From the Cincinnati American, of Jan. 3.

GEORGIA AND THE SUPREME COURT.

We presume that our readers have not forgotten that, in the course of the last summer, Mr. Wirt, having been employed by the Nation of Cherokee Indians, to advocate their cause before the Supreme Court of the Union, addressed a letter to the Governor of Georgia, proposing that a case should be made out and submitted to the judment of that tribunal, involving the contested principle. Our readers also, no doubt, remember that to this letter, proposing a course so fair, so open, and, as one would think, so entirely free from objection, Governor Gilmer saw fit to reply in terms of the most indecent violence, throwing out sneers and insinuations as to the conduct of that distinguished jurist and lofty-minded man, and rejecting contemptuously the proposal he had made.

The Cherokees had now to choose between submission to the Legislature of Georgia and an appeal to the judgment of the Supreme Court, in the ordinary mode, by a writ of error. They preferred the latter alternative. A case soon occurred. A Cherokee was indicted under the law of Georgia, convicted and sentenced to death. We know nothing of the circumstance of the case. But God deliver us,—we speak solemnly, for we feel deeply,—God deliver us from a trial by the oppressors of our kindred, while none whose complexion resembles our own, are permitted to bear testimony in our behalf. It might be that, under such circumstances, exact and even justice would be rendered to the accused; but the probabilities are fearfully against it. It matters not in the present instance, however, what the process of trial may have been. It was the opinion of the Cherokees, that under the Constitution, and laws of the United States, the Courts of Georgia had no jurisdiction over the property or person of an Indian, and they took the proper measures to bring the matter before the Supreme Court. A citation was accordingly issued, signed as the law provides in such cases, by the Chief Justice of the United States, requiring the State of Georgia to be before that tribunal on the second Monday of the present month.—We give this citation as it was published in the Georgia Journal.

[Here follows the citation.]

This citation was received at Milledgeville on the day preceding the adjournment of the Legislature, and was immediately laid before that body by the Governor, accompanied by an inflammatory message, declaring it to be an attempt to control the State Court in the exercise of its ordinary jurisdiction, and announcing his determination to disregard it. It was referred to a select committee, who reported as follows:

[Here follows the Resolutions.]

We think we see in these resolutions, a determination on the part of Georgia to persist in her unrighteous dealings with the Indians. We have no more to say of this matter than this. If public crime—the offence of one nation against another—consist, as it unquestionably must consist, in the strong trampling on the weak, then by how much the weaker is the injured nation by so much the more enormous and obnoxious to the execration of mankind, is the injury. Let us not deceive ourselves in this matter. If we had no treaties with the Indians—if they were as strong as they are weak—if we occupied not the soil which was theirs, while they are forced into a scanty remnant of their once wide-spread possessions—and should suffer one of the States of the Confederacy to encroach upon their rights, we should deserve and receive the reprobation of the world—a reprobation mingled with bitter scorn and derision.—But as the case is, with the multiplied obligations upon us to act in good faith and friendship, towards these dependent tribes, if we yet through violated treaties, and broken laws, seek to deprive them of the little they can still call their own, how will our name become a by-word in the mouth of all people! Well may it be said of our land, as of another it has been already said.

"Thou standest a wonder, a marvel to men,
Such perfidy blackens thy brow."

But there is another aspect in which these resolutions seem to threaten, if possible, more direful evil. They set at naught the process of the Supreme Court. They practically nullify the laws of the Union. There is a clause in the Constitution, which gives to the Supreme Court, jurisdiction in the last resort, in all cases arising under the laws and Constitution of the United States, and treaties made under their authority. An act of Congress, defining this clause, provides that the final judgment or decree of a State Court, in a suit, where is drawn in question the validity of a statute of, or an authority exercised under, any State on the ground of its being repugnant to the Constitution, treaties or laws of the United States, and where the decision is in favour of its validity, may be re-examined and reversed or affirmed in the Supreme Court of the United States, upon a writ of error. There can be no doubt, that this law was intended to apply to all proceedings in a State Court, criminal as well as civil; and, this being admitted, there can be as little doubt that the case of the Indian, mentioned in the citation, was a case to which its provisions were applicable. He was indicted, under the laws of Georgia. He pleaded to the jurisdiction of the court on the ground that the exercise of such jurisdiction was repugnant to the treaties and laws of the United States. His plea was disallowed. The jurisdiction of the State Court was affirmed. He then filed a writ of error, with a view to have this question of jurisdiction decided by

