

The Missionaries.

GEORGIA, GWINNETT COUNTY.

Superior Court September Term, 1831

THE STATE

vs.

THE MISSIONARIES.

} Indictment, Verdict Guilty.

The trial commenced on Thursday morning: their pleas to the jurisdiction were overruled without argument, by the Court, when the case went to the Jury, before whom the constitutionality of the law extending the jurisdiction of the state into the Cherokee nation, was argued at great length by the counsel for the prisoners. All the authorities were read from the treaties and other books, and insisted on with great force, by Judge Underwood, and Mr. Chester, two of the prisoners' counsel, and were ably answered by S. H. Trippe. The argument closed at about 12 o'clock at night, when the Jury retired, and in about twenty minutes, returned a verdict of guilty, against all the prisoners. On Friday morning, the prisoners were brought to the bar to receive the sentence of the Court, and on an enquiry from the Judge, whether the prisoners, or any of them, had any thing to say, any sentence should not be passed against them according to law, the Hon. Mr. Underwood rose and remarked, in substance as follows: "May it please the Court, if I were made guilty of all the charges alleged against me by evidence in the case, and which were not supported by evidence, that I would have nothing to say why sentence should not be passed on me according to law. But as I am before God, before whom I expect to answer, that I am not guilty of those charges, I have only one to say, that I do believe that under the Constitution of the U. States and the treaties, the Honorable Court ought not to hold jurisdiction in cases arising in the Cherokee Nation." After which, the Court delivered to the prisoners the following

As I sincerely believe this prosecution has been sought and endured. I will not say in an unchristian temper, but certainly in a great spirit of opposition to the laws, for political effect: I deem it my duty, to make a few remarks on this occasion, not by way of vindication of the public authorities, for they need none; but to prevent a mis-direction of public opinion, and with a hope that it may undeceive many an ignorant and innocent individual, who has been seduced into a similar transgression by the high example of this undutiful disobedience. I mean no reproaches, the penalty of the law is punishment enough for the offence, and my respect for misfortune always inclines me the rather to reduce, than increase its suffering. I shall speak in a free and decided language, unmixed, however, with the least temper of unkindness. Foreseeing, as I think I do, one of the main objects of this singular perverseness, I will endeavour as far as in my power, to counteract it by a full and plain history of the case. I will not pretend to discuss the right of jurisdiction, that matter is settled. But that every body may see the true nature of this whole transaction, I proceed to give the following particulars: In the year 1825, the late venerable President Monroe, communicated to Congress a design, which had been the subject of deep reflection by that benevolent sage, of ameliorating the condition of the Indians found on the East of the Mississippi, by way as he emphatically expressed, "of atonement, alike due from our justice and humanity, for the long train of injuries inflicted on that race by the discovery and settlement of America." I wish my limits would justify my presenting the whole of that valuable document, but I can only give a few of its outlines. He commences thus: "Being deeply impressed with the opinion, that the removal of the Indian tribes from the lands which they now occupy within the limits of the several states and territories, to the country lying westward and northward thereof is of very high importance to our Union, and may be accomplished in a manner to promote the interest and happiness of those tribes, the attention of the Government has been long drawn, with great solicitude, to the object. For the removal of the tribes within the limits of Georgia, the motive has been peculiarly strong, arising from the compact with that state." After stating many considerations in favor of this plan, such as the future peace and contentment of the Indians, their removal from all the causes which disturb their quiet, harrass their peace, oppose their religious instruction, and finally prevent their civilization; he adds: "Experience has clearly demonstrated, that, in their present state, it is impossible to incorporate them, in such masses, in any form whatever, into our system. It has also demonstrated, with respect to the

ses, in any form whatever, into our system. It has also demonstrated, with equal certainty, that, without a timely anticipation of, and provision against, the dangers to which they are exposed, under causes which it will be difficult, if not impossible, to control, their degradation and extermination, will be inevitable." Though as he thought, they might be greatly attached to their native soil from a variety of motives, yet, "to prevent intrusions on their property, to teach them, by regular instructions, the arts of civilized life, and to form them into a regular government, were considerations of so powerful a nature, as to induce them, and especially their elders, who had attained sufficient intelligence to discern the progress of events, to acquiesce in the plan, and by yielding to momentary sacrifices, secure their families and posterity from inevitable destruction."

