LAW INTELLECTION CE.

From the Athenian, 23d ult. JUDGE CLAYTON'S OPINION.

We present to our readers to-day the decision of Judge Clayton, in the case of the State vs. John Sanders, and others, Indians. We have been struck with the similarity of reasoning upon several points in the opinion, with that of er on those subjects, is void. the report of Mr. Bell in the House of Repreed before the report of Mr. Bell had come to

This decision will be taken up to the Supreme Court, by a Writ of Error-when the question will, for the first time, so far as Georgia is concerned, undergo a solemn adjudication.

HALL SUPERIOR COURT.

THE STATE, Indictment, JOHN!SANDERS, and Assault and and others, Battery. Indians.

Plea to the jurisdiction of the Court. The following facts in the case, are submitted; -One Jesse Stansell, a white man and a resident citizen of Habersham county, in this State, was arrested by an officer of the Cherokee Nation, for the crime of horse stealing, and brought before an authorized Magistrate and a jury of said nation empannelled for the purpose of trying said case. That the defendants constituted the Court, and the officers necessary to the execution of their sentence, and the evideace exhibited before said court, proved that the said Jesse Stausell, had hired a horse to ride about two miles, and that after riding that distance, he had taken the liberty without permission from the owner, to ride his horse sixteen or eighteen miles, and that he had declared his carried that intention into effect. In view of ties. this evidence, the jury declared the said Jesse Sunsell to be guilty of horse stealing, which acto a punishment not exceeding one hundred lashes. And accordingly the said Jesse Stan-

right to entertain jurisdiction of said case. The law of Georgia under which the case is

on his bare back.

persons citizens, of this state or of the United | tribes, that the states have surrendered the right | make no treaty with the Indians, within the receive it, but this must always be left, as is | Stores, and entitled to the privileges aforesaid, to extend their criminal laws over such robes as | limits of Goorgia, other than such as regulated | every other social rule, to our own best judg | or against any of the citizens of this State or the | may be found within their limits? If such a doc- | commerce, and that precisely in the way the | ment. United States, shall be tried and punished in trine be maintained, what will be the conse- same object was effected among the several | A case has been presented, in this state, the county to which the territory, in which the quence? Is it not perceived to weat an absurd states, and any stipulations, either in Treaties which serves to illustrate the principle of exclusaid crimes and offences shall be committed, is | conclusion it leads? In the very same clause | or Laws beyond this single point, are void as | sive jurisdiction as contended for in the foregohereby added and annexed, in the same man- is conferred the right to regulate commerce a- far as Georgia is concerned. And the very ling remarks. Some years ago the Indian title ner is if said crimes or offences were com- mong the several states; will it be asserted that case before as proves, as I said before that the to a position of the Cherokee nation was examto and within the limits of any of the organized this power gives the right to protect the people period has arrived when the error must be cor- guished, leaving however in different parts a copyries of this State."

ecolors would be, upon the commission of an litable expansion. in the rown of Gainesville, would any one dise | can be found. pute this Court's jurisdiction over the case?

have undergone the severest imputations, a also. sense of self respect, requires that a full investigation of this subject should be had, if not to disabuse public opinion, at least to repel un-lout a constitution, must act within some limited l country. Nothing I trust shall escape me, real others, and that treaties bind only the contracthis place disrespectful to the opinions of others; | scroogest arm. er defensive.

been delegated to the confederation.

each state would have asserted and retained, tion. without any question, all these rights.

the contrary was expressly refused. (See Jour- | contrary principle.

otherwise.

instrument.

clear recognition of the above rights.

stubborn and notorious facts.

was to extend the criminal laws of the State er argument be sound? But extending this idea of no debate. over the Cherokee natio, it a limited degree, sall farther, from this power to regulate com-

But it is denied to the state of Georgia, the eral Government, and in which the whole force | which she had conquered from Great Britain | nation. This brings us to the consideration is, that by treaties, it has promised protection shown, was more than once refused on the Genmore excitement abroad that at home, and al- | that under this clause of the federal constitution, | would not grant this right directly to the Indithough it might seem that this is not the proper viz. the President shall have power, by and with ans, and such an application coming from them delicate" speculation. place to notice any thing foreign to the imme- the advice and consent of the Senate, to make would have been sopremely ridiculous, surely diate question before us, yet as the whole char- | treaties," said government had a right to make | no one can imagine, and be honest with his unacter of the state, including its Courts of justice, such treaties. Now let us consider this ground derstanding, that she has indirectly given to the of the people of Georgia, under the late multi-I again lay down these principles.