the Supreme Court. It was a plain case for the interposition of that Court, and the Chief Justice issued his citation to the State, as the law, from which we have already quoted directs him to do in such cases. The Governor and Legislature have treated the summons with marked disrespect and contempt; thus practically declaring that the law of the United States which we have cited is of no force within the State of Georgia. We do not pretend to say whether the authority exercised by the Courts of Georgia would or would not be affirmed by the judgment of the Supreme Court. But Georgia absolutely refuses to submit the question to that tribunal in any shape, and claims to be herself the sole judge of the constitutionality of her own acts. Here is a plain transgression of a law of the United States. Here too is an arrogant assumption of a power vested by the Constitution exclusively in the Supreme Court. Let these resolutions pass into unquestioned precedents, and common sense will tell every man that the Union cannot be preserved. With twenty-four States competent to decide all constitutional questions, (and if one be competent, all are—and if competent to decide one such question, then competent to decide all such questions,) and without any common arbiter, it is nonsense to talk of preserving it.'

Yet we see that these doings of the Governor and Legislature of Georgia are narrated in the Jackson papers without a word of disapprobation. Nay, the leading Government paper seems to rejoice, that Georgia has resisted the authority of the Court. And its expressions of satisfaction are adopted and quoted by the Jackson Organ here. We cannot say that we are surprised at this demonstration of hostility to the Supreme Court. It harmonizes well with the rest of the policy of this administration. But let the People beware. The authority of the Supreme Court is our only security for the preservation of our liberties. Destroy that, and we drift rudderless, upon a stormy sea, momently exposed to instant and imminent destruction.

From the National Gazette.

THE GEORGIA CASE.

From the manner in which this case has been treated in some of the newspapers and, indeed, from some of the expressions used in the resolutions of the Legislature of Georgia, it is supposed there is some misapprehension in the public mind of its true nature, and of the position in which Georgia is placed by this proceeding. It seems to me that when the case is truly explained and understood, there need be no apprehension that serious consequences will grow out of it.

In the first place, it is altogether a mistake to believe that the Chief Justice of the United States has issued any "*mandate*" or injunction to the Governor of Georgia, forbidding him to execute the judgment of the Court of Georgia upon the person of the defendant, convicted of murder in the Court of Georgia, and sentenced to be hanged for that offence.—The Chief Justice has neither forbidden nor bidden the Governor of Georgia to do or not to do any thing. The defendant, in the prosecution alluded to, asked, as he had a right to do, for a writ of error from the Supreme Court of the United States, to examine and revise the judgment rendered against him in the Court of Georgia, shewing such ground as was necessary to entitle him to the writ. The Chief Justice "*allowed*" the writ, as he would have done in any other case. On the allowance and issuing of such a writ, a citation, or rather notice, is given to the adverse party, *admonishing* him to appear and shew cause, if any he has, why the *judgment in question should not be corrected, and justice be done between the parties.* This is the form and substance of every such citation; and, as in this case, the adverse party, or the party in whose favor the judgment was given, was the State of Georgia, the citation was served on the Governor, as the Executive representative of the State, but it was directed to the State of Georgia, who was the plaintiff in the cause in her own Court, and the defendant as it stood in the Supreme Court. Thus, then, is all that the Chief Justice has done.—He has not ordered the Governor of Georgia to stay the execution of the sentence, nor commanded him to appear at the bar of the Supreme Court under any penalty of contempt or otherwise. He has given him notice of the proceeding, that he may appear to show cause, or not, as he pleases. If he does not, the case will be examined, as any other case, on an exparte hearing, and "justice done between the parties."

Nor is the legal operation or effect of the writ of error to forbid or stay the execution of the sentence. It is well known to be no supersedeas in a criminal case; nor indeed, in a civil case, except under certain restrictions. Instances have frequently occurred here, and I presume in every other State, when, notwithstanding a writ of error, the party suing it out is undergoing the sentence of the Court, pending the writ. The judgment is not stayed or suspended by the writ of error; although on a final revisal he will be discharged. In a capital case, it is true, this cannot happen; but the principle of the law is the same. A proper respect for the Supreme Court—a proper regard for human life—a proper reluctance to shed human blood while the right was doubtful and *subjudice*, should, undoubtedly, induce a State to arrest the arm of the executioner until the right was examined and settled; but if Georgia choose to take upon herself the responsibility of destroying a human being under such circumstances, she has at least a legal right to do so; she violates no provision of the Constitution, no law of the United States; she does not thereby put herself in a state of hostility with the United States. It would be cruel for an individual to go and execute a civil judgment, to the ruin of the defendant, when the judgment might afterwards be found to be erroneous; but he has a right to do so except in the cases in which the writ of error is a supersedeas; and, as in criminal cases it is never so, the right to go on with the judgment always exists in such cases. Perhaps the case may suggest the propriety to Congress of making some provisions on this subject; it must be done, however, with great caution, as it would be highly inexpedient to stay the arm of criminal justice pending writs of error, without proper guards; which would always be taken out if such were their effect.

