

On Saturday last William Robbins and others, to the number of nine persons, were brought before Judge CLAYTON, on a writ of Habeas Corpus, the return to which and the decision thereon published below, will show the nature of the case, and will perhaps be of some interest to the public.

GEORGIA, CLARK COUNTY.

In obedience to the within *fiat*, I have brought before the Court issuing this Habeas Corpus, the persons therein named, and for cause of their caption and detention state, that I am a Lieutenant of the 4th Regiment of the United States' Infantry, acting under the command of one Captain Francis W. Brady, who has been ordered by the General Government, with a detachment of troops, to remove all intruders from that part of the Cherokee Nation, lying within the limits of Georgia. That in pursuance of said orders, said Capt. Brady is stationed in said Nation, and that on the 16th inst. the within named persons came into the Nation to a place called the Pigeon Roost, said to be in Hall County in said state, but a part of the Indian Nation, to where a man by the name of Bean, a white man, though enjoying the privileges of an Indian in said nation, was, or had been digging gold; that they ordered off said Bean, as he, or persons through him, informed Lieut. Trenor, the commanding officer at, or near that place; and he further informed him, said persons had the working tools usual for the purpose of digging gold, and had declared they would dig gold in said nation, in defiance of the laws of the United States, the Governor's Proclamation or the troops. Whereupon the said Lieut. ordered affirmant with a detachment of troops to proceed to their apprehension, and he with another detachment went for the same purpose another route, and arriving at the place where they were, first apprehended said persons, and gave them over to affirmant to report the case to Capt. Brady at Scudder's, which was done, and the said Capt. Brady ordered affirmant to take said persons before the civil authority, to be dealt with according to law for a breach of an act of Congress, passed to regulate trade and intercourse with the Indian tribes, and to preserve peace on the frontiers; and for said purpose, and by said order, affirmant has said persons in custody. Given under my hand this 19th June, 1830. JOSEPH CLAY, Lt. 4th Inf.

DECISION.

THE STATE,

vs.

Wm. Robbins and others.

Habeas Corpus.

The return is objected to by counsel for Prisoners on the following grounds:

1st. It shows no offence committed against the act of Congress to regulate trade and intercourse with the Indians.

2nd. The Officer shows no authority for his arrest; he does not show Capt. Brady's orders from the government, nor his own orders from Capt. Brady, and that his bare unsupported statement of these facts are not sufficient evidence of his authority.

3d. That if there was an offence committed by these individuals, the arrest was illegal, for it was not done upon the view of the military force, but derived entirely from the hearsay testimony of an individual unsupported by oath, and one not connected in any way with the force sent to remove the intruders.

4th. That Congress have no right to pass a law making any act an offence which does not immediately relate to the regulation of commerce among the Indian tribes, and that the digging of gold in the nation *actually committed*, much less, the declaration of an intention to do so without carrying that intention into effect, is no act which comes within the right of Congress to punish, under said power to regulate commerce.

And 5th. That the Territory is Georgia's, always was, and over it she has exclusive jurisdiction, and having from the 1st day of this month organized said territory, by extending her laws over the same, the authority of the United States ceases, if it ever had any in this particular case, and the state now possesses jurisdiction of all offences committed on said territory, and if a crime has been committed by said individuals, they are alone amenable to the state laws.

Without being reduced to the necessity, at all times painful, of disputing with the General Government the extent of its powers, in relation to jurisdiction within the territorial limits of Georgia; the court thinks that this point can be settled by a proper consideration of the 1st objection. The facts in the return do not show any crime to have been committed even against the act of Congress to regulate trade and intercourse with the Indian tribes. The law on that subject as well as every other penal law, requires the act declared to be illegal, to have been *actually perpetrated*. The declaration of an intention to commit a crime does not amount to the crime itself; there must be a "union or joint operation of act and intention." The mere declaration to *Bean* that they would dig gold, and this constitutes the intrusion if any, does not amount to that offence, and if it did, the information unsworn to by Bean, is not sufficient evidence of the fact to authorise an arrest. It would be dangerous to the liberties of the citizens, in the very highest degree, to suffer such information to be the foundation of an arrest for the commission of *supposed crime*. (It is a boasted principle of our laws, that the military shall be subject to the civil authority; but what can be more opposite to such a valuable privilege than to suffer the military to arrest the citizen, upon much less evidence than the civil officer, and which, if done by him, would be considered false imprisonment. A magistrate dare not arrest upon such information, much less would he arrest an individual for trial who had merely said it was his intention to commit a crime, without having perpetrated it. Upon this ground therefore, the prisoners must be discharged, and I am glad that I am relieved from the decision of the other points, because it is extremely desirable that there should exist the utmost harmony between the state and general government, and no act should be done which will endanger that object; and I must take this occasion to say, and I wish the remark hereafter to be recollected, that the going into the nation for the purpose of doing any act, which will injure the property of the state, or disturb the permissive possession of the Indians, is calculated to produce that truly unpleasant result, and as against the state's interest is highly illegal, and contrary to the proclamation of the Governor in this regard, which must be respected. I hope the citizens of the state will be warned by the circumstances of this case, to forbear in future from trespassing upon that territory, and by no means to consider that the discharge of these individuals, will be a license to future intrusions upon the public property of Georgia. It will be a very delusive idea, and one which may involve them in great and serious misfortunes.

A. S. CLAYTON.