"To the U. S. (he said) the proposed arrangement offers many important advantages in addition to those already enumerated. By the establishment of such a government over these tribes, with their consent, we become in reality their benefactors. The relation of conflicting interests which has heretofore existed between them and our frontier settlements, will cease. There will be no more wars between them and the U. States. And it may be fairly presumed, that, through the agency of such a government, the condition of all the tribes inhabiting that vast region to the Pacific, may be essentially improved, their sources preserved, and our commerce extended." Here then is the beginning and foundation of that wise and humane policy laid by

the General Government, so worthy of the head and heart that conceived it, for the final redemption of the debt of justice due to this unfortunate people. Is it not just? Is it not humane? Ought it to be frustrated? I put these questions to all considerate and reflecting minds. But this is not all, this policy has the sanction of other great names. Mr. Calhoun, in the same year, as Secretary of War, made a report to Congress on the same subject, and stated among other facts that the whole number of Indians to be removed, in the United States, did not exceed thirty-two thousand (about the population of Rhode-Island) and that the sum of 95,000 dollars would effect the object, and concluded by a declaration, that if fixed principles were adopted to effect the object, such as had been suggested by the President and himself, the basis of a system might be laid, which in a few years, would entirely effect the object in view, to the mutual benefit of the Government and the Indians, and which in its operations, would effectually arrest the calamitous course of events to which they must be subject, without a radical change in the present system." The next statesman we find recommending this highly benevolent object, is President Adams, and in accordance with his views the committee on Indian affairs, to whom that part of his message was referred, called upon Mr. Barbour, then Secretary of War, for such report and specific plan as was best calculated to accomplish the purpose. He drafted a law for the committee and submitted it with very able and judicious remarks, warmly supporting the plan, and enforcing it by a variety of considerations, replete with justice and wisdom among which he urged that "next to the advantages to be gained by ourselves, the future residence of these people will be forever undisturbed; that there, at least, they will find a home and resting place. And being exclusively under the control of the U. States, and consequently, free from the real claims of any of the States, the former may plight its most solemn faith, that it shall be theirs forever, and this guarantee is therefore given." He concluded his able report with the following impressive language: "I will add, that the end proposed is the happiness of the Indians—the instrument of its accomplishment—their progressive, and finally, their complete civilization. The obstacles to success, are their ignorance, their prejudices, their repugnance to labour, their wandering propensities, and the uncertainty of the future. I would endeavor to overcome those by schools, by a distribution of land in individual right, by a permanent social establishment which should require the performance of social duties, by assigning them a country of which they are never to be bereaved, and cherishing them with parental kindness. In looking to the possible results of this plan, I am cheered with the hope, that much good may be effected with comparatively little injury. Our difficulties in their present form, will be diminished, or entirely removed. The desire to acquire Indian lands will cease, and no longer produce collisions. The Indians will at last know their lot with certainty." I pause to enquire if these are not suggestions worthy of all consideration? But again, in this same administration, twice or thrice was this subject pressed upon the attention of Congress, and besides the able views of Thomas L. McKenney, agent of Indian affairs, which urged with peculiar earnestness the adoption of the system, who has forgotten the memorable because unrivalled report of Gen. Porter, Mr. Adams' last Secretary of War? This luminous document seemed to put the question at rest, satisfied the doubtful, confirmed the wavering, and lent fresh energy to the decided. Since that pe-

fresh energy to the decided. Since that period we have had nothing to contend with but the miserable selfishness of political aspirants, and the sinister influences they have put into operation, not so much to defeat the plan as to promote the reachings of ambition. They care not for the Indians, they want the agency of the strong sympathy which their helpless condition inspires, to destroy the fair fame of one among the best patriots of this, or any other age, and who unfortunately stands in the way of their restless designs. Hence the unfortunate scene we behold to-day, men, whose avocations should have led them away from political strifes, have lent themselves, as willing instruments, to the projects of heartless demagogues, and, under the misguided zeal of suffering ignominy for "conscience sake," and thereby arouse, and increase that same public sympathy, they have wooed and won the fond object of their wishes. Wonderful infatuation! It was greatly to have been hoped, under the sensible and reflecting character of our institutions, the days of fanaticism in this sober country, had long since been numbered.

