

CHAPTER XIX

ARREST OF THE MISSIONARIES

WE now approach the most dramatic event in the lives of the missionaries of Brainerd who were working among the Cherokees in the State of Georgia.

The brutal treatment received by the missionaries at the hands of the state officials who pretended to be Christians is one of the blackest stains on the character of the white race in North America. The thread of the plot to drive the missionaries from the State of Georgia extended from the officials of that state into the office of the Chief Executive of the United States at Washington.

The missionaries were giving the Indians their greatest inspiration and encouragement in their upward climb toward civilization. On July 26, 1827, the Cherokees adopted a Constitution similar to that of our own government.

The final blow came to the Indians when the State of Georgia flung justice into the mire over which unprincipled white men trod with haughty and greedy spirits. It was little wonder that the leading chiefs of the Cherokee Nation in retrospect declared that had they known that Andrew Jackson would turn against them, they would have shot him at the battle of Horseshoe Bend when they saved him and his army from being completely routed by the Creeks.

The reader to-day, in common with the Cherokees of

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yesterday, marvels not over the puzzle that confronted the Indians, when, after learning the principles of the Christian religion, they wonder why it is that some of the whites are no better after having had it so long!

Some writers have expressed the belief that the quick action taken by the Georgia legislature on December 20, 1828, a month after the national election, in passing laws to gain possession of the Cherokee lands, was done at the suggestion of Andrew Jackson, the newly elected President.

The laws that were quickly enacted took over all the Cherokee land lying within the state by annexation, and gave the state jurisdiction over it all. Furthermore, it was declared that all the laws and customs of the Indians were null and void. Any person of Indian blood or descent living in the Cherokee country was prohibited from being a witness or a party to any lawsuit where the defendant was a white man. The law was to take effect on June 1, 1830.

Following the passage of these laws, the entire Cherokee country in the State of Georgia was laid off by state surveyors and mapped out into counties. These were in turn divided into land lots of a hundred and sixty acres and gold lots of forty acres each. When they were put up by the state and distributed by lottery among the whites, one ticket was available to each white citizen. Every Cherokee head of a family was allowed a reservation of a hundred and sixty acres without a deed, and his continuance depended entirely on the pleasure of the state legislature. These laws were followed by the passage of others that were favorable to the whites. Among them was one that invalidated a contract between a white man and an Indian unless it could be established by the testimony of two white witnesses. This was equivalent to canceling all

debts that the whites owed the Cherokees. The Indians were forbidden from holding council, or to hold meetings for any public purpose. Furthermore, they were not permitted to dig gold on their own land.

The State of Georgia was determined to get possession of the property of the Cherokees at all cost of integrity and honor, if necessary. To accomplish their designs, the officials reasoned that it would be easier for them to succeed by breaking up the missions within the state. To make a beginning in this direction, a law was enacted directed squarely at the missionaries. It declared that all white men who were found living on Cherokee property within the chartered limits of Georgia on or after the first day of March the next ensuing, without having taken an oath of allegiance to the state and obtained a license from the governor or his agent, should be imprisoned in the penitentiary at hard labor for a period of not less than four years. Copies of the new law were sent to the missionaries stationed at Carmel, Haweis, Hightower and New Echota.

As this unconstitutional law was aimed directly against the rights of the missionaries and the Cherokees, the missionaries resolved to disregard it and seek protection from the United States Supreme Court.

These newly passed laws were so offensive to the minds of honest people that they attracted the attention of the country's most able leaders. In the Senate of the United States on April 16, 1830, Senator Sprague of Maine directed national attention to the fact that the Georgia laws gave the Cherokees' property over to the cupidity of their white neighbors and left the Indians exposed to every outrage that lawless persons could inflict; that even robbery and murder might be committed with impunity at midday,

if not in the presence of whites who would testify against it. In an address on the subject on May 19, 1830, before the House of Representatives, Edward Everett said in part:

"They have but to cross the Cherokee lines; they have but to choose the time and the place where the eye of no white man can rest upon them, and they may burn their dwellings, waste the farm, plunder the property, assault the person, murder the children of the Cherokees of Georgia, and though hundreds of the tribe may be looking on, there is not one of them that can be permitted to bear witness against the spoiler."

The foregoing predictions were fulfilled to the letter. Unprincipled men bearing arms collected into bands, entered the Cherokee country, stole horses and cattle, took possession of the Indians' homes and other buildings, ejected the occupants and assaulted the Cherokees who tried to defend their rights. The following is presented as a fair example of many of the outrages that took place:

Near Dahlonega, Georgia, an educated Cherokee entertained two white men at supper. The hospitable Indian was almost of pure white blood. When the parents left their home for a very short while in the evening, the two white men set fire to the building, after forcing the children and their nurse into the yard. The house was burnt to the ground including its contents. The two men were captured, but when their case came up for trial, the judge dismissed the suit against them because no Indian could testify against a white man!

The Cherokees were prohibited from digging gold on their own property. For this offense they were fined and imprisoned, while at the same time, scores of white men who had sneaked into their country were permitted to mine on the same land without interference.

The first interference under the law that was passed to drive the missionaries out of Georgia came, about the twelfth to fourteenth of March, 1831, when Messrs. Isaac Proctor, Samuel A. Worcester and John Thompson were arrested and made prisoners by a Georgia colonel in command of twenty-five armed men known as the Georgia Guard, for living on Cherokee property without swearing allegiance to the State of Georgia and taking out a permit from the governor. On the fifteenth day of March, these three missionaries were taken by a writ of *habeas corpus* before the Superior Court of Gwinnett County where able counsel moved for their release on the ground that the law was unconstitutional and void. Judge Clayton, presiding over the court, overruled this motion, but he decided that inasmuch as Dr. Worcester was a postmaster at New Echota, Georgia, and all the missionaries had been employed in expending funds for civilizing the Cherokees, they were in some sense agents for the general government, and, therefore the law did not apply to them. The judge ordered the accused missionaries released, and they went back to their labors among the Indians.

To clear up some technical doubts in his own mind, Governor Gilmer of Georgia addressed a letter to the Secretary of War to ascertain if the Department considered the missionaries from Brainerd as its agents. The Secretary of War seems to have purposely evaded a direct answer, and merely stated the facts, from which he intimated that Governor Gilmer might infer a negative. Of course, the governor was quick to seize the opportunity to send a personal letter to Messrs. Butler, Proctor, Thompson, and Worcester informing them that he had sufficient evidence from the United States Government that the missionaries were not its agents. Furthermore, he informed Dr.

