

The Burlington Free Press.

NOT THE GLORY OF CESAR; BUT THE WELFARE OF ROME.

BY H. B. STACY.

FRIDAY, FEBRUARY 9, 1838.

VOL. XI--No. 555

EYES.

The vividness of an eye's expression is not dependent on its color. The eye is most expressive, whose owner has the most thought and feeling. The eye expresses the language of the mind and heart; and whether light or dark, wherever there is strong emotion, it manifests it. A man is a better reader of meaning in a woman's eye, than he is of one of his own gender; and a lady discovers more indications in the eyes of the opposite sex, than can the most scrutinizing man.

The eye is the most poetical of features; and ample testimony has been borne, in all time, to its superiority in this particular. There is much poetry in the smile of one we love; but there is more in the gleaming kindness of an eye from which the concentrated rays of feeling, thought and sentiment are looking forth. Did you ever look in the tranquil depths of an eye, and see the shadows of thought winging themselves onward? Did you never read whole chapters about the sympathy of souls in them? If not, your observation has not been acute, nor your love very devout.

The sublime science of astrology, which once commanded the faith of the learned has been laughed at by the wisdom of more modern times. The doctrines and the devotion of these old readers of the stars have been discarded; and to the human eye the only relief of astrology now on earth has been confined. Lovers are the sole inheritors of the romantic doctrines bequeathed by elder astrologers to posterity. They do not cast devout looks towards the bepregnled firmament, at night; but to them, the brow of a beloved being is a heaven, and the star that unfolds to them the shadows of their coming destinies. Their ancestors read the decrees of fate in the glittering watchers of the night season, and they foresee the mysteries of the future in the expressions which shift and play upon the eye. If the eye of his mistress sparkles at his approach, it is the precursor of after joy. If the murky shadow of a frown rests upon it, it is the foreboding of the woe to come.

To the lover the eye of his mistress is ever eloquent, of hope or fear, of triumph or defeat. It is the polar star of his hope, the cynosure of his faith; and in the complexion of the future changes as her eye wanes in the shadow, or waxes into the light of day.

LIPS.

A wholesome lip is a thing to be loved. People are too much in the habit of regarding lips as mere appendages to the human face divine—ornaments, like ear rings, to set off its beauty. This is to detract from their true use and excellence. They serve other purposes, and are indices of character.

A wholesome lip is of the complexion of a mureto cherry. It puts like a rose bud, and might lead a bee astray, as the grapes of Xenis did the birds. When kissing was in fashion, gallants of taste showed a preference for lips of this kind. There was a flavor about them—ambrosia, on which young Love fed and grew fat.

The disciple of Socrates was feminine in the matter of lips, for bees hovered over them; and the judgement of a bee in this particular is scarcely inferior to that of a bachelor under thirty.

In general, people are apt to think their noses of more importance than their lips, and many saucy noses seem to be of the same way of thinking; since we see them turning up with high disdain, as if the lips were so inferior as to merit scorn.

No 'gentle,' well behaved nose is guilty of such dastardly effrontery. Such an one, it is true, may at times flap its nostrils, and crow lustily over its neighbors, as if it were 'cock of the walk'; but there is a soft insinuation about an eloquent lip, that cuts the comb of the braggart, and invariably tames the monarch down to the mere republican.

Our maiden aunt Sally wore a lip, which, like her matrimonial chances, was rather shrivelled. It was a mere streak along the horizon; an indistinct margin along an ocean of mouth; a strip to tell you where her teeth were. My aunt died husbandless. If she had wedded, her bridal kiss would have been interesting.

She saluted my cheek once, when like Fanny, I was 'younger than I am now, and prettier—of course!' I thought the sensation like a gentle bite. Instead of soft, spongy flesh, her lips seemed like scraps of flesh, iron bound.

Sometimes she puckered them up, like the orifice of her reticule; and this was

an indelible precept of a coming storm. Xantippe had a thin, bluish, unwavering lip. Beware of such.

The lips of one's sweet-heart are a volume of poetry. Smiles fling a ray like the flush of morning upon them, and they are glorious in their brightness. They are an oracle, and from them comes the voice of destiny. They are a shrine, and around them the breath of inspiration ever lingers. It would be vain to talk of kissing any thing so sacred, when the mere thought overwhelms one in unexpressible bliss!

