

## THE MISSIONARIES.

It is certainly true that the Supreme Court has decided in favor of these men, and against the State of Georgia.

For the information of persons of other States, and per adventure to refresh the recollection of some in this, we will premise, briefly; that the legislature of Georgia in December, 1830, enacted (with certain provisions and exceptions not applicable here,) "that all white men who should be residing on the Cherokee Territory on or after the first of the ensuing March, without a license from the Governor, should, if they continue there, each take an oath to support and defend the Constitution and laws of the State of Georgia, and uprightly demean himself as a citizen thereof;" on pain of confinement in the Penitentiary not less than four years.

Certain Missionary preachers continued to reside there after that date, and were found to exert the most active and formidable influence with the Indians, in inducing them to oppose the laws and policy of the State. They were requested by the Government of Georgia to go away; but would not. They would neither leave the State, nor submit to its laws; but remained in defiance, feeling it, as they said, to be their *duty* to do so. They were of course, prosecuted, convicted and sentenced, as they, doubtless, wished to be. Even after their sentence they were offered a pardon if they would promise obedience to the laws in future.— They refused to do this; and were committed to the Penitentiary, where they now are.

The cause was carried to the Supreme Court of the United States. The State of Georgia, denying the jurisdiction of the Court, refused to appear before it. The Court on hearing the argument for the Missionaries, have decided in their favor; declaring as we understand, that the law of Georgia, under which they were convicted, is unconstitutional; and that we have no right to extend our laws beyond the Cherokee line.

We give to-day in another column, a sketch of the decision, copied from the National Intelligencer; and it may be that the Editors have misapprehended, or insufficiently stated in this brief and hasty analysis, the nature and extent of some of the grounds assumed by the Court. The Court is made to say that "by the Constitution, exclusive power belonged to the United States to receive cession of Indian lands; and to make treaties with them." They are reported to assert, as a historical fact, that France, Spain, and Great Britain have *uniformly* recognized the Indian tribes to be in *no respect* under the power of the Europeans, except as to their right of intercourse with other European nations; and the right of preemption in the discoverers to purchase their soil. Still more startling is the proposition as we understand it to be stated, "that their independence of State Governments had been constantly upheld." It is difficult to suppose the Court assumed the positions, in the face of history; in the face of constant exper-

... and in the teeth of some of their own decisions.

The abstract in the *Intelligencer* is very brief, and we presume is not pretended to be perfect.— We shall soon see the decision at full length.

There can be no two minds on this point among the people of Georgia; but they will have abundant time for calm reflection and full deliberation. Nothing like force will or can for a long time be in operation, if indeed ever; and we devoutly hope and are inclined to believe it never will be. The Judge of the Western Circuit will probably in due time and in due form, receive a copy of the decree, ordering him to reverse the aforesaid decision. The answer to this mandate can hardly reach the Supreme Court within its present term, and the next term commences on the 2d Monday in January of next year. In the interim the judges of the State will convene at this place; the legislature, fresh from the people, will hold its annual session; and all will proceed deliberately, and no doubt in that peaceable firm and steady manner, which best becomes the dignity of a great State, in the fulfilment of its high duties on so momentous and vital a subject. The State has now a part to act, that is to be distinguished in history, as important to the Union and to the world. Much, we may say, all depends upon herself; and it is obvious, that the less of passion, the more of weight and strength, will be in her position and her movements. What we believe right, that we will do, calmly and quietly, and meet the consequences without fear, and without just reproach.

We have no time to look up cases that may indicate the course to be pursued by the Supreme Court, when it learns that Georgia declines a dismemberment and partition of its territory. We happen to have before us, the Virginia case of *Hunter vs Fairfax*, when their attention was rather invited to the *modus operandi* of coercing a sovereign State; but the court declined to consider it.

"In the case of *Fairfax v Hunter*, a writ of error in the Supreme Court of the United States, was awarded to the Court of Appeals of Virginia upon a judgment in that court, against the right claimed under a construction of the treaties made with Great Britain in 1783 and 1794, and the judgment of the Court of Appeals was reversed, and the cause remanded, and the Court of Appeals below were required to give the original judgment which had been reversed in that Court, to be carried into due execution. The Court of Appeals, when the cause came back to them, resolved, that the appellate power of the Supreme Court of the United States did not extend to that court, and that so much of the act of congress as extended the appellate jurisdiction of the Supreme Court to that court, was not warranted by the constitution; and that the proceedings in the Supreme Court were *coram non iudice* in relation to that court, and they consequently, declined obedience to its mandate. A writ of error was awarded upon this refusal, and the cause came up again before the Supreme court of the United States in a case in which the judgment of the court below drew in question, and denied the validity of the statute of the United States, authorizing an appeal from a state Court."

"The judgment of the Court of Appeals in Virginia, rendered on the mandate in the cause, and denying the appellate jurisdiction of the Supreme Court was reversed, and the judgment of the District Court in Virginia, which the Court of Appeals in Virginia had reversed, was ~~reversed~~ affirmed."

Whether the Supreme Court had authority to issue the compulsory process of *mandamus* to the State Courts, to enforce the judgment of reversal, was a question which the court did not think it necessary to discuss or decide, and one of the judges, in the separate opinion which he gave in the cause, seemed to think that the Supreme Court, in the exercise of its appellate jurisdiction, was supreme over the parties and over the case, but that it had no compulsory control over the state tribunals. The court itself gave no intimation of an opinion, whether it could or could not lawfully resort to compulsory or restrictive process, operating *in personam* upon state tribunals; and it was no doubt deemed discreet not to assert more authority constitutionally vested in the court, than was necessary for the occasion."

## EXTRACT.

We must submit the following letter just received, from a man whose opinion on all great occasions will always be listened to in Georgia, with affectionate and confiding interest.

WASHINGTON, 5th March, 1832.

DEAR SIRS.—The people of Georgia will receive with indignant feelings, as they ought, the recent decision of the Supreme Court, so flagrantly violative of their sovereign rights. I hope the people will treat it however, as becomes them; with moderation—dignity and firmness; and so treating it, Georgia will be unhurt by what will prove to be a *brutum fulmen*. The Judges know you will not yield obedience to their mandates, and they may desire *pretexts* for the enforcement of them, which I trust you will not give. The Chief Magistrate of the United States, will perform all his Constitutional duties; but he will not lend himself to party, to perform more. He will, if I mistake not, defend the sovereignty of the States, as he would the sovereignty of the Union; and if the blow be aimed equally at *him* and *at us*, it would be ungenerous, by an improvident act of ours, to make him the victim of the common enemy. The jurisdiction claimed over one portion of our population may very soon be asserted over another; and in both cases they will be sustained by the fanatics of the North—very soon therefore, things must come to their worst; and if in the last resort we need defenders; we will find them every where among the honest men of the country; whom a just and wise conduct will rally to our Banner—for the rest we care nothing.

Dear Sirs, very respectfully yours,

G. M. TROUP.