

It is a somewhat singular coincidence that about the same time that Judge Clayton was hearing and deciding the case of the State against John Saunders, and others, Indians, for whipping Stansell, a similar trial was taking place in Alabama, for a similar offence, by similar personages. The trial was had in the Circuit Court, Montgomery county, and the case is thus stated in the Montgomery Journal :

James B. Reed, vs Opothyoholo and Jim Boy.—This was an action of trespass, *vi et armis*, brought by the plaintiff, to recover damages of the defendants for whipping him. The plaintiff is a white man and a citizen of this State; the defendants chiefs of the Creek Indian nation. No appearance was entered for the defendants, and judgment by default was taken. At the last term of the Court a plea to the jurisdiction was tendered, but the Court decided the question could not then arise under the state of the pleadings. A mistrial was had. At the present term a motion was made to set aside the judgment by default, and open the case for pleading. That motion was overruled by the Court, and the cause went to the jury upon an enquiry of damages. The evidence proved the plaintiff to have been tied to a tree, by the defendants, and on his naked back received forty lashes with hickories five feet long, and that he swooned under it. The defendants attempted to offer, in mitigation, an order from the sub-agent to commit the act. The jury returned a verdict of \$4,500 damages.

The charge of the Judge to the jury concludes as follows :

That it was his opinion that the Creek nation of Indians had never been an independent and sovereign people since the commencement of the political history of the United States; that at the period of the acknowledgement of the Independence of the States, they owed a qualified allegiance to the state of Georgia; the most of them lived within the chartered limits of that State; that they never were acknowledged by either the Federal or State governments as exercising any thing more than a right of self government, *sub modo*; that all such rights as they enjoyed as a separate people had been conferred by acts of Congress or by treaty; that although it seemed hard to reconcile some of those treaties, as they had been ostentatiously called, and some of the acts of Congress, with the rights of the States, yet, to give them their full force and effect, according to the most liberal interpretation, not one of them authorises the Indians to arrest a white man, an American citizen, who did not reside among them, in their na-

tion, and inflict on him corporal punishment; that the perpetrators of such an outrage could not protect themselves under any custom or usage of these people, and there had never been a time when they could not have been called by a court of common law to answer in damages for the offence, if found after its commission within the jurisdiction of such court.

