GEORGIA & THE U. S. COURT.

From the National Intelligencer of January 4.

In the official paper of yesterday morning, appeared the following paragraph:

"We congratulate the friends of State rights upon the case, and the manner in which GEORGIA has been cited to the bar of the Supreme Court. The time too is auspicious. The spirit of Liberty and Reform is abroad upon the earth, and the position in which the Supreme Court is placed by the proceedings of Georgia, demonstrate the absurdity of the doctrine which contends, that that Court is clothed with supreme and absolute control over the States."

[*U. S. Telegraph, Jan. 3.*

In such terms as these, does the *Official Government paper* exult, in the defiance which the Legislature of the State of Georgia has bid to the authority of the Constitution and the Laws of the United States. "The spirit of Liberty and Reform is abroad upon the earth;" and to the reforms already effected under this administration, the Government Paper rejoices that there is to be added that of the prostration of the Supreme Court of the United States, the only safeguard of the rights and liberties of either the States or the People.—This, too, until authentically contradicted, must be taken to be the sentiment of the present Administration.

It is time, fellow citizens, that we come to a pause, and solemnly reflect upon our situation.—The Tariff has been declared to be unconstitutional by more than one State; Internal Improvement has been denounced in the same manner; the United States Bank has been assailed in the same manner; and, worst of all, the authority of the Judiciary is set at naught—all under the banner of "Liberty and Reform." It is not necessary for us to add, that, sustain these doctrines, and our Government is at an end. The sword and the bayonet will have usurped the office of appeals and writs of error, and the Supreme Court will be substituted by some tribunal of more summary proceeding.

We should not speak of the Resolutions of the Legislature of Georgia in this tone of alarm, if they were not seconded in spirit by the Official Paper. Those resolutions, passed under the influence of strong feeling, will operate, probably, to produce no tangible effect, and are not irreversible. Whether reversed under the influence of better views on the subject or not, if they operate upon nothing, they will have only the effect of the declaration of an opinion. But the approval of the spirit of them by the Government Paper, following as it does other recent demonstrations of hostility to the Supreme Court, from the same quarter, is calculated to fill the mind of every Constitutional Republican in the country with alarm and dismay.

What, in brief, is the case presented by the documents now in possession of the public? An Indian condemned to be hanged by the Georgia Court, under a law of the State, sued out a writ of error from the Supreme Court of the United States, to bring the cause into that Court, upon the ground that the law of the State of Georgia, under which he was condemned, was void, as being against laws and treaties of the United States. The Judiciary of the United States has jurisdiction of such cases, by express provision of the 25th section of the judiciary act, passed at the first organization of this Government. It has repeatedly exercised such jurisdiction, and the States have yielded to its decision.

The execution of the Indian was to have taken place, we believe, on the 24th ultimo, and no doubt did then take place, at the time set for it; so that the death of the plaintiff will have abated the suit and the citation of the Chief Justice, and the Resolutions of the Legislature of Georgia, as regards that particular case, will be equally inoperative.—But the resolutions go farther, and say, that the State of Georgia "will *never* so far compromit her sovereignty as to become a party to the case sought to be made before the Supreme Court of the United States, by the writ in question." "The case" here alluded to, is a case involving the validity of the same treaties of the United States which, in the case which has actually occurred, the decision of the Georgia Court has determined not to be valid as a defence for the criminal.

Whether the defence set up by this Indian was a valid defence, is not the question, and, one way or the other, can have no bearing upon it. The question is simply whether, in a case between a State and an individual, involving the validity of a law of the United States, or a treaty, the individual has a right of appeal to the Supreme Court, which the Constitution, as well as the Laws of the United States, have expressly declared shall have jurisdiction in such cases.

The Resolutions of the Legislature, as well as the Message of the Governor, seem to make it a point, that the execution of the *Criminal* Law of the State is interferred with. But the Constitution makes no distinction between civil and criminal laws—it speaks of *all* laws; and the cases of Cohens *vs.* the State of Virginia, and that of McCulloh *vs.* Maryland, wherein the authority of the Supreme Court was maintained, had their origin in the penal laws of those States. It is in vain for the State of Georgia to declare that "the right to punish crimes, &c. is an original and necessary part of sovereignty, which the State of Georgia has never parted with:" for, since the establishment of the Constitution, there is no such a thing as a sovereign State, independent of the Union. We quote the language of the greatest lawyer of our country, when we say, "The General Government, though limited as to its objects, is supreme as to those objects. This principle is a part of the Constitution: and if there be any who deny its necessity, none can deny its authority." If there be any thing which is peculiarly an object of the General Government, it is the execution of Treaties, and the guaranty of their sanctity. These Treaties are the "supreme law of the land." What language can be stronger than that which is used to this effect in the 2d clause of the 6th article of the Constitu-

tion? It was not necessary, however, to insist upon this point; for the State of Georgia has declared that she will not permit herself to be brought to plead before the Supreme Court in any case affecting her criminal laws. She will not suffer it to be *enquired* whether her Laws do contravene Treaties made by the authority of the United States. This is the more unfortunate in the case before us, from the *circumstance* that there is no appellate jurisdiction *within* the State; the Circuit Courts of Georgia, as appears by the Governor's Message, having *exclusive* jurisdiction in all criminal cases.