Worcester of his removal from the office of postmaster. The missionaries were ordered to leave the state under the threatened penalty of another arrest.

Drs. Butler and Worcester replied that they could not conscientiously obey a law that was enacted especially for their own expulsion.

In the early part of June, missionaries Butrick, Proctor, and Thompson removed their families out of the borders of the State of Georgia, but still within the Cherokee country. Rev. Proctor started a new mission at Amohee, near Candy's Creek, in Tennessee.

On June 22, a detachment of the Georgia Guard, under command of Colonel Nelson, appeared at the mission at Hightower and asked to see Mr. Thompson. They claimed the mission house, the lands and the growing crops as the property of the State of Georgia, and notified Miss Catherine Fuller, who was in charge of the mission, that the Guard would take possession and occupy the mission house the following evening. Miss Fuller immediately sent word to Rev. Thompson who dispatched a note to Colonel Nelson notifying him that he would not give his consent to the Guard occupying the house at Hightower.

The Guard became infuriated at the Thompson note and the missionary was arrested and taken through swamps and forests to Camp Gilmer fifty miles away. Although Rev. Thompson was ill and suffering severe pains at the time of his arrest, and although he owned a good horse, he was forced to walk. When he became thoroughly exhausted he was thrown rather rudely into a very uncomfortable wagon and bound in chains. After his arrival at Camp Gilmer, he was placed in prison for a very brief time. When he was removed and taken before Colonel Sanford, Commander of the Guard, Thompson was severely cen-

sured for his very great freedom of speech, and the colonel denounced the missionaries bitterly. Thompson was then released and informed that he might go where he pleased, although no means were provided for his return home.

On July 7, Dr. Samuel A. Worcester was rearrested, and his letter written while in jail, which is given below, gives a vivid word picture of the brutal treatment he received at the hands of the Georgia officers:

"Jail at Camp Gilmer, July 18, 1831.

"Early Friday morning, July 8, I with my guard, joined sergeant Brooks at the house of a neighbor, and rode thence ten miles to where Colonel Nelson was with a detachment, of which that under Mr. Brooks, by which I was arrested, was only a part. There I found the Reverend Mr. Trott, a Methodist missionary who has a Cherokee family, and a Cherokee by the name of Proctor. Proctor was chained to the wall of the house by the neck, and had another chain around his ankle. He had been arrested on Tuesday on the charge of digging for gold, chained the first night by the ankle only, the second and third by the neck to the wall and by the ankle to Mr. Trott. Mr. Trott was arrested on Wednesday and taken on horseback about ten miles to where Colonel Nelson was. He had been before arrested, and was under bonds to answer at court for the offense of residing in the nation without a license, and now was taken again, as having committed the second offense by returning to his family while the cause was pending. On Thursday he and Proctor were marched on foot twenty-two miles to the place where I found them, Proctor being chained by the neck to a wagon. This manner of treatment, I supposed, was occasioned by his having

offered resistance when arrested, and afterwards attempted to escape.

"When I was arrested, sergeant Brooks inquired the state of my family, and when told that Mrs. Worcester was still confined to her bed, remarked that he regretted that Colonel Nelson himself was not present, implying, I understood him, that if he were here, he probably would not arrest me under such circumstances. When we arrived where Colonel Nelson was, I requested Mr. Brooks to mention to him the state in which he found us, which he readily promised to do, but certainly had not fulfilled his promise when I heard him say that I was to go on to headquarters, *i.e. to this place*. Perceiving, therefore, that the state of my family was not to be regarded, I said no more.

"We were then marched on foot twenty-two miles to the same place from which Mr. Trott and Proctor were taken the day before, Proctor being again chained to the wagon. We had proceeded about three miles when we met Messrs. McLeod and Wells, two Methodist clergymen, not residing within the charter of Georgia. With leave of Colonel Nelson, they turned and rode some distance in our company. In conversation, Mr. McLeod asked Mr. Trott whether he had been chained the preceding night, and being answered in the affirmative, asked if it were according to law to chain a prisoner who manifested no disposition to escape. Mr. Trott said he thought not, but that we ought not to blame those under whose charge we were as they were obliged to act according to orders. Mr. McLeod remarked, 'It seems they proceed more by orders than by law.' This gave offense. A few words had passed between Mr. McLeod and some of the guard, when Colonel Nelson rode up, and being told

of the remark, asked Mr. McLeod where he resided. He replied, 'In Tennessee.' Colonel Nelson with a curse, ordered him to 'flank off.' Mr. McLeod, turning his horse, said, 'I will, sir, if it is your command,' but added, hastily, as he afterwards said, 'You will hear from me again.' He was then riding away, when the Colonel ordered him to halt, and then dismount and lead his horse along in the rear. He then inquired of Mr. Trott if this were 'one of the circuit riders.' Mr. Trott answered, 'Yes.' Mr. McLeod's horse was taken from him and delivered to Mr. Wells, and was declared a prisoner, and was ordered to walk with the rest. For a short distance Brooks compelled him to keep the center of the road, through mire and water, and threatening to thrust him through with the bayonet if he turned aside. In the meantime he was heaping upon all our heads loads of tremendous curses, and reviling missionaries and all ministers of the Gospel in language, which, for profaneness and obscenity, could not be exceeded. The words of our Savior he turned into ridicule, 'Fear not,' he said, tauntingly, 'Fear not, little flock, for it is your Father's good pleasure to give you the kingdom.' The manner in which these words were uttered did not prevent me, at least, from rejoicing in the consolation they afford. Brooks was the chief speaker, and exceeded all, though some others joined him in his revilings.

