ALBANY, 20th June, 1832.

Mr. Croswell,

Sir:—I was desirous that the following article should appear in the New-York Observer, as that paper has been particularly industrious in circulating statements to the prejudice of Georgia. Having been refused admission to its columns, I must beg the favor of you to permit me to use yours.

Since the note to the editor of the Observer was written, it has occurred to me that it might be well to mention the following fact.

Georgia has, at this moment, a controversy with the government of the United States, in relation to a part of the territory of Florida. It is her desire that this controversy should be settled by the Supreme Court, because she believes that tribunal has, under the constitution and laws of the union, jurisdiction of the case. Accordingly *the Executive authority of the state has been directed to adopt measures to bring the question before that tribunal for adjudication.*

I mention this not as *an apology* for Georgia.—That state, knowing that she is right, would spurn from her any of her citizens who would attempt to *make apologies* for her conduct in relation to the Indians and Missionaries. Her course was taken after patient deliberation,—with a full view of all the consequences, a perfect knowledge of her rights, and a firm determination to maintain them, at all hazards.

Still she is not indifferent about the opinions her neighbors may entertain of her. All she asks is that *facts* may be fairly stated and attentively considered:—being perfectly satisfied that whenever this is done, the decision of all impartial and unprejudiced men will be in her favor.

If you can, without inconvenience, publish this note, together with the papers which accompany it, during the approaching session of your legislature, you will confer a favor on,

Sir, yours, very respectfully,

JAS. CAMAK.

To the editor of the N. Y. Observer.

New-York, June 1, 1832.

SIR—Since I left home I have conversed with many persons on the subject of the missionaries who are confined in the penitentiary of the state of Georgia. I have been greatly surprised at the opinions entertained and expressed, in relation to the course that has been pursued by Georgia;—and the more so, as these opinions appear to me to be founded on an apprehension of the facts of the case, altogether erroneous.

To dispel error, and to give to those who sincerely desire to know the truth, an opportunity of gratifying that desire, I request the publication, in the Observer, of the enclosed document, and the notes annexed thereto. Permit me to express the hope that it will be attentively read, and patiently examined.

In the Baptist convention lately held in this city, the writer of this article is informed, that the question concerning these missionaries was agitated. Mr. STOCKS, president of the senate of Georgia, being one of the delegates, had the report and notes printed and circulated among the members of the convention. The result was an unanimous vote in favor of Georgia, as the writer has been informed.

The author of the report, E. A. NESBITT, of Morgan county, is a member of the Presbyterian church: and, as a jurist, a man and a christian, he will not suffer any thing by a comparison with any man of his age in the country. The author of the notes is a distinguished member of the Baptist church; and has been, for many years, president of the senate of Georgia—the second officer in the state government.

state government.

As to the *right* of Georgia to extend her laws over the Cherokee territory, the writer refers confidently to the report, to the note, (*a*) and to the treaty between the government of Georgia and the government of the United States, in 1802. So also does he refer to the report as to the *expediency* of such a measure, on the part of Georgia; but more particularly to the note marked (*b*,) as containing a statement of fact, among many others of a like character that might have been made, the force of which, he thinks, is irresistible.

Very respectfully, your obedient servant,

JAS. CAMAK,
of Milledgeville, Georgia.

CHEROKEE QUESTION.

Report of the committee on the state of the republic, presented to the legislature of Georgia, December 15, 1831.

The committee, to whom was referred so much of his excellency the governor's communication as relates to the enforcement of the law, making it penal, under certain restrictions, for white persons to reside within the limits of the Cherokee nation, together with the documents in relation to that subject, have bestowed upon the subject such reflection, and given it such investigation, as its importance merits. It does not appear to your committee, so far as the people of Georgia are concerned, at all necessary to enter into a defence of this measure of the government. Our people with one accord, your committee believe, approve both the policy of the law and the manner of its enforcement. The policy of the state towards the Cherokee tribe of Indians, in regard to the unsettled lands within her limits, and particularly in reference to the missionaries who have made themselves obnoxious to the penalty of the act of the last legislature, has been and still is already [abroad] the subject of misrepresentation, and the theme of vituperation. We have been represented as usurping rights which belong to the Indians, as exercising dominion over a people free and independent, and as disregarding the sacred character and holy functions of the missionaries of the cross. A regard to the moral sense of the people of the Union, and a just respect to the character of the state, your committee believe, require that, upon this subject facts should be exhibited, and the principles of action which have governed the state should be well understood.