Is it not obvious that, in this course, on the part of the State of Georgia, the theory of *Nullification* is reduced to practice? Suppose that any State makes it penal to collect duties from its citizens under the Tariff, or any other laws of the United States. An officer of the United States, however, (the Collector of the port of New York for example,) trusting to the virtue of his commission, goes on to collect; he is tried, condemned and sentenced to death by one of these State Courts, which have exclusive jurisdiction. Is he to suffer death for the discharge of his sworn duty? Most certainly he will, if the ground taken by the State of Georgia be maintained, and the militia refuse to march, when called out "to execute the laws of the Union."

Our fellow-citizens will see, at once, that, with the authority of the Supreme Court, not only the laws, but the Constitution also, must be nullified.—We know that there is a portion of the people of one State (a respectable portion of a respectable State,) who think that this process of nullification is an undeniable and harmless right of the States. This we had regarded as the delusion of a day, which would soon pass away. But the late proceeding on the part of the State of Georgia shows that in that State also a lamentable infatuation blinds the majority to the awful consequences of the doctrine which they have not only proclaimed but acted upon. We find, in addition, the confidential organ of the Executive Government of the Union giving countenance to these Revolutionary *movements*. *Is there not reason for alarm?*—Will the body of the people of these States who are attached to the Union repose in false security until it is undermined by these insidious and fatal doctrines, which are making rapid progress, under the seductive but delusive guise of a regard for State Rights? Will our Sampson slumber until his locks are shorn? Or, will not the friends of the Union rouse themselves, and look the danger in the face? It requires nothing but a general rally, we are confident, to bring a moral force into the field which will utterly rout and discomfit these heresies, of modern date, but most dangerous tendency.

We have neither time nor room for all the comment which the occasion invites. We take space enough, however, to refute the suggestion, (for it is not an assertion,) of the Administration Paper, that there is a party in this country which contends that the Supreme Court "is clothed with supreme and absolute control over the States." There is no such party; and in the whole range of our knowledge such a doctrine has never been advanced from any quarter. *We* contend for such control only over the *judicial proceedings* of the State Courts as is expressly vested in the Supreme Court by the Constitution.

From the National Intelligencer of Jan. 10.

The issuing of the writ of error was a matter of course; a right guaranteed by the laws, and a duty *imperative* on the Court: that writ operated, in fact, only as a notice to the State that a Writ of Error had been sued out. It was a summons, which the State had a right to disregard if she chose; because, if the State did disregard it, the case would nevertheless have been examined before the Supreme Court, and adjudged according to law, had not the death of the party abated the cause.—Nor was the execution of the Indian, or the Proceedings of the Legislature or of the Executive of Georgia by which the execution of the sentence was enforced and directed, any offence against the Laws of the United States. A humane regard for human life; a spirit of mercy; a proper respect for rights claimed in the forms of law, would perhaps have induced a suspension of the execution until the decision of the Supreme Court should have been made, but no legal obligation or injunction exists which has been violated by the sentence being carried into effect. The wrong, so far as a wrong has been perpetrated by the execution of the sentence, is a moral (not legal) wrong.

The resolutions of the Legislature of the State of Georgia, it is true, go farther than this, and impugn the authority of the Supreme Court, as derived from the Constitution. So far, the proceedings of the Legislature are unconstitutional, and therefore, in our view, not justifiable. But there is no process by which that unconstitutional proceeding can be *brought before the Supreme Court*, if it were desirable. As a case of actual conflict between the United States and Georgia, therefore, the case has terminated with the death of the Indian. We do not rejoice in the death of the Indian, even though he may have legally incurred the penalty; but we are glad that the case is ended by reason of that circumstance. For we are far from desiring to multiply points of conflict between the Federal and State Authorities.

From the National Journal.

As the course of proceeding exhibited in the following extract from the Milledgeville Recorder is of a character to arrest and fix the attention of both the Government and the people of the United States, we have deemed it proper to give it without change or abbreviation. We will not pretend to anticipate what may be the measures which the *cabinet of General Jackson* will adopt on this occasion; although we can have no difficulty in determining as to the true course which is demanded by a due regard for the Constitution of our country, and a proper desire for the perpetuity of those institutions which, under that instrument, are given to us, and guaranteed to those who are to come after us. The resistance set up by the Governor and Legislature of Georgia, to the authority of the Supreme Court, is an exhibition of courage which will not claim much respect or imitation from sounder heads, and hearts more thoroughly imbued with the feeling of patriotism than are those of the individuals who direct the destinies of that infatuated state. The plain question which the rashness of these *intemperate politicians has forced on the country*, is, whether the Judicial arm of the General Government shall be amputated, or armed with additional vigor, and whether, by the mere volition of one of the States of the Union, the structure of our government shall be at once and violently overthrown. Whether there exists any settled and concerted conspiracy to effect a separation of these states, we cannot pretend to assert, but the rumored despatch of a political missionary to England from the south, gives some color to the suspicion; and if this movement in Georgia be connected with that wicked and dangerous scheme, the people should be awake to the fact, and have a watchful eye to the cause which General Jackson may pursue *in this very extraordinary crisis of our affairs*. Our apprehensions on this subject run far ahead of our hopes; and if the present cabinet should, by an act of wisdom and vigor combined, check the mischievous impetuosity of the rulers of Georgia, we shall be as much surprised as gratified.

