. Wirt was governed by such considerations in making the proposition he did. There had been nothing in the past history of Mr. Wirt's life to excite the least suspicion of dishonor; the guilt might have been somewhere else. "All things appear yellow to the jaundiced eye."

About twenty days after Mr. Wirt's letter was received, Mr. Gilmer addressed a letter to the Hon. Augustin S. Clayton, who was then judge of the western circuit, informing him that he had received a formal notice from a very distinguished lawyer of Maryland that he was counsel for the Cherokee Indians, and giving the contents of Mr. Wirt's letter, without mentioning his name. This letter is found in his book, page 356, and, strange to say, he omits to publish Judge C.'s answer. My distance from Georgia prevents me from giving the same, though I am able to supply what I have no doubt was the purport of it from another document. He informs the judge in said letter, dated July 6th, 1830, that "I am induced to write thus freely and fully, because it is understood in Washington city that you are desirous that the Federal court should assume the jurisdiction of determining the extent of the right of the State to govern its Indian population;" and then continues in his book: "Judge Clayton, to whom this letter was addressed, was related by marriage to Mr. Wirt in several ways, and his association with Mr. Wirt and his family very intimate." In this letter, and the subsequent statement, there are two misrepresentations on which to build his calumny; first, that he, Judge Clayton, was desirous of submitting the question to the adjudication of the Federal court; and secondly, that his association with Mr. Wirt and family were very intimate. No man in Georgia, I assert without the fear of successful contradiction, can point to a syllable ever written, or a word ever uttered, that Judge Clayton ever desired any such thing. All his writings prove the contrary; perhaps no man in Georgia ever contended more strenuously for the rights of the States, or was more jealous of the usurpations of the Federal Government. As to his intimacy with Mr. Wirt's family, my recollection is, that up to this time he had never seen any member of it, including Mr. Wirt himself. In his *Atticus* he had animadverted with some severity upon his conduct; besides, he was the warm personal and political friend of Mr. Crawford in the controversy with Mr. Calhoun, wherein Mr. Wirt was on the other side; and in an article published in the *Georgia Journal* of April 21st, 1831, signed A. B., he spoke of Mr. Wirt in such manner, as one of the witnesses against Mr. Crawford, as to show that his associations with him and his family could not have been intimate. But why this reference to the relationship of Mr. Wirt in this connection? Does he intend to insinuate that his judicious decisions were biased by any such consideration? He can mean nothing else; and none but a low, mean, debased heart alone could have justified such a conclusion.

Let us see how far the charge of a desire on the part of Judge Clayton to submit the question to the arbitrament of the supreme court is sustained by the records. In August following this letter, in a charge to the grand jury of Clark county, he holds this language:

"Besides the fact officially announced in the council of the Indians lately assembled, I have received information from the Executive branch of this Government, that counsel have been employed by the Cherokee nation to raise for the adjudication of the Supreme Court of the United States the question, 'whether the State has a right to pass laws for the government of the Indians residing within its limits.' Now, without intending the least disrespect to that court, to whose constitutional authority this and all other State courts will, I hope, cheerfully submit, this question can never go from a court in which I preside until the people of the State yield it, either from a conviction of error, ascertained by their own tribunals, or the more awful sense of their weakness to retain it; and it is useless to disguise the matter—to this issue the question must come, if the State is true to itself." Again, in another part of the same charge, he says: "So long, however, as the law remains unrepealed, the country has my solemn pledge that it shall be faithfully and impartially administered, so far as I am concerned. I only require the aid of public opinion, and the arm of the executive authority, and no court on earth besides our own shall ever be troubled with this question."

How malicious then is the allegation, and how badly sustained by the records. I will venture to say that not a contemporary of Judge Clayton heard that he desired to let this question go before the Supreme Court of the United States; and from the low insinuation, that he was influenced by his relationship with Mr. Wirt, I am justified in believing that it originated in the brain of George R. Gilmer.

