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BY REQUEST.

A CONTROVERSY involving facts, that reſt entirely upon the comparative degree of credit due to the aſſertions of adverſe parties, can ſeldom be the ſource of public information. But where an appeal is made to the public judgment, *that* judgment will doubtleſs be formed upon the *ſame principles* of evidence, whether the tranſactions of men as citizens of the ſtate or as officers of the government, give riſe to the appeal. In individual diſputes, a deciſion on the truth or falſity of counter declarations, depends upon the reputation *for veracity* which the witneſſes reſpectively ſupport.—This principle muſt govern the public deciſion in the conteſt between the governor and council, where oppoſite ſtatements are made, and where no corroborative facts are eſtabliſhed by indifferent teſtimony, to give the prepondérance to the aſſertions of either.

But the "Civil Officer," by admitting that the governor agreed *conditionally* to meet in the evening, makes a conceſſion that will go very far in refuting the charge againſt the council, *of perſonal diſreſpect*. If he agreed to *meet*, it is of little importance whether that agreement was *abſolute or conditional*: in either event it proves that the governor *knew* there would be an evening ſeſſion, and it will never be contended, that the council agreed that their meeting ſhould depend upon the contingency, of the governor's being enabled to diſſuade Meſſrs. Houſton and Montgomery from acting as commiſſioners.

It may now be proper to examine the other charge againſt the council, *of having groſsly violated the ſpirit of the reſolution paſſed by the legiſlature*. This queſtion being *leſs dependent* upon *aſſertion* for its ſupport, than the one previouſly diſcuſſed; the public will more readily form a correct opinion upon its merits.—Whether the Civil Officer means, that the governor has the *excluſive right of nomination*, or whether (agreeably to the idea of "A Citizen" which was probably written by the ſame author) the *concurrent* right of nomination is conceded, whilſt the governor's veto is claimed upon all appointments made by the council, the queſtion is but little varied under the conſtitution of our ſtate.—By the 33d ſection, the framers of that conſtitution have expreſsly declared, what power ſhall be veſted in the governor *alone*; or how far the executive powers of government could be ſafely confided to a ſingle individual.—Among theſe powers, they have enumerated the right of interference by *reprieve or pardon* in criminal caſes.—This right, thus creating its poſſeſſor the arbiter of life and death, muſt in its exerciſe be viewed as important by every ſociety. And yet the Civil Officer thinks the governor can *do nothing*, becauſe he does not poſſeſs all power.—By the ſame ſection, other powers are confided ſolely to the governor; but the convention not thinking it politic or wiſe, further to intruſt executive tranſactions to the governor alone, created a *council*—and have declared how far *they* alſo ſhould be conſidered as conſtituting the executive department of the government.—By the 48th ſection, "the governor for the time being, with the advice and conſent of the council, *may* appoint the chancellor, &c and all other civil officers, of government" (aſſeſſors, conſtables and overſeers of the road only excepted).—This ſection even if conſidered *abſtractedly*, without reference to any other part of the conſtitution, cannot poſſibly be conſtrued, to give the *excluſive right of nomination* to the governor.—The words may be gratified throughout, upon the idea of the right being *concurrent*.—Wherever a ſtatute directs a thing of a *public nature* or for the *public good*, the word *may* (as was correctly obſerved by Republicanus, a late writer in the American) is conſtrued to be *imperative*, and muſt be conſidered in the conſtitution as ſynoniмous with the word *ſhall*. If upon this principle, *ſhall* be ſubſtituted for *may*, the clauſe would be mandatory and not diſcretionary.—The words "advice and conſent" if taken *ſeparately*, would make the right *concurrent*.—If the governor were to nominate a character and the majority of the council were to agree to appoint him, he would ſurely be appointed with their *conſent*; but if on the other hand, the council were to *adviſe* the appointment of a different perſon, all the expreſſions would be equally gratified; for by giving *their advice* (which they unqueſtionably can do either before or after it is aſked) they at the ſame time give their *conſent*—and then the injunction of the conſtitution operating upon the governor by the ſubſtitution of the word *ſhall*, commands him to make the appointment, the council having *adviſed and conſented* thereto.