LAUGHTER.

*** Yet talking of laughing— as Mr. Aircastle would say, I own I like to laugh. It is worth a hundred groans in any state of market.

I never saw a Frenchman laugh. They smile, they grin, they shrug up their shoulders, they cry "Ha!" and "Ciel!" but they never give themselves up to boisterous unlimited laughter. They have always a rein upon their lungs, and their muscles are drilled to order. Their mirth does not savor of flesh and blood. I do not mean to contend for that pampered laugh which grows less and less, in proportion as it is high-fied, but for a good broad humorous English laugh, such as belongs to a farce or a fair. The Germans laugh sometimes, the Flemings often, the Irish always; the Spaniard's face is fused, and the Scotchman's thawed into a laugh; but a Frenchman never laughs. They smile indeed, but what then?—Their smile is like their soup—meagre, thin; their merriment squeezed and strained. There is in it something of the acid of their salads, something of the pungency of their sauces, but nothing substantial. It is neither solid ethereal,—but a thing between wind and water,—not of earth nor of heaven,—good nor bad; but villainously indifferent, and not to be admitted as mirth.—(Essays of Elia) by Charles Lamb.

Coleridge somewhere relates a story to this effect.—Alexander, during his march into Africa, came to a people dwelling in peaceful huts, who knew neither war nor conquest. Gold being offered to him, he refused saying that his sole object was to learn the manners and customs of the inhabitants. "Stay with us," says the chief "as long as it pleaseth thee." During this interview with the African chief, two of his subjects brought a case before him for judgment. The dispute was this:—The one had bought of the other a piece of ground, which, after the purchase, was found to contain a treasure, for which he felt himself bound to pay. The other refused any thing, stating that when he sold the ground, he sold it with all the advantages apparent and concealed, which it might be found to afford. Said the chief, looking at the one, "you have a son," and to the other, "you have a daughter; let them be married and the treasure be given as a dowry." Alexander was astonished. "And what," said the chief, "would have been the decision in your country?" "We should have dismissed the parties," said Alexander, "and seized the treasure for the king's use." "And does the sun shine on your country?" said the chief; "does the rain fall there? Are there any cattle there which feed upon herbs and green grass?" "Certainly," answered Alexander. "Ah," said the chief, "it is for the sake of those innocent cattle, that the Great Being permits the sun to shine, the rain to fall, and the grass to grow in your country."

DEFENCE OF GEN. JOHN E. WOOL.
Before the Court of Enquiry began and held at Knoxville (Tenn.) on the 4th September, 1837.

MR. PRESIDENT: It was very far from my expectation, when I took leave of my command on the 1st of July last, in obedience to instructions from the War Department, that I should so soon be compelled to revisit this country, particularly under the circumstances in which I now appear before you. I frankly confess that when I took my departure, I was flattered with the pleasing reflection that I carried with me the approbation and kind wishes of all the Tennesseans, the Georgians, the North Carolinians, and the Alabamians.—It appears, however, that I was mistaken, and the pleasing illusion which I had so fondly cherished was soon and rudely to be dispelled. For on my arrival at Washington, I learned from the Secretary of War that I had been charged by the Executive of Alabama with usurping the powers of the civil tribunals of the State, disturbing the peace of the community, and trampling upon the rights of its citizens; and that a Court had been instituted to inquire into the circumstances, and report the facts to the War Department.—My surprise was great, for all that could be alleged against me during the period I commanded in the Cherokee nation, the

charges preferred against me were the most foreign to my feelings and intentions, and which every measure adopted with reference to the Cherokees and the white inhabitants will clearly prove.—I did not go to that country, Mr. President, to tarnish what little reputation I may have previously acquired, by acts of oppression or cruelty, nor by violating the laws of my country. My object was a faithful execution of the treaty with the Cherokees, to protect all in their rights as guaranteed by it; the white men and the red, the weak as well as the strong.—These were the cardinal rules for my conduct, which I steadily kept in view, and which I never lost sight of for a single moment, from the time I entered the country until I left it.