Though the policy of colonizing the Indians originated with President Monroe, was ably supported by his Secretary, Mr. Calhoun, was approved by his successor, Mr. Adams, and as vigorously defended by his Secretaries, Messrs. Barbour and Porter; yet when President Jackson signified his approbation of this generous work, and really attempted nothing more than the execution of what he conceived had been already begun, and put in progress by his predecessors, then behold, it was an act of barbarity and outrage upon the faith of treaties, and a violation of all law, human and divine. And persons, lost to the obligations they owe to the laws of their country, have been found so fatally deluded, as to believe they had the right to oppose all exertions employed by the government to effect this highly useful and favorite purpose. When all the circumstances attending this transaction, are duly and fairly considered, it presents a subject, to say the least of it, of the most astonishing weakness. Let it be recollected, that the views of the government, had met the decided recommendation of three Presidents, and three Secretaries of War; had so far acquired the confidence of the people of the Union as to have produced in its favor a public act of Congress; that in obedience to this

act, a better home had been offered to the Indians, as well as full compensation for their journey thither, besides being supplied with many articles, not only of comfort, but of property highly useful to them in their present situation; furnished also with ample provisions, after arriving at their new homes, and then forever thereafter to receive the constant protection of the General Government. This is not all; they had an assurance from the Government, upon which they could rely, of a permanent settlement, such as no future collisions could disturb, far removed from all the causes which could possibly thwart its civilizing operations, and what is still better for them, out of the reach of all those vicious influences that had, heretofore, so signally counteracted the effect of Missionary labours. Apart from these striking advantages to them, we have seen in the views of the great statesmen already mentioned, that much was expected to the interest of the Government in its relations of peace, commerce, union, and above all in the discharge of a long deferred compact with the state of Georgia, which has been so procrastinated as to produce a spirit of discontent, such as not only to impair the confidence of the State, in the fidelity of the General Government, but greatly to disquiet the repose of the Indians themselves. Are not these considerations enough to have induced a dutiful and orderly citizen, if not disposed to aid in such a benevolent object, at least to have restrained his opposition? But it seems they were not; a spirit of resistance and disobedience has been infused into the Indians by the white-men of the Nation; they have had political discourses preached to them, in which Georgia and its authorities have been most unsparingly reviled and abused. The Missionaries themselves, have had a public meeting and resolved, that they viewed a removal of the Indians over the Mississippi, as "an event to be most earnestly deprecated." The resentments of the Indians have been excited to the highest pitch by public and private harangues against the laws of the State, and against the President and government of the United States. Officers of every grade and character belonging to both Governments, have been insulted and calumniated in their meetings, in their councils, and by their Press; and when an attempt has been made by Georgia to remove this influence from among them, it has been met by the most decided and prompt opposition. The State has been defied, and a territory over which she has the exclusive jurisdiction, has been openly declared by these white-men to belong to the Indians and that they have the right to set up a government, not only independent of Georgia, but of the U. States. Nay, through this mutinous influence, a constitution and government has been formed, and lest we might not be sufficiently notified of its existence by the usual method of manifesto, they have dragged our citizens before their tribunals and inflicted disgraceful and cruel punishments, unknown to our own laws. Such have been the refractory and high handed measures of the Nation, that Georgia has been at last com-

to our own laws. Such have been the refractory and high handed measures of the Nation, that Georgia has been at last compelled, as a measure of self defence, to take the rule of a country, to which, by the annals as well as public documents of the government, she has the most undoubted right, but which might have remained with the aborigines if they could have contented themselves with their ancient usages and customs, and not have been seduced from their allegiance by the agency I have before described. It is for the contempt and disobedience of one of her necessary laws to put down this influence, that the individuals at the bar have been tried and convicted.

