

# MARYLAND GAZETTE

T H U R S D A Y, F E B R U A R Y 3, 1803.

Annapolis, February 3.

From the (Baltimore) ANTI-DEMOCRAT.

BY REQUEST.

The substance of the verbal address of the governor to the members of the legislature of Maryland, January 10th, 1803.

TWO letters addressed to the legislature of Maryland on the 10th of January last, the one by the governor and the other by his council in reply, and several mutilated extracts from the proceedings of the assembly, have been hurried into the common routine of publication: The agent who transmitted them to the press, has not noticed a subsequent note and address of the governor, nor the principal resolution which palled the senate and was rejected by the delegates, by the yeas and nays, and to which what have been published were only appendages: The motives for these omissions are perhaps immaterial, but the effect is unfavourable to truth.

A correct disclosure of the conduct of public functionaries is due to their constituents, and when a great constitutional question becomes involved, which can neither be explained, modified or decided, but after an appeal to the people, it would be criminal to withhold any information that may enable them to repress usurpation or correct abuses.

Until such a representation can be prepared, the facts which compelled a resort to a verbal address to the legislature ought to be made known: They were thus disclosed by the governor. That his letter already published was written early on Monday morning as soon as he was apprised of the transactions of the preceding Saturday evening; it was immediately read to the council by himself and transmitted by the clerk to the assembly: The members of the council disappearing except one or two, he remarked that he did not expect they would do any business that day and that he should retire home: This was done under the entire persuasion that if they should reply to his letter, they could not fail to observe a conduct equally frank in communicating its contents to him; but notwithstanding the five members all concurred in, and forwarded to the legislature soon after his departure, the reply that has been published, the governor had not the slightest intimation of the transaction until late in the evening, when he attended expecting to sign the laws.

Duty to himself and his constituents forbid an acquiescence under a statement calculated in his judgment to make erroneous impressions on the public mind; although on the facts disclosed in those letters, the question might perhaps be safely rested; and it might be asked under what part of a resolution worded—That the governor, by and with the advice and consent of the council, and he is hereby authorized and requested to appoint, &c. the council without the knowledge and approbation of the governor and indeed knowing that it was contrary to his opinion, and in his absence, could make the appointment themselves? For admitting that the word *advise*, as they seem to imply, contrary to the common understanding of mankind, and contrary to the universal and received constitutional construction of the United States, is equivalent to a mandate, which the governor was not at liberty to disobey; yet in this instance he has not been even the degraded and mechanical instrument to execute their orders: He had in fact no agency whatever in an appointment, for the merits and consequences of which he was thus apparently responsible.

Thus impressed, and by no means disposed to sustain so humiliating and dangerous a position for the ensuing twelve months; he found the usual and more eligible mode of written communication no longer practicable; as the legislature were then ready to rise, and it was already so dark as scarcely to admit his writing two lines, stating; that previous to the signature of the laws he was anxious to address a few verbal observations to the members of both houses collectively.

The two houses having assented to this request, he stated to them what will hereafter be fully detailed to the public with the proper references, but what can now be only briefly recapitulated, substantially was to the following effect.

That with regard to the appointments under the resolution cited he had on Saturday morning proposed in council, a selection of characters, above all suspicion of private interest, party prejudice, or predetermined opinion; whose high reputation and known attachment to the state, would secure the public confidence, and whose legal knowledge would protect the public interests; he named the three gentlemen mentioned in his letter published, but also added other names that would be acceptable to him, requesting a free communication of opinion on the part of the council; but when members of assembly were proposed, he had observed that the warm observations during two successive sessions; had probably conspired the active characters to take certain and determined ground, from which it was not probable they could now be induced to recede; that with respect to the gentlemen whose names had been used, he could feel no personal motive, but what was entirely favourable to them—he expressed his sense of their merits, and his unwillingness to hazard what might wound their feelings; but having been considered as the prominent characters, who had successfully opposed the previous applications, and offers of compromise, on the part of the canal company; their appointment on this occasion might possibly be attributed to party, and perhaps indecorous motives in the executive; and would probably induce the company, through despair, to persist in an offer of their whole interest to Pennsylvania (a copy of which he had seen) and from which he apprehended pernicious consequences to this state; that although he could make no appointment without their advice and consent, yet in his opinion the council could make none without his concurrence; they were intended mutually to check each other, and that the responsibility must rest on the party proposing a proper appointment, as was the case in the constitutions of the states and in the United States, where the resolutions passed by the advice and consent of others—