"Another circumstance afterwards occurred, which was related to me by Mr. Thompson, who was an eyewitness. Mr. Wells, after Mr. McLeod's arrest, pursued his journey in the opposite direction, till met by Mr. Thompson, riding in the same direction with the guard. He then turned and rode with Mr. Thompson intending to see what should become of Mr. McLeod, and to render him any assistance

in his power. After some time they came up with the guard. When Colonel Nelson saw Mr. Wells, he ordered him to ride out of his sight, either before or behind, threatening violence if he did not. Mr. Wells, without replying, fell back a little and followed on. Colonel Nelson cut a stick, and making up to Mr. Wells, gave him a severe blow on the head. Mr. Wells then said that he had a right to travel the public road, and should do so. He persevered accordingly, and rode on till he came to a house where Mr. McLeod had requested him to stop. I know not what offense Mr. Wells had given, unless that, in conversation with me, he had expressed strong disapprobation of the policy of the State of Georgia, and the course pursued by the Executive of the United States. Towards the end of our day's journey, Mr. McLeod was afflicted with a severe pain in the hips and knees, to which he had been subject, and requested the privilege of riding. Colonel Nelson sent him answer that Proctor at first thought he could not walk, but afterwards got along very well.

"At night the four prisoners were chained together by the ankle in pairs. Sometime after we lay down, a small detachment arrived with Dr. Elizur Butler. He had been arrested at Haweis on the preceding day. After crossing a river three or four miles from home, a chain was fastened by a padlock around his neck, and the other end to the neck of a horse, by the side of which he walked. Night soon came on. The horse was kept walking at a quick pace, and Doctor Butler unable to see any obstruction which a rough wilderness road might present, and liable at any moment to fall, and so to be dragged by the neck till the horse should stop. After walking some distance in the dark, on representing the danger of the situation,

he was taken up behind the saddle, his chain still being fastened to the horse's neck, and short enough to keep his neck close to the shoulder of the guard. In this situation, the horse fell. Both riders fell under him, and neither the horse nor either of the men could rise, till others could come, and, after ascertaining their situation by the sense of feeling, roll the horse over. Doctor Butler was considerably hurt, but the soldier the more, having two ribs broken. After this, till they came to their lodging, Doctor Butler was permitted to ride; while the soldier walked. In the meantime they lost their way in the woods. However, they found a pine knot of which they made a torch by striking fire, and by this means recovered their way. Their lodging place was only fourteen miles from Doctor Butler's, but it was midnight when they arrived, well drenched with rain. When they lay down, the prisoner was chained to his bedstead by an ankle, the officer, however, putting a handkerchief around under the chain. The next day they had thirty-five miles more to travel. Doctor Butler wore the chain on his neck, but no longer fastened to the horse. He was occasionally permitted to ride, one or another of the soldiers walking in his stead. At night he was chained to Mr. McLeod and me.

"On Friday morning we had to cross the Hightower River in a boat. As the prisoners, with a part of the guard were crossing, Mr. Thompson was observed on the opposite side waiting to speak to us. At the same time Colonel Nelson and sergeant Brooks were observed in conversation. Brooks then called to those who were with us, charging them that no person should be allowed to speak with a prisoner privately, and no letter to be delivered unexamined.

"Proctor was now mounted on his own horse (which had been taken as a prize when arrested) wearing a chain as Doctor Butler had worn the day before. He had a bag of clothes for a saddle, and a rope halter instead of a bridle. No other one was chained. When we had traveled a considerable distance, four of the soldiers were so kind as to walk four or five miles and allow the prisoners to ride, for which we were told they were afterwards abused by Brooks, who now had command of the detachment, Colonel Nelson having parted from them. Afterwards Mr. Trott, being likely to fall, was mounted on Proctor's horse in his stead. Still later Mr. McLeod, having become so lame that he could scarce walk, solicited the privilege of riding. Brooks, with much cursing, compelled him to walk. Afterwards, however, he ordered Reverend J. J. Trott to dismount, and placed Mr. McLeod in his stead. Our day's journey was thirty-five miles.

"At night only Proctor was chained, Brooks having retired without giving any orders on the subject, and the officer who had charge of us not being disposed to chain us.

"The Sabbath came, and we had twenty-two miles to travel. Remonstrance would only have irritated. We were under command of armed men and must travel on. Mr. McLeod being utterly unable to walk, was mounted on Proctor's horse. Mr. Trott was allowed to ride a part of the way in the wagon, and Dr. Butler and myself two or three miles on horseback.

"Arrived here, we were, as a matter of course, marched into camp under sound of fife and drum. We were then introduced to jail, Brooks saying as we entered, 'There is where all the enemies of Georgia have to land—there and

in hell!' Happily man has not the keys to the everlasting prison. At night a white man who has a Cherokee family was added to our number.

"Our prison, when we entered it, presented no very pleasant appearance. The floor was sufficiently dirty, and there was little air or light, and a very unpleasant smell. All these evils we have in a good measure remedied, so that our dwelling is comparatively comfortable. The want of air and light we have supplied in some degree by enlarging some holes already made through the daubing of the wall, and making others new, no man forbidding us. True the floor is rough, but we contrive to sleep on it soundly enough. We have no chairs, bench or table, but these are not indispensable. We have plenty of wholesome food and good water, and a sufficient supply of blankets for the night. We have no chains to wear. Proctor's was taken off on his being put into jail. Though not at liberty, we dwell in peace, and with peace of conscience we are contented.

"On Monday Mr. Thompson and Mr. Wells came and requested an interview with us. Thompson was admitted under the restriction that no one should have any private conversation with us, or receive any papers from us without their being inspected by Colonel Nelson who was the present command, Colonel Sanford being absent. Mr. Wells was refused admittance.

"Mr. McLeod sent a note to Colonel Nelson on Monday requesting a personal interview. On Tuesday morning, Colonel Nelson sent for him and dismissed him. He was not permitted to return and bid us farewell.

"On Saturday evening, July 16, perceiving that we should probably spend the Sabbath here, we sent to Colonel Nelson the following request:

" 'COL. C. H. NELSON:

" 'Sir: If it be consistent with necessary regulations, it would be a high gratification to some of your prisoners, if Mr. Trott and Mr. Worcester might be permitted to hold a meeting to-morrow evening, at some place where such of the guard and of the neighbors as are disposed might attend. If the favor can be granted, be so kind as to give us an answer as soon as convenient. We wish to be understood that we should all greatly desire the privilege of attending.

" 'S. A. WORCESTER,

" 'ELIZUR BUTLER,

" 'J. J. TROTT,

" 'SAMUEL MAYES.'

"The above note was returned with the following written on the outside: 'We view the within request as an impertinent one. If your conduct be evidence of your character and the doctrines you wish to promulgate, we are sufficiently enlightened as to both. Our object is to restrain, not to facilitate their promulgation. If your object be true piety, you can enjoy it where you are. Were we hearers, we would not be benefited, devoid as we are of confidence in your honesty.

