

IMPORTANT DECISION!

From the Georgia Journal Extra, of Monday.

The following important decision will be read with deep interest by the people of this state. The Grand Jury of the county where it was delivered, recommend its publication in the following language.

Extract.—“We the Grand Jury believing that the opinion of the presiding Judge of this Court, on the subject of the legality of the late removal of the Secretary of State is of importance to the citizens at large, do request that it be published, and we cannot omit this opportunity of expressing our approbation of the step that has been taken by the Court.—
It is a public sentinel, occupying a very important station in the government, designed to check the encroachments of either of the other branches, it is his bounden duty to suffer nothing to pass that important post, in violation of the law, or the true and just principles of our republican institutions, and that when such an event takes place, the people have a right to expect from the judiciary a firm and independent resistance.”

An “opinion” delivered by Judge Claxton, at Jackson Superior Court, on Tuesday the 10th inst. in a case reserved from Habersham.

The State } Habersham Superior Court
vs. } Scr. Fu
James V. Vessels, sen }

This is an action to avoid a grant under the Land Lottery act of 1818, founded as it is alleged on a fraudulent draw, and to support which, the first piece of evidence offered, is a grant to James Vessels sen'r. for Lot N. 129, in the 2d district of Habersham county, dated 23d of August, 1822, and Registered by Simon Whitaker, Secretary.—It is objected to this grant's going in evidence to the Jury, on the ground, that it necessary to have the Secretary of State's name signed on the grant; it was not so signed by the proper Secretary of State, that according to the Governor's order, appointing the said Simon Whitaker, as Secretary, it appears there was no vacancy of that office, and that the true and proper Secretary of State is Abner Hammond.

Courts are often placed in a delicate situation by the motions of Counsel, who no doubt are impelled to these steps by an imperious regard for the interest of their clients. This is one of those cases that is sensibly felt from the circumstance that it is not confined to the parties litigant, but occupies in a very sensitive manner the public mind. I am called upon however, to make a decision: to evade it would be judicial weakness, to meet it is official duty. Which course to take certainly cannot long be a matter of hesitation, but I may say without affectation of diffidence, that it is approached with that becoming decorum, for a high department of the government, which is surely due to the question.

The subject as presented by the documents, to my mind, naturally divides itself into two branches.

1st. What is such a vacancy of office as the Constitution intended the Executive should fill?

And 2d. How far an office may be discharged by deputy?

On the first point, I will lay it down as a principle, without an exception, that in all instruments whether public or private, whether constitutions or contracts, the true, plain and open intention of the framers of those instruments ought to be ascertained, and when ascertained, ought strictly to be pursued. I will lay down another principle, that no words in any instrument ought so to be tortured as to produce a meaning different from their obvious import, or original design.

With these confessedly just and safe rules, let us dispassionately investigate the question before us.—The clause of the Constitution under which the Executive was acted is in the following words: “When any office shall become vacant by death, resignation or otherwise, the Governor shall have the power to fill such vacancy.” 9th sec. 2d art.

It is very clear that the alleged vacancy does not come under either of the two first causes which may produce one, and