Whatever may be the course of the government, however, Georgia herself has taken a step which, in her moments of returning discretion, she will regret and condemn; and in which, we presume, her rulers will scarcely be sustained by her citizens.—She has done that which will be fatal to her reputation for soundness of judgment, attachment to the union, and a correct conception of the demands and duties of the republican character. She may

survive the diminution of her fame, and the overclouding of her star, but it must remain for a wiser and a more dispassionate age to win back to her even a modification of the respect which she has heretofore enjoyed.

From the N. Y. Daily Advertiser.

We do not see but the State of Georgia is now fully in the field, prepared for a conflict with the government of the United States, on a point of vital importance, viz: the authority of the highest court of law known to the national constitution.—It may perhaps be in the power of the State to defeat the immediate effect of this process, by ordering the convict to a speedy execution—a measure, that without regard to the consequences of disobeying the highest authority of the Union, will stamp the government of that State with perpetual disgrace for the inhumanity of the measure. But it is probable that this consideration will have but little weight, when it is remembered how far they have advanced in the career of injustice and oppression towards the Indians. But resistance to the authority of the Supreme Court, in the exercise of its legal and constitutional powers, is a matter, at least to the persons who may be immediately and actively concerned in it, of more serious importance.—"*Treason against the United States,*" says the Constitution, "*shall consist only in levying war against them.*" Resisting the execution of the laws by arms, is levying war against the United States. It is not in the power of the Governor, or legislature of Georgia, to sit in judgment, either as a court of errors, or as a court of arms, over the Supreme Court of the United States. However much they may consider the dignity or sovereignty of the State compromitted by the supremacy of the national laws, or the decrees of the national courts, they must either submit to them, or place themselves in the attitude of forcible resistance, which is levying war, and therefore within the constitutional definition of treason. This brought Fries of Pennsylvania to the bar of the court, subjected him to trial, conviction, and sentence, and would have sent him to the gallows, if a pardon from the chief executive magistrate of the United States had not interposed and saved him.

If this Indian convict is hung, in defiance of the writ of Error, we do not see how the President of the United States can extricate himself from the predicament in which his own rashness and folly has placed him, without exerting his constitutional authority for enforcing the execution of the laws. The situation in which he is likely to stand, may teach him the importance of confining his labors to the circle of his own duties, and not to interfere with those of the other branches of the government. The constitution obliges him to execute, not to suspend the laws of the Union. And whenever a chief magistrate of the nation takes upon himself the latter power, he ought to be brought to the bar of the constitutional tribunal, for the trial and punishment of such offences.

From the Columbia Times and Gazette of Jan. 3.

The late proceedings of the State of Georgia, in answer to the citation of Chief Justice Marshall, are full of the deepest interest to this State and the Union. While we are *discussing* the doctrine of Nullification, and Georgia, through most of her Journals, rebuking it—her Legislature, at the shortest notice, with an almost unanimous vote, actually *carries it into execution.* It appears that George Tassels, an Indian, was tried and convicted of murder, under the laws of Georgia, administered in the Superior Court of Hall County. The counsel of Tassels brings his writ of Error in the Supreme Court of the United States, under the 25th section of the Judiciary Act, passed in 1789, 2d vol. of Laws of the United States, page 65, on the ground that the Court of Georgia had no jurisdiction, the offence being committed, if we are rightly informed, within the Indian Territory. Chief Justice Marshall accordingly issues his citation to the State of Georgia, as prosecutor, to appear and shew cause why the judgment should not be reversed, and Georgia, through her Governor and Legislature, refuses to obey. This refusal may have been dictated by one motive or other, but its plain and palpable effect, is to *nullify* the 25th section of the Judiciary Law of Congress, which authorizes an appeal from the State to the Federal Courts, in all cases "where is drawn in question the validity of a *treaty*, or statute of, or an authority exercised under the United States, and the decision is against the validity; or where is drawn in question the validity of a statute of, or an authority exercised under any State, on the ground of their being repugnant to the Constitution, *treaties*, or laws of the United States, and the decision is in favor of their validity, &c." They "*interpose and arrest*" the operation of this law of Congress, by declaring that no such appeal shall be made, and authorizing the Governor to resist the consequences of it, with force if it be necessary. Whether the State of Georgia has or has not jurisdiction over the Indian Territory, is not the issue now made; but whether the law of Congress, as above stated, is binding on the States. Of course the Governor and Legislature have not acted hastily in this matter. Theirs was the promptness of men whose minds were made up. The question was brought before them by Mr. Wirt's letter, some time ago, and they have now acted on the convictions then produced. We cannot but say, well done! We believe the law they have nullified to be an unconstitutional and dangerous one. Unconstitutional because the Supreme Court of the United States have, under the Constitution, no more right to supervise the decisions of the State Courts, than Congress has to supervise the proceedings of the State Governments. Both parties, in both instances, are supreme and independent within their own spheres, and where either party trenches on the jurisdiction of the other, it is a violation of political rights: is properly a subject of remonstrance and reclamation between the respective Governments, and, finally, of *arrest by either party.* It is dangerous, because it is an assumption of high sovereign power, rendering the General Government omnipotent and the States dependent.

