

*To the Editor of the Athenian.*

Mr. SHAW.—I find a report in circulation, that I had refused a warrant to Col. Montgomery, the Indian Agent, the object of which was to remove certain intruders from the Indian lands now engaged in digging gold; upon the ground that they were justified in their conduct. This report is very erroneous, and as it is calculated to involve many of our good citizens in difficulty, and occasion them to commit acts of impropriety, I beg leave to correct it through your paper.

On the first morning of Hall Court, the agent informed me that a respectable gentleman of that county, who was concerned in the above business, had agreed, upon being required to leave the nation, to submit the matter to my decision, provided I would issue a warrant, and determine the question upon the validity of the *intercourse law*. I replied to the Agent, if he would leave it to my individual opinion, I would have no difficulty in saying the gentleman was wrong, and that he and all others ought to leave the nation. But I stated I could not conscientiously support, or attempt by my official acts to carry into effect, any law, that took from

the state of Georgia one particle of its jurisdiction or sovereignty. That it was an early inattention to rights like these, that had induced the General Government to draw to itself, so many powers that do not rightfully belong to it, and which will finally overwhelm the states if not firmly opposed. I stated that *all the territory* within the chartered limits of Georgia belonged to her, except such as had been legally disposed of, and consequently, as territory and jurisdiction are inseparable, *all the people*, within that territory, were subject to her jurisdiction, that there was no difference between the whites who held their lands *in fee*, and the Indians who held theirs *by permission*, for a difference of *tenure* could make no possible difference in political *condition*. That in relation to the Indians on this territory, the General Government held but *one single right*, and the identical same right they held in relation to the citizens of the other part of the state, and precisely in the same manner, for they were found side by side in the Federal Constitution, viz: "to regulate commerce among the states and with the Indian tribes." That if this clause was expunged from the constitution, so far as *that instrument* is considered good authority, it would leave the General Government as *wholly and essentially without power* in reference to Indians in this state, as it is in regard to our slaves. That I was at a loss to perceive how it was possible to construe a power to *regulate commerce* into a power to punish *simple naked trespasses*, totally unconnected with that subject, the prevention of which, exclusively belonged to the state of Georgia. I did not believe that any one, be his infirmity of mind what it might, if it left but the bare exercise of reason, could honestly come to the conclusion that merely going into the nation, or while there, the cutting down a bee tree, the killing a deer, the surveying or tilling of land, or the digging of gold, were acts properly and legitimately within the *range* of commercial regulation, as known and received by the commercial world. If they are, then I pronounce that there is no regulation which may not be wrenched within such a limitless construction, and as the very same power extends to the other part of the state, it follows that the whole territory and jurisdiction of Georgia may be effectually lost to her by the mere operation of commercial laws. That crisis had not yet arrived, and though it was approaching, and perhaps in view, yet there was on that account the greater necessity on my part to withhold all aid from any movement tending to such a deprecated result.

I stated explicitly, that the gold diggers were wrong and ought to come away, but it was upon another principle, that the land belonged to all the good people of Georgia, in common, and *no one* had a right to go there and enjoy it in any manner, until *all* could by law, be permitted to do the same thing. That the premature occupancy of the territory, by some, where all had a right, afforded a pretext to persons of other states to take the same liberty, and individuals from at least four states, were there robbing the citizens of Georgia of their future interests.

I stated further, that the Intercourse law did certainly forbid such a trespass, and that the Federal Court had the execution of this law, and whatever might be my opinion, it did not by any means affect that tribunal; and that the persons were running great risk, in braving the consequences of a trial of the question, before a court, that had uniformly enforced the law.

A. S. CLAYTON.