ion of a legal question, may be received in a without its well known boundary, and that the Ition in order to reach the western States I proceed by laying down the following prin- | powers conferred upon that Government. serves independent of Great Britain, each pos- late, the two functions of Government farthest

That no authority wrong fully acquired, can punished again for the same offence. relinquished by the states to the General Gov. be unfounded, and it is to be hoped the Gen. things will be suffered to exist. In vain may from the state of Georgia one particle of its jurisdic and it is to be hoped the Gen.

perturieur, in the Federal Constitution, but on jeral government would disdain to contend for a Georgia attempt to ameliocate her penal code, ti

proceed to the following statement.—After the lowed to tear open the wounds, it has been the L That so far as Georgia is concerned, they Federal Government went into operation, there anxious effort of twenty years to heal. from filial duty and respect, as from any know the truth of this matter, we should have And it is most positively denied that any in- | thing else; but this cannot make that right, | been spared their unkind censures. strument exists by which Georgia has transfer- which was fundamentally wrong. But there It is true they are deprived of many privired to any state, or the General Government was another circumstance which kept the state leges that belong to the citizens, but their con-(except as a part of her territory, and sites for respectfully silent on this subject. No state in dition is precisely the same in the rest of the o Forts and Arsenal) any part of the aforesaid the Union has suffered more from Indian dep- states. They have never been put upon the p rights, and that none can be produced. And redation than Georgia, and such was the con-same footing any where, and it is a great act of a the fact that a part of her Territory and sites for | stant scene of savage butcheries, and desola- | insincerity towards Georgia, and a fatal delusion | Forts and Arsenals, have been purchased by ling conflagrations on her frontiers in the days to the Indians to attempt to inspire such a bethe General Government from the state, is a of those first treaties, that she was willing to lief. And it cannot be expected that Georgia have peace on any terms and submitted to what- will submit to any thing to which other states I am aware that it is claimed for the Gener-lever the General Government, in her parantal have not submitted. It is true we have said in al Government to protect the Indians, within solicitude, might impose, for the sake of any re- they shall not be witnesses against white men intention to ride the horse out of the nation, and the States, from two sources, 1st, from the spite from those horrid massacres to which she this is a municipal regulation and is entirely of c thus make him his own property, but had not Federal Constitution, and 2dly, from trea- was daily exposed. And if these treaties im- our own concern; subject to no other scrutiny p Let us impartially consider both grounds. binding on Georgia, who was really no party to er regulation; we may be censured for our fol-I have already stated, that when the Federal them, while one of the contracting parties has ly but we usurp no power. The same authoricording to the laws of the nation, subjected him | Constitution was under consideration, the very | violated them from time to time, in the carnage | ties that exclude slaves, infidels, convicts and | subject we are now discussing, was distinctly of our women and children, and the rapine of idots, from giving testimony in courts of justice, brought to the view of the Convention, as is in- our frontiers in an extent of four hundred miles? on account of a defect of moral principle, can sell was bound, stript, and received fifty lashes disputably attested by the journal of that body, It is not too much to say, nor is it said in the do the same, thing towards any other class of h and was most unequivocally denied to the Gen- spirit of reproach, that the bones of many of persons, whom they in their judgment may u The plea founded on the above facts, is sub- | eral Government. If the journals of deliber- | our people, can at this day be pointed to which | deem to be labouring under the same disability, | the shoutially this, that the Cherokee nation of In-lative assembles, are taken for any thing, it is bave been bleaching upon the naked earth, and land we are answerable to no one but ourselves. I ri dime is an independent government, entirely inconceivable how such a pretension is set up scattered from the unburied bodies of many With regard to other privileges, the Indians P separate and distinct from that of the State Geor-) for that government, and if they are not to be | who were lovered and mardered long since the | cannot expect to be placed upon the same foot- | 4 give. That they have the right to establish laws begarded as evidence of motives or intention, last treaty of peace with that unfortunate race, ling with our own citizens; we do not allow an begulations different from those of Georgia, why are they preserved? Why recorded and Who does not know that war puts an end to all that to enlightened foreigners, much less to and the belligerents, and who does wandering savages, and I beg to be considered to to do what is charged against them; that the of- let the instrument, whose history and consum- not know, that there have been repeated wars as not using this term here or elsewhere refence alledged was commuted within the nation, mation they purport to give, speak for itself, and ravaging incursions by the Indians, since proachfully. This is a prerogative that be- n and it is no crime by the laws of their govern- and then we should be spared the mortification any treaty where the tranquility of Georgia was flongs to all governments, and must be exercised [fe ment; and that the Courts of Georgia have no of wanessing the exercise of power, falsified by concerned, and in which the faith of the Gen- under that sound discretion which is supposed in evalueGovernment has been bledged to protect to rest in every well regulated society. That o But in this case, let us resort to the instru- their within her lists? But aside from all these power in government which prescribes five? brought into this court, was passed on the 21st ment itself. In no part of it from the begin- considerations, the time is come when we years to an alien before he shall be entitled to of December, 1822, and after attaching certain | mag to the end, can the word Indian or any | stand upon our rights as secured to us by the | the rights of a citizen could place a limit of positions of the Cherokee nation to the adjoining thing relating to that name. be found except | constitution. If the General Government has | fiffy years to the same privilege, nay they could | Former counties of this State, and particularly in one solitary place, and that is the following, bound uself to perform or act which will violate [deny it altogether, and where is the greater in-