We shall look to the result of this movement with the deepest anxiety. We will not anticipate the steps the General Government may pursue, but whatever they may be, Georgia standing on her rights, will be invincible.

From the Charleston Mercury.

WELL DONE GEORGIA!—We have the issue now fairly made up between Federal Power and State Rights. The high-handed and now at least palpable usurpations of the former, have been bravely met by *one* advocate of the latter. Would to heaven that *we* had been the Champion! But, although humbled, and jealous that Georgia should take the lead, through the temporising policy of the minority among us, let us give her our full sympathies and co-operation. Let the question now be fairly tried—let it at length be definitively settled, what are the powers of the Federal Government—what are the rights of the States.

In the case of Chisholm, Executor of Farquhar, against Georgia, 2 Dallas, 419, the Supreme Court asserted a jurisdiction similar to that now claimed.—This produced the 11th article of the amendments to the Constitution, in which it is declared, "That the Judicial Power of the United States shall not be construed to extend to any suit in Law or Equity, commenced or prosecuted against any of the United States, by citizens of another State, or by citizens or subjects of any foreign State."

We will pause until some attempt is made to reconcile the recent proceedings of the Supreme Court with this amendment; and in the mean time recommends strongly to the candid perusal of every one, the admirable and conclusive article upon the "Tribunal of dernier resort," in the last number of the Southern Review. TOCSIN.

From the Edgefield (S. C.) Carolinian.

The proceedings of the State of Georgia, in relation to the Supreme Court of the United States, are of the highest interest. They show that, however that State may taunt South Carolina, for indiscreet violence on the subject of the Tariff, she is willing to go as far as the farthest, when her peculiar interests are involved. Touch the Indian land rudely, and the whole State feels the shock. The same Senate that adopted 'Wood's Resolutions', have concurred in the resistance to the mandate of the Supreme Court by a large majority. We do not mean

to intimate any doubt that Georgia stands on firm constitutional ground in this respect. We believe that the framers of the Constitution never contemplated an appeal to the Supreme Court from the State tribunals, and that the 25th section of the Judiciary Act of 1789, which authorizes such a course, is unconstitutional and void. (We are happy to notice, that our watchful Representative, Mr. Davis, has submitted a motion for the repeal of this section). We also believe, that to allow a citizen of a State, or of a foreign State, to sue a sovereign member of this Confederacy in the Supreme Court, under the subterfuge of a writ of error, is a gross fraud upon the amendment to the Constitution. And all this usurpation is articularly odious in a matter of criminal jurisprudence, which, if any thing at all is, is peculiar to the territorial sovereign. We do not design to discuss these principles, but we refer to the article in the Southern Review, on the Tribunal of Dernier Resort, usfully establishing them, both by argument and testimony. The resistance of Georgia to the usurpation of the Supreme Court, in the case of *Chisholm vs. State of Georgia*, procured the amendment of the Constitution to which we have referred above, and we trust that her resistance on the present occasion, will be equally glorious and triumphant.

From the Pendleton Messenger of Jan. 5.

By a reference to the last proceedings of the Georgia Legislature, it will be seen that our sister State is likely to get ahead even of South Carolina, in the controversy with the General Government—or if the expression will suit some of our friends better, in the work of Nullification. Tassels, the Indian, was executed, we learn, on the 24th ult. according to sentence, and it remains to be seen whether the Chief Justice of the United States will take further steps in the matter. The Indians, it is said, did not object to the justice of the sentence, though they denied the jurisdiction of the Court; and were prepared had the execution not taken place, to remove him to the nation to be tried by their own laws.

From the Sumpter (S. C.) Gazette.

Georgia.—We could scarcely permit ourselves to regard the precept served on the Governor of Georgia (published in our last) as a genuine paper. Even with a full belief that the Federal Judiciary considered itself invested with unlimited and uncontrolled authority in deciding on its own powers in relation to the rights and prerogatives of the States, still, at the very moment when the separate and distinct sovereignties of the Union were demanding, each for itself, an adherence to those conditions upon which alone they entered into the confederacy, we did not expect that any public functionary would have been so far misguided by intemperate devotion to his own opinions, as to have claimed, much less exercised the authority to interfere or intermeddle with the Judicial Department of any State, in a matter touching the administration of its criminal law in its own territory. It appears, however, that we have been mistaken, in our conjecture, that the summons was a hoax, as appears by an article from the Augusta Chronicle, which we insert below; and we now behold the extraordinary spectacle of the Judiciary of the United States pretending to the power of regulating and supervising the Courts of the State. Georgia, ever alive to the principles which have claimed for her the high distinction which she enjoys in political reputation, has upon this occasion, as might have been anticipated, conducted herself as she should have done. She has treated the mandate as a nullity, and now we presume a rule will be served upon her to answer for the *contempt?* Will her Governor be brought to the bar of the Federal Judiciary? or a Marshal and his Deputies claw her Legislature to answer to the heinious accusation? or will the Sheriff of Hall county be indicted for carrying into execution the sentence of a State Judge? Really we are at a loss to perceive how the *contempt* will be punished, or by what process it is to be purged. The very difficulty that will present itself to the Court, as to the mode of *compelling* the State to answer for disobedience to its mandate, shows at once that no power exists in the Federal Government to control the Judiciary System of the States—for had the constitution given the power, it would have given also the means by which that power could be exercised.

