Judge Clayton removed.—The Judges of Georgia are elected by the Legislature every three years. We perceive that at the election on the 11th inst Judge Clayton, of the Western Circuit, and of somewhat famous memory, was not re-elected, his opponent, Dougherty, having a majority over him of 19 votes. Judge Clayton was removed for the only sound decision he made in the Indian cases, and which Governor Gilmer nullified. It was, that if the law made it a criminal offence for the Indians to dig up their own ground, it was unconstitutional. It appears that Judge Clayton feels the removal as a direct censure upon him for pronouncing this decision. He has published the following communication in the Georgia Journal, and fortified his opinion, as will be seen, by high authority.

MILLEDGEVILLE, Nov. 12th, 1831.

MESSERS. EDITORS.—You will confer a favor by publishing the following letter of Chancellor Kent. In making this request, I have only to remark, that the sole consideration for making it is, to submit the testimony of one, in favor of my legal reputation, whose character as a jurist will entitle his evidence to great weight. He is justly considered the Blackstone of America, and his character as a lawyer stands as high in Europe as it does in his own country. He has never been engaged in either party or political strifes, and his whole life has been devoted to legal research. This publication is asked under not the slightest temper of complaint for my late removal from office; for I hope I shall have it in my power, at a more convenient season, to lay before my fellow citizens, such a statement of the whole matter, as will shew there is no necessity, on my part, for either ill-will or reproach.

Respectfully your's,

A. S. CLAYTON.

NEW YORK, Oct. 13, 1831.

DEAR SIR.—I was favored yesterday with your letter of the 3d inst. together with the *Southern Recorder* of Sept. 29th, containing your opinion in the case of the *State of Georgia vs Canatoo.*

That opinion has been read by me with great care and attention, and agreeably to your request I subjoin the conclusion to which my own mind has arrived, in answer to the two material points in the case.

1. It appears to me that upon the whole, the statute applies to the case. I can only judge from the extracts from it contained in your opinion. The statute asserts that the mines alluded to, are *of right the property of Georgia, and it authorizes the Governor to take possession of those mines, and to employ force to protect them from all further trespass.* I presume such forcible possession has been taken, and that the offence alleged against the Cherokee Indian arose subsequently. But the statute is so exceptionable, in reference to the rights of the Cherokees to their lands, (and which include the mines therein, as well as the trees and herbage and stones thereon,) under the existing treaties with them, and in reference to the constitution and constitutional authority of the United States, that I agree with you, that such a statute should receive an interpretation *if possible*, favorable to constitutional and treaty rights. If such a statute does not apply *in very terms*, to the very case of a Cherokee Indian digging in the mines, the benign intendment would be that the Legislature did not intend it, because such an intention would contravene the clear rights of the Cherokees, to the undisturbed use and enjoyment of the lands within their territory, secured to them by treaty.

2. But the better way is not to rest upon any such construction, but to go at once, as you have done, to the great and grave question, which assumes the statute to have intended to deprive the Cherokees without their consent and without purchase, of the use and enjoyment, in part at least, of their lands secured to them by national treaties, and which calls into discussion the constitutional validity of the Statute.

On this point I am entirely with you, and in my opinion your argument is sound and conclusive, and you have examined the subject with candor and accuracy, and with the freedom of judgment which your station and character dictate.

I am most entirely persuaded, that the Cherokee title to the sole use and undisturbed enjoyment of their mines, is as entire and perfect as to any part of their lands, or as to any use of them whatever. The occupancy in perpetuity to them and their posterity, belongs to them of right, and the State of Georgia has no other right in respect to the Indian *property* in their lands, than the *right of pre-emption* by *fair purchase*, no other interest in the lands, as property, belongs to the State, and to take possession of the mines by force, is substituting violence for law and the obligations of treaty contract. It appears to be altogether without any foundation, to apply the common law doctrine of *waste* to the case, and I cannot but think that the Legislature of Georgia would not have passed the statute, if they had duly considered that the Indian lands, have never been claimed, or the occupancy of them in the most free and absolute manner by the Indians, questioned, either by the royal governments before the American Revolution, or by the Union, or by any State since, except in open wars, or except the claim was founded upon fair purchase from the Indians themselves. The proceeding of Georgia in this case is an anomaly, and I think it hurts the credit of free and popular governments, and the moral character of our country, and is in direct violation of the constitutional authority of the United States, as manifested by treaties and by statute. I cannot think that the high spirited, free and noble race of men, who compose the citizens of Georgia, would be willing on reconsideration to do any such thing. Yours, respectfully,

JAMES KENT.

Hon. A. S. CLAYTON.