By a law of the state, passed [illegible]

and the principles
the state should be well understood.

By a law of the state, passed at the last session of the general assembly, all white persons, except agents of the United States, are prohibited from residing within its territory, occupied by the Cherokees, unless authorised by license from the governor or his agent, upon taking an oath to support the constitution and laws of this state. The right of the state to pass this law, results as a necessary consequence to the right which she has to the soil and jurisdiction over the Cherokee lands. Her right of jurisdiction is co-extensive with her chartered limits, and embraces the persons and things within those limits. No enlightened jurist of the present day; no one familiar with the custom which has governed all the states of the Union, who have had Indian tribes within their limits (*a*); or who is conversant with the policy of the federal government, since the administration of Mr. Monroe, will for a moment doubt the right of the state to extend her criminal laws over the whole of her chartered limits. This is not a vexed question. At all events, its elucidation does not constitute a part of the duty of your committee upon the present occasion.

(*b*) The reason and necessity of the law are as obvious as the right to enact it. A leading object with the general government has been, for many years, the removal of the Cherokee Indians west of the Mississippi. This has been held by the most benevolent, and also the most distinguished of our statesmen, the only means left to the government to save the wretched remnants of this once numerous and powerful nation from moral ruin as individuals, and total extinction as a tribe. Year after year, the tribes within the states have been seen to decrease in numbers, and to sink lower and lower in crime, depravity and sin. The parental arm of the government has been extended to their relief, and the federal and state governments have united their efforts to remove them from their present habitations, and locate them beyond the Mississippi.——There, under the protection of the government, and free alike from the crimes and the cupidity of the white man, to live in their own peculiar way, the happy and lordly masters of the forest.

It was an object of peculiar interest to Georgia, to acquire a speedy possession of her Cherokee lands. Too long had the government delayed to liquidate the Indian possession. She had become justly jealous of her rights, and her people had become impatient of the restraints imposed by the delay of the federal government to fulfil her treaty obligations. The Cherokee tribe had assumed the attitude of an independent nation, with government and laws distinct from, and independent of the state authority. The discovery of immense mineral wealth within the limits of the nation, acting upon the avarice and cupidity of men, had brought into the territory a numerous body of men, lawless, abandoned, and hostile to the policy of the state. (c) These circumstances imperiously asked of the state decisive and prompt action; and on those accounts she enacted laws, abrogating the Cherokee government, making it penal to dig gold, and punishing a resident within the territory, unless the resident would take an oath to observe the constitution and laws of the state. The exclusion of all white persons from the Cherokee lands was the dictate of policy and necessity. It was well ascertained that the efforts of whites resident in the nation were directed to a prevention of the removal of the Indians. They dissuaded the Indians from emigrating, encouraged them in their ideas of independence, misrepresented the policy and intents of the government, and thwarted, by all the means within their power, the views of the state. It became necessary, therefore, that the state should abandon her policy, and cease her efforts to remove the Indians, or rid herself of the selfish and corrupt whites who had settled among them. Hence the passage of the act making it penal to reside within the limits of the land occupied by the Cherokees, without a license, and without taking an oath to observe the constitution and laws of the state. The oath and the license, it was thought, would be a sufficient protection of the policy of the state, from any attempts to defeat it, by such as might think proper to remain. To such as were well disposed to the benevolent views of the state, the oath would be no stumbling block, whilst it would exclude such as were hostile to her interests and her policy. And the fact of permitting a residence there, upon such terms, proves conclusively that the law was intended to operate upon such only as were defeating the great objects of the state. Removal of the whites was not so much desired, as the destruction of that influence which was at war with the interest of Georgia.