But it is not my intention, Mr. President, to detain this Court, or weary its patience, by attestations of my innocence, or a labored defence of my conduct, whilst commanding in the Cherokee nation. The President of the United States having refused my request for a general inquiry into my conduct, and the present inquiry being limited to a single complaint, I will at once proceed, in as brief a manner as circumstances will permit, to present my views on the subject to the consideration of the Court. The facts by which this Court is to be guided in the formation of its opinion are now upon its records. I await the result of its deliberations, and the judgement of the American People, when your proceedings shall be made public, with undoubting confidence.

My instructions, Mr. President, of the 20th June, 1836, in which a copy of the late treaty with the Cherokees was enclosed, are before you, marked (1.) With what energy, zeal, and promptitude I discharged the important duties thus assigned me, the Court will be able to judge from the facts and the documents before it. A directed, I repaired to Athens, in Tennessee, with as much despatch as practicable, and after organizing a brigade of volunteers, arming and equipping such a force as I considered the nature of the service required, and establishing depots of provisions in suitable places for both the troops and the poorer classes of Cherokees, distributing the troops in such a position as would afford the greatest facilities for operating and controlling the Cherokees in case of hostilities, I established my head quarters on the 27th of July, a little more than a month after I left Washington, near the mouth of Valley river, N. C. in the midst of the most obstinate and warlike of the Cherokees, and most devotedly attached to their country. I was not slow in detecting that the command I had assumed was one of delicacy in its nature, and extremely troublesome in the execution. I found the Indians laboring under a state of excitement, produced by the means resorted to force upon them the late treaty, which they most explicitly disavowed, "dearing that they had made no such treaty with the United States, and that the paper which purported to be one was made by a few unauthorized individuals, without the sanction of the nation, assisted by corrupt agents of the Government." This state of feeling was heightened by the daily encroachments of the whites, who were flocking into the nation and driving them from their homes. This excitement was still greater in Georgia and Alabama, where the Indians were not only dispossessed of their houses and fields, but in consequence, also, of the conduct of the troops of these States, who, in pursuit of Creek Indians who had fled for refuge among the Cherokees from the war that was raging in their own country, not unfrequently captured the Cherokees, and conveyed them to the Creek emigrating camp for transportation to the West. By this means husbands were frequently separated from their wives, and children from their parents. Such was the perplexed and embarrassing state of things with which I had to struggle on my entrance into the Cherokee country.

To allay this excitement, to correct these abuses, and to induce the Cherokees to acquiesce and submit to the conditions imposed by the treaty, the best energies of which I was master were put in requisition. The testimony before the Court will show that I devoted myself unceasingly to accomplish the objects of my mission to the Cherokee country, to execute the treaty honorably to the Government and justly to the Indians. I have the satisfaction of believing that the measure adopted would have produced the desired effect. The Cherokees were beginning to relax in their opposition, and were making preparations for removal to the West.

I have thus endeavored, Mr. President, briefly to lay before you the state of the Cherokee nation in August and September, 1836. If, at that time, I had been sustained in my course by the Government of the United States, and the Commissioners had been present to enter upon the discharge of their duties at the same time, I have no doubt, and think I will be sustained in the declaration by the more intelligent part of the nation, that at least five thousand of the Cherokees would have removed to their new homes during the last fall and winter. This would have induced the removal of the residue of the nation without trouble or difficulty.

As an indication of the course pursued by me during my command in the Cherokee country, and as showing the means by which I acquired the confidence of the Indians, and the approbation of the white citizens of the nation and the neighboring country, I would call the attention of the Court to my communications to Brigadier General Dunlap, of the 4th and 12th of August, 1836. In that of the 4th of August, the following directions will be found:

"You will proceed, without delay, to New Echota, and such other parts of the

Cherokee nation, within the limits of Georgia, as may be necessary to give protection both to the Cherokees and the white inhabitants residing in that section of the country. You will allow no encroachment on either side. Both will be protected in their person and property.—You will prevent, as far as practicable, all collisions between your troops and the Indians. You will also prevent any interference on the part of the Georgia troops with the Cherokees.

