

Number of Individuals of the Militia whatever. The Law then declares, that the Pay of such Officers and Men, as may be so raised and employed, and all the necessary Charges of such War shall be discharged and defrayed by an equal Assessment upon the Taxables of this Province, or out of the Public Treasury of this Province, and no otherwise whatsoever.

By a subsequent Clause of this Act, beginning with the Words, "and be it further Enacted, by the Authority aforesaid, that if upon any foreign Invasion, any Person or Persons, or a Mode is prescribed, (as the Gentlemen of the Lower House observed to Governor Ogle, in an Address they presented to him the 4th of June 1740) "for the Punishment of any Men that shall not, after being duly warned, appear and serve in Arms, for the necessary Defence of this Province on such an Occasion;" to wit, they are first to be carried before a Justice of the Peace, and if the Justice shall think their Excuses insufficient, he is to commit them, and they are to remain in the Sheriff's Custody, until they find Surety to appear at the next Provincial Court, there to be proceeded against according to the due Course of Law, and if thereupon they shall be convicted of such obstinate Refusal, or Disobedience as aforesaid, they are to be fined and imprisoned according to the Directions of the Justices of the Provincial Court.

It was undoubtedly the Intention of the Legislature, by which the Act of 1715 was made, that every Part of the Militia, should be a Militia for the Defence of any and every Part of the Province, when called upon for that Purpose; there are several Expressions in the Law that imply as much; such are, "in and at such Places, &c. as the Service, Safety, or Defence of this Province shall require, or as his Excellency, &c. shall see Cause to order. Such Soldiers as shall, in the Time of War, adventure in the Service of the Country. For the Encouragement of such Soldiers as shall, in the Time of War, adventure in the Service of this Country. For the Encouragement of such Soldiers as shall adventure their Lives in the Service and Defence of this Province. Every Person that shall adventure as a Soldier in any War, or Defence of this Province, and shall therein happen to be maimed, &c. shall, according to his Disability, receive a yearly Pension, to be raised out of the public Levy of this Province. And every Person slain in the Service of this Province, leaving behind him a Wife, &c. the Party petitioning for such Pensions and Allowances, procuring a Certificate from the County Court where he, she, or they live. All Soldiers hereafter to be employed in any public Service within this Province, be paid in the respective Counties where the said Soldiers live." Had these Soldiers, or Militia, been to serve only in Defence of the County where they lived, and not in Defence of any other Part of the Country, the Legislature would probably have left it to the County to pay them, and not have laid that Burthen on all the Taxables of this Province.

But tho' there was no Expression in the Act to give Countenance to such Construction, yet surely if there be no Expression limiting or restraining Parts of the Militia to the Defence of certain Parts of the Province, from the very Nature of the Thing it would not be otherwise; for the Strength and Defence of every Country consists in the united Force of the Individuals of that Country or State; and as every Member of a State is originally bound in Duty to aid and assist in the Defence thereof, he is undoubtedly obliged to aid and assist in the Defence of every Part of it; for otherwise the Whole must be easily destroyed by a gradual Destruction of each and every Part.

There was indeed an Act made here in the Year 1649 or 1650, and which is mentioned in one that was made in 1676 as being then in force, whereby it is Declared, that if the Lord Proprietary, his Heirs, &c. "shall at any Time hereafter make any War out of the Limits or Precincts of this Province without the Consent and Approbation of the General Assembly of this Province first had and declared, the Freemen of this Province shall be no ways obliged or compelled against their Consents to aid or assist with their Persons or Estates in the Prosecution or Maintenance of such War, but are and shall be discharged of all Attendance or Supply concerning or in relation to such War, any Law Usage or Custom to the contrary hereof in any wise notwithstanding." It is afterwards enacted by the same Law, "that no Martial Law shall at any Time hereafter be exercised within this Province but only in time of Camp or Garrison, and that within such Camp or Garrison,"

but not a Syllable is to be found in this or any other Act which has ever been made in this Province, whereby the Service of the Militia, or any of them, is restrained to any particular County or Place within the Limits of this Province, or whereby they are exempted from Marching to any Part of it, that the Governor, with Advice of his Council, may think proper to order them; and in a Word, neither the Practice of this or any other Colony on the Continent (not to mention the Law or Custom of our Mother Country) will give the least Countenance to the Construction you contend for.

Left my Answer to your Address should be protracted to too great a length, I admit all you say relative to the Marching and Service of the Militia that were ordered to the Frontiers in September and October 1756, tho' I am of Opinion, that such of them as were Drafted and went against their Inclination (and many such there were) could not properly be called Volunteers: But as the next part of your Address, and indeed the whole of it, seems calculated to make your Constituents believe, that in September 1756, when the late Lower House approved of my having Ordered out Two Companies of Militia to the Frontiers, and moreover Addressed me to Order out Others to relieve them, there were not a sufficient Number of Troops there, to protect the Inhabitants, but that at the Time the Companies were lately ordered to march from Kent, Queen-Anne's, and Calvert Counties, there was an armed Force in the Pay of this Province on the Frontiers, more than sufficient, had they been compelled to do their Duty, not only to protect the Inhabitants, but to make them easy and quiet: I must, in order to prevent your Constituents being imposed on and disquieted by such a Representation, observe to you, that the Two Companies of Soldiers which were Stationed at Fort Frederick in September 1756 and were commanded by Capt. Dagworthy and Capt. Beall, amounted to upwards of 190, including Officers, and there was also at that Time a strong Garrison of Virginia Forces in Fort Cumberland.