his part he could not then consent to appoint both the members of assembly insisted on—the council rose, but it was by no means true that the governor desired a meeting in the evening—this was proposed by a member who said that he expected to leave town next morning, and the governor observed that if he could converse with certain members and satisfy his mind, he would meet them, but as he could only do this partially, he did not attend—and certainly that the council should proceed to appoint under a resolution so worded, and to notify those appointed, without the ceremony of sending the door-keeper to inform the governor; was equally inconsistent with his ideas of their powers, and the common respect due to his official situation.

In fact the company and the canal itself had become secondary objects with him from the time Pennsylvania had questioned the right of Maryland to grant the half-toll; although the resolution has been cautiously worded to exclude this question from discussion, yet it might be incidentally decided, and a law had been actually proposed to the legislature involving this effect; it was therefore by no means so easy with the governor to select at once, characters to whose talents and address, such complicate and delicate interests could with safety be confided.

That as to the general powers of the governor and council, although he had made every sacrifice of opinion during the last year that a sense of absolute duty would permit; yet he had early apprised the council of his construction of the constitution; that the governor by its express words is authorized to make every appointment but one, and to do every executive act but two, either by and with the advice and consent of council, or by his sole authority: That for this purpose and with this view the council were declared expressly by the constitution, to be a council to the governor—not a council to the state of Maryland. That instead of this they had completely inverted the order, the expression and the sense of the constitution. They had at first considered him only as a governor appendant to the council—the mere instrument through which their orders were to be executed; that they had next proceeded to act in every instance where the constitution required the concurrence of the governor and council without regarding his consent as necessary: And finally by issuing their orders through their clerk to act even without his knowledge; that the constitution had authorized them expressly to appoint one officer and to do two acts as a council without the concurrence of the governor:—But that these provisions must have been truly absurd and ridiculous; if the makers had ever contemplated that they were to appoint every officer of the state; and perform the duties of the executive, of their own mere motion, by their own authority, without consulting with and without the consent, or even knowledge of the governor. That every different article and part of the constitution, was perfectly reconcilable and consistent, under the interpretation of the governor, but the whole would remain a mass of absurdity and a tissue of contradictions under that of the council. That the technical terms *by and with the advice and consent of council*, had been transferred into different constitutions of these states, from the words of the old royal and proprietary commissions to the governor of the colonies; that their meaning had been established from their earliest settlement by uniform usage, and had been practised under without a doubt, for many years after the revolution, in the sense given to them by the governor, by the different states of the union: That they had been lately adopted into the constitution of the United States, where their meaning had been considered both in theory and practice as unequivocal, by the united opinion and admission of all the American union; that the president in making appointments and treaties was to act *by and with the advice and consent of the senate*; yet no one solitary suggestion amidst the wilderness of modern conjecture could be adduced, to authorize the senate to appoint an officer or make a treaty, without the consent or knowledge of the president. The practice had been for the president to propose equally the one and the other, and the senate were at liberty to reject or conform on their responsibility: That he had not been able to find a record of any civil officer of this state, being appointed in the absence of the governor, and he had examined for several years after the adoption of the constitution: Tradition was certainly against such a practice, and for the council to transact business at all, without the governor, unless he was absent from the seat of government, would be found on investigation a novel abuse: He had made these observations on the practice, although he never could admit the monstrous and dangerous doctrines, that that usage could control the express words of the constitution: The governor closed his remarks by adding, that if the legislature should give a different construction to the constitution, to that which he had maintained (and by an act to be confirmed at their next session they had a right to declare what the constitution should be) he was then ready to resign his authority into those hands, from whom he received it, as he could neither act against his conscience, nor would he act against their opinion; but if they should rise without declaring their opinion, he would continue to discharge his duties whilst in office, according to his solemn impressions of the meaning of that instrument, he had so sacredly pledged himself to support. Had the resolution which passed the senate (although it wandered from the line of conduct prescribed by the constitution) received the sanction of the house of delegates, a letter was prepared to be delivered, limiting the period of the official duties of the present governor, but from that resolution the house of representatives dissented.