Nor do I perceive any danger to the peace of the Union from this occurrence. I presume the man has been hanged; the orders to that purpose seem to be peremptory. Does not this put an end to the whole proceeding? There is no longer any parties to the suit in the Supreme Court. The plaintiff is dead—who can appear for him? The defendant, the State of Georgia, will not appear. Must not the suit be dismissed for want of parties? So it appears to me.

I cannot conclude these hasty remarks without expressing a deep regret that this writ of error was asked for. Cui bono?—To what possible good purpose? Not to serve the unfortunate defendant; but rather to sacrifice him. If Georgia hesitated about executing him; if any disposition was felt to extend the pardoning power of mercy to him, this proceeding inevitably prevented it. On the other hand, it was calculated to excite the utmost irritation in Georgia, and to rekindle a fire which was subsiding there. It was an unadvised, rash and dangerous measure, without the possibility of good any where. It cannot ever be said it was a means to bring the Indian question before the Supreme Court; for, as it must have been foreseen that it would fix the fate of the defendant, it should also have been foreseen that his death would prevent the cause from coming before the Court; at least if I am right in that opinion.

I do not mean to say that Georgia has not acted in a most unbecoming manner in this business, in the violence of her resolutions, and her refusal to listen to and wait for the judgment of the great federal tribunal, before she proceeded to execute a sentence of death; but I do not see that her proceeding has put her in an attitude of hostility to the United States, because she has violated no law of the United States, nor any of her constitutional obligations; and therefore there is no cause for any alarm about the consequences of this unhappy affair. There was certainly no occasion for Georgia to make a display of her power and prowess, by authorizing and requiring her Governor, "with all the force and means placed at his command, by the constitution and laws of the State, to resist and repel any and every invasion from whatever quarter"—for I cannot imagine from what quarter any invasion can come to be resisted and repelled by this formidable force and means.

I beg to make one further explanation. I would not be understood to say that the principles asserted in the Georgia resolutions are not in hostility with the powers of the federal government and her constitutional duties. The Supreme Court has an unquestionable right to issue a writ of error to a State Court, in a criminal case; but if, notwithstanding such writ, the State goes on to execute her judgment, she does not thereby violate the Constitution or laws of the Union; nor does she so, by refusing or neglecting to appear on the citation. When, however, she disclaims the jurisdiction of the Supreme Court, over the judgments of her criminal courts, she asserts an exemption from the federal power, which does not belong to her. The doctrines she holds are unconstitutional, but in this case they cannot bring her into collision with the authority of the United States.

From the Frankfort Kentuckian.

HIGHLY IMPORTANT.

The following documents were received by the last Milledgeville Journal. And they show the

important fact, that an issue has at length been made between the Judiciary of the United States, and the State of Georgia! It must have a termination, and either the national authority, or state authority, involved in the premises, *must* succumb. The Chief Justice of the United States has called on the State of Georgia to show by what authority she has sentenced to death an individual not subject to her laws. This Georgia refuses to do, and declares that she will resist the mandate by all the means in her power. But we cannot make the case plainer than it already stands in the documents themselves. We deem its occurrence one of the most important events in the history of our country—the most important perhaps, since the adoption of the national constitution.

From the Ithaca (N. Y.) Journal.

GEORGIA AND THE UNITED STATES COURT.

We publish in another column the proceedings in the Legislature of Georgia, on the subject of a *citation* from the United States court, of the *state of Georgia*, to be and appear before said court to answer a writ of error filed in behalf of an Indian who was tried and convicted of murdering another Indian, under the criminal laws of the state. The murder was committed within that part of the Cherokee Territory comprised in the boundaries of Hall county, and the trial took place, finally, November 23d, before the Superior Court of that county. The question of jurisdiction was raised by the prisoner's counsel on the trial. Three several hearings, and decisions adverse to the defence were had; the last time, the judge submitted the question to all the judges in the state, who unanimously coincided with him in opinion; he also left the question, without charge, to the jury, as judges of the law and the fact; there was no doubt of the prisoner's guilt; he was pronounced guilty by the jury; and sentenced by the court to be hung on the 24th day of December.

The writ and citation were undoubtedly procured for mere political effect. No person, acquainted with the powers, jurisdiction, and course of proceedings of the United States Court, will pretend that it has power to interfere with the *criminal laws* and proceedings of a State, and its courts, at least in the mode attempted. The writ of error, and the citation, it is said, issued on application, as a matter of course; they involved not the merits of the question; nor, even had the U. States Court the *right* thus to summons a sovereign State, was the instrument of such a nature as to require the absolute compliance of the party. Hence, although the Governor and legislature of Georgia, jealous of its rights and prerogatives, may have been too sensitive on the subject, those mischievous politicians who *predict* and *hope* serious consequences from this apparent collision, will be much disappointed.