Now it will appear by the Muster-Rolls, that the whole Number of Private Soldiers in the Service of this Province the 9th Day of December last, did not amount to 360, about 100 of these, with a proportionable Number of Officers, were at Fort-Frederick, and the Rest, or most of them, were, by the especial Order of his Majesty's General, in Garrison at Fort-Cumberland, or otherwise employed, in that distant Part of the Province, in such Manner as Captain Dagworthy thought best for the Security of the Inhabitants, and to annoy the Enemy.

You have not, I presume, forgot, that on the 7th of last December, I informed you, that many Difficulties had been purposely thrown in the Way of Mr. Ross, the Agent Victualler, by a Member of your House, to prevent the Garrison of Fort-Cumberland being supplied with Provisions; it happened, that that Member's Endeavours did not succeed so far as to force the Troops to abandon that Place for Want of Food, but they laid the Commanding Officer at Fort-Frederick under the Necessity of sending several Parties to Fort-Cumberland, the latter End of December, and in the Month of January, to convey up Provisions for the Use of that Garrison during the Winter.

Such, Gentlemen, was the State and Number of our Forces the 9th of December last, and such the Service, that, almost naked as they were, those of them that Capt. Beall had the immediate Command of, were obliged to perform in the Middle of Winter; let us next examine what Encouragement they had to perform it, and how far they could be considered at that Time in the Pay of this Province.

On the 15th of October last, Mr. Murdock and Mr. Dick, two of the Agents that were appointed to cloath, pay, and victual them, informed me by a Letter, that they had examined their Books, and found that the Money which had been appropriated for the Support of the Troops, which were then employed in the Service of this Province, was entirely expended; and I since find, that it had been expended a Week before the Gentlemen gave me that Notice, or at least, that no Pay has been issued to any of the abovementioned Troops, for their Service, since the 8th Day of October. You did indeed frame a Bill, after that Time, for keeping up 300 of the Men for the immediate Defence of the Frontier Inhabitants, but it was such a One as the Earl of Loudoun thought the Gentlemen of the Upper House did very wisely in rejecting, though there had been nothing else exceptable in it, than what related to the Disposition or Distribution of the Men, for whose Support it was intended to provide. The Bill was, I think,

returned to your House with a Negative, the First of December, and although the Assembly sat till the Sixteenth of that Month, nothing farther was done for the Support of our Troops, or that could afford them any Prospect of being paid; neither did you do any Thing which could justify me, in giving the Party of *Cheerokees*, that had just before offered us their Service, the least Encouragement to continue on our Frontiers; on the contrary, when I intreated you to appropriate to their Use, Part of the Money which was then in the Hands of the Agents, or in the Loan Office, and which had in Fact been reserved for them, you were pleased to refer me to the Bill that had been rejected, in which, had it passed into a Law, you said such Provision was made as you judged most expedient for cultivating their Friendship; how regular or decent it was to give me such an Answer, or to refer me on that Occasion to a Bill which did not then exist, and which had never been offered to me, or how much this evinced an earnest Desire on your Part to contribute, by the Presence of your good Brothers, as you call them, to the Security of the Frontier Inhabitants, I submit to the Judgment of others.

A few Days after the End of that Session, I was informed by a Letter from the Officer commanding at Fort-Frederick, that a Member of your House had, on his Return from the Assembly, endeavoured to stir up Sedition among the Soldiers, that among other Things he had told them, their Officers had no Right to punish any Soldier for getting drunk, that the Money which had been raised for their Support was all expended, that their Officers could have no Authority over them after the 25th of December, that they might then go whither they pleased, and that no Person had a Right to apprehend them; should the Gentleman deny that he industriously propagated such a Doctrine among the Troops, there are many Persons ready to prove it, particularly Captain Ware, Sergeant Love, and a Soldier called Charles Clagot.