At all events, you will prevent any improper exercise of military control over the Indians or the white inhabitants.—The whole subject is left to your sound discretion, taking care to do nothing that will bring you in conflict with the authorities of Georgia. The sovereignty of the State and its laws must be respected.—You will recollect, in your proceedings, that the State and the citizens are still laboring under a state of excitement, caused by the cruelties of a savage warfare.—Therefore great prudence and discretion should be exercised in all your intercourse with the nation, and particularly in all measures which might have a bearing upon the rights and interests of the State and People of Georgia."

Again, on the 12th of August, the Court will find I transmitted to Gen. Dunlap the following instructions: "Captain Vernon, stationed at New Echota, informs me that John Ridge has complained to him that some white man is about to take forcible possession of his ferry on Coosa river.—You will without delay, inquire into the case, and if you should find the complaint to be just, you will, until further orders, protect Ridge in his rights and property. This order will apply to all cases of a similar character in the Cherokee country."

In your proceedings you will be governed by your instructions of the 4th inst.—Ridge's ferry was in Alabama.

By examination of the testimony of Captain Morrow, Colonel Byrd, Captain Shaw, and Major Lyon, the Court will discover that I gave similar instructions to every officer ordered on command, and particularly to Captain Morrow, stationed near Gunter's Landing, Alabama, and yet I have been charged by his Excellency C. C. Clay, now Senator Clay, (in violation of the laws of Alabama,) of assuming the power of adjudicating and determining the right of possession or ownership of land and improvements thereon, and of dispossessing one claimant, and supplanting him with another by military force. Under one of these decisions, a conflict took place in the county of Marshall, as the Government states, "which resulted in the death of two individuals, certainly, besides the most serious injury to others, some of whom it is feared, may yet die of their wounds."

The letter of his excellency is so far correct in this, that I did, on the occasion alluded to, and at other times, dispossess white men of Indian improvements, which they had unjustly taken, and "supplanted them" not with another white man, as it might be inferred, but with an Indian claiming the benefits and protection of the late Cherokee treaty; and for this I believe that I was fully warranted by the letter and spirit of the treaty, and that justice demanded the exercise of such a power. On this point I shall have occasion to speak more fully hereafter.

The facts of this case are simply these: The heirs of John Gunter, sr., deceased, through their administrator of the estate, Mr. Riddle, applied to me to restore them to the possession of a certain improvement which they claimed, as Cherokees, under the treaty of 1835, then in the possession of Nathaniel Steele. Having satisfied myself by a thorough investigation that it was an Indian improvement, and that it rightfully belonged to the heirs of John Gunter, sr., deceased, and that Steele had no claim whatever to it, I considered it imperative duty, having the treaty before me, which I could view in no other light than part of my instructions, to transmit the instructions before the Court of the 3d of June, marked G, to Captain Morrow. You have it in testimony before the Court that these instructions were obeyed, and the administrator put in possession. I would, however, call the attention of the Court to the concluding paragraph of these instructions as clearly indicating my desire in no wise to interfere with that which properly belonged to the civil tribunals of the country.

It will be remembered by the Court that Mr. Riddle was an officer acting under the laws which I am charged with having outraged and trampled upon. That he states in his testimony, most explicitly, that he applied to me for relief, because he believed he had no adequate remedy under the laws of Alabama. I also refer to the very clear testimony of Captain Morrow on this point. I wish it also to be understood that the Government of the United States was distinctly informed, and approved of the course, for which I have received the denunciations of the Governor of Alabama. For this purpose I would refer the Court to my letter of the 13th August, 1836, to the honorable Lewis Cass, marked 5, enclosing instructions to General Dunlap, of the 4th and 12th of August, and the answer to that letter dated the 1st of September, marked 6; also, to my letter of the 27th of August, marked 7; and the answer of the acting Secretary of War, of the 13th of September, marked 8; to the letter of the President of the United States, of the 7th of September, marked 10, the following extract of which is very explicit: "Should you find any evil disposed white man in the nation, exciting the Indians not to comply with the treaty, you will forthwith order him or them out of the nation; and if they refuse to go, the facts being thoroughly established, you will take the steps necessary to put them out. Such characters must be considered in the light of intruders, prohib-

ted by the treaty from living within the limits of the nation." Again, in my instructions of the 12th of October, marked 13, it will be perceived I was authorized not only to have dispossessed Steele, but to have turned him out of the country. For it is there laid down "that if any of our citizens enter the Indian country, and incite opposition to the execution of the treaty, you will ascertain whether there is any law of the State which can be brought to bear upon them, and under which they can be removed. If they cannot be reached in this way, it is the opinion of the President that they may be removed under the 6th article of the treaty, in which the United States guaranty that the Cherokees shall be protected against interruption and intrusion from citizens of the United States, who may attempt to settle in the country without their consent."