" 'C. H. NELSON.'

"After dark we were at supper. The door of the prison was thrown open to give us light. Several of the guard came and stood by the door, and one of them commenced insulting us, and me in particular, with such language as made it appear that even sergeant Brooks could be equalled in filthiness of conversation. One or two others joined him. Such men do not consider that they are paying us a compliment by taking it for granted that profaneness and

obscenity are torture to our ears. Afterwards some of them came and lay down by our door for the apparent purpose of disturbing our rest by their talk. One re-echoed several times from the mouth of Brooks, 'Fear not, little flock.'

"From most of the individuals of the guard we have received no ill treatment; from some of them, kindness. As was, however, perhaps to be expected in our circumstances, we have received some insults, which it is trying for the spirit to bear. But we regard it as a testimony in our favor, that when the desire is to torture us, it is taken for granted that this can be best effected by uttering profane and obscene expressions in our ears.

"July 19. Yesterday Mr. Thompson and Mr. William Rogers, a Cherokee who acts as agent for the nation, arrived and presented Colonel Nelson a writ of *habeas corpus* which they had procured to remove us from this place. This would have been sooner done, but Doctor Butler and I thought best for Mr. Thompson first to consult Mr. Underwood, our counsel, who lives at considerable distance, whether that was the best course to pursue to the final result. When the writ arrived, we supposed we should be immediately taken before a court, but we still remain here.

"New Echota, July 28. After I had written the above, we still remained in jail till Thursday morning, July 21. The reason afterwards assigned by Colonel Nelson in court for our detention was, that Colonel Sanford, who returned Wednesday evening from a journey to Milledgeville, had important testimony in his possession. On Thursday morning, we were furnished with horses and set out for Lawrenceville. On the way we were taken before a justice of the peace and committed to jail, al-

though the writ of *habeas corpus* required Colonel Nelson to present us before the county court at Lawrenceville. It was understood that the constable into whose hands we were committed would wait upon the Colonel till he could attend the court. We arrived at Lawrenceville late at night. Friday was spent in a vain attempt to convene the court. On Saturday morning, Dr. Butler had a very violent and dangerous attack of bilious colic, and although by prompt and vigorous medical assistance he was relieved in a few hours, he was by no means able to attend court. The Cherokee was also unable to attend.

"The court convened, and we were presented before them, I think, at about eleven o'clock in the morning. I will not attempt to describe the proceedings. They appeared to me as singular as the attitudes in which we were presented—in the hands of a constable, already committed to jail, and at the same time in the hands of Colonel Nelson to be presented before the court to which he was required to render the reasons of our capture and detention. In the result, we were ordered to give security for our appearance at the next term of the Superior Court, or be anew committed to jail. We gave bail for our appearance, except the Cherokee, who could not at the time find any one to be his surety.

"In the course of the trial, Colonel Nelson's counsel produced as evidence in the case of Doctor Butler and myself a letter from the postmaster general to the governor, informing him of my removal from office; a letter from the Secretary of War disavowing missionaries as agents of the general government; Dr. Butler's answer and mine to the governor's letters to us, and a letter from the governor to Colonel Sanford directing him to have us arrested forthwith, and if we should be released by the

court, or give bail and return home, to have us arrested again. These letters, I suppose, were the important testimony referred to by Colonel Nelson as having been in the hands of Colonel Sanford.

"Dr. Butler and myself left Lawrenceville on Monday morning after experiencing several acts of distinguished kindness from some of the most respectable citizens which we shall gratefully remember."

CHAPTER XX

IMPRISONMENT IN THE PENITENTIARY

EVEN though Dr. Worcester was released from prison, he was aware of the danger of being repeatedly arrested, which would make his residence at New Echota impossible. To avoid this great annoyance, he chose to return to Brainerd to get from under the jurisdiction of the State of Georgia. While he was at Brainerd, his infant daughter died on Sunday, August 14, at New Echota, and on Tuesday he hastened there to comfort Mrs. Worcester in her deep grief and during her severe illness. His family visit, however, was cut short when on Wednesday evening he was decoyed to his door by a member of the Georgia Guard in disguise, and arrested. When Colonel Nelson was informed of the circumstances, Dr. Worcester was released from prison and he returned to Brainerd.

There were a number of prisoners to be tried at Lawrenceville, Georgia, September 15, 1831. Among them were Dr. Samuel A. Worcester, Dr. Elizur Butler, Rev. J. J. Trott, J. F. Wheeler, printer of the *Cherokee Phoenix*, and seven other white men who were not missionaries.

A great many Georgians disapproved the treatment that the missionaries were receiving at the hands of the state officials, but since they were powerless to act, their assistance could reach scarcely beyond an expression of sympathy. The legal firm of Chester, Harris and Underwood was engaged to defend the prisoners' cases. General Har-

den volunteered his services in their behalf, and was so deeply concerned over the unjust punishment that he declined to accept any compensation for his legal services. The crime with which all these prisoners was charged was that of living in the Cherokee country without taking the oath of allegiance to the state and obtaining a license from the governor.

The jury returned a verdict of guilty, and on the following day, Judge Clayton sentenced them to hard labor in the penitentiary for four years. He recommended executive clemency if they would agree to take the oath of allegiance, or to leave the Cherokee country.

The prisoners were now convicts. They had to be taken to the penitentiary at Milledgeville. When Saturday came, the sheriff's papers were not ready and at the request of the convicts, their departure for prison was postponed until after Sunday. On September 22, they arrived at the penitentiary. Governor George R. Gilmer had directed the prison inspectors to have a conversation with the convicts promptly on their arrival and learn if they would promise to leave the state provided he pardoned them. The inspectors carried out the governor's orders, and their report to him contained the conversation that had taken place with each convict. All of them agreed to the governor's terms except Drs. Samuel A. Worcester and Elizur Butler. To accept pardon would have been an acknowledgment of their approval of the unjust and unconstitutional law that sent them to prison, and the laws that robbed the Cherokees of their property and rights. The convicts who agreed were promptly released, but the prison officials became gravely concerned over the missionaries who declined to accept the governor's offer. All conceivable methods were employed to terrify them, when the officials found that

