JUDGE CLAYTON'S OPINION.

We present to our readers to-day the decision of Judge CLAYTON, in the case of the State vs. John Saunders, and others, Indians. We have been struck with the similarity of reasoning upon several points, in this opinion, with that of the report of Mr. Bell in the House of Representatives, and we consider it due to Judge Clayton to state, that his opinion was delivered before the report of Mr. Bell had come to hand.

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, *vs.* JOHN SAUNDERS, and others, *Indians.* } *Indictment, False Imprisonment, and Assault and Battery.*

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 authorised 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 evidence exhibited before said court, proved that the said Jesse Stansell, 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 intention to ride the horse out of the nation*, and *thus make him his own property*, but had not carried that *intention* into effect. In view of this evidence, the jury declared the said Jesse Stansell to be guilty of *horse stealing*, which according to the laws of the nation, subjected him to a punishment not exceeding one hundred lashes. And accordingly the said Jesse Stansell was bound, stript, and received fifty lashes on his bare back.

The plea founded upon the above *facts*, is *substantially* this, that the Cherokee nation of Indians is an independent government, and entirely separate and distinct from that of the State of Georgia. That they have the right to establish laws and regulations different from those of Georgia, and that by one of their laws, they had the right to do what is charged against them; that the offence alledged was committed within the nation, and is no crime by the laws of their government; and that the Courts of Georgia have no right to entertain jurisdiction of said case.

The law of Georgia under which the case is brought into this Court, was passed on the 21st of December, 1822, and after attaching certain portions of the Cherokee nation to the adjoining frontier counties of this State, and particularly that part of it to Hall county, in which the offence is said to have been committed, has the following provision, viz: "all offences committed within the said tracts of unlocated territory against the state, and all crimes committed BY persons CITIZENS of this state or of the United States, and entitled to the privileges aforesaid, OR AGAINST any of the citizens of this state or the United States, shall be TRIED and PUNISHED in the county to which the territory, in which the said crimes and offences shall be committed, is hereby added and annexed, in the same manner as if said crimes or offences were committed within the limits of any of the organized counties of this state."

It is obvious that the object of the above law was to extend the *criminal* laws of the state over the Cherokee nation, in a limited degree. The jurisdiction was not intended to reach to cases where Indians alone were concerned, but only to those offences committed *by* or *against* citizens. If a crime was perpetrated *by* a citizen *against* an Indian, or *by* an Indian *against* a citizen, the offender became immediately amenable to our Courts of justice. And the only enquiry would be, upon the commission of an offence, could our Courts take cognizance of the same, provided it had been committed within the limits of an organized county? Let us apply this rule to the case at bar. Suppose the defendants, or indeed the same number of white men with no other authority, had arrested, tried and punished a citizen in the same manner in the town of Gainesville, would any one dispute this Court's jurisdiction over the case?

But it is denied to the state of Georgia, the right to extend her laws over the Cherokee nation. This brings us to the consideration of a subject that seems to have created much more excitement abroad than at home, and although it might seem that this is not the proper place to notice any thing foreign to the immediate question before us, yet as the whole character of the state, including its Courts of justice, have undergone the severest imputations, a 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 unjust charges against the civil institutions of the country. Nothing I trust shall escape me, unbecoming the moderation due to the station I fill; nor is it intended to offer any thing from this place, disrespectful to the opinions of others; it is earnestly desired, that whatever is said beyond what is absolutely necessary to a decision of the legal question, may be received in a spirit of candid enquiry, and considered altogether defensive.

I proceed by laying down the following principles: That when the states declared themselves independent of Great Britain, each possessed precisely the same rights, sovereignty and territory which they held under, or belonged to that nation, except whatever may have been delegated to the confederation.

That no part of the territory, or the jurisdiction over it, was relinquished by the states, in the articles of confederation, but on the contrary was *expressly* refused. (See 1 vol. Secret Journal of Convention, pages 74, 295, 310, 362, 369, 378, 437, 440.)

That at the recognition of the Independence of the States by Great Britain, each state still held its seperate territory, jurisdiction and sovereignty in as full, ample, and complete a manner, as if it had remained attached to said government, or had been *alone* detached from it.

That if there had never been any Union, each state would have asserted and retained, without any question, all these rights.

That neither of these rights has ever been relinquished by the states to the General Government, in the Federal Constitution, but on the contrary was *expressly* refused. (See Journal of Federal Convention, pages 70, 277, 309, 310.)

That so far as Georgia is concerned, they have never been relinquished by any convention or treaty made by the General Government with her, and if made with any other power on those subjects, is void.

That the Indians have never been considered, or treated by any of the states or the General Government as citizens, or entitled to the privileges of citizens, nor have they been permitted any where in the U. States or its territories, to set up for themselves independent Governments. As a people, they have been denied the right of suffrage and representation in any of the States, Territories or the Federal Government, and the States within whose limits they fall have the exclusive