The execution of Tassels took place on the 24th ult. agreeably to his sentence. Among the large concourse of persons who assembled on the occasion, were eighteen or twenty Indians. No notice had been served either on the judge or sheriff of the county.

The *National Intelligencer*, one of the most decided and respectable opposition prints, speaking of the proceedings, and the final execution of the criminal, says,

"The case has, therefore, we suppose passed from the Supreme Court; no injunction or supersedeas having been issued from that court, disobedience to which would bring the case before it."

"It [the writ of error] 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."

"No legal obligation or injunction exists which has been violated by the sentence being carried into effect."

"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."

☞ The recent *case* between Chief Justice Marshall and the authorities of Georgia, reminds us of an excellent revolutionary anecdote which is told of Gen. Putnam—A person, who was a lieutenant in the new tory levies, was detected in the American camp at Peekskill. Governor Tryon, who commanded the new levies, reclaimed him as a British officer, and threatened vengeance in case he should be executed. To this threat Gen. Putnam wrote the following reply:

"SIR—

"Nathan Palmer, a lieutenant in your king's service, was taken in my camp as a *Spy*—he was tried as a *Spy*—he was condemned as a *Spy*—and you may rest assured, sir, he shall be hanged as a *Spy*.

"I have the honor to be, &c.

"ISRAEL PUTNAM.

"His Excellency Governor Tryon.

"P. S. Afternoon, He is hanged."

From the New York Advertiser.

Notice has been given to the authorities of the State of Georgia, that application will be made to the Supreme Court of the United States in March next, for an injunction in behalf of the Cherokee nation, against that State, for the purpose of staying all proceedings for executing and enforcing the laws of Georgia within the territory of the Cherokees, as designated by treaty between the U. States and that Nation. If this notice has been regularly given we do not see how the State of Georgia can avoid a discussion of the great constitutional question between themselves and the Cherokees. Georgia may indeed refuse to appear: but if legally summoned, her absence will not prevent a discussion of the question. Hanging an Indian will not answer in this case, as it did in the late attempt to obtain a writ of error in favor of Tassels. It now appears, by the article which we publish from the Georgia Journal, that the citation in the writ of error was served upon the Sheriff, as well as upon the Governor. We think the State will be convinced in the end, that there is but one way to get rid of the power of the Judiciary, and that is *by force of arms.*

[FROM OUR CORRESPONDENT.]

Extract of a Letter, dated

WASHINGTON, Jan. 11, 1821.

The Supreme Court of the United States commenced its annual session yesterday. All the Judges, with the exception of Judge Johnson, were present. The court has assembled under very peculiar and trying circumstances. Heretofore it has met with the certainty that its orders, judgments and decrees, would be carried into effect by the Executive branch of the government, however much they might conflict with the interests, prejudices, or prepossessions of the parties, or of the states. It has now met, with a full knowledge that the Executive will not enforce its decisions, if they are counter to his views of constitutional law. I speak within bounds, when I say there are two thousand lawyers in the United States, the opinion of any one of whom would be sooner consulted on a legal or constitutional question, than that of the President; and yet he will exercise his discretion in relation to the first judicial tribunal known to the constitution. Mr. Ingham is said to be the only member of the cabinet who does not believe in the supremacy of the President, and who would not advise him to set the law at defiance, if it stood in the way of accomplishing political views. The court has met with a knowledge that it will be violently assailed in the House of Representatives, and that an attempt will be made to deprive it of its constitutional right to decide on the constitutionality of state laws. The Speaker appointed, for the first time, this session, a majority on the Judiciary Committee, of *relief-men* and *nullifiers*. This may have happened from a misapprehension of the sentiments of the members of the committee; but it is a remarkable coincidence, that at this important crisis, he should have selected a majority of that committee known to be hostile to the exercise of the Supreme Court over state laws, and state pretensions. Mr. Davis, of South Carolina, introduced a resolution some days since, empowering the Committee on the Judiciary to enquire

into the expediency of repealing that section of the Judiciary Act, which provides for the removal of causes from the highest judicial State Courts, to the Supreme Court of the United States. A bill to that effect will be reported in a few days. If it shall become a law, the Government will be at an end. There is no law of the United States that may not be rendered wholly inoperative by any one of the states. The Supreme Court of the United States has been justly considered as the sheet-anchor of the constitution; and while every other department of the government has been contaminated within less than two years, our hopes have been placed on this anchor. How long they may be permitted to rest there, is only known to him who has thus far preserved us. The appointment of Judges McLean and Baldwin, by the present administration, was wholly fortuitous, and produced by a combination of political causes beyond the control of the President. If their seats were now vacant, there is no doubt they would be filled with thorough-going nullifiers.