They are within our jurisdiction and our ter-The jurisdiction was not intended to reach to mer e "with foreign nations," who is so bold as ritory, and the Federal Court has so determined, benefit they were reserved, like very many coses where Indians alone were concerned, but to affirm, that the General Government has (Sec 6 Cranch 140.) Ever Judge Johnson similar Reserves, in other states. Now will it only to those offences committed by or against the right to pretect all the rest of the world, who dissented from the above opinion declared, be consended that these Indians and these Recitizens.--I'a rime was perpetrated by a citi- from the force of their own penal laws? Though in his usual strong and forcible manuer, that servations constituted independent territories ze vertinst an Indian, or by an Indian igniest and self same power, to the dismay of the states, self same power, to the dismay of the right of jurisdiction is essentially connect within the counties where they were situate, con, the offender become immediately a- has opened upon their rights a most destroying ted to, or rather identified with, the national and that the laws of the state could not extend re while to our Courts of justice. And the only flowl, it has not yet quite reached such an illim- | sovereignty. To part with it is to commit a finto them? That their inhabitants were bespecies of political suicide. In fact a power to youd any contol from state jurisdiction so long of was could our Courts take cognizance of: So far then as this clause parts with the right produce its own annihilation is an absordity in as they kept in their own bounds, and that withthe some, provided it had been committed withe of Georgia to territory, jurisdiction or sovereign- terms. It is a power as utterly incommunicable in Fallmits of an organized countr? Let us by, over the scople red, black or white, citizen to a natural person." We have they pleased? In favour of such a docume, I apple his rule to the case at har. Suppose the or alien, found within its acknowledged limits, never part d with it to the Gen'l Government, humbly conceive, no one can be found. defendants, or indeed the same number of I think I may safely say, she is safe, and as to | much less to the Indians. Does any one believe | tied and punished a citizen in the same manner | instrument, I say, and speak advisedly, none | Union, if it had been required of her to ack-But the strong ground assumed for the Gen- }then coccupying four-fifths of that very territory | General Government the right to do this very | plied insults they have received from various thing, to set them up for themselves, in the very parts of the Union. Time will dissipate the That all governments, whether with, or with- | heart of the state?