their ears were closed to persuasion. Drs. Worcester and Butler remained firm and unmoved. As a last resort, while the penitentiary officials urged the two men to accept the governor's terms, the heavy gate of the penitentiary was swung slowly to and fro, and forced to grate harshly on its old iron hinges in a last effort to terrify them with the fear of the hard life and the punishment that threatened all who entered in! But Messrs. Worcester and Butler had already made up their minds as to the course that they were going to pursue, and nothing the prison officials could do would frighten them. The missionaries knew if they accepted pardon that their act would be an acknowledgment of guilt, and they would lose the right to test the constitutionality of the offensive law that put them in prison unjustly. They also knew that the persuasion of the prison officials, which was employed to induce them to accept the governor's terms, was equal to a confession that the governor did not wish to have the validity of the law tested in the higher courts. When all hopes of their acceptance had been abandoned, the missionaries were dressed in the regular uniform of the penitentiary, thrown with the other criminals and put to hard labor. Dr. Worcester worked at the cabinetmaker's trade, and Dr. Butler was put to work at the shoemaker's bench. However, there was no prison garb or hard labor assigned to them that was successful in causing people to look on them as common criminals. The excitement in the State of Georgia was strongly in their favor. Even the keeper of the penitentiary, though obliged to enforce the rules, treated them with the utmost kindness and respect. The felons with whom the missionaries were thrown felt and acknowledged the difference between these two men and themselves who were really guilty of committing crimes.

They had not been living within the prison walls very long before they began their religious educational work among the convicts. Dr. Worcester's sermons on Sundays were well attended and deeply appreciated. At the request of the prisoners, Drs. Worcester and Butler were put in different parts of the prison to enable more of the inmates to have an opportunity to enjoy their hour of worship in the evenings. The result of this work within the prison walls was quite significant.

In the meanwhile, Mrs. Worcester and Mrs. Butler, accompanied by Rev. William Chamberlain of Brainerd, came to visit them. It was a strange experience for the two women who took books and blankets to comfort their husbands. The Cherokees were deeply grieved over the fate of the two missionaries who had worked so unselfishly and faithfully for their education and advancement. Some of the Indians sent them letters of confidence, and others sent them contributions of money.

Since the mission at Brainerd and the other stations had been established by the express sanction of the President of the United States, the Prudential Committee, on November 3, 1831, forwarded the following memorial to the President:

"To his Excellency Andrew Jackson, President of the United States. The Memorial of the American Board of Commissioners for Foreign Missions respectfully sheweth:

"That your memorialists, as a benevolent association, were authorized by a letter bearing date of May 14, 1816, from Hon. William H. Crawford, then Secretary of War, to the Reverend Cyrus Kingsbury, the agent of your memorialists, a copy of which is hereunto annexed, to send teachers and missionaries into the Cherokee Nation, agree-

ably to the stipulations made by the United States in treaties with the said Cherokees, to erect buildings, to establish schools, enclose lands, and make other improvements for their accommodation. Your memorialists have felt themselves further authorized and countenanced to proceed in their labors for the welfare of the Cherokees by the repeated interviews which their agents have been permitted to have with successive Presidents of the United States and the Secretaries of the War Department; also by annual reports of the several Secretaries of War, and the Messages of the Presidents made to Congress from year to year, in which the teachers and missionaries have uniformly been mentioned as entering and residing in the Indian country with the approbation of the Executive of the United States; as co-operating with the government and its agents in a benevolent and disinterested work, and as being under its patronage. Your memorialists have been further encouraged by the fact that portions of the fund appropriated by Congress for civilizing the Indians have been annually intrusted to them to expend, and that the annual reports, which the teachers have on this account been required to make to the War Department, have been uniformly approved; and also by the decided approbation which has been expressed by officers and agents of the government who have visited and inspected many of the stations. Your memorialists have been further assured of the countenance and approbation of the government by communications which they have received from the War Department, extracts from which are hereunto annexed.

"Sanctioned and patronized in this manner by the Executive of the United States, your memorialists have proceeded in their undertakings, and during the last fifteen years have erected buildings and made various other im-

provements at eight stations, at each of which, on the first of May last, there were schools with teachers and other laborers sent out by your memorialists; and at all but one of which, there were boarding schools and agricultural establishments of greater or less extent. At these schools more than four hundred Cherokee children and youth have been instructed for a longer or shorter period of time; three-quarters of whom have been boarded, and half of whom have received an English education adequate to the transactions of the common business. In sending forth and supporting teachers and other laborers, erecting buildings, making fields, providing agricultural implements and household furniture, in boarding and clothing the scholars, and in other ways for the accommodation of the schools and mission families, your memorialists have expended for the purpose of instructing and civilizing the Cherokees (in addition to above \$10,000 received from the government of the United States for the same purpose) more than \$110,000.

"The teachers and other missionary laborers continued to prosecute their work unmolested, until January last, when the missionaries at four stations under the patronage of your memorialists, received a communication containing a law, purporting to have been enacted at the last session of the legislature of the State of Georgia, of which the following is an extract:

" 'And be it further enacted by the authority aforesaid, that all white persons residing within the limits of the Cherokee nation on the first day of March next, or at any time thereafter, without license or permit from his excellency the governor, or from such agent as his excellency the governor shall authorize to grant such a permit or license, and who shall not have taken the oath herein after

required, shall be guilty of high misdemeanor, and upon conviction thereof, shall be punished by confinement in the penitentiary at hard labor for a term of not less than four years.'

"The teachers and missionaries believed this law to be an unwarranted extension of the jurisdiction of Georgia over the Cherokee country; to be contrary to the express provisions of the treaties entered into with the Cherokees, to the Intercourse Law of 1802, and to the Constitution of the Union; and that the enforcement of it would be a gross and oppressive violation of their rights as citizens of the United States; and knowing that they were demeaning themselves in a peaceably and orderly manner, they did not feel under obligation to obey this law; but decided to look to the Government of the United States for protection at the station which they occupied, and in the work which they had undertaken and were prosecuting under its sanction and patronage.

"In regard to the meaning of the treaties and laws and those clauses of the Constitution on which they relied, they were confident, and your memorialists are confident, that they could not be mistaken.