At the last term, some of these individuals were brought before me upon habeas corpus, and their discharge was sought upon the ground, that the law of Georgia was unconstitutional. After the most deliberate investigation, preceded by long and able argument, that law was pronounced to be constitutional and in full force, consequently, such as could not bring themselves within its saving provisions, were bound over to take their trial at this Court. There were, however, two who were considered agents of the general government, and on that account, and by virtue of an exception found in the law in favor of such, they were discharged. The obstinacy of their conduct, (for really I can give it no other name,) and the determination manifested still to exert their influence, under the all prevailing force of religion, to stimulate the Indians to a continued opposition against the wishes of the general government, as well as contempt for the authority of Georgia, induced the Governor to request the President to have them removed from their agency, so as to oblige them to comply with the Georgia law, or leave the nation. Upon every principle of reason and propriety, there is nothing unjust or oppressive in this act. If officers of government set themselves up in opposition to the public acts; if they seek either by open or insidious means to counteract the policy of the government; thwart its measures; use their office and influence to bring the higher authorities into contempt; by every thing that is sacred, they ought to be removed, and that as quick as possible. This was done, and the Governor still willing to afford an opportunity to obey the law or leave the nation, notified the parties they should still have time to make their election. What was their answer? "My own view of duty, (says one) is, that I ought to remain and quietly pursue my labors for the spiritual welfare of the Cherokee people, until I am forcibly removed. If I am correct in the apprehension, that the State of Georgia has no rightful jurisdiction over the territory where I reside, then it follows that I am under no moral obligation to remove in compliance with her enactments." Another individual replies, "I could not take the oath required of white-men who live in her chartered limits, because I should then acknowledge the jurisdiction of Georgia over this country, which would be

adverse to my opinion, and would essentially detract from my usefulness as a Missionary labourer, and my usefulness as a Missionary labourer. My principles of action are founded on the Word of God, and if in adhering "to the law and the testimony", and endeavouring to follow the examples of Holy Writ, my conduct is construed into an unjustifiable interference with political affairs, I cannot help it."

Though this is a grave subject, one is almost induced to smile, and, in the language of some of the counsel of the accused, ask, if this be not the doctrine of Nullification? Can it be possible that we have come to this, that every man has a right to throw himself upon his original sovereignty, and obey just such law as he pleases? I might safely concede that he has, but he must take care of the consequences, "if the law" be against him, and he has not physical strength to resist its overthrow, he may depend upon it. He has taken a fatal and inconsiderate step. But I would suppose, giving my humble views of the "law and the testimony", that the Governor had placed a proper construction upon both, when, in addressing these individuals, he "put them in mind to be subject to principalities and powers, to obey magistrates, to be ready to every good work". Tit. III. 1. For he had reason to know, and his charity required him to act upon his knowledge, that people are "sometimes foolish, disobedient, deceived, serving divers lusts and pleasures, living in malice and envy, hateful and hating one another": ib. 3. What a pity it is, this view could not have actuated the minds of all concerned! What a pity the peaceful course of the Prince of Peace could not have been recollected, in his mild reply to his disciple on the subject of that well known oppression of the Jews, by Cæsar Augustus". Matt. XVII. 27. Luke II. 1 and XX. 22. I am willing to make all due allowance for the diversity of human opinion, in matters of government as well as in religion; but I ask every candid man, what would be the consequence, if every individual were allowed to judge for himself, whether he would obey the laws or not, especially after they had been pronounced by the only competent tribunal to be constitutional? If these individuals have the right to do it, all the rest in the community have; and what, I repeat, would be the consequence? Anarchy and confusion! And then what becomes of the "examples of Holy Writ"? Wherein we are required to "submit ourselves to every ordinance of man for the Lord's sake: whether it be to the King, as supreme; or unto Governors, as unto them that are sent by him for the punishment of evil-doers, and for the praise of them that do well": And why? "For, that with well-doing, ye may put to silence the ignorance of foolish men: As free, and not using your liberty for a cloak of maliciousness, but as the servants of God". 1. Pet. II. 13, 14—16.