Let us examine some of the consequences of our unkindness. But if contrary to all reasonjust charges against the civil institutions of the powers, so as at least, to respect the rights of this december. We have a frontier of something able hope this just expectation should not be relike two hundred males in length, separated in alized, and our adversaries abroad, by their becoming the moderation due to the station I tag parties, and no two nations can treat away some places, by only au imaginary line from sickly solicitude, should cause an invasion of a fill; nor is it intended to offer any thing from the rights of another, but by the law of the the Cherokee nation. On this line there are new settled and decided right, they will not five counties, and four of them by far the most only have to contend against the force of an it is samestly desired, that whatever is said That the General Government is a strictly populous of any in the State. Besides this there undivided people, but they may find, behind | beyond what is absolutely necessary to a decis- limited Government, and has not a single power is necessarily much travelling through the ma- that very moderation and forbearance, which spirit of candid enquiry and considered altogeth- power to make treaties is not unlimited, but the Cherokee nation is erected into an inde- toon suited to any alternative which a graceless must be confined within the sphere of the other dendent government; what ensues ?- The case fingusion may provoke. The plea over ruled. If at bar affords the answer. The moment affects ciples: That when the states declared them- this is not admitted, then the President and Sen- | white man is caught within the nation and accused of a crime, (and how easy to prefer a charge). sessed precisely the same rights, sovereignty removed from the people, can do more than all he is arrested and a most summary trial takes and territory which they held under, or helong- the rest of the political machinery besides! place. An Indian officer speedily collects four dian Agent, the object of which was to remove cered to that me ton, except whatever may have Can do what Congress dare not, dispose of or five Indians, organizes them sinto a court tain intruders from the Indian lands now engaged states and their rights at pleasure; indeed, without regard to time or place, far from the in digging gold; upon the ground that they were t That no part of the territory, or the jurisdic- | maugre all the studied restrictions thrown a- | friends or witnesses of the accused, often un- | justified in their conduct. This report is very ertion over it, was relinquished by the states, in round the government, through this power is let | derstanding nothing of their language, and in a | roneous, and as it is calculated to involve many of | the articles of the confederation, but on the in the power to do every thing. Such acording few moments he receives the sentence of the contrary was expressly refused, (See 1 vol. to Mr. Jefferson, was never intended. | court to be sconred in the most cruel manner, it through your paper. Secret Journal of Convention, pages 74, 295, That the General Government is limited in and it is as quickly executed. And thus the On the first morning of Hall Court, the agent in-310, 362, 369, 378, 437, 440.) the power of making treaties to the sphere of its well earned reputation of a life may in an in- formed me that a respectable gentleman of that the sphere of its well earned reputation of a life may in an in- formed me that a respectable gentleman of that That at the recognition of the Independenc other delegated powers; it has no right to make stant be blasted. This kind of treatment too county, who was concerned in the above business, of the States by Great Britain, each state still treaties with Indians residing within the limits of may extend to the taking of life or limb, and had agreed, upon being required to leave the nation, held its separate territory, jurisdiction and sov- | States, but upon the single subject of commerce, | this is not all, he is subjected to punishment | to submit the matter to my decision, provided I | ereignty in as full, ample, and complete a man- | because "to regulate commerce with Indian | twice for the same offence, for our laws will | would issue a warrant, and determine the question | per, as if it had remained attached to said gov- tribes," is the only power they have in relation punish citizens for crimes committed against upon the validity of the intercourse law. I replied ecoment, or had been alone detached from it. to that people; if any thing more is contended Indians, and there are now men suffering in the to the Agent, if he would leave it to my individual That if there had never been any Union, for it was in vain to have a written constitu- Penitentiary on that very account, who, when

That neither of these rights has ever been be rightfully exercised after it is discovered to It cannot be expected that such a state of ficial acts to carry into effect. any law, that, took

and soften the rigor of cruel and bloody punish- | ti nal of Federal Convention, pages 70, 277, 309. With these principles constantly in view I ments, if the savages in her very bosom, are al-