It is worthy of remark, that the federal government, acting "*in loco parentis*" to the Indians, delegated to her Indian agents more power over whites, resident in the nation, than Georgia seeks to exercise, in the enforcement of her law. They were instructed, by order from the war department, in the following words: "You are to allow no white person to enter and settle on the Indian lands within your agency, who shall not, on entering, present to you approved testimonials of his good character for industry, honesty and sobriety; nor then, without the consent of the Indians. And if, after permission is given under such testimonials, the person or persons to whom it is given shall become lazy, dishonest, intemperate, or in any way setting vicious examples before the Indians, exciting them against each other, or *inflaming their jealousy and suspicion against the general government*, or any of its *acts towards them*, or attempting to degrade in their eyes the agents of government, thereby destroying their influence over the Indians by false accusations or otherwise, you will forthwith order such person or persons out of the Indian country." It is here seen, that Georgia, in her sovereign character, and in the exercise of an indubitable right, has scarcely assumed as much power over these persons, as the federal government thought proper to commit to her agents, who were to a great extent irresponsible. Both governments had mainly in view the the same object, in the suppression of any influence among the Indians adverse to their benevolent designs towards them; and yet, not a few of those who admit and justify the measures of the general government, condemn and reprobate the law of this state. Your committee are of opinion that when this matter is understood, it will be admitted that all which Georgia has done was made necessary in order to effect the removal of the Indians.

Let those, too, who clamor so much about Indian rights, and who weep so much over Indian sufferings, know, that this law was necessary to the protection of the persons and property of the Indians, from the violence, the intrigues, and the corruptions of the whites. Here it is well understood, that white men are the greatest enemies to the Indians, whether in the character of the selfish, avaricious, and ambitious resident within their limits, or the character of the political knave, or canting fanatic without their limits. At no time have Indian rights been better protected, and at no time has the Cherokee tribe exhibited more evidence of peace, quiet, and protection, than since the extension of our laws over them. The Georgia jurisdiction has been their shield. Not only so, but the law excluding the whites, was intended to ~~extend~~, and does now extend, protection to those who are willing to evade its penalties, by complying with its terms. The laws and character of the state are a guarantee to such of more right than they ever enjoyed there.—By a strange perversion of principle, or a wretched ignorance of facts, a mild and benevolent policy has been corrupted into the veriest despotism; and that law, which created a right for the white man in the Cherokee country, which he had not before, and protected him in the enjoyment of it, has been denounced as arbitrary, unjust, and unholy. At no time, under the intercourse laws, have the Indians been so effectually protected, and at so little cost, as under the laws of Georgia. Your committee have

been so effectually protected, and at so little
under the laws of Georgia. Your committee have
said, that the act of the general assembly was neces-
sary to carry into effect the benign policy of the
state, in reference to the Indians; that it operated
as a protection to them, from the rapacity and vio-
lence of the whites; and that, so far from its being
an unwarrantable proscription of them, it actually
conferred privileges which, of right, they have not
before possessed. The latter position is made mani-
fest by adverting to the fact, that before the passage
of the act, no white citizen could claim his residence
there as a matter of right; but the moment he com-
plied with the reasonable requisitions of the law, he
became, ipso facto, entitled to such residence, and
all the benefits it conferred. It is true, that many
were upon the soil at the moment of passing the act;
but their residence was assumed, and only tolerated
by the state: they were only residen s at the suffer-
ance of the state. The missionaries themselves will
not deny but that their condition, in the Cherokee
nation, under the jurisdiction of Georgia, was great-
ly preferable to what it was under the dominion of
the agents of the United States.

The law which has excited so much feeling among
our brethren of the eastern states, is not partial or
exclusive in its operation. The first citizen of Geor-
gia, the most abandoned of the refugee adventurers
for gold, as well as the meek and law-abiding Mo-
ravian missionary, are within its provisions—all clas-
ses, all grades, and all professions, are alike liable to
its penalties. Our law in this, as well as all [other]
cases, aims at no individual or individuals, and re-
cognizes no exemptions. And had the most talent-
ed, or the most dignified of our sons, resided within
the limits of our lands in the possession of the Cher-
okee Indians, without having taken the oath, the
law would have been administered upon such a one
with unsparing rigor and unrelenting severity. Your
committee, therefore, declare that no objection can
be urged against the state, with any propriety, upon
the score of its inequality, for the state made all men
"equal under the law."