Again, at page 388 of this biography, we have a repetition of the calumny: "By a clause of the law all agents of the United States were exempted from its operation. The judge of one of the circuits which included the Cherokee territory, the relative of Mr. Wirt, ima-

gined that he had read somewhere that missionaries among the Cherokees were agents of the Government. He discharged several missionaries who were brought before him upon a writ of habeas corpus, upon his own assumption that missionaries were agents of the United States Government, and therefore exempt by law from arrest."

He has again to resort to misrepresentation to keep up the calumny, without the sagacity this time to perceive that the decision was prejudicial to the interest of his relative; for if the missionaries were discharged the case could not go to the supreme court; and unless it went to the supreme court, Mr. Wirt would not get the fee of twenty thousand dollars, which Mr. Gilmer in his book says "was certainly a very urgent inducement to every means of success."

One would suppose, from his assertion, that the court had assumed that the missionary was the agent of the Government, without any evidence to establish the fact. At the March term of Gwinnett superior court, 1831, Worcester and others were brought before the court upon a habeas corpus, charged with violating the law of Georgia which prevented all white persons from residing within the limits of the Cherokee nation without taking an oath to support and defend the constitution and laws of the State of Georgia. It is useless to quote more of the opinion of the court than is necessary to show that there was evidence indicating that these missionaries were agents of the General Government. The extract runs thus: "Under all the foregoing views of the subject, I am of the opinion that the law is perfectly constitutional, and that its provisions must be carried into effect. But there is one provision in it which two of the individuals in custody seem, for reason best known to themselves, to have overlooked, and which will discharge them from their present arrest, if I have been correctly informed as to the facts. Both of them are missionaries, and one of them a postmaster. In the first character they are there with the consent of the General Government, and, as its agents, are in the nation for the purpose of civilizing and christianizing the Indians; and as evidence of their being Government agents, they have the disbursement of large sums of public money for the aforesaid objects." Subsequent to this, this same Worcester and eleven others were convicted and sent to the penitentiary, Judge Clayton presiding; and yet Mr. Gilmer in his book omits to mention the fact that the "judge of one of the circuits which included the Cherokee Territory, the relative of Mr. Wirt, presided on the occasion.

It will thus be observed, that if he, the judge, had been correctly informed as to the facts, they were both of them agents of the General Government, and disbursed large sums of money in their public capacity; and yet Mr. Gilmer prints in a book that he discharged these men upon his own assumption that missionaries were agents of the United States. If this were so, why is the fact referred to in the opinion that they disbursed public funds? I have no means of coming at the testimony, except from the opinion of the court, and such is the vigilance of the legal fraternity that it is unreasonable to suppose that they would have permitted such a statement to go uncontradicted. It is, therefore, not to be expected that justice could or would be done either to the acts or motives of Judge Clayton by one who is so gratuitous in his assertions.

Besides the positive assertion to the contrary in his charge to the grand jury of Clark county, (an extract from which I have quoted above,) that no other court had or should have the jurisdiction of the question as long as he had the honor to preside, the whole previous life and writings of Judge Clayton stamp the allegation with impossibility: He had contended, upon every occasion, as a member of the legislature, as a judge on the bench, in his political essays, and in his public speeches, for the rights of Georgia in this controversy. It is not saying too much to assert as my firm belief, that he had written more vindication of her rights in the controversy with the General Government in regard to her Indian relations, and yet George R. Gilmer, who was his enemy when he was in life, endeavors to leave behind as history the assumption that his leanings were against his native State, and in favor of the United States. The bare mention of the fact, without a comment, should be sufficient to bring to any human face a blush, where there was a heart which had the sensibility to feel. And then, too, the insinuation that he was influenced by his relationship to the distinguished Wirt, who was the attorney of the Indians before the Supreme Court of the United States, betrays a low, base, degraded meanness, to which falsehood could be no addition. To the contemporaries of Judge Clayton, it would have been only sufficient to have announced that George R. Gilmer had printed a book, and published as matter of history these things against him; but for the benefit of the rising generation, who are not familiar with the history of Georgia at this time, I have felt it my duty to be more elaborate than I otherwise would. I have, I think, shown the utter improbability of the truth of either assumption by his accuser, and prove from the records, that upon every occasion where he rises above an insinuation and attempts to assert a fact, he is not sustained. One word as to the assertion that Judge Clayton's relations with Mr. Wirt and family were very intimate, and I am done. According to the best of my recollection, Judge Clayton never saw Mr. Wirt, or any member of his family, until after he took his seat in Congress in January, 1832, when his duties as judge had necessarily ceased. I do not now remember that Mr. Wirt was ever in Athens, Georgia, in his life, and I am certain that his relative, the