"In the treaty of Hopewell, November 28, 1785, particularly in article 9, it is expressly stipulated that Congress shall have the exclusive right to regulate trade and intercourse with the Indians. In the treaty of Holston, July 2, 1791, the same stipulations are renewed more in detail; especially in article 11 a marked distinction is made between being within the Cherokee lands and within the jurisdiction of any state. In both the treaties above named, provisions were made with special care for preventing white persons intruding on the Cherokee lands, and for punishing crimes and trespasses committed by citizens of

the United States on the Cherokees, or by the Cherokees on citizens of the United States, without the slightest allusion to the right of the authorities of any State to interfere in the case, and of course to the exclusion of all such rights.

"In the treaty of October 2, 1798, the former treaties 'are acknowledged to be in full and operative force, together with the construction and usage under their respective articles, and so to continue.' It is well known what the construction and usage had been and what it continued to be till within the last two years.

"At the close it is stipulated that this and former treaties shall be carried into effect on both sides with all good faith.

"In the treaty of October 25, 1805, the first article declares 'all former treaties which provide for the maintenance of peace and preventing crimes, are on this occasion recognized and continued in force,' and additional provisions are made in this treaty and in that of October 27 for the roads and for free passing of the United States mail, and of citizens. This right was purchased by the United States of the Cherokees, showing plainly how the two parties understood, and in practice construed the stipulations of former treaties respecting entering the country of the Cherokees, or having intercourse with them. State authority of jurisdiction is not named or alluded to.

"In the treaty of July 8, 1817, it is again stipulated that the former treaties between the Cherokees and the United States are to continue in full force; the United States to have the right of establishing factories, post roads, etc. No right of jurisdiction, or of making regulations respecting trade or intercourse, are named or recognized as belonging to the States. None of these stipulations have ever

been annulled of their force or impaired either by counter stipulations between the contradicting parties, or by construction or usage, or by the failure of the Indians to perform their part. On the contrary, the manner in which they have been construed for forty years, by all parties concerned, show what is their true meaning, and how the United States, the Cherokees and the State of Georgia, understood them.

"It was moreover expressly provided in the Indian Bill of May, 1830, that no part of that bill should be construed as to authorize measures in violation of any of the treaties existing between the United States and any of the Indian tribes.

"The intercourse law of 1802, especially sections 14, 15, 16 and 17, gives expressly the Courts of the United States the jurisdiction in respect to all cases arising out of the intercourse of citizens of the United States with the Indians within the Indian country, to the exclusion of the courts of any State.

"But even if the right of jurisdiction claimed by the State of Georgia should be admitted, the teachers and missionaries are confident, as are your memorialists, that they have a right, so far as the authority of any State is concerned, to a quiet residence and prosecution of any lawful employment in the Cherokee Nation, according to that clause of the Constitution of the United States which declares that 'the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.'

"With the stipulations and provisions of these treaties, and of the Intercourse Law of 1802 before them, with all the light that has been thrown on their meaning by a course of proceedings based upon them and continued

unvaried through more than forty years and under the direction of six different Presidents, the missionaries were confident, and your memorialists are confident, that they could not be mistaken in their conclusion, that the sole and exclusive jurisdiction over the Cherokee country is vested in the Cherokees; that while residing among said Cherokees they were amenable to no civil or military authority but that of the Cherokees, and that of the United States as specified in the treaties; and that all interference of the civil or military authorities of the State of Georgia, or of any other State would be a gross violation of their rights as citizens of the United States.

"But on the 12, 13, and 14 of March last, while relying on the protection vouchsafed to them by the Constitution of the United States, and by treaties, Mr. Isaac Proctor, Rev. Samuel A. Worcester, and Rev. John Thompson, teachers and missionaries at Carmel, New Echota and Hightower, were seized by a band of twenty-five armed men with no warrant of civil precept, separated from their families, and forcibly carried to a place called Camp Gilmer, the headquarters of what is called the Georgia Guard. After being detained at this place one day, two of them were taken before the Superior Court of the State of Georgia, then sitting in Gwinnett county, and there acquitted on the ground that the law of the State respecting white residents did not apply to those missionaries and teachers of the Board, who, having received patronage from the Government of the United States, were, in a sense, its agents. They were all set at liberty, and returned to the peaceful prosecution of their labors, after having been taken more than a hundred miles and kept a week absent from their families and under strict guard.

"On the 7 of May, Doctor Elizur Butler, superintendent of the school at Haweis was arrested and taken from his

house by a band of armed soldiers acting under the authority of the governor of Georgia, and after having been carried ten or twelve miles he was released.

"About the end of May, Messrs. Butrick, Proctor, Worcester, Butler and Thompson received letters from the governor of Georgia informing them that, if they did not remove within ten days they would again be arrested. A copy of the letter to Mr. Worcester is hereunto annexed; as also the replies of Mr. Worcester and Doctor Butler.

"On the 23 of June, Mr. Thompson was again arrested at Hightower; the circumstances of which are detailed in the letters of Miss Catherine Fuller, teacher at that station, and a letter of Mr. Thompson himself, which also accompany this. Your memorialists request your particular attention to the treatment which this female received from Colonel Nelson, the commander of the detachment who threatened the seizure of the mission house, and what was growing in the fields.

"On the 7 of July, Mr. Worcester and Doctor Butler were again arrested by armed soldiers acting under the orders of the governor of Georgia. The treatment which they received during the fifteen days that they were in the hands of the Georgia Guard, and the hardships and dangers to which they were exposed are detailed in a letter of Mr. Worcester which also accompanies this.

"All this the missionaries and teachers under the patronage of your memorialists have been made to suffer, while no crime was proved or charged upon them, than that of being where the government of the United States had authorized them to go, and of quietly prosecuting the work which they were in the same manner authorized to perform, and for which they have from year to year received the express approbation of the Executive of the United States. They have suffered this, also, your memorialists

would add, from a military force acting under the authority of the State of Georgia, in direct violation of that clause of the Constitution which forbids any State to keep troops in time of peace. By these troops their labors have been interrupted, their persons seized, insulted, chained, and abused, torn from their families in time of sickness, driven great distances on foot, their feelings outraged, their bodies incarcerated, held by military, the right of *habeas corpus* denied them, and they at length brought before the courts to which they were not amenable, and finally subjected to ignominious punishment in the penitentiary.