"equal under the law."

The law of the last legislature, herein adverted to, did not, according to its provisions, take effect immediately. The commencement of its operation was fixed at a time sufficiently remote to put all persons interested upon their guard; and ample opportunity was afforded for a knowledge of its existence and of its provisions. No man was entrapped; and all who offended against it, sinned against the authority of the state, with a perfect knowledge of the consequences. Most of those persons who were residents in the Cherokee country, either removed from the state, or submitted to the requirements of the law.(*d*) The board of directors of the United Brethren's mission at Salem, believing that the object of their mission to the Cherokees, under the peculiar circumstances of the state and the Indians, could not be effected, instructed their missionaries to remove from the country. Acting, as your committee believe, from a sense of respect to the laws and authorities of Georgia, they were unwilling to interfere with her laws or her policy. In the conduct of these unobtrusive and devoted missionaries of the cross, is exhibited in bold relief the pure and sublime principles of our holy religion. Some there were, however, who refused to remove from our limits, and who refused to comply with the conditions of residence prescribed in the law. These individuals were either missionaries, or persons who were under their influence, and acted under their advisement. The most conspicuous and talented of these individuals, are the Rev. S. Worcester and Dr. E. Butler, Missionaries of the American Board of Foreign Missions.

These persons had long been conversant with the policy of the general government, and with the rights as well as the laws of Georgia. The law, to whose penalty they became obnoxious, was known to them. The law had raised within their hearing, its warning voice, and admonished them of their duty; but the governor of the state, reluctant to enforce upon them the penalty of the law, respecting their sacred profession, and respecting still more the most holy cause in which they were engaged, kindly and politely, and in the spirit of forbearance, warned them, yet again of their crime, and invited them away from their own ruin. A personal address was made to each of them by his excellency, and

ten days given for their removal—all this did no avail. They not only persisted in their illegal residence, but ventured upon the justification of their crime in an address to the executive of the state. Orders were then given to arrest them, that they might feel the full penalty of our laws, "since such was their voluntary choice." They were arrested, tried, and convicted, and now, inmates of the state-prison, they suffer the melancholy doom which their perverse obstinacy, or misguided zeal has brought upon them.

What reproach could be cast upon the state for their conviction, and what justification or extenuation can be had for their violation of the laws of the state? None. No man would hesitate to pronounce them the wilful perpetrators of their own misfortunes. If it be said that they were residents upon those lands by permission of the United States' government, and therefore the state had no right to punish them; your committee answer, that the government of the United States has no power to bestow a right, which is adverse to the rights of Georgia, and that this permission was good to them so long as the state acquiesced in it, and no longer; *(e)* and the enacting of the law, making the residence criminal, is a declaration of the state's dissent to it. If it is said that their residence was by permission of the Indians, and therefore the state could not make it penal,—your committee answer, the Indians, it is true, have a right of occupancy; but this right of occupancy is personal to themselves, and cannot be by them delegated to any person whatever; therefore their consent to a residence is no justification. The ultimate fee to the lands is in Georgia; and so far as Georgia and all the world (except the Indians) is concerned, she is the absolute unqualified owner.—As your committee before remarked, the right of jurisdiction is in Georgia, and of consequence there is no limit to her right of penal enactment. The state owned the lands, and it was perfectly competent for her, to prescribe such terms to residence upon them as she deemed fit and expedient. It will not be denied that the state has the right to prescribe such conditions to a residence, upon the state-house square in the town of Milledgeville, as she may think fit. So far as all the world (except the Indians) is concerned, there is no difference between the title, which the state has to her state-house square, and her title to the Cherokee lands. In either case the grant is in her, and can never be divested but by her own act. If it is said that the state did require the missionaries to take an oath, which in conscience they could not take, or suffer the penalty of the law; your committee answer, that the state involved the missionaries in no such desperate dilemma. If the oath was taken, it was a voluntary act, and the oath could have been avoided by removal from our limits. *(f)* If the