A Civil Officer of Maryland.

In the House of Delegates, January 11, 1803.

On the second reading of the resolutions relative to the governor and council, the question was put, that the house assent to the following? "And resolved, that it is the opinion of the legislature, that the practice that has long since prevailed, of indiscriminately nominating persons for appointments by the governor as well as by the council or any member thereof, is the safest and perhaps the best construction, that we can put upon the constitution, and that the person, obtaining a majority of the council that constitutes a quorum, is constitutionally elected.

The yeas and nays being required appeared as follows:

### AFFIRMATIVE.

Messrs. Hatcheson, Moore, Stansbury, Love, Lemon, S. Frazier, Miller, Alexander, Veazey, Wood, Kemp, Montgomery, Forwood, E. Davis, Lytle, Orrell, Hardcastle, Dickson, Purviance, Kerlner, Smith, Tilghman, Swearingen. 23.

### NEGATIVE.

Messrs. Frisby, Harwood, Hall, Blake, Somervell, Boume, Lloyd, Dashiell, Cottman, Hyland, Goldborough, Keene, Steele, Van-Horn, Carr, Quynn, Ridgely, Thomson, Purnell, Wilson, T. Davis, Selby, Veach, Simkins, Tomlinson, 25.

So it was determined in the negative.

True extract from the proceedings.

W. HARWOOD, Clerk.

The rev. Wm. Duke, of Prince-George's county, is appointed professor of languages in St John's College.

The total amount of coins issued by the mint of the United States, from 1st January to 31st December, 1802, inclusive, amounted to 516,115 dollars 83 cents.

From a Philadelphia paper of January 29.

Extract of a letter from a gentleman at New-Orleans, dated Dec. 18, 1802.

"Being present this morning at the intendant's office, when the original of the following royal order was transcribed, I seized the opportunity of procuring a copy, and have translated it in a hurry, under the hope that it will be acceptable to you.

"The minister of war has communicated to me the following—" In a letter of the 15th inst. Don Pedro Cevallos, informs me as follows: Whereas his majesty has ceded to the French republic the colony or province of Louisiana in all its present extent and AS IT WAS HELD BY THE FRENCH WHEN CEDED TO HIS MAJESTY, I advise you thereof, by his royal order, that you make the necessary arrangements for the delivery of it to the French commissioner or commissioners, who being duly authorized by the government, may present themselves for the purpose. Which royal determination I have made known to the captain-general of Louisiana, informing him at the same time that it is his majesty's pleasure with respect to the regiment of the place and the military that garrison the province, that individuals, who voluntarily wish to remain under his majesty's dominion, shall after delivering up the colony, proceed to the Havana, where other posts will be allotted them. Of this I advise you by royal order, that you may comply with that part of his royal determination which relates to you.

God preserve you many years.

SOLER, Minister of foreign affairs.

To the Intendant of Louisiana.

Madrid, July 20, 1802.

ALEXANDRIA, January 19.

We have to acknowledge our obligation to a friend for the following important information: "A cessation of hostilities has taken place between the king of Sweden and bey of Tripoli for six months. It is expected a permanent peace will shortly be agreed on."