

MARYLAND GAZETTE.

T H U R S D A Y, M A R C H 3, 1803.

Annapolis, March 3.

From the AMERICAN.

BY REQUEST.

A COMMUNICATION signed "A Civil Officer of Maryland" which appeared originally in the Anti-Democrat, and has since been reprinted in different Federal news-papers, must no doubt have attracted the public attention. It purports to be a correct disclosure of the substance of the governor's verbal address to the general assembly, in consequence of a difference of opinion between him and the council; and it may, also, be considered as a summary of facts, that constituted (in the governor's opinion) the disrespectful conduct of the council, noticed in his letter to the legislature, on the subject of that difference. Had the "Civil Officer" given a full and correct statement of all the circumstances attendant upon this transaction, the council, it is believed, would have stood acquitted, in public opinion, of the slightest personal disrespect towards his excellency; and the public reason would then have been unbiassed in the investigation of a constitutional question, which has given rise to an unfortunate, but honest diversity of sentiment, among constituent members of the same department. The writer of this will not assert that the "Civil Officer" has been intentionally incorrect, because he entertains too favourable an opinion of the supposed author of that performance, to intimate that he is capable of wilful misrepresentation: But that his statement is materially variant from that of every member of the council, is a fact of which the public ought to be apprized, in forming its opinion on this interesting question. With this view, he ventures to submit a narration of facts, which, he believes, he is warranted in asserting to be substantially correct, from different conversations which he has had on this subject, with every member of the executive council. This may serve to remove improper impressions, and be a necessary preliminary to the further discussion of the constitutional point, to which the attention of the state has been lately drawn.

It is true, that the governor's opinion, of his having the exclusive right of nomination in all appointments, was known to the council, early in the last year; and he was as early apprized of their opinion, of its being a concurrent right to be exercised by the governor and every member of the board. This led to no serious inconvenience. In one instance, however, it being believed that the board were not united in opinion, as to the proper character to all some appointment then under consideration; one of the council requested that a ballot might take place, as he had understood, that mode had been adopted by former executives—it was objected to by the governor, as an infringement of the constitution, and an interference with his right of nomination. The effect was nothing more than a momentary irritation, and a postponement of the appointment until the next day—when again taken up, the governor consented to the ballot, but observed, that it must not be considered as a constructive waiver of his right of nomination. Balloting, was in all subsequent appointments, resorted to, when required—And a right of nomination to office, by the governor or any member of the council, was exercised, when the character first proposed by either, did not receive the approbation of all the attending members of the board. The governor, in no instance, even when appointments were made by the council, in his absence, refused a commission: Of course this conflict of opinion, was ever brought to an issue, during the last year.

But to proceed to the facts more immediately connected with the appointment of certain commissioners on the part of this state, which produced the governor's letter to the assembly, charging the council with a flagrant violation of the resolution under which the appointment was made, and with disrespectful conduct towards himself. On the morning of Saturday the 8th of January, the resolution was taken into consideration by the board, the governor and all the council attending—in the course of conversation, different gentlemen were named by the governor and members of the council, as proper characters to discharge the duty of commissioners. The impropriety of appointing two members of the legislature, it is true, was brought into view, and the council were not united in opinion, as to its expediency. But it was soon discoverable that a majority of the board were in favour of the gentlemen ultimately appointed. To take the sense of the board, one member of the council requested, that the question might be tried on a gentleman he had named; another remarked, that perhaps it would be more regular, to put it on the first nomination.—The governor then, to the astonishment of the council, with warmth observed, that he would put the question on no person not nominated by himself; and that from that day for-

ward, he would sign no commission where the character therein named, did not meet his entire approbation.—A suspension of the business took place, upon its being observed, that other appointments, upon which there might not probably be such a difference of opinion, had better be taken up. After a lapse of an hour or two, the subject was resumed, by one of the council remarking to the governor, that although he (the member of the council) did not agree entirely with the majority of the board in their selection of commissioners, yet if that majority were determined to appoint three particular gentlemen, the act he thought would be binding; and he hoped for the sake of harmony, the governor would consent to go into the appointment. The governor replied, that he entertained a different opinion. A general conversation then took place on the subject, which was closed by an agreement to meet at 5 o'clock, P. M. for the purpose of making the appointment. The governor remarked, that he would in the mean-time, see the two gentlemen in the legislature, who had been nominated as commissioners; and he thought he could convince them that under all the circumstances of the case, they ought not to act in that capacity.

It is readily admitted, that before the adjournment took place, it was understood by the board that one of the members of the council expected to leave the city of Annapolis the day following, which was one reason of the agreement to meet in the afternoon.—It is equally certain, that the adjournment was agreed to unanimously; the governor and all the council consenting to it. Indeed, some of the council are positive, that the governor himself proposed the adjournment.

The council attended punctually in the afternoon, and having waited at least an hour, proceeded to the appointment. They directed their clerk immediately to notify the commissioners of their appointment, as two of them were members of the assembly, and it was supposed, that body would terminate its session during the evening.

