Since the foregoing was written, the celebrated "Opinion" of Judge Clayton has arrived, accompanied by its patron, the presentment of the Grand Jury of Jackson county. They are twins conceived at Athens and brought forth at Jefferson. It seems the birth of these bantlings was not expected until Hall court, their prematurity, accounts for their weakness.—But as they are relied on, as a "firm and independent resistance" to *encrouchment*, I will treat them with that "becoming decorum," due to the *department*, from which they come. Candor, however, compels me to acknowledge, that I do this more from courtesy, than from a conviction of right.

I would first inquire, what "encroachment" is intended to be resisted, or how his honor happened to consider it necessary that *he* should throw himself into this supposed breach of the Constitution. He has powers, to be sure, of a high judicial character, but they are as well defined and as strictly limited as the powers of any other department of the Government; and I consider that his will be a difficult task, who undertakes to defend the propriety of making the decision which the Judge has pronounced. It seems that a grant was tendered in evidence, possessing, in appearance, all the legal requisites of such instruments.—But from public rumor, or newspaper re-

port, which is not more authentic nowadays; it came to the ears of the counsel employed in the case, that there was some disturbance at Milledgeville about the Secretary who had signed the instrument. Then upon slight argument, and without the production of authority by the counsel or by the court, a constitutional question of high import, involving public convenience and individual right, is forthwith decided—I'll venture to say, that it is the first time that any Judge has set aside so solemn an instrument as a Grant, when it purported to possess the legal requisites. The "Powers that be," are always respected, and their acts considered as valid until the contrary is made to appear by competent authority. That a Judge presiding in a distant county, in the trial of a question of a fraudulent draw possesses this competency to decide the constitutionality of an officers appointment, and to nullify his acts, no jurist will insist. Yet this has been done, and the "People have a right to expect from their representatives a determined resistance"—as well might the court have set aside the Grant for the land on which Jackson Court-House is situated, on the alleged ground that the soldier whose bounty warrant was there located, never rendered service—that the Surveyor was not duly qualified—that the chain carriers were not sworn—that the Surveyor General had never recorded the plat—that the Secretary of State had not given bond—or that the Governor was an alien. If the court will permit grants to be impeached for these, or for any other causes upon mere motion, and will take public rumor or newspaper report as evidence of the fact, the State may be considered as an unlocated territory, and reported to the Legislature to be disposed of by Lottery. Thus far as to the *right* of decision.—I will now direct a few words to the decision itself.

The opinion proceeds upon two grounds. 1st. What vacancies the constitution *intended* the Executive should fill—2d. How far an office might be discharged by deputy.—The last ground involved no difficulty—It never was a question except with those who acknowledged no guide but prejudice, and who were determined to persist even against their own convictions. It will not now, I presume, be contended that the Secretary of State can act by deputy and find his justification *even in the Fee Bill*. The first ground then, seems to be the only one deserving notice. In discussing this, the court looks to the intention of the law givers, and the import and signification of words—Both rules are confessedly just and safe, but the first, as applied to the present question is as vague and indefinite, as the clause of the constitution itself. In the construction of a remedial statute, the Judge's task is more easy.—By considering the old law, the mischief and the remedy, the intention *becomes obvious*. But to constitutions, no such rules apply—their provisions are general, and unfortunately, their expressions sometimes indefinite, and always left to the construction, and sound discretion of those who are appointed to execute them. Our constitution in distributing its powers, gives to the Executive the authority of filling "any office which shall become vacant by death, resignation or otherwise." In the present instance, the vacancy happened "otherwise" than by death or resignation. But says the opinion it must happen as though by death or resignation, else it is no vacancy. Here the court violates one of its own rules, and tortures the word "otherwise" so as to "produce a meaning different form its obvious import." The framers of the constitution knew that offices were necessary, and that the government must be conducted by agents—They knew also that these offices were liable to become vacant by death, resignation, removal, disability, abuser, nonuser, and by a great variety of other casualties which could not be foreseen or enumerated, and which could not be provided for in any way so convenient, as by referring the exigency to the discretion of the Executive. *We find the reference made accordingly*, and so made as to vest the power, not only of *filling*, but of declaring vacancies also.—Against a capricious exercise of these powers, the constitution has sufficiently guarded by the responsibilities which it has imposed. The idea of limiting Executive discretion in this regard could never have occurred. If it had, the limitation was easy and unambiguous. The section might have been, "That the Governor shall have power to fill vacancies which may happen by death, resignation or the like cause." This would have been a nearer approach to precision, but the design of the instrument would not have been furthered, or the rights of the officers better protected. Executive construction, and Executive discretion, would at last have defined the rule, and in these there is safety. The danger, if any, is on the side of too much forbearance. So high an office as the Executive of a free State would never jeopardize the tenure of his own appointment by an act of pusillanimity towards a subaltern—for "what profiteth a man to gain "the whole world and loose his own soul?" —The word "otherwise," then, I consider as free from any limiting or controling influence of the words "death" or "resignation."—There is another clause in the Constitution which is in strict analogy with the one we are examining. It is the amendment of 1815 to the 4th. sec, of the 2d. Article, providing, that, "In case of the death, resignation or *disability* of the Governor" the President of the Senate shall do the duties," &c.—Now what amounts to a "disability," and who shall judge of it? It stands upon the same footing with the world "otherwise," in the previous article, and is to be construed in the same way. For example—suppose the Governor should leave his office, "on a visit" to Augustine, but with the *intention to return* twelve months hence, having however given one of his secretaries a power of attorney.