It appears as the Union is increasing in age, a recollection of the common causes which induced it, is forgotten. Every day affords some new evidence of strange conceptions of the government existing in the minds of those called upon to exercise its high offices. To a power to impose a Tariff on foreign wares, for the purpose of promoting and encouraging domestic manufactures by Congress, is added, a power to construct roads and canals, in the bosoms of the States, with or without their consent. To this is added, the power (not the *right*) to appropriate funds of the public treasury to the encouragement of education in the West, and indeed these powers multiply and increase with such astonishing rapidity that each serves not as the father of one more, but of a dozen.

In 1793, the court, in the celebrated case of Chisholm v. the State of Georgia, (2 Dallas 419) assumed the right to make a sovereign State a defendant at the suit of an individual citizen. The consequence was, an amendment to the Constitution was proposed and adopted in the words following: "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of any foreign State."

Even this amendment, although it limits more definitively the authority of the Supreme Court, has has not wrought any change of opinion in the understandings of those who are willing to regard the *Federal* (no, the NATIONAL) head as every thing, and the States as nothing.

From the Richmond Enquirer.

THE GEORGIA QUESTION.

The papers, which are devoted as loyally to the power of the General Government, as the genius was to the Lamp of Aladdin, have borne down with all their wrath upon the acts of Governor Gilmer, and the resolutions of the Legislature of Georgia, concerning the Citation of the Chief Justice.—The New York American declares, that "The *value of the Union* is now brought fully to the test—that "It must now be seen whether the President will or will not maintain the Constitution and laws of the United States, which he has sworn to support. The Supreme Court, finding their process resisted, will of course apply to the Executive department for the *means of enforcing it; and if the President declines, the Union is dissolved!*"—that "It is the most momentous question that has arisen under the Constitution since its establishment, and it is now presented *in a form that cannot be evaded.*—The life of the wretched Indian has doubtless been taken, and so far as he is concerned, earth can afford him no remedy; but the supremacy of the Constitution, on which the *happiness and duration* of this Union depend, may yet be asserted!"

The N. Y. Daily Advertiser clothes its canvas with the darkest colours. It charges *treason* home to the Governor and Legislature of Georgia. It declares, that "resistance to the authority of the Supreme Court, in the exercise of its legal and constitutional powers, is a matter, at least to the persons who may be immediately and actively concerned in it, of a more serious importance—that "*Treason against the United States,*" says the Constitution, "*shall consist only in levying war against them,*"—that "Resisting the execution of the laws by arms, is levying war against the United States,"—that it is not in the power of the Governor, or Legislature of Georgia, to sit in judgment, either as a Court of Errors, or as a Court of Arms, over the Supreme Court of the United States"—and that "However much they may consider the dignity or sovereignty of the State compromitted by the supremacy of the national laws, or the decrees of the national courts, they must either submit to them, or place themselves in the attitude of forcible resistance, which is levying war; and, therefore, directly within the constitutional definition of treason."

The *N. Y Commercial* quotes from the Constitution the several restrictions which have been imposed upon the States, and refers to the "41st, 42nd, 43rd and 44th Nos. of the Federalist—all from the *pen of Mr. Madison.*"—*to show that Georgia* ought to have bowed submission to the summons of the Chief Justice—and given up, what has never been given, the control of her criminal jurisdiction to the Supreme Court of the United States.

The Nat. Intelligencer, of course, joins in the *melo* —chimes in with all these Federal presess—and true to its usual vocation of hinting away characters by

innuendo and insinuation, would leave the impression that the friends of Jackson are opposed to the lawful authorities of the Federal Government, and that Henry Clay must be elected to save the Union itself.

The reader may judge how far Mr. Madison can be fairly quoted on their side of the question, by the following fact. The summons in the case of Tassels, convicted of murder, is brought under an act of Congress, which is founded on the following clause of the 2nd Sect. of 3d Art. of the Constitution—"The Judicial power shall extend to *all* cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." Now, what says Mr. Madison's Report on this very clause? "The expression "cases in law and equity" is manifestly confined to cases of a *civil nature*, and would exclude cases of *criminal jurisdiction*. Criminal cases of law and equity would be a language unknown to the law."

What would be the situation of the States, if the Federal Court could interfere with them in the exercise of their criminal jurisdiction—and drag them before its tribunal, at its pleasure, on such an occasion? Can the State be dragged to that bar, in a case where either its own citizen or the citizen of another State is a party?—Shall it be said, that the writ of error is issued by way of carrying into execution a Treaty of the United States with the Cherokees?—But where is the treaty which strips the State of its criminal jurisdiction? or, which acknowledges the Cherokee Government as perfectly independent of that of Georgia?—*If such a treaty had been made*, would it be valid? Can the United States pass away the rights of Georgia? What substantive power have the States given to the General Government, but to *regulate commerce with the Indian tribes*?—and does this special power transfer all jurisdiction, both civil and criminal?