Under this statement it may surely be asked, where were the circumstances of personal disrespect towards the governor? Or, where the evidence to establish the fact, that the appointment was made without his knowledge? True it is, that it took place when the governor was absent from the council chamber; but that was certainly a voluntary absence arising from a disinclination to attend, as the adjournment for the special purpose for making the appointment was agreed to by him, if it was not the result of his own proposition. But it is said by some, that it would have been respectful to have informed the governor, through the messenger, that the council were attending! With a knowledge of the meeting, it was a duty no less incumbent on the governor, than every other member of the board to have been present at the time. Independent of this consideration, it was believed, that it might lead to still further irritation than what had been produced by the interchange of sentiment in the morning.

When the governor met the council on the Monday following, after observing that he had understood they had appointed commissioners on Saturday evening, he began the letter which he afterwards forwarded to the assembly. Before its completion, he named three gentlemen who he said he thought ought to be appointed, and asked if the council would act on that nomination? One of them replied, that he considered the proceedings of Saturday conclusive. The governor then finished his communication and read it to the board. He was assured that no member of the council intended to treat him with disrespect. Without making any reply, he sealed his letter and forwarded it to the legislature by the clerk. The council conceived it a duty to exculpate themselves from the charges of the governor, by furnishing the legislature with a brief statement of facts counteracting the impression of the appointment having been made without his knowledge.—But the "Civil Officer" has stated, that the council did not act with frankness towards the governor, in not communicating their answer to him, before it was presented to the assembly.—An impartial public will decide, whether candour required, that men charged with indecorum of deportment towards the chief magistrate of the state, should communicate to their accuser the nature of their defence prior to its being preferred to that tribunal, before which the accusation had been made? It will not be denied, that the governor's conduct in reading his letter to the council, is not inconsistent with the idea of frankness or candour; but it will never be admitted, that it deserves the dignified appellation of good breeding or refined politeness; with a breach of which, the council were afterwards charged in the verbal address.

The governor left the council room in a short time after his letter was delivered, and the council expecting that the assembly would that day put a period to

their session, hastily prepared their reply, that it might be handed to that body. It could hardly be supposed, that they would take their answer into consideration in the presence of the governor, after having heard the terms in which his letter was couched—besides, it was not an executive act, but the address of individuals justifying their conduct as public functionaries; and if it were to be admitted for the sake of argument, that the governor's fiat was necessary to give validity to the appointment of commissioners, yet the sanction of his approbation could not reasonably be deemed requisite to a defence against charges which he himself had exhibited.

Here perhaps this statement should be brought to a conclusion, but the writer cannot forbear remarking, that the "Civil Officer" has published, but one resolution of the senate on this subject, disconnected with any further procedure of the legislature except the yeas and nays of the house of delegates on that resolution.—Without any further explanation, this would be calculated to convey the idea that the house of delegates rejected the proposition of the senate, because they thought the governor's construction of the constitution correct.—To enable the public to judge upon this subject by bringing into one view the whole proceeding, a copy of the senate's resolutions and the message of the house of delegates assigning the reason of their dissent to the last resolution, is herewith published.

Such facts are here submitted to the perusal of the public in justification of the council, as the omissions of the "Civil Officer" seemed to render necessary. The constitutional question on the relative powers of the governor and council, may hereafter claim the attention of

A FRIEND TO CANDOUR.

By the Senate, January 11, 1803.

By the constitution the legislative, executive, and judicial departments are distinctly separated, neither have a right within the sphere of action of the other, to control or expound the limits fixed by the constitution to each; therefore any opinion the legislature may express, or any construction they may give to the constitution in which the executive authority is implicated, cannot in any manner conclude that department, nor will it be bound to adopt the legislative construction. But as the governor and the council have both expressed a desire that the legislature should give an opinion, and as that opinion may close the misunderstanding that has taken place in the board; although we disclaim any right of concluding by our decision, still we consider it by no means improper to comply with their mutual request.

Therefore resolved, That at the time of passing the resolution respecting the appointment of commissioners on the part of this state, to meet such commissioner or commissioners as may be appointed on the part of Pennsylvania and on the part of the Susquehanna canal company, respecting the navigation of the river Susquehanna, it was the intention of the legislature, that those appointments should be made by the governor and council in the same manner, and not otherwise, that the civil officers of government are appointed.

And resolved, That it is the opinion of the legislature, that the practice that has long since prevailed in the executive of indiscriminately nominating persons for appointments by the governor as well as by the council, as 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 members of the council that constitutes a quorum is constitutionally elected.

The house of delegates agreed to the first resolution and preamble, but rejected the last for the reason assigned in the following message:

By the house of Delegates, Jan. 11, 1803.

GENTLEMEN OF THE SENATE,

We have dissented from your last resolution, which contains an expression of your opinion on the constitutionality of the practice which has heretofore obtained relative to appointments by the executive, because we decline expressing an opinion on the construction of the constitution relative to the duties to be performed by the executive.

Laws of Maryland.

PASSED NOVEMBER SESSION, 1803.

A further additional supplement to the act, entitled, An act to direct descent.

BE it enacted, by the General Assembly of Maryland, That in all cases where any of the heirs of a person deceased without will shall sell out their right and title to the intestate's real estate, and the purchaser or purchasers, and the other heir or heirs, cannot