judge of the western circuit, was never at his house, unless it was after January 1832. I will go one step farther. I do not now remember that Judge Clayton ever wrote a letter to, or received one from, Mr. Wirt in his life, and my confidential relations with him were such that I would have known something of it, if there had existed anything like intimacy between them. What occurred, after he was elected to Congress, here in Washington city, in receiving and returning the civilities and courtesies of life, I know not; they may have been intimate, but it was subsequent to the judicial action against which Mr. Gilmer has made his misrepresentations and directed his insinuations. I do not give importance to the assertion that he was intimate with Mr. Wirt and his family, because I attach any impropriety to it if the fact existed, but to show the utter unworthiness of what is intended as history, when it is written to gratify a personal revenge or is the offspring of disappointed ambition.

There are many other remarks in Mr. Gilmer's book relative to Judge Clayton which I deem it unnecessary to notice. Suffice it, he never speaks of him in respectful terms, of which I make no complaint; he had the right to consult his own taste in writing his own book, and I am not disposed to deprive him of a solitary enjoyment he derives therefrom.

In this communication I have not appeared before the public to praise Judge Clayton—I come to defend him: and in this connection it will not be considered inappropriate to refer briefly to the cause which separated him and Mr. Gilmer from those relations which existed prior to the controversy about which I am going to speak. The cause of difference was not any of the cases I have referred to above; there was no conflict between the executive or the judiciary of Georgia in either the case of Tassels, the Indian who was hung for murder, or the missionaries who were first discharged as coming under the provision which exempted the U. S. agents from the operation of the law, or those who were afterwards sent to the penitentiary, having no right to claim such exemption. The collision was on account of the decision of the judge in the case of Canatoo, a Cherokee Indian charged with digging gold in his own nation, which the legislature of Georgia had made a penitentiary offence. The ground upon which that decision was made and the law was unconstitutional and violated numerous treaties made with the Indians, and expressly guaranteeing the undisturbed possession and occupancy of all their lands not ceded to the whites. I am not going to argue the correctness of that decision; at no very distant day I contemplate presenting to the public the life and writings of its author, at which time I trust I shall be able to do justice to the legal ability by which it was sustained. My present purpose is to appeal to the public, and in that public to include his worst enemy, George R. Gilmer, to know if Judge Clayton did not deserve, in what was intended as a history of the controversy at that time, to have had justice meted out to his motives. What are the facts? Mr. Gilmer and he belonged to the same political party; they had been personal friends; every inducement upon earth, save the conscientious discharge of duty, existed why a contrary decision should have been made. His own political friends had passed the law: he in common with every citizen of Georgia was anxious to have the Indians removed to the west of the Mississippi; his decision he knew must have the effect to embarrass that hoped-for object; the discovery of gold had phrenzied the people, and all were solicitous for an occupancy of the Territory; his re-election or defeat as judge was within sixty days of the time; there was not the possibility of a personal benefit to him or his friends by discharging the Indian, and yet, in the face of all these difficulties, he did nothing more than what he conceived to be his duty. For all which I do not claim for him any credit, but I do think, that when the true history is written he should be exempt from censure. The sequel was as every one predicted—the legislature refused to re-elect him judge, though the people elected him to Congress in less than sixty days thereafter Mr. Gilmer was defeated for Governor about the same time, having rendered himself obnoxious to the people of the State. It had the effect upon him of hydrophobia, from which he has never recovered. He has been snapping and snarling at every successful statesman and every political organization in the State ever since; the clear and pellucid stream of charity throws him into convulsions and he will soon pass away unwept, unhonored, and unsung, with the melancholy remembrance that the only true services he has ever rendered his country or his kind are his omissions.