The Court says, "that time nor distance cannot alter the principle." It is known to the President of the Senate that this absence has commenced, and how long it will last—That grants ought to issue at the average of ten per day—That convictions have taken place, and that pardons or reprieves are to be applied for in favor of life. Would these exigencies amount to a "disability," and would the President enter upon the functions of the office? What timid, cringing President would stand back, or where is the community of freemen so prejudiced, as not to sustain and protect him. But says the "opinion," resort to impeachment, to an action on the bond. Such sophistry may be consoling to the offending officer, but it affords inadequate redress to an injured and insulted community!

The officers composing the Executive branch of the government, (I mean the State-House officers,) are provided with competent salaries or compensation, and that of the Secretary of State nearly equal to all the others together. Their duties are defined, and they enter into express contract to discharge them—the public have a right to their services, and the Governor, from the

nature of his office, and the powers with which he is clothed, superintends the whole. The most prominent of his powers, is the one which we are discussing; the right to declare and fill vacancies. I have said, that these vacancies may happen by abuser, non-user, &c. Altho' I do not belong to the honorable profession of the law, yet I will not betray such indifference to public opinion as the Judge has done, by giving a long decision without any authority to support it—His reliance is upon the ingenuity of his argument—mine upon common sense and the strength of authority. I have, therefore, taken a book or two from a Lawyer's office, where I read the opinion of my Lord Coke, that offices may be "forfeited by abuser, non-user, and refusal"—3 Bacon's Abridgement, 342—"That when an office concerns the administration of Justice or the Commonwealth, the officer, ex-officio, ought to attend without demand or request, and that by non attendance or non-user, the office is forfeited." That "non-attendance is a good cause of the forfeiture of the office of Recorder," 1 Salk. 435, 3 Mod. 146, Dyer 151. His honor will please excuse my impertinence in medling with law books, but I really thought I should not be treating the public with a "becoming decorum" to lay my speculations before them, without some authority, particularly as I had no Grand Jury presentment to back me.

In the opinion, a question is put to the "candor of every sober judgment," whether the Legislature would impeach, remove, or even non-elect an officer who had been guilty of no other offence than visiting the seaboard. The most effectual test would be for the Judge to make the experiment himself, at the commencement of his Judicial Circuit—let him absent himself for six weeks, and then see whether the Legislature would not relieve, guard, and place a more faithful sentinel at his post.

I shall say no more at present. I regret that there was occasion for saying so much, and that the subject were not in better hands. But finding the opinion prematurely obtruded upon the public, I consider it every man's privilege, and most men's duty to expose it. As the Executive Department of the government is made the subject of inquisitorial scrutiny, the judicial, can claim no exemption.

A FRIEND TO TRUTH.