been avoided by removal from our limits. (f) If the penalty was suffered, it was a voluntary act, which might have been avoided either by taking the oath, or removing from the limits. The missionaries were left free to choose between the oath, the penalty of the law, and removal; and they chose the penalty of the law. Why then should the state be censured for an act, which was the result of choice on the part of the missionaries; and which your committee fear was sought by them, either for the purposes of political effect, or to exhibit themselves to a sympathising fraternity, as sufferers for righteousness' sake?

They surely cannot claim for themselves exemption from the operation of the laws of the state by reason of their profession or their vocation. The laws of Georgia interfere not with the religious privileges, or conscientious opinions of men; and the state lends her aid to all efforts for the dissemination of the truths of revelation: she is the auxiliary of the missionary, in teaching the heathen the great truths of Christianity; and her constitution and laws are based upon the principles and doctrines of Him who spake as never man spake. Still the law is no respecter of persons; and he who violates it, whether Jew or Gentile, Christian or Infidel, Mahometan or Pagan, must expect to meet its sanctions, and [illegible] to feel its penalties. It is for the missionaries to reconcile their precepts with their practice, and to prove to the world that the religion which they profess allows, much less encourages, disobedience to laws, insubordination, and resistance to the powers that be. It remains for them to show that resistance to rightful civil authority is either a christian duty, or a christian privilege; that things which are Cæsar's are not to be rendered to Cæsar; and that conscientious scruples can defeat the operation of laws, or stay the hand of government. If the opinion of every subject, as to the constitutionality of the laws under which he lives, can exempt him from their operation, then is government a mockery, and lawgivers, judges, and governors, the merest toys to be sported with according to the whims and caprices of individuals. In the letters of these individuals to the governor, the reason of their refusal to obey the laws of Georgia, is assigned to be that they did not believe the state had the right of jurisdiction over the country; and believing as they did, they could not do violence to their consciences by taking the oath. Your committee believe that scruples as to the oath should have [illegible] duty to remove. They cannot deny the right of all men to judge for themselves of the constitutionality or propriety of any law; but it is a new idea, that the law, as to such an one so judging, is to fail of its effect and become a nullity. Those who do assume this original, natural right, and act upon it, as the missionaries have done, must expect to suffer as they are suffering, the consequences of their rash judgment.

ment.

The Rev. Samuel A. Worcester and Dr. Elizur Butler were warned of the existence of the law they have violated. They were politely invited to remove, and time given for their removal. They resisted the authority of the state, and repelled with disdain the kind offices of the governor in their behalf. They were arrested, defended by enlightened counsel, tried before a court distinguished for its legal wisdom and benevolent feeling, and convicted and sentenced. Still, the authority of the state followed them with anxious solicitude to relieve them; still kindness and mercy and forbearance would have stayed the execution of the sentence. At the gate of the penitentiary they were met with the offer of pardon, upon the easy terms of removal from the territory, or taking the oath. This offer they repelled—these overtures of mercy they heeded not, and entered the penitentiary, a living monument of fanaticism, political knavery, or egregious folly. Notwithstanding *all these things*, Georgia has been ranked among the despotisms of the east; and her late benevolent, honest, and talented governor placed among the Neros, Dionysiuses, and Dracos, of infamous memory. From the enlightened, the candid, and the pious, of all parties and all creeds, the state must receive a judgment not only of acquittal of error or crime, but of high commendation.

Resolved, That this committee recommend, and do hereby recommend to the general assembly, the printing of forty copies of this report for each member of the state delegation in congress, and that his excellency the governor, be, and he is hereby requested to forward to our delegation in congress, forty copies each of the report.

Read and agreed to.

THOMAS STOCKS, *Pres.*

Attest, I. L. HARRIS, *Sec'y.*

In the House of Representatives, concurred in, Dec. [24] 1831.