"Your memorialists would also further state, that the right of property has been invaded. Soldiers under the authority of the State of Georgia have forcibly ejected the occupants of the mission house at Hightower, erected and owned by your memorialists, and occupied it for quarters for themselves in direct violation of that clause of the Constitution which declares that 'no soldier shall, in time of peace, be quartered in any house without the consent of the owner.' They have appropriated to their own use or destroyed the household furniture and other property, and appropriated for food or forage the corn and other vegetables which they found in the fields. They have also asserted a claim to the buildings, improvements and other property belonging to your memorialists at other stations, and threatened to eject the mission families.

"Having thus presented the grievances which the teachers and missionaries under the patronage of the Board are enduring, and the dangers to which their persons are exposed, your memorialists pray that the arm of the Executive may be interposed for their protection and deliverance; that they may be secured in the peaceful prosecution of their labors for the instruction of the Cherokees; that, as citizens of the United States, they may not be liable to

arrest, separation from their families and imprisonment by armed soldiers; that if charges are alleged against them, they may be brought to trial before impartial tribunal, competent to the jurisdiction of the case.

"Your memorialists would further pray that the Attorney General may be directed to commence a suit in the Courts of the United States against the offending officers of the State of Georgia for the false imprisonment, and other injurious treatment of the teachers and missionaries in violations of the treaties and laws of the Union, and of the rights at citizens of the same.

"And your memorialists, as in duty bound, will ever pray.

"By order of the Board,

"WILLIAM REED,
"Chairman of the Prudential Com-
mittee of the American Board."

As a soldier, Andrew Jackson on the battlefield had the reputation of being a brave and fearless man. The American Board in the foregoing memorial brought clearly to his attention the violation of Indian treaties and of the Constitution of the United States.

The missionaries and the Cherokees did not find in President Jackson the fair-minded friend and supporter that they had found in his predecessors who had occupied the President's chair, as the following reply indicates:

"Department of War,
"November 14, 1831.

"SIR: I have received and submitted to the President the Memorial of the American Board of Commissioners for Foreign Missions, transmitted in your letter of the 3 instant, and I am instructed by him to inform you, that having on mature consideration satisfied himself that the

Legislature of the respective States have power to extend their laws over all persons living within their boundaries, and that, when thus extended, the various acts of Congress, providing a mode of proceeding in cases of Indian intercourse, inconsistent with these laws, become inoperative, he has no authority to interfere, under the circumstances stated in the Memorial.

"I have the honor to be, very respectfully,

"Your obedient servant,

"LEWIS CASS."

"William Reed, Esquire, Chairman of the Prudential Committee of the American Board of Commissioners for Foreign Missions, Boston, Massachusetts."

The prison life did not discourage Drs. Worcester and Butler and make them downhearted. The following letter, one of many written while in the state penitentiary to David Green of the American Board, illustrates their good disposition:

"Penitentiary, Milledgeville, January 9, 1832.

"VERY DEAR SIR:

"Yours of December 3 and 12 have been some time on hand. When I received the first, I waited for the second, which you promised, and since that was received, it has not been convenient to acknowledge it till now. There are so many letters which I wish to write, that you will excuse a very hasty answer.

"It is sufficient on the principal subject of the letters to say that the views of the Committee and your own thoughts which you express accord entirely with Doctor Butler's feelings and my own, and that the expression of them at the time they were received was very seasonable.

"Mr. Chester was here on the 19 ult., and proceeded to

Washington to attend to our case. It seemed necessary that someone should go, and very desirable on several accounts that he should be the man. I gave him a draft on Mr. Hill for \$300 to defray expenses. After he was gone, I feared that the draft was not worded with legal accuracy, but I trust if it is so it will not occasion any difficulty in regard to it.

"Be kind as to send us the *Missionary Herald*. Send immediately back numbers, including September. Direct to Charles G. Mills, Esquire, who is the principal keeper of the penitentiary. He will know for whom it is designed, and will not fail to hand it to us. You will be interested to know that he is a pious man, a member of the Presbyterian church, and disposed to show us all possible kindness.

"Yesterday morning—Sabbath—the prisoners all assembled together in one room that I might have opportunity to preach to them. This is to be the case every Sabbath. It is also the desire of Mr. Mills to have another service in the afternoon, whenever he can obtain some clergyman to come in and preach to us. He would have made the arrangement that I should preach twice each Sabbath, when there was no other preaching if I had desired, but I did not think it on the whole expedient to undertake more than one service.

"We still enjoy, as we trust, the presence of God, and are not cast down, but habitually cheerful. I would write more, but for the haste which I have already mentioned. Dr. Butler with me in very affectionate regards.

"I remain yours as ever,

"S. A. WORCESTER."

"Mr. David Green,
"Missionary Room,
"Boston."

On the twentieth, twenty-first and twenty-third of February, 1832, the cases of Dr. Samuel A. Worcester and Dr. Elizur Butler were brought by a writ of error before the Supreme Court of the United States, and were argued in their behalf by attorneys William Wirt and John Sargeant. No one appeared before the Court in behalf of the State of Georgia. On the third of March, Chief Justice John Marshall pronounced the decision of the Court in favor of the missionaries, declaring the laws of Georgia extending her jurisdiction over the Cherokee country to be repugnant to the Constitution, treaties and laws of the United States, and, therefore, null and void. The following mandate of the Court was immediately issued:

"Mandate of the Supreme Court of the United States. (L. S.) The President of the United States of America! To the honorable judge of the Superior Court for the County of Gwinnett in the State of Georgia.

"Greeting.

"Whereas lately in the Superior Court for the County of Gwinnett, in the State of Georgia, before you in a case between the State of Georgia, plaintiff, and Samuel A. Worcester, defendant on an indictment for residing in the Cherokee Nation, without license, the judgment of the said Superior Court was in the following words, viz: The defendant in this case shall be kept in close custody by the Sheriff of this County until he can be transported to the penitentiary of this State, and the keeper thereof is hereby directed to receive him in his custody and keep him at hard labor in said penitentiary for and during the term of four years, as by the inspection of the transcript of the record of the said Superior Court, which was brought into the Supreme Court of the United States by virtue of