I hope that no just government, acting within the pale of its authority, will ever require any of its citizens to proceed upon "any principle of action not founded upon the Word of God"; for it may safely trust that "Word"—especially when it enjoins upon the citizen "to keep the King's [State's] commandment, and that in regard of the oath of God. Be not hasty to go out of his sight; stand not in an evil thing; for he doeth whatsoever pleaseth him: Where the word of a King is, there is power: And who may say unto him, What doest thou?" Eccl. VIII. 2, 3, 4.

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One of these individuals replied to the Governor, that "if I suffer in consequence of continuing to preach the Gospel, and diffuse the Word of God, among this people. I trust I shall be sustained by a conscience void of offence". Now, in this speech, there is all manner of unkindness; and the meekness that directs "to render unto Cæsar the things that are Cæsar's, and unto God the things that are God's", would have required a more ingenuous answer. It was not for preaching the Gospel, that the Governor wished him either to remove or "suffer". As the Executive power of the State, solemnly sworn to execute the laws, he only informed the individual that there was a law which required all white men, without distinction, (for laws to be just must be equal), residing in the Nation, to take an oath to support the Constitution of the State, or to leave the Territory, and he was, doubtless, very hopeful that this person's Scriptural reading, as well as his love of the Gospel, would have reminded him that "every soul must be subject unto the higher powers: For there is no power but of God: Whosoever, therefore, resisteth the power, resisteth the ordinance of God; and they that resist, shall receive to themselves damnation; For rulers are not a terror to good works, but to the evil. Wilt thou, then, not be afraid of the Power?" Rom. XIII. 1, 2, 3. The Governor seems to have suspected that there were some of the good citizens of Georgia who felt themselves "under no moral obligation" to respect the "enactments" of the State, by reason of their apprehending that she had "no rightful jurisdiction over the Indian Territory"; He, therefore, warned them, that, as the Executioner of the Law, "he beareth not the Sword in vain"; and would, consequently, be compelled as "a revenger, to execute wrath upon him that doeth evil: Wherefore, (he advised them), ye must needs be subject, not only for wrath, but also for conscience-sake". There is, in every part of the moral and pious community of the United States, but especially at the North, an unusual anxiety to colonize another description of people in this country, whose condition is better than that of the Indians, and yet, strange to tell, the same object attempted for this declining race, by some of the best and wisest patriots of the age, backed by the patronage of the whole government, under much more favorable auspices, meets with the persevering opposition of this same community. This is either strange inconsistency; or the colonizing of Africans, speaks one thing, while it means another.

To my mind, and I would fain believe, to

the reflection of every dispassionate man, there is no good reason for rushing upon the severe penalty of this law, and foolishly defying its consequences. It cannot be excused upon any principle of sound religion, or a rational and discreet desire to serve the cause of piety; for, surely, that religion which requires us to "Render tribute unto whom tribute is due: Custom to whom custom: Fear to whom fear; Honor to whom honor", never could demand such resistance to the laws of the Land, as would incur, in the delinquent, a forfeiture of all the enjoyments of liberty, and impose, in their stead, all the hardships of an ignominious slavery! I do exceedingly regret, that the warning voice of this Court, at its last session—of the Governor—of the Law; and, I would add, with great reverence, of God himself—had not induced these individuals to pause before they plunged themselves into such a reckless calamity. Both governments have been deeply engaged in the work of removing the Indians, for causes they need never be ashamed of avowing; and, before God and Man, if they are sincere in the motives which impel them to this undertaking, they are rendering the only atonement in their power, for the long-suffering of a much injured people; and such, in my humble opinion, as High Heaven itself will own and bless. To prevent, then, the accomplishment of a work so desirable, is not only presumption of the highest character against the Sages who planned it; but it is cruelty to the Indians, ingratitude to the country, and, what is worse than all, seems, when persisted in, to involve a consequence, with which no prudent man should dare to trifle!