In speaking of political parties subsequent to the time of which I have been writing, Mr. Gilmer, at page 465 of his book, has the following passage: "A few days after my return home, (from the Anti-Tariff Convention at Milledgeville,) I received a letter from James Liddell, a leading member of the legislature; in which he stated that he had heard a portion of my remarks against the doctrine of nullification; that he did not understand the subject, wished to be informed, and asked me to give him my views fully, saying that my letter should be strictly confidential. I wrote to him what my opinions were about the resolutions which had been adopted by the convention, particularly that which set forth the extreme opinions of Mr. Calhoun of the power of a State to control the legislation of Congress on the subject of the tariff, stating to him that they were given to himself, and not for others or the public. I was thus cautious, because I wished to avoid writing any thing against my party friends. I kept a copy of my letter. When the Democratic State Rights party were about selecting a candidate for governor in 1837, those who were opposed to my be-

ing a candidate, and desirous that Judge Clayton should be, obtained a mutilated copy of my letter to Liddell, and used it to excite the nullifiers into opposition to my nomination. I was in Virginia whilst this intrigue was going on. Upon being informed of it, I wrote to Liddell that I had heard of his having communicated to others the contents of my letter, and asked him to send me a copy. The sorry fellow having no suspicion that I had kept a copy answered that he thought the letter did me great honor, sent a copy of the part which he knew to be offensive to the nullifiers, and omitted that which qualified what made it so, averring that his eyes were so sore, and he so unwell, that it was as much as he could do to copy what he sent. I afterwards saw Judge Clayton and General Harris, who had been very busy circulating Liddell's mutilated copy of my letter; showed them the entire copy, and convinced them that they had been misled."

Where no records exist to substantiate facts, we are dependent entirely upon recollection; and while I would not say that Mr. Gilmer, in this narrative, has suggested an untruth, I have no idea that he has given all the facts as they existed at the time. My recollection of the facts are these: On account of Mr. Gilmer's position, which was a perfect willingness to receive favors from the State-Rights party, whilst at the same time he was denouncing their principles to their opponents in letters, around which he threw the sanctity of privacy, many, many State-Rights men determined not to support him.

While he and his friends were very anxious to secure the nomination of the State-Rights party, or perhaps it was after he had been nominated, the letter to Liddell was produced, to which he gave a meaning and signification that removed some of the objections which had been urged against him. Judge Clayton or his friends had nothing to do with any intrigue to defeat his nomination, or procure or circulate any mutilated letter for any such purpose. My opinion is, that a correspondence took place between Mr. Gilmer and Gen. Harris at the time, which I have no doubt would have thrown more light on the subject than Mr. Gilmer was willing should meet the public gaze.

I have one extract to notice in his book, and I conclude. At page 485 he says:

"I was opposed to rechartering the Bank, and yet did not approve of the means used by General Jackson for putting it down. The Georgia members of Congress who had been elected on the same ticket with myself were favorable to the Bank, and partisan opponents of General Jackson."

This refers to the Congress of 1833-'4, at which time the Hons. Roger B. Gamble, Seaborn Jones, Thomas F. Foster, Richard H. Wilde, Augustin S. Clayton, and, if I mistake not, James M. Wayne, were elected with Mr. Gilmer upon the same ticket; and by reference to pages 483--'4, of House Journal for the first session of the 23d Congress, it will be perceived—with the exception of Mr. Wilde, who voted for the Bank, and Mr. Gamble, who was absent—the rest voted with Mr. Gilmer against the Bank. Why this misrepresentation in a book that purports to be history, I am at a loss to understand.

I have said nothing of his book in relation either to the credit it will reflect upon the State, the information it gives, or the place it will occupy in the world as a literary production. I have not sought a controversy, and therefore I have avoided every thing like attack. Besides, I should be justly chargeable with more than an ordinary malignity to subject his book and his taste to the rules of criticism; as it is, I have no defence against the unkindness of directing public attention to it. The misrepresentations which abound in his "Sketches," when he speaks of the acts and motives of other men, are so common and so frequent, that I have the charity to grant him the benefit of the habit, to rescue his own character from the infamy into which his autobiography has plunged it.

P. CLAYTON.

Washington City, Jan. 23, 1855.