To the Editors of the Southern Recorder.

The 9th section of the second article of the constitution declares that, "when any office "shall become vacant by death, resignation, "or otherwise, the Governor shall have the "power to fill such vacancy." The end proposed to be effected by this section of the constitution, was clearly, that the several offices of the government should be at all times efficiently filled, or in other words, that the operations of the government should, at no time, be suspended for the want of proper officers. One of the true tests of a good government, is its capacity to keep and maintain all its parts in equal, useful, and constant operation. A good government, like a piece of perfect machinery, is so constructed and fitted together, as to renovate itself, and remove or obviate all interruption caused by its own imperfections; the decay or failure of a subordinate part will not derange and stop the operations of the whole machine. Indeed, it may be, not inaptly called the perpetual motion of the moral and political world.

The power given the Governor to fill vacancies, necessarily involves the power to determine when vacancies exist, for the plain and obvious reason, that the power to determine, is an essential means in executing the power to fill; if the power to determine be elsewhere lodged, great inconveniences and delays would arise before the power to fill could efficiently operate; and besides, no good reason can be assigned, why these two powers should be vested in distinct branches of the government. It is true, the Judiciary, or at least one of the Judges has gratuitously assumed the power to determine; but that assumption is no argument, that the power in question has been by the constitution vested in the Judiciary.

It has been well said by one of the most enlightened statesmen of the present day, that "no axiom is more clearly established "in law or in reason, than that whenever "the end is required, the means are authorized; whenever a general power to do a "thing is given, every particular power ne"cessary for doing it, is included." I would enquire, "what is power, but the ability or "faculty of doing a thing? what is the abi"lity to do a thing, but the power of employ"ing the means necessary to its execution?" What is the Executive power in the present instance, but the power to fill vacancies, to effect the end contemplated by the constitution, that the administration of the government should, at no time, cease? What are the means necessary to execute this power, but the power to determine whether an office is vacant by death, resignation, or otherwise? Separate the power to determine, from the power to fill, and it will be readily seen, how the one may defeat the other, and both become useless. To deny the power of the Governor to determine whether a vacancy did exist under given circumstances, would be a denial of the truth of the well known maxims in political reasonings, "that "the means ought to be proportioned to the "end; and that there ought to be no limita"tion of a power destined to effect a pur"pose, which is itself incapable of limitati"on."

It is true, that possible abuses are incident to this implied power, and it is equally true, that possible abuses are also incident to every specific power vested by the constitution in the Executive. The Governor, in the exercise of the powers given him by the constitution, whether express or implied, must use his own discretion and judge for himself; if he pass the bounds of the constitution, and make a tyranical or improper use of his powers, the people must resort to such measures as the exigency may require, and such as the constitution may warrant.—This reasoning is so obvious, and so agreeable to common sense, that I am persuaded, the plainest understanding will at once comprehend it, and assent to its truth.

To pursue the subject further—the 8th sec. of the 2d art. of the constitution, gives the Governor the "power to convene the "General Assembly on extraordinary occa"sions." The expression "*extraordinary occasions*," is certainly broad, vague, and extremely indefinite, as much so at any rate, as the word "*otherwise*." Has the Governor the power to determine what events or circumstances will, in terms of the constitution, create an "*extraordinary occasion?*" If he have such power, it is assuredly given by implication, for no such power is specified, and it too, may be abused; for "some "future Executive disposed to be arbitrary, "could always find" circumstances, "that, "under this *unlimited* power of constructi"on would amount to" an extraordinary occasion, and consequently he could convene the General Assembly every month in the year. What would we say of that Judge, who should decide that an act, passed at an extra session of the Legislature was *no law*, because the Governor had convened the General Assembly under circumstances which did not amount to an "*extraordinary occasion?*" Strange as it may appear, a Judge has as much power to make such a decision, as he has to determine whether an office is vacant by death, resignation, or otherwise.