But what has been the condition of *other* States?—Has either of them *ever yielded such a right of jurisdiction* within its own borders?—Have not many of them extended its code to the Indian tribes? A law of Connecticut in 1808, provides that an Indian shall be put to death for the murder of another Indian, "on being thereof convicted before the Superior Court."—A law of N. York in 1822, forbids the Senecas and other tribes of Indians residing within (that) State, to try and put to death "members of their respective tribes; "and claims "the sole and exclusive cognizance of all crimes and offences committed within the State, as belonging "of right to *courts holden under the Constitution and laws thereof*, as a necessary attribute of sovereignty," &c.—Similar provisions are to be found in the statutes of other States. The power belonged to them even when colonies; and they have *never divested themselves* of it—The sole power which they transferred under the Constitution, was that of regulating commerce.—If no other State has parted with this power, when did Georgia? If others are to exercise it with impunity, why should *she* alone be punished?

It has been said, that the New York tribes were scattered—whereas the Cherokees are a more numerous people, and have formed a government of their own—And this, which was a reason with Mr. Adams, for urging him to interfere and to break up a government, which was formed within the jurisdiction of Georgia, a pretended *imperium in imperio*, is now to be called in as a reason, why the State should not interfere, and why it should abandon its jurisdiction!

The N. Y. American trembles for the Union—It insists upon it, that the Union is in danger, if the authority of the Federal Court be not asserted.—But is there no danger of dissention the other way?—We are so well satisfied of it, that as we lately said to South Carolina, "Pause, pause, for Heaven's sake pause"—we would now say to the Federal Court, "Pause, for Heaven's sake pause."

From the Richmond Enquirer of Jan. 6.

THE CITATION.

Some of the Southern Prints still express doubts, whether the summons addressed to the State of Georgia, be not spurious.—They may dismiss such doubts. We have ascertained that the paper is unquestionably genuine.

Most of the papers in Georgia and South Carolina have expressed their astonishment and resentment at the issuing of any such summons. They rejoice at the course which the Georgia Legislature promptly took upon the occasion—some of them only are surprised by the moderate tone in which Georgia has asserted her inalienable rights of jurisdiction.—But what species of jurisdiction would she possess within her own acknowledged boundaries, if she could not exercise a *criminal* jurisdiction upon her own soil; if she could not try and bring to punishment an Indian who had been guilty of murdering a white man?—How does the Supreme Court get any jurisdiction in the case? Suppose the Cherokees to be Citizens of Georgia; the Constitution gives the Supreme Court no power to take cognizance of cases instituted against a state by her own Citizens.—If they should peradventure, be considered as Citizens of another or of a foreign state, the 11th article of the amendments to the Constitution declares "That the Judicial Power of the United States shall not be construed to extend to any suit in law or Equity, commenced or prosecuted against any one of the United States, by citizens of another State, or by citizens or subjects of any foreign State."—In the case of Chisholm, *Ex, rerimus Georgia* (3d. Dallas's Reports) the right of a Citizen of another State to sue a State was maintained by the Supreme Court in 1793—But this amendment was subsequently made to the Constitution which, says the Reporter, "swept at once from the Records of the court, this case, and all the other suits against States." In the Federal Convention of Virginia, Mr. Marshall held even, that under the Constitution as it originally stood, no such cognizance could be taken by the Federal Court: "I hope, (says he) *no gentlemen will think* that a state will be called at the bar of the Federal court"—"It is not rational to suppose, that the sovereign power shall be dragged before a court."—Yet was Virginia actually dragged to that bar in the case of the Cohens—and Georgia is to be dragged in the case of Tassels.

But *will* she now? The man is actually hung. Tassels then is gone beyond the verge of all human authority. No power of the Supreme Court can "touch him now." They cannot bring him from the grave—And what will they do? Will they punish for a contempt—Whom? Will they *imprison* the State of Georgia? Will they punish the Sheriff or the Judge of Hall county, on whom no notice was served? Will they lay their hands or levy a fine on the Governor? They dare not—The fine never would be paid—No marshall or posse comitatus would dare to lay a finger on Governor Gilmer, to incarcerate *him* for an *alleged contempt*. How then stands the case? Where is the dignity of the Supreme Court in this dilemma?

The fact is, that the two governments ought to bear and forbear. Much discretion and delicacy must be shewn in the use of the authority they possess—and much more care, lest they assume a power which does not belong to them—else, the two systems must clash with each other—and discord, dissention, and we know not what direful consequences, may yet endanger one of the most beautiful and useful forms of government, that was ever devised by the wit of man.

From "the Globe," of Jan. 5, 1830.