Upon this ſingle ſection of the conſtitution, the right claimed by the governor, may however be conſidered by ſome as queſtionable or uncertain.——There is another rule in the conſtruction of ſtatutes or inſtruments of writing, which will ſerve to elucidate *more clearly* the fallacy of this *new doctrine*, of the governors *veto or excluſive nomination*. Whenever there is a doubt as to the meaning of any one part of a law or piece of writing, the whole ſhall be taken together, to enable us the better to aſcertain the will of thoſe who framed or made it. The convention having, as before ſtated, veſted in the *governor and council* the right of appointments, and having alſo intruſted to them all other executive buſineſs, not confided to the *governor alone*, thought it expedient to preſcribe *the manner*, in which that buſineſs ſhould be tranſacted. By the 34th ſection of the conſtitution they have declared, "That the members of the council, or any three or more of them, when convened, ſhall conſtitute a *board* for the tranſacting of buſineſs; that the governor for the time being, ſhall preſide in the council, and be entitled (if a vote on all queſtions, in which they ſhall be divided in opinion; and in the *abſence* of the governor, the firſt named of the council ſhall preſide, and as ſuch, ſhall alſo vote in all caſes where the other members diſagree in their opinion." By this clauſe, the governor and council are evidently conſtituted into *one board* for the tranſaction of all *ſuch buſineſs* as had not been committed to the governor alone. The convention here declare *the number* that ſhould be authoriſed to tranſact *that buſineſs*, and that it might be conducted with regularity and order, they make the governor *preſide* over the board—but with what powers is he veſted? Not with the extenſive privilege of originally propoſing all queſtions himſelf; nor with a concluding negative upon them, as the preſident of the convention itſelf, or perhaps like the preſident or ſpeaker of every public body, when known to the convention; he is cloathed with the authority of giving the caſting vote, when *the body*, over which he preſides, ſhall be divided in opinion.

If he has the *excluſive right of nomination*, the conſequence muſt inevitably reſult, that the council can in *no caſe*, where the *governor and council* ſit together under the conſtitution, propoſe or ſuggeſt any thing that may be ſuppoſed to ariſe within the routine of buſineſs to be tranſacted by *the board*. Becauſe all acts of aſſembly, conferring powers upon the *governor and council*, muſt upon every principle of rational conſtruction, be underſtood to be directory, as to the *perſons* to exerciſe the powers, and *the manner* in which thoſe powers ſhall be exerciſed. To aſcertain this *manner*, immediate reference muſt be had to the conſtitution, which recognizes the authority deſignated by the law. The *manner* in which the governor and council, when aſſembled, are authoriſed to tranſact buſineſs, muſt of courſe be adopted, where *both* are directed to diſcharge a legal duty.—If it is contended that all appointments muſt meet the *approbation* of the governor, and the *excluſive right of nomination* be abandoned, the argument is equally ſtrong againſt this power, *which amounts to a negative in the governor*, upon the proceedings of the majority of the *board*. By the ſection of the conſtitution, laſt cited, the governor ſhall be entitled to vote *in all caſes in which the council ſhall be divided in opinion*. It may be aſked, what is meant by the right of voting *in all caſes where the council ſhall be divided?* Does it mean that he ſhall *only* vote where there is *a diviſion?* Or did the convention intend to convey the abſurd idea, that this right of *rejection* or *diſapprobation* claimed by the governor, did not amount to a *vote?* If this be their meaning, then the queſtion is at an end, and the council muſt relinquiſh their point for ever. But it may be remarked, that equally intelligible would be language, proclaiming that the ſenate had *rejected* a bill from the houſe of delegates, but had not *voted upon it*. If the power contended for by the governor, be conſtrued to convey the right of *voting*, then it muſt appear unwarrantable under the words or ſpirit of this ſection of the conſtitution. Once allow the conſtruction of the Civil Officer, and this irreconcileable inference is readily deducible—Although the governor can vote, *only when the council are divided*, yet he can *reject* their act *even where they are all* united in opinion. The Civil Officer admits the *caſting vote was wiſely conferred on the governor*, otherwiſe, he ſays, *he could not obtain their advice and conſent, and his own judgment would avail nothing, although half the council ſhould agree with him in opinion*. If, however, his conſtruction were correct, two of the council might vote for A, two for B, and the governor would have a right to vote for C, which would not be a *caſting vote*. But the conſtitution obliges him to vote either for A or B, for by voting for C, it would not be a caſe where the council *were divided*, C not being the cauſe *of a diviſion among them*.—It may be further remarked, that if the conſtitution intended that the governor, when acting with the council, ſhould ſtill poſſeſs integral powers *as the executive*, there could have been no neceſſity for ſaying that he ſhould *preſide in the council*. It might have left the arrangement of the buſineſs to his own diſcretion, and he would have been as diſtinctly ſeparated from the council, as the *ſenate* is from *the houſe of delegates*. But it is alſo provided, that "in the abſence of the governor, the firſt named of the council *ſhall preſide*, and as ſuch ſhall alſo vote in all caſes where the other members diſagree in their opinion." What power in the event of the governor's *abſence* does the firſt named of the council poſſeſs? The anſwer is obvious, all the power attached to the governor *when preſiding in the council*; he ſhall exerciſe the right of voting as the governor exerciſes it when *he* preſides. If the governor has the *excluſive right of nomination to office*, the firſt named of the council who *quo ad hoc* repreſents the governor, it is preſumed muſt have the ſame right.