The 14th sec. 2d art. of the constitution says, "the Governor shall have power to appoint his own Secretaries." When the Governor's Secretaries are once appointed, they are to all intents and purposes as much under the protection of the constitution, as the Secretary of State, and in their constitutional rights they differ from him in no one particular. Now, if these gentlemen were to declare independence and set up for themselves, one going to St. Augustine, one to New-Orleans, and the other to the Saratoga Springs, but all with an "*intention to return*" at some future and uncertain day, having, however, previously authorized Peter Fair to sign their individual names to all grants, orders, and other official acts, what ought the Governor to do? According to the principles laid down and maintained in Judge Clayton's late decision, their offices would not be vacant; and so I suppose his sense of "*official duty*" would compel him, with "*becoming* decorum," to decide, whenever occasion required. But all men understanding the principles of the constitution, and regarding the plainest dictates of common sense, must acknowledge that the Governor would have the implied power to determine their offices vacant, and fill them accordingly. And we find that some of the Governors of this state have, as occasion required, suspended and dismissed from office their Secretaries, and no one ever pretended to question their constitutional power to do so.

The 2d. clause of the 2d. Section of the 2d. Article of the constitution of the United States, declares that the President, "Shall "have power to nominate, and by and with "the advice and consent of the Senate, shall "appoint Ambassadors, other public Minis-

"ters and consuls, Judges of the Supreme "Court, and all other officers of the United "States, whose appointments are not herein "otherwise provided for, and which shall be "established by law. But the Congress may "by law, vest the appointment of such in"ferior officers as they think proper in the "President alone, in the courts of law, or in "the heads of Departments."—Early after the formation of the constitution of the United States, it was *contended*, that inasmuch as the Senate co-operated in making appointments under the constitution, their consent would be necessary to *displace* as well as to *appoint*. But we are informed that, "this construction has since been re"jected by the Legislature; and it is now "settled in practice, that the *power* of dis"placing belongs exclusively to the Presi"dent."—One of the most useful, enlightened and distinguished administrations of the General Government commenced its operations by an almost universal and indiscriminate removal of officers from office. And indeed Mr. Jefferson without hesitation exercised the power of abolishing offices. In his message of the 8th December, 1801, to both houses of Congress, he says, "We may "well doubt whether our organization is "not too complicated, too expensive: whe"ther offices and officers have not been mul"tiplied unnecessarily, and sometimes in"juriously to the service they were meant to "promote. I will cause to be laid before "you an essay towards a statement of those "who under public employment of various "kinds, draw money from the Treasury or "from our citizens. Among those who are "dependent on Executive discretion, I have "begun the reduction of what was deemed "unnecessary."—After enumerating several offices which he had discontinued, such for example, as were connected with diplomatic *agency, inspectors of internal revenue*, and several agencies, he proceeds and says, "Other reformations of the same kind will "be pursued with that caution which is re"quisite, *in removing useless things*, not to in"jure what is retained."—Here it may be remarked that the clause of the constitution above quoted, contains no express power authorizing the President either to create or to suppress an office; nor does it contain an express power for the President to *remove* an officer; yet Mr. Jefferson exercised the two last mentioned of these powers, and for so doing, the *least* and the *meanest* of all his slanderers, never ranked *him* among those who "feel power and forget right."—And now I submit to the decision of any candid and honest adversary of the Governor to say, whether the construction given by him to the word "otherwise" is so unlimited and so unreasonable as the one given by the Presidents and the National Legislature, to the clause of the constitution of the United States, above mentioned.

To remark further—By reference to the quotations made from Mr. Jefferson's message, and to the message at large, it cannot fail to be discovered, that it breathes a spirit hostile to every thing bearing even a remote *analogy to sinecures*; and that it goes to inculcate and impress with much force, the good, wholsome and republican doctrine, that offices were intended for public good, *and not exclusively for individual convenience* and private emolument. What are the principles and doctrine avowed in Judge Clayton's opinion? Let the candid and reflecting part of the community read and judge for themselves, and they cannot help discovering in its tone and spirit, a friendly regard for what does not in principle, differ from sinecures. It openly avows the doctrine that an officer receiving four or five thousand dollars of the people's money per annum, may leave his office for months at a time, provided he intends to return, and that he may authorize any one to sign his name "*alone*" to official acts. Apply this doctrine to any officer, whose office is worth only four thousand dollars per annum, and what is the result? The officer can hire a substitute for one thousand dollars per annum—the substitute is authorised to sign the name of his principal, and so the principal may go about his business, and pocket three thousands dollars per annum without doing any official duty whatever. If such doctrine be not, in principle, precisely the same as that of sinecures, I am at a loss to conjecture what is to be understood by the word *sinecure*.—I mean, by the word sinecure, an office without employment, where the officer receives pay and does nothing.