The writ issued by the Chief Justice of the Supreme Court, summoning the State of Georgia before his tribunal, is one, we think, for which no precedent will be found in the form books. The Judge, however, has never failed to supply, from analogies all legal and constitutional, all formal and substantial requisites, to subject the *States to his control*. In the present instance, the State of Georgia seems to have been considered a petty corporation, and is summoned by its presiding officer to appear in Court. Georgia, upon her part, *exhibits*, through her Legislature, the character of an Independent and Sovereign State, asserts her right to punish crimes committed within the jurisdiction of her State courts, *directs* her Governor to disregard the mandate of Judge Marshall, and requires her law against murder to be executed, and we presume it has been executed. This contempt of the assumed authority of the federal Judge to annul the criminal code of a State, presents the nullifying doctrine in a new shape.—The question will now be, has the Supreme Court a right to deprive the States of the power to punish murderers and felons for offences committed within their limits, whatever may be the complexion of the criminals. The power has been exercised by New York, Connecticut, and other New England States,

Indians have been punished capitally in various States for crimes committed on their own lands, within the limits of the States. Ohio, we are informed, has confined Indian offenders within the walls of her penitentiary; and although the Supreme Court did not hesitate to enter the Treasury of the State, by its officers, and take from it the tax levied on the capital of the Bank of the United States employed there, yet we have never heard that any Writ of Error was ever sued out to deliver the Indians from the penitentiary of Ohio But it seems now there is to be a crusade carried on against the South by the party of whom the Chief Justice has been always the uniform representative. He has achieved for them infinitely more in the Court than all the rest of the party have been enabled to effect elsewhere; but we think this ends his victories. He has had astonishing success hitherto, but how his ingenuity is to triumph in the present instance, it is difficult to conjecture. From the prompt and decisive course of the Georgia Legislature, there is no doubt but that the unhappy malefactor has paid the forfeit of his crimes. The Writ of Error cannot bring him to life, if the judgment of the State court should *be nullified*.—What then is to be done? Must the State of Georgia be punished for a contempt of Court in failing to obey the mandate! How is this to be done? We suppose an attachment must be sued out against the State of Georgia, and like the Writ of Error be served upon his Excellency the Governor; and as it is impossible to imprison the whole State—man, woman, and child—the Chief Magistrate must undergo the confinement, we imagine, and thus do penance for the people he represents, and their Legislature.—Would it not be well for Governor Gilmer to resign, and thus elude the danger that threatens him?

From the United States' Telegraph.

THE SUPREME COURT vs. GEORGIA AND STATE RIGHTS.

Our neighbors of the Intelligencer promised us further comments on the enormity of the proceedings in Georgia, upon the late citation of the Chief Justice, requiring that State to appear at the bar of the Supreme Court, at the suit of Tassells. A friend had promised to obtain for us a statement of the case, in which, we learn, the guilt of Tassells, as a murderer, is admitted—and the only plea was to the jurisdiction of the State Court. The plea is, that under the treaty, Tassells was a citizen of a *foreign State*, and that, therefore, he was not liable to be punished, *for the crime* of murder, by the courts of Georgia. And the Intelligencer, a paper, once the organ of Republican principles, responding to the opinion of Jefferson, Roane, and McKean, now calls upon the "*Constitutional*" Republicans to rally in aid of this plea, and threatens to fall into fainting fits at the bare idea that we should question its propriety, or the *right* of the Supreme Court to enforce it.

No one is more desirous than we are, to preserve for the Supreme Court that veneration and confidence upon which its usefulness, if not its existence depends; and for that purpose we would guard against all political collisions with public sentiment.—A difference of opinion, as to the extent of the powers vested in that court, has existed since its organization. The Intelligencer, in the days of its excellence, did not look to its constructions for the limit.—Tassells claimed, by virtue of an Indian treaty, to be a citizen of a foreign State, and that, therefore, he was not liable to be punished by the civil authority of Georgia, for *an acknowledged murder*. The 11th article of the amended Constitution reads as follows:

"The judicial power of the United States shall not be construed to extend to any suit in law or equity commenced or prosecuted against one of the United States, by citizens of another State, or by citizens or subjects of *any foreign State*."

If Tassels was a citizen of a *foreign State*, he was expressly excluded by the words of the Constitution, as here cited, from an appeal to the Supreme Court. If he was not a citizen of a foreign State, he had no *pretext* for his appeal.

We have before said, that the writ issued as a matter of course. It involved no opinion of the distinguished jurist whose name it bore, and the charge that the Supreme Court is endangered, or that any of its rights have been infringed, by the refusal of Georgia to submit her criminal jurisdiction to its examination, pre-supposes that Judge Marshall had made up an opinion in favor of the jurisdiction of the Supreme Court, on the case in question.

The Intelligencer denies the existence of a party in this country, claiming for the Supreme Court a control over the States. That distinguished individuals differ, and differ widely, as to the extent of the power and jurisdiction of the Supreme Court, (and we may add that with *some* it is an honest difference of opinion,) cannot be denied. That there are some who would identify themselves with the court, and claim for it extensive *construction* and *implied* powers, for political effect, is equally true.—All who desire to perpetuate our institutions, and look to our courts as the arbiters of justice, must regret the attempt to identify them with political aspirants.

It is clearly demonstrated, that there are limits beyond which the court cannot extend its powers, and the friends of the court, as well as of State rights, have cause to rejoice that there is little room for doubt upon the merits, or the law, of the case in question.

As to the Intelligencer, we have seen so many of its tricks, that we entertain no fear of serious consequences from its affected hysterics. A sugar plumb is a sovereign specific.

From the N. Y. Courier and Enquirer.