have never been relinquished by any conven- were very many of its principles and powers | Government at best is a state of restraint, is ion or treaty made by the General Govern-but little understood and required to be drawn and made for the benefit of the many over the in ment with her, and if made with any other pow- out in practice before their proper tendencies few, and no one will deny that it is better for to I could be fairly tested. These principles have a savage, to be under the government of a civ-17 That the Indians have never been consider- | been developing ever since, and new powers | ilized people, than for the latter to be subjected | sentatives, and we consider it due to Judge ed, or treated by any of the states or the Gen- or rather strange lights are making their ap- to the horrid irregularities of the former. The Clavton to state, that his opinion was deliver- | eral Government as citizens, or entitled to the | pearance every hour, in the national firmament. | same laws that govern us, will govern them, privileges of citizens, nor have they been per- | It was not wonderful then, that many acts of the | with no other exceptions than such as their pemitted any where in the United States or its | General government, while the states were | culiar situation will naturally require. At all \in Governments. As a people, they have been out a strict scrutiny into their legitimate conse-lbe treated with humanity. Their rights have in denied the right of suffrage and representation | quences, and having full confidence in the integ- | always been respected by the state government | s in any of the States, Territories or the Feder- | rity of a government, founded upon the best af- | witness the number of white persons who have | w al Government, and the states within whose | fections of the states, consecrated by common | been rigorously prosecuted and punished for a | to limits they fall have the exclusive jurisdiction dangers, sufferings and distress, it could not be violation of their persons and property; Wit- a and control over them, except in such cases | believed, that if such a government should be | ness the successful issue of the case of their re- | ? False Imprisonment, that the constitution of the U.S. has declared found to have transcended its bounds, it would serves, than which none could have met with [1] for one moment hesitate to retrace its steps and more violent opposition—Witness how few of From the foregoing, it is confidently maintain- repair the injury. This is the precise situation of them have ever been punished by our courts. ed that Georgia, within her chartered limits, Georgia. Many tractics were made between Have they ever come among us without receiv- a so far as relates to territory, jurisdiction and the General Government and the Indians, to ing our ready charity, and kind hospitality? a sovereignty, is supreme, and no other power which she was no party, within her limits, and The reproaches against Georgia for the unjust is whatever, has any right to question it only so though the very first was objected to, yet that treatment of the Indians, to say the least of it, was any right to question it only so though the very first was objected to, yet that treatment of the Indians, to say the least of it, was any right to question it only so though the very first was objected to, yet that treatment of the Indians, to say the least of it, was objected to. far as she has parted with either by any written and all the rest have been acquiesced in as much is undeserved, and could our Northern brethren

posed any obligations, are they to be alone than that which refers to the wisdom of any oth- the that part of it to Hall county, in which the of- "the Congress shall have power to regulate the rights of a state, will it enforce that act, con- justice in exercising a precisely similar power to fence is said to have been committed, has the commerce with foreign nations, and among the trary to the remonstrance of that State? In relation to the Indians, a people much less following provision, viz: "all offences commit- several states, and with the Indian tribes.", Now | Are the rights of Georgia less to be respec- contilled to such a right, either from moral imted within the said tracts of unlocated territory | I ask, can it be seriously contended that from | ted than the suposed rights of the Indians?—| proprovement or latelle told elevation. No! | 1 ag my the State, and all crimes committed by the power to regulate commerce with the Indian | We say that the General Government could the truth is, whenever they deserve it they will \$

of the states, from the criminal laws of their re- | rected, for we must govern the Indians or they | number of Reserves of one mile square, to which It is obvious that the object of the above law | spective Legislatures? And why not if the oth- will govern us, and this is a question that admits | their title was not extinguished, and these fell | into separate organized counties of the state, and were occupied by the Indians for whose in those limits, they might commit what crimes

Then what is the difference, between one whit men with no other authority, had arrested, any other grant of power to that effect, in that that Georgie would ever have entered in a the Indian on one mile square and 5000 Indians on two hundred miles, both being within the nowledge the independence of the Indians, facknowledged chartered limit, of Georgia? This subject considered in reference to the first case is perfectly within the comprehension of right to extend her laws over the Cherokee of argument and ingenuity is arrayed and spent, and her Indian allies, and which, as I have the narrowest capacity, but increase the numbers and enlarge the limits, and a principle, beof a subject that seems to have created much to the Indians within the limits of states, and eral Government? Impossible! If Georgia fore as plain as noonday, vanishes into doubt, and all at once becomes a question of "very I cannot conclude without greatly commend-

ing the forbearance and dignified moderation error that lies at the foundation of such gratui-If they so much affect to contemn, all the resolu-

From the Athenian. Mr. Shaw.—I find a report in circulation that I had refused a warrent to Col. Montgomery, the Inour good citizens in diffiulty, and occasion them to commit acts of impropriety, I beg leave to correct

opinion, I would have no difficulty in saving the gentleman was wrong, and that he and all others they come out, if caught in the nation, may be ought to leave the nation. But I stated I could | not conscientiously support, or attempt by my of-