Thus it will be seen, Mr. President, that my course was not only approved when I informed the War Department of my intention to protect the Cherokees in their property from the lawlessness of intruders; but the President of the United States, who is my superior officer, and whom I am bound to obey, directs me in the most positive manner to turn any white man out of the nation who should incite opposition to the treaty. And the important principle is there recognized that the United States, having guaranteed that the Cherokees shall be protected from all interruption and intrusion of the white men, has the authority to turn them out of the nation as intruders. I had also that less obvious but more useful power to dispossess them of an Indian house where they had violently and unjustly intruded themselves.

Mr. President, before I close this brief defence, upon an intimation to that effect from one for whose opinion I have the greatest respect, I will, as concisely as I can, bring to view the reflections which brought to my mind the conviction that the laws of Alabama, extending her jurisdiction over the Indians and their country, are contrary to treaties and the statutes of the Union, and therefore void. I approach the discussion of such a question as this with much embarrassment. It is properly and purely a judicial question, and I make no pretensions to legal attainments. Besides, I am well aware of the angry discussions which it has elicited, and of the jealous sensitiveness of the State upon this point which at one time, threatened to overthrow the Union. Neither can I suppose for a moment that I shall be able to convince the Court upon a question which has divided the most eminent statesmen of the day, and has undergone the rigid scrutiny of such minds as Marshall and Story, and Wirt, and Sergeant, and many others who have adorned the bench, the bar, and the Senate of our country, and whose names give lustre to the age. My object shall be to present to the Court my own reflections, with a reference to such decisions, treaties, and statutes, as the Court may conveniently consult, should it be inclined to pursue the investigation.

I shall pass by the discussion of the rights which discovery or conquest conferred upon the nations of Europe over the aborigines of this continent, barely remarking that all the powers of the British Crown over the savage tribes inhabiting this country passed, by the Revolution, to the United States of America, and not to the individual States. All subsequent rights have been acquired by treaty stipulations, or conferred by the Constitution upon Congress.

The Constitution of the United States declares that laws made in pursuance of it, and treaties made or to be made, are the supreme laws of the land, any thing in any State Constitution or law to the contrary notwithstanding.

The Indian tribes inhabiting this continent have been always recognized as independent communities, capable of making treaties, and of sustaining the relations of peace and war. "The United States," says Chancellor Kent, "have never dealt with these people within our national limits as extinguished sovereignties. They have constantly treated them as independent nations, governed by their own usages, and possessing governments competent to make and maintain treaties. They have considered them as public enemies in war, and allied friends in peace." (Godell vs. Jackson, 20 vol. Rep. 714.) The Supreme Court of the United States declared (6 Peters' Reports, 554) that, "by the sixth article of the treaty of Hopewell, a surrender of self-government was never intended by the Cherokees, and so to hold would be a perversion of the necessary meaning of the Indians." In the same case, the Court used the following language: "Is it credible that they should have considered themselves as surrendering to the United States the right to dictate their future cessations, and the terms on which they should be made, or to compel their submission to the violence of licentious and disorderly intruders?"

All the treaties with the Cherokees, from 1785 up to this time, recognized them as a nation capable of living under their own laws. The principal provisions in those treaties have been thus summed up: "Perpetual peace, grant of land by the nation, express designation of boundaries, to give up offenders taking refuge among them. That retaliation shall cease, the exclusion of the whites from the lands retained by the Indians. Acknowledgment of the protection of the United States, and of no other sovereign whatever. That Congress shall have the sole and exclusive right of regulating trade with them, and managing all their affairs, as that body shall think proper. (Treaty of 1785.) A solemn guaranty to the Cherokees of all their land not ceded. That it shall be against the law for white men to settle on such land

and such intruders to be punished as the Indians think proper."—Judge Peck's opinion, 3 vol. Rep. "In the treaty of Hopewell, the Cherokees are treated as a nation, and throughout that whole instrument their distinctive character as a separate political community is kept up and clearly acknowledged. The treaty of Holsten, 1791, recognises them as a nation, and guaranties the Cherokees all their lands not thereby ceded. All subsequent treaties recognise and acknowledge the operative force of these treaties."—Judge Green's Opinion, 3 vol. Rep. 344.