a Writ of Error, agreeably to the act of Congress in such case made and provided, fully and at large appears. And, whereas, in the present term of January, in the year of our Lord one thousand eight hundred and thirty-two, the said cause came on to be heard before the said Supreme Court on the said transcript of the record and was argued by counsel, on consideration whereof, it is the opinion of this Court that the act of the legislature of the State of Georgia upon which the indictment in this case is founded, is contrary to the Constitution, treaties, and laws of the United States, and that the special plea in bar, pleaded by the said Samuel A. Worcester in the manner aforesaid, and relying upon the Constitution, treaties and laws of the United States aforesaid, is a good bar and defense to the said indictment by the said Samuel A. Worcester, and as such ought to have been allowed and admitted by the said Superior Court for the County of Gwinnett, in the State of Georgia, before which the said indictment was pending and tried, and that there was an error in the said Superior Court of the State of Georgia in overruling the plea so pleaded as aforesaid; It is therefore ordered and adjudged, that the judgment rendered in the premises by the said Superior Court of Georgia, upon the verdict upon the plea of not guilty afterwards pleaded by the said Samuel A. Worcester, whereby the said Samuel A. Worcester is sentenced to hard labor in the penitentiary of the State of Georgia, ought to be reversed and annulled, and this Court proceeding to render such judgment as the said Superior Court the State of Georgia should have rendered, it is further ordered and adjudged that the said judgment of the said Superior Court be, and the same is hereby reversed and annulled, and that the judgment be, and hereby is awarded that the special plea in bar so as aforesaid pleaded,

is a good and sufficient plea in bar in law to the indictment aforesaid, and that all proceedings on the said indictment do forever surcease, and that the said Samuel A. Worcester be, and hereby is, henceforth, dismissed therefrom, and that he go thereof, quit without day, and that a special mandate do go from this Court to the said Superior Court to carry this judgment into execution;

"You therefore are hereby commanded that such other proceedings be had in said cause in conformity with the judgment of said Supreme Court of the United States, as according to right and justice and the laws of the United States ought to be had, the said writ of error notwithstanding.

"Witness, the honorable John Marshall, Chief Justice of said Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and thirty-two.

"WILLIAM THOMAS CARROLL,
"Clerk of the Supreme Court
of the United States."

On March 7, attorney Chester, supported by attorneys Underwood and General Harden, moved in the Superior Court of Georgia that the above mandate be received and recorded, and the prisoners discharged. The Court refused to obey the mandate. The next step for the attorneys was to carry a record of this refusal to the Supreme Court of the United States, which should then proceed to enforce its own decision. To prevent this procedure, the Superior Court refused to permit its own decision, or any matters relating to it, to be recorded. To supply this deficiency, for which the statutes had made no provision, Chester made an affidavit of these facts, which Judge Clayton cer-

tified, was sworn before him. Chester then applied by letter to the governor to discharge the prisoners, but he refused to answer in writing, saying, "You got around Clayton, but you shall not get around me!"

In the meantime, the Georgians proceeded to take possession of the Cherokee country. According to the law passed by the Georgia legislature, the Cherokee government was forbidden to act or to exist. Armed forces were dispatched with authority to arrest any members of the Cherokee National Council, if they should attempt to hold a meeting. The Cherokee lands were laid out and distributed by lottery according to the laws which had already been passed. October 22, 1832, the drawing actually commenced. Crowds of whites swarmed into the Nation to take possession of the Indian lands, even before the lottery was begun. Some of the white men were appointed justices of the peace and they seemed to derive extreme enjoyment in making a great display of the Georgia code. With the white men, came whiskey without restraint. Many of the Cherokees with hopes now gone gave up to intemperance and its kindred vices. Some who became thoroughly discouraged and disgusted moved to the West. In the early part of November, the Georgia legislature met. The governor's message to that lawmaking body reported satisfactory progress had been made in taking possession of the lands of the Cherokees, and the law was soon repealed which put the missionaries into prison. Dr. Worcester notified the governor and the attorney general on the twenty-eighth of November of his intentions to move the Supreme Court for further proceedings in their case at its session on the second of February, 1833.

The missionaries continued their work among the Indians as best they could. Even in Georgia, several of the

mission schools were continued through women teachers. Some of the men from Brainerd even ventured into the state to preach to the Indians, and John Huss, one of the early converts of Brainerd, a native Cherokee preacher, was daring enough to venture into Georgia on missionary duties.

The exciting events that had taken place as a consequence of Georgia's unconstitutional law had drawn the attention of politicians as well as the churches throughout the country. They became deeply incensed over the retention of the missionaries in prison regardless of the decision of the United States Supreme Court. Their case attracted national notice. The theory that a state has a right to declare a law of the United States unconstitutional and to prevent its execution within her limits had already become predominant in South Carolina where a convention which was called by the legislature that published an ordinance nullifying the existing revenue laws of the United States. South Carolina forbade the courts of the United States, their officers, and all other persons from attempting to enforce the law within her limits. That state, also, declared that if the general Government should attempt to enforce it, South Carolina would withdraw from the Union. Indeed, that state had already drafted men and provided military stores to sustain its ordinance by force, if necessary.

Men with keen visions believed that if the missionaries should persevere in their suit, and the Supreme Court of the United States should attempt to enforce its decision in their favor, that Georgia would join the nullifiers and that Alabama and Mississippi where unconstitutional laws had been enacted, would follow the example; then there would be four contiguous states leagued together to resist the

general Government by force. If President Jackson should sustain the Court, the example would strengthen the cause of South Carolina. However, it was clear that Georgia wished to support the President against the nullifiers but dared not do so while it seemed so likely that she, too, would soon find it to her advantage to join them.

These peculiar embarrassments had been foreseen ever since it was learned that Drs. Worcester and Butler could not be terrified and would not accept a pardon on the governor's terms. The governor sent them word that he intended to release them at some future time without committing himself to any particular date. He saw that it was necessary to free himself immediately from the impending difficulties when in November the missionaries served the notice of their intention to move the Supreme Court for further process. There was only one way for the governor to escape. That course was to induce Drs. Worcester and Butler to withdraw their suit. The governor and his friends became quite active. Politicians of yesteryears were just as shrewd as the most expert ones are to-day. Many leading politicians were dispatched to the penitentiary to interview them on the subject. Drs. Worcester and Butler were assured that if the suit were withdrawn that they would be unconditionally discharged immediately after the Supreme Court had adjourned. The Hon. John Forsyth called on Mr. Wirt, their attorney, and endeavored to persuade him to advise the missionaries to accept the governor's proposition. Mr. Forsyth assured Mr. Wirt that the prompt release of the two missionaries would be made following their announcement of their notice to drop the matter. Despite the fact, that he had been authorized by the governor of Georgia to give this assurance, he was