ASBURY HULL, *Speaker.*

Attest, W. C. DAWSON, *Clerk.*

Approved, Dec. 26, 1831.

WILSON LUMPKIN, *Governor.*

NOTES—By Thomas Stocks.

The foregoing Report was drawn up by a distinguished jurist and esteemed member of the church, and unanimously agreed to by both branches of the Legislature.

(*a*) New-York and other states had done the same. Extract from the law of New-York in 1822:—"The several courts of justice, organized under the constitution and laws of this state, possess the sole and exclusive jurisdiction of trying and punishing, in the manner prescribed by law, all persons, as well Indians as others, for offences and crimes committed within the boundaries of the state," &c.

"For a long succession of years," says the Supreme Court of New-York, "we have exercised entire supremacy over all the tribes within the state, and have regulated by law their internal concerns, their contracts, and their property."

(*b*) There was no safety to persons travelling through the nation, and no authority to punish for the most enormous crimes. Two white men wantonly murdered another who was residing within the limits of the nation. They were arraigned before the Superior Court of an adjoining county; but the Judge could not punish them, because the constitution of Georgia requires all criminals to be tried in the county where the crime was committed; but the Cherokee *country* was not a *county*. Unwilling, however, to let such an infringement of personal rights pass without punishment, the Judge bound the prisoners to appear before the United States Court for the District of Georgia. There the Judge decided that he had no power to punish them, and they went at large! When these decisions were made known, the number of out-laws and villains was greatly multiplied, and they swarmed into the Cherokee Nation.

(*c*) These men, together with the chiefs, controlled the whole body of Indians. It was their interest to retain possession of the country, and impose on the ignorance of the great mass of the population.—The chiefs, most of whom are nearly destitute of any Indian blood at all, received and made use of the annuities paid by the General Government, for themselves, and expended it for their own interest. Lately, however, the President has directed these annuities to be paid to each family; and hence the head men, in order to fee lawyers, have resorted to

the speech-making plan among the Northern States. A few years ago, some hundreds accepted the offer of the Government, and removed west of the Mississippi; but, to prevent further emigration, the chiefs passed a regulation making death the punishment of any family that would enrol for this purpose! The common Indians felt it was their interest to remove, and all would have gone ere this, had it not been for the despotism of their rulers. Their game is gone; and it is well known they are too indolent to labour, and many of them are in a most wretched condition.

(*d*) Rev. Mr. O'Bryan, a Baptist missionary, was in the nation; but he did not think it was his duty to defy the laws of Georgia, lecture on politics, and insult the government. Nor did he lose the confidence of the Indians for his respect to the laws. More than eighty families begged him to go west with them; he has consented, and they have now probably arrived beyond the Mississippi.

(*e*) The right of soil and jurisdiction was in Georgia previous to the formation of the federal constitution. She permitted the United States government to regulate intercourse with the Indians, until it became necessary for her to assume jurisdiction.

(*f*) The missionaries could have removed if they disliked the law, a few miles, either into Alabama, Tennessee or North-Carolina, and there, within the same tribe, pursued their benevolent labors. There is nothing in the Georgia law which infringes at all their rights of conscience, or hinders them from preaching the gospel. Should it be said that the taking the oath would destroy all their hope of doing good with the Indians, it may be answered, that it is not true; for Mr. O'Bryan's obedience did not unfavorably impress the Indians towards him.

Let it be asked, would Massachusetts suffer the Mashpee tribe, within that state, to declare itself an *independent nation?* Would New-York, or any other state, suffer it?

If it should be said that Georgia is wresting the lands from the Cherokees, it is not true: she has directed the survey of them, in expectation that the general government will soon induce them to remove beyond the Mississippi; but she does not intend to dispossess them of the right of occupancy. They may remain as long as they please.

This report, and these few notes and remarks, have been reprinted to correct the many erroneous impressions that are abroad on this subject. Had the presses at the north given publicity to the report and other documents, refuting the many slanders cast upon Georgia, this pamphlet had not seen the light. THOMAS STOCKS.

New-York, April, 1832.