Had any indifferent Person received such Information as I did at this Time from the Commanding Officer at Fort-Frederick, could he have imagined that any of the Soldiers would have continued there more than Six Months without Pay, or any Promise of being paid? especially if such Person had given the least Credit to what several Persons were encouraged, or forced, to come from Frederick County, in October and November last, to swear, namely, that the Men had been ill fed and used barbarously by their respective Officers; and if the Soldiers had been persuaded to disband themselves, before any of the Militia that were ordered out could reach the Frontiers, there is the greatest Reason to conclude, from what has heretofore happened, that not only the Settlement of *Conococheague* would have been broke up, but that very few of the People who lived beyond *Frederick-Town*, would have ventured to remain on their respective Plantations; in which Case they would, it is apprehended, have been taught even by some of yourselves to lay the Blame entirely upon me, for not having ordered a sufficient Number of the Militia to their Assistance, as I had done on former Occasions. I flatter myself, that enough has been already said to justify the Orders that I sent to Captain Brown of Kent County the 21st of December, and to Captain Casson soon afterwards, but as you insist that these Orders were issued at a Time when not so much as a Report of an Incurion was stirring, I cannot help observing to you, that two Days before my Instructions were sent to the former, I received Advice, by a Person who came hither Express, that a large Party of *French* and *Indians* had been discovered near Fort-Cumberland within this Province; there is a Gentleman in your House who must acknowledge, that, in a Letter which he was pleased to write from the Mouth of *Conococheague* the 15th of December, and which I received the 19th of that Month, he referred me to the *Bearer*, and told me, that he could inform me "of the *French* that appeared the Saturday before at Fort-Cumberland." Some Letters from another of your Members (which, agreeable to his own Desire, I laid before you in a former Session), convinced you, I believe, that Alarms have been frequently given, and that Parties of the Enemy have been said to be committing Murders, almost in the Heart of Frederick County, when in all Probability there were none within the Distance of a Hundred Miles of the Province; but the Action or Skirmish that happened in December last, between a Detachment of our Forces and the *French* abovementioned, leaves us no Room to doubt, but a considerable Party of the Enemy was in this Province at that Time; one of them who was taken Prisoner in that Skirmish, and brought immediately

nely to Annapolis, by Lieutenant Riley, on his Examination before Col. Hala, John St. Clair and Myself, that the Party consisted of Two Officers, Six Cadets, Twenty and Eight *Indians*, and that their Intention they came from Fort du *Quesne* the 27th of November, was to make a Descent on this

There is one Remark more that I have the Liberty to make before I quit this Province, and it is this, that while you were framing your Constituents, that by the Troops on the Frontiers, not being compelled to do the Inhabitants are neither protected nor quiet and easy, you endeavour to shew the Inhabitants were entirely satisfied, and a Person could be found, who could truly be apprehensive of any Danger at all, and who was founded my Power, or Right, to order the Militia of Kent, Queen-Anne's, or Calvert Counties to the Frontiers, on the Address that was presented to me the 30th of September 1756, by the Lower House of Assembly, or if I had proceeded, upon a Supposition that I was by no Means vested with any Authority which would afford Precedents, and your Observance we ought to guard against every bad Construction which may possibly flow from a Stretch beyond its due Bounds, might perhaps have more aptly introduced than they seem to be present; but I assure you, Gentlemen, that it will always give me great Pleasure to see that the Members you allude to, approve of what I do, yet, I shall not think that the Unanimity, of any Part of you, in approving or disapproving, will make wrong that is in its Nature justifiable, or an Act lawful or Commendable, that is illegal and Oppressive; however, if the Men were of Opinion the 11th of October you answered my Message, that they had an Error, and had by their Address led me to a higher of my Power and Authority over them than I ought, they would have dealt more in acknowledging their Error, and endeavouring to undeceive me at that Time, but as they did not, I can hardly think that by saying they were wrong, I should be wrong for the present.

Company of Militia to the Frontiers, that, in their Opinion, it would be wrong for me to order any to march for the Frontier, when I remember the particular you gave for not advising me to order a Party at that Time, to wit, that there were no Soldiers enough on the Frontiers to protect the Inhabitants; which indeed was the Reason, though the Soldiers could, and did, protect them, yet it was not in their Power, to make them quiet and easy.

What Reason you have, or think you have, to presume, that if your House had approved of sending out any of the Militia on that Occasion, I should not have ordered them from Kent, or Calvert Counties, I know not, but I positively say that I should, but, in all Probability, if you had desired me to comply with the Request of the Captains *Delafosse* and *Chaplain*, made, in Behalf of the Frontier Inhabitants, that the Company would have been ordered from these Counties, lest the Inhabitants of the other Counties which had been ordered to the Frontiers, should have complained, compelling them to do more Duty than was properly to be deemed their Share; and as none of you are of Opinion, that a Party of the Enemy was on the Eastern Side of the Bay, I excuse him from contributing to the Support of those who live on this Side of it.

Had the Present you speak of been given to the Party of *Cheerokees*, even before Captain *Delafosse* received Orders to march, that Circumstance perhaps, have had some Weight with you, to imagine *Indians* will be restrained, or that you would have been restrained, or that your framing a Bill for their Encouragement on the 30th of March, was a Reason for you to have taken, or to have declined to take that particular Step on the 9th of that Month, was the Day the Orders to Captain *Delafosse* were issued.

In my Message of the 23d of February, you, that as I had good Reason to think that the Soldiers which had been raised for the more immediate Defence of our Frontiers, would disband themselves, I thought that the Assembly had broke up, and making any further Provision for their Support, I thought it my indispensable Duty, to order the Companies of Militia to the Frontiers