Is it necessary for language to be stronger? Where can you find rights more clearly defined or more solemnly guaranteed? Lands are ceded, boundaries are expressly delineated, a guaranty for those retained, and an assurance of protection from the intrusions of the whites. Are then these treaties, and have they the operative force of such an instrument, as known to the Constitution? It has never been doubted. They have been approved by the President, ratified by the Senate, published to the world as such, and recognised in the highest judicial tribunals as the supreme law of the land.

Was the United States competent to enter into stipulations of this kind, and is it able to perform them? Or did this magnanimous Government designedly bind itself to terms which it could not enforce, with a handful of rude, unlettered savages, while it compelled performance on their part; and, when they demanded a fulfillment of the conditions, coldly to inform them we cannot comply, you must rely upon the justice of the States and the tender mercies of the bordering white men?

Was it ever contemplated by the Indians, when they received the solemn assurance of the United States of protection from all intrusion of the whites, that they were to become subject to a body of laws imposed on them by the State of the States, the language of which they did not even understand, and so entirely dissimilar to all their habits and customs? In the language of the Supreme Court of the United States, "it is incredible." It would be a perversion of language to suppose so, and a fraud upon the Indians to give it that operation. Or, did this Government, in the formation of these treaties, condescend to "patron in a double sense, to keep the word of promise to the ear, and break it to the hope?" I trust that such Punic faith will never stain our national character.

In Worcester vs. the State of Georgia, 6 Peter's Reports 561, the Supreme Court of the United States held that "the Cherokees are a distinct community, occupying its own territory, with boundaries accurately described, in which the laws of North Carolina could have no force, and which the citizens of North Carolina had no right to enter, but with the assent of the Cherokees themselves." This, perhaps, is the last case, involving this question, which has been before the Supreme Court of the United States, the only tribunal recognised in the Constitution for the decision of such questions. The opinion was pronounced by that pure-hearted man and eminent jurist, Chief Justice Marshall whose expositions of the Constitution will be revered while that instrument itself endures. The time and circumstances give to this decision unusual solemnity and importance. The Court will remember that the Union was agitated from one extreme to the other, and threatened no less than an overthrow of the Constitution. At such a time, how calm would have been the deliberations of Marshall! how earnest his convictions!

The Constitution of the United States also prescribes that Congress shall have the power of regulating commerce with foreign nations, among the several States, and with the Indian tribes.

It has been decided that personal intercourse was commerce in the sense of the Constitution. The laws of Alabama are, therefore, void, as being repugnant to the provisions of the Act of Congress of March 30, 1832, commonly called the Intercourse Act. And it would seem that the Congress of the United States was of the opinion that the Act of 1802 was still in force as late as the year 1834, at which time an act was passed regulating trade and intercourse with the Indian tribes west of the Mississippi, and in which the Act of 1802 was declared not repealed, as to the tribes east. (See the Act of 1834, Act of 1802.)

Upon what argument, then, rest the rights of the States to extend their laws over these people? We are told that the Indian tribes are within the chartered limits of the States, and that the States are sovereign within those limits, and cannot be restrained. But are they not parties to the formation of these treaties? Where were the Senators of these States at the time of their ratification? Does their solemn protest stand upon the records of the Senate against this usurpation of the Gen. Government? They were present, and themselves parties to the act.

But the State of Alabama became a member of the Union with this tribe of Indians then in her borders, with most of these treaties existing in full force, pledging the protection of the United States, guarantying to them the undisturbed possession of their country, and the enjoyment of their usages and customs; prohibiting the intrusions of the whites upon their soil, and laws enacted to carry out the provisions, and penalties prescribed for their infraction. By accepting membership with these conditions before her, she became a party to the acts, and cannot disavow them.

Under the repeated and solemn guaranties of the United States to the Cherokees, for the occupation of their lands not ceded, would the Government at any time permit the State of Alabama to force white men upon the