But whence does Judge Clayton derive his power to determine, on mere motion, whether an office is vacant? It is certainly not an express power given to the Judiciary: it then must result, I suppose by implication? and from which express power can it be fairly implied? Is it implied from the 1st. Section 1st. article of the constitution, which declares as follows: "The Legislative, Ex"ecutive and Judiciary departments of go"vernment, shall be distinct, and each de"partment shall be confided to a separate "body of magistracy; and no person or "collection of persons, being of one of "those departments shall exercise any pow"er properly attached to either of the others, "except in the instances herein *expressly* "*permitted*."—I flatter myself that it has been conclusively shown, that the power to determine the question of vacancy, or no vacancy, *properly* belongs, and is attached to the Executive Department, and that power being not *expressly permitted* or given to either of other departments, it follows that his honor has assumed jurisdiction of a matter not belonging to the judiciary department.

Judge Clayton, after having recapitulated the substance of the Executive order of the 12th of August last, proceeds in his opinion, and says: "Now, apply it to similar cir"cumstances in and about the town of Mil"ledgeville, *and it will be readily seen that* "no vacation of office would result, to wit: "Abner Hammond, Esquire, Secretary of "State, having absented himself this morn"ing (for time nor distance cannot alter "the principle) from the seat of government, "without the permission or knowledge of the "Executive, *on a visit to Scotsborough*, and "thence to the *boat yard* (I mention these "because they are well known and contigu"ous to the seat of Government) which "makes it very *uncertain* when he will re"turn, &c.—Ordered, that his office be va"cated, &c. Now, does not plain sober rea"son revolt at the idea of a mans losing, "perhaps his all, on account of so innocent "an act, whether he left any one in his of"fice or not?" This argument has been adverted to, not with a view to answer it, for it deserves no answer, but as a specimen to show the manner and spirit in which the learned Judge has delivered his opinion.—Surely his reasoning in this particular shows in a clear and strong light, the vast benefits which may be derived from the "*vigiliæ annorum lucubrationes*."—By a similar process of luminous reasoning and cogent argument, this "*living oracle*" of the law, could, with the help of a grand jury properly selected, demonstrate in a manner equally clear and satisfactory, that the Governor

ought not to be entrusted with the power to pardon, for the reason that he might possibly let loose all the convicts from the Penitentiary.

The very happy way, and dignified manner, in which his honor has thought fit to illustrate his argument by references to the *boat yard*, &c. &c. inclines one to doubt, whether he intended his opinion to be considered as a law argument, or only as an *effusion of Holly Spring wit*. If the latter were his intention, I may, "*without the affectation of* diffidence," leave it as "*matter of curious speculation*," for others to say, whether or no,

"His wit was sent him for a token,
"But in the carriage, crack't and broken."

COMMON SENSE.

A Card to "A Friend to Truth."

The undersigned will feel much obliged to "a friend to truth," to look at his law-books again, and refer him to some other pages.—On examination, it is found, "Bac. 342," is entirely upon the statutes of gaming—"3d Mod. 142," the report of a case examining whether a Marshal could make a grant of his office, and no such page as 432 can be found in 1st Salk. Perhaps his mistakes, at the bar like these, induced people long since to take up the opinion, which he has at last found out, and candidly confessed, "THAT HE IS NO LAWYER." His success in that profession, no doubt convinced him, that every man who has been admitted to practice law, is not a lawyer; and that he had better quit it, and turn his attention to some business which requires subserviency more than talents to enable him to succeed.

JURIS-CONSULTUS.
