

It is not my intention to reply to the disgusting insinuations that have been thrown out against Judge Clayton, much less to the sophistry with which his argument has been assailed. But there are some candid and reasonable men who object to his decision in the case of Hammond and Whitaker, because they do not see how the question could possibly be brought before the court in a case where a fraudulent deed was the subject of discussion. How did the court know, say they, but that Whitaker was the legal Secretary of State?

On this point, I believe, the enquiries of every ingenious mind may be easily satisfied; and with the view to give all the assistance in my power, I have taken some pains to ascertain the circumstances of the case as they occurred, and the principles which governed its decision. I trust that the explanation will be received with the same candor with which it is given.

By the act of 1818, distributing the cession of land, which had been acquired a short time previous to its passage, it is provided, among other things, that "all returns made contrary to the true intent and meaning of the act, are fraudulent, and all grants issued on such fraudulent returns are null and void, and the land so granted shall revert to the State." Under this law the case of Vessels in Habersham presented itself, and according to the decisions of the courts the first thing to be shewn was the *issuing of a grant*. For until the land is granted the state is not divested. It has not parted with its right; no grant can be avoided until it is issued; and no property can revert until it has passed out of the state. The first piece of evidence tendered, therefore, was the grant to Vessels. An objection was raised against the grant going to the jury, because it was not registered, as the law requires, by the Secretary of State; for, by the certificate of registry it appeared that it had been registered by one Simon Whitaker, who, it was contended, was not Secretary of State, Abner Hammond being the legal incumbent of that office. In reply to this objection it was asked, how the court knew but that Whitaker was the legal Secretary of State. To this enquiry, the party objecting to the grant, produced the Governor's order or proclamation, published in the Georgia Journal of the 20th of August last, declaring the office of the Secretary of State vacant, announcing the appointment of Whitaker as Secretary, and commanding that he "be respected accordingly." Upon this proclamation, and this alone, the point turned. That it was legally before the court, & that the court was bound to notice it, is abundantly supported by law. See Philips Evidence 304—Also, 5 T. R. 436, and 7 Johns. Rep. 38, in which the principle is expressly and fully recognized, that "a gazette is evidence of all acts of state," without any other proof.* Now this proclamation clearly brought the matter before the court, for it shews that Hammond was not dead, and that he had not resigned; and if he had not "otherwise" vacated his office, no other person could legally certify grants. Whether he had otherwise vacated his office, is a question of which the courts, most unquestionably, have a right to judge, it being one in which the construction of a law, and that too of the paramount law of the land, is involved. Before the case at bar could proceed, it was absolutely necessary that this point should be settled, in order that the character of the grant to Vessels, as to its legality, might be ascertained.

Suppose the Governor's proclamation had stated that Hammond had vacated his office, because he had received more than the lawful fees, and commanded all persons and courts to "respect the appointment." Will any one say that the highest judicial authority in the state would be bound by that proclamation? If it would not be, and of this there can be no doubt, wherein consists the difference between such a cause of removal, & any other equally unconstitutional. The very end and object of the judiciary department of the government, is to expound the laws where the rights of individuals are concerned;—and neither the elevation of the rank, nor the dignity of the office of the Governor, can lift him above the laws of the land, more than any other officer. The duties of all are regulated by law, and it is the sacred duty of the courts to see that all laws are properly regarded.

This much I have thought it my duty to say, in justice to an upright, firm, independent, and meritorious officer of the government under which I live.

*When any public measure has been adopted by the government of this country, it is usual to announce such measure to the public by means of a Gazette, and of any act of State, so announced, this Gazette is of itself sufficient evidence. The King's proclamations address from the people to the people, and the like may be given in this manner without the production of the proclamation, or address itself; for these being matters of public notoriety, communicated to the public in a known, prescribed form, the law pays such attention to the established rules of office as not to call for higher evidence than that to which all mankind look for information on the subject. For the same reason proclamations (5 T. R. 436.) and the articles of war (5 T. R. 442) as printed by the King's printer, are received as sufficient evidence of them.

In 1 Salk. 241. it was held that a general history was sufficient evidence of a war relating to the Kingdom in general, and the case of St. Catharine's Hospital was cited where a Chronicle was allowed as evidence to prove a particular point of history in the time of Edward III.

Mr. Ozmak—By publishing the enclosed extract from the presentments of the Grand Jury of Newton County, you will oblige
A SUBSCRIBER.

Oct. 30, 1822.

We the Grand Jury, for the county of Newton, October term, 1822, do felicitate ourselves, that on this occasion we had so few causes for presentment, in our newly organized county; and while we thus express our feelings of gratitude, we should do injustice to our own bosoms, were we to pass unnoticed and without expressing our approbation, the decision of his honor Judge Clayton, made at Jackson, touching the validity of the grants signed by Whitaker. Our feelings are similar to those expressed by the

Grand Jury of that county: And we feel proud to express our abhorrence of the par-

ty-like attack made on that decision, and on that honorable body, by a writer under the signature of **A Friend to Truth**. To the **Judiciary** we look, for a firm execution of our laws; they are the pillars of our republican fabric, and must not yield (at all hazards,) to the influence of prejudice or party. And now, at the close of our service, in taking leave of his honor **Judge Clayton**, we beg leave to return him our thanks, for his prompt dispatch of business during the present term; and our fond hope of ever seeing him clothed with the same judicial powers, while he continues to execute with firmness our laws.