It will be seen that the agitators of the Missouri Question, the Essex Junta, and those who have heretofore laboured to divide the Union, making the Potomac the boundary, has succeeded in producing at least a *crisis* in the conflict between a Sovereign State and the Judiciary of the United States. These men, on whom the responsibility must rest—men who, under the cloak of humanity for the Indians, concealed the most depraved political objects, have persuaded the very aged Chief Justice to issue a writ of injunction against a Sovereign State, ordering that state to appear in the United States' Court, and to suspend the execution of an Indian convicted under the state laws and within its jurisdiction, of murder. The proceedings are extra judicial, erroneous and void, and must be resisted by Georgia, or the sovereignty of the states *ceases at once*.

Extract of a letter from the correspondent of the New York Courier and Enquirer, dated Washington, Jan. 4, 1831.

The noisy jackdaws of the "table orator," are striving to excite alarm & dismay, about the refusal of Georgia to obey the mandate of Judge Marshall. They talk in a strain of affected wonder—open their eyes wide—and put on faces a yard long. The misfortune is that men of sense turn from them with laughter and contempt. Who ever dreamt of dragging one of the old Thirteen States with a bit of parchment into a dark nook of the capitol, there to abide, at the risk of its sovereignty, the fiat of a few frail mortals? Why, Georgia was a free and independent state prior to the organization of the supreme court, and, in fact, one of the creators of that court. Shall the creature, then, presume to question the creator, touching the exercise of an inherent right?—Georgia knows what she is about, and the chattering of these daws will scarce attract her notice. 'Tis all of a piece with that wretched farce, called "The American System," and will, as usual, end in smoke.

From the New York Courier and Enquirer.

Georgia—Supreme Court, &c.—Every person in this country would smile at hearing Mr. Dwight, the Secretary of the Hartford Convention, define what Treason against the United States means, and how it is to be punished. Few would believe that treason was a subject which Mr. Dwight would be inclined to discuss, and yet he has done it in his paper of the 5th inst.; forgetful of the past and indifferent to the future, he has unblushingly broached what to him at least should be an interdicted subject. He declares in effect that Georgia and its Governor are committing treason against the United States in resisting the mandate of the highest Court in the United States; and independent of this consideration, if the Indian is executed, Mr. Dwight says it "will stamp the government of that state with perpetual disgrace for the inhumanity of the measure."

Why did not Mr. Dwight plead the cause of the two Knapps, recently executed for murder? He has great sympathies for a scoundrel of an Indian, whose tomahawking and scalping of women and children may be proverbial, or a runaway Negroe, who may have murdered a whole family; but a white man or two in New England, suffer without a consoling paragraph from his pen. The whole community are disgusted with this paltry affectation of humanity—this fictitious sympathy, covering the darkest political objects.

Mr. Dwight says, "it is not in the power of the Governor or Legislature of Georgia, to sit in judgment either as a court of errors or as a court of arms over the supreme court of the United States." We grant this, and add "it is not in the power of the supreme court of the United States to interfere with or suspend the operation of the criminal laws of a sovereign state," and whenever it is attempted, it will be resisted as it has been in Georgia.

If this citation or injunction had been issued by the Chief Justice against the State of Georgia, for the purpose of bringing before the court any question relative to the titles of lands of the Cherokees, or any legal point touching their right, it may have been

considered legal and regular, but the absurdity of demanding of a sovereign and independent state, to suspend the execution of its *criminal laws*, and the exercise of its legitimate authority by a special mandate of the supreme court, is too apparent and self evident to waste a word on the subject.

We admonish such persons as Mr. Dwight and Mr. Stone, and others of Old Hartford Convention notoriety, to leave the delicate subject of "Treason" to the discussion of persons who have an interest in its detection and punishment, and if they have grace enough to return thanks, let them do so, that they did not live under a despotic government at a time when a Provost Marshal would have had no compunction in deciding how far their conduct was legal and patriotic.

From the New York Standard.

That the doctrine held by the state of Georgia in reference to her right of Sovereignty over the Indians within her limits, is not without precedent, at least up to the moment of the sentencing of Tassels, will be apparent from the perusal of the following statute passed by the State of New York, on the 12th April, 1822, and recognised as being constitutional by Chancellor Kent, when sitting as a judge in the highest tribunal in this state.

[Here the law is published, which was passed April 12, 1822. The preamble declares, that the Indian tribes residing within this State, have assumed illegally the power of trying & punishing members of their tribe against the jurisdiction of the State, & that the sole and exclusive cognizance of all crimes and offences committed within the State, belongs of right to the courts of the State, &c.]

The case which came before the Court on the occasion alluded to in our introductory remarks, was one involving the question of descent under our statute, and the property in controversy necessarily brought up the right of sovereignty of New York over the Indians within her borders. The Chancellor on that occasion, in approbation of the act above cited, said that "their irregular and foul executions (of Indians by Indians among themselves,) were shocking to humanity, and were *not to be tolerated* in the neighborhood, and under the eye of a civilized and christian people. Under the circumstances in which we were placed in relation to those *Indians* as their guardians and protectors, we had a right to avail ourselves of the superiority of our character, and *put a stop* to such irregular and horrible punishments." It should be remembered that Chief Justice Marshall has not in the case of Georgia, expressed any opinion; and that the writ which issued from the Supreme Court of the United States, is a common writ of error, allowed of *course*, without reference to the merits of the case.