

## EXECUTIVE versus THE JUDICIARY.

case of Canatoo, an Indian, committed to the  
summit county for digging gold on the Che-  
rokees. Judge Clayton discharged the prisoner on  
the ground that the Cherokees had, have, and will  
have a right to dig gold, until their possessory title  
has been extinguished by force or purchase.—  
The decision, believing it to be contrary to  
the opinion of the Legislature, and tending to in-  
crease the reluctance to emigrate manifested by the  
Cherokees—but we cannot suspect the purity of  
Judge Clayton's motive in this decision, and cannot  
repeal his authority until it shall have been rever-  
sive legislative action; for it is a principle, para-  
mount to all constitutional governments, that to the  
Executive belongs the interpretation of the law. But  
the result of the case will be seen by the subjoined

letter) is determined to let no constitutional barriers deter him from playing the dictator and altering our form of government. By this step, he has put the Judiciary under the feet of the Executive, and transformed into absolute mockery the arm of the government created expressly to repel usurpation and guard personal security and personal freedom. Whether the people of Georgia are prepared to acquiesce in a stretch of authority so unwarranted, flagrant and dangerous, will be determined by the ballot-box on the first Monday in October. Here is the letter:

*Executive Department, Milledgeville,  
20th September, 1831.*

"Sir—I have just learned that the Judge of the Western Circuit has decided that the law for the protection of the mines in the Territory occupied by the Cherokees is void, and has discharged an Indian from confinement who had been arrested by the Guard for its violation. As the effect of this decision will be to create the opinion among the Indians, that they are now licensed to plunder the State of this valuable property, I have thought it proper to give you fresh instructions to defend it, that you may be justified in pursuing that course.

I have no doubt but that the Legislature has the authority to take possession of the mines, and the constitutional right to pass laws to protect them from trespass. By the law which has been passed, the Governor is directed to take possession of the mines and to cause all persons to be arrested who may attempt to violate that possession. The special object of your appointment and the organization of the Guard under your command, was to enable the Governor to obey these requirements; you are not an officer connected with the Judiciary Department, but the agent whom the Legislature has authorized the Executive to employ to perform a public service, which was imposed by law upon that Department. You will therefore arrest every person who may be found attempting to take away any gold from the mines. You will give general information in the Cherokee country of the determination of the Executive Department to enforce the laws, so as to prevent if possible, the necessity of making any arrests.

"The peaceful acquisition of our Indian territory and the preservation of the rights of the State may depend essentially upon your prudence and firmness in executing the duty which has been assigned you.

"Very respectfully yours, &c.

GEO. R. GILMER.

"Col. John W. A. Sanford."