But the Civil Officer objects to the council being called a *board*, and the governor a *member* of that *board*. The conſtitution itſelf calls them a *board*, when ſuch a number are aſſembled as are authoriſed to tranſact buſineſs. By the 26th ſection, the clerk is commanded to take an oath of ſecrecy in ſuch matters as he ſhall be directed *by the board* to keep ſecret. If the council were divided in opinion as to the propriety of keeping a particular meaſure ſecret, and the governor were to vote that ſecrecy ſhould be obſerved (for he has a right to vote *in all caſes of diviſion*)—would the Civil Officer contend, that ſecrecy was not enjoined by *the board?* Or would his argument be, that it was directed by *the governor* and *the board*, or (to uſe expreſſions with which he may be better pleaſed) by the governor and *his* council.——This leads to another remark, which may tend to prove that the governor and council are conſidered as *one board*, and the governor *when preſiding in the council*, is a *member* of that board. The Civil Officer ſeems to view it as an abſurdity, that the governor ſhould be conſidered as *one of a council to himſelf*. Let us take a caſe that has recently occurred. The council were divided in opinion as to the character to be appointed judge of the general court; the conſtitution directs that the judges of the general court *may be appointed by the governor, with the advice and conſent of the council*; the governor gave the *caſting* vote, and the judge was commiſſioned. Will the "Civil Officer" argue that the governor did not adviſe the appointment *as one of the council?* If ſo, the inference would follow, that the judge was not appointed *with the advice and conſent of the council*. The reaſoning of the "Civil Officer" ſeems to be grounded upon the idea, that advice cannot be mandatory in its nature, but leaves a diſcretion in the party to whom it is directed: In common parlance this may be the caſe, the conſtitution, however, ſeems to mean otherwiſe; for by the 33d ſection, which enumerates the excluſive powers of the governor, the convention, in one particular inſtance, have placed him under the control of the council. After ſtating that the governor ſhall have "the ſole direction of the militia and of all the regular land and ſea forces under the laws of this ſtate; by that ſection it is provided, "that he ſhall not command in perſon, *unleſs adviſed thereto by the council*, and then only ſo long as *they ſhall approve thereof*." If the council ſhould adviſe that he ſhould act the *hero* (a term by no means ridiculous among military men) by taking the command in perſon, this *advice* would operate as an *order*; and if after a particular period they ſhould adviſe him to relinquiſh that command, it would be equally imperative, as it would be evidence of their *diſapprobation of his longer continuance at the head of the army*.

Another leading principle on which the Civil Officer reſts the claim of the governor, is derived from the terms of the 26th ſection which directs the choice of five perſons to be "the council to the governor." He ſays *they are a council to the governor not a council to the ſtate of Maryland*. The expreſſions of the conſtitution are by no means evidence that the convention did not intend they ſhould be viewed as a council to the *ſtate*. They were probably denominated a council to the *governor* becauſe *he* was the prominent officer through whom moſt of their acts were to be promulged, becauſe he preſided at the *board* of which they were members, and becauſe his ſignature was required to all commiſſions that ſerve as public teſtimonials of appointments made by *that board*. That the convention conſidered them as a council to the *ſtate*, is proved by the act of February ſeſſion, 1777, chap. 6, which preſcribes the oath of office.—That oath commences in theſe words, "I, A B, elected a member of the council of *Maryland*, do ſolemnly promiſe and ſwear," &c. This was the firſt ſeſſion of the legiſlature after the adoption of the conſtitution and there were at leaſt *forty-two* members of the convention in the two branches of the aſſembly. Among theſe are the names of S. Chaſe, J. T. Chaſe, W. Paca, Charles Carroll (of Carrollton) J. Hall, Matthew Tilghman and Robert Goldſborough, who muſt no doubt have had a principal ſhare in the formation of the government. It is thought too tedious and unintereſting to give a liſt of all the names, as the proceedings can eſtabliſh the correctneſs of the ſtatement.

But let us purſue the reaſoning of this writer a little farther. By the ſection of the conſtitution which authoriſes *the council* to tranſact buſineſs, the Civil Officer conceives that it muſt mean *principally*, that they are to adviſe and conſent to ſuch executive acts of the governor as require their *concurrence*, or ſuch buſineſs under the conſtitution as may by ſome particular law require their concurrence *expreſsly*.—This may be all true, but as before ſtated, it muſt be done in the *manner* provided for by the conſtitution; that is, the will of the majority when known, ſhall make the act final and obligatory. But what is to be done *in the abſence of the governor?* Over this queſtion the "Civil Officer" has glided with wonderful dexterity, after ſtating *that part of the ſection* which directs that in ſuch caſe the firſt named of the council ſhall preſide, and referring us to an old act of 1716, (paſſed under the proprietary government;) as the foundation of this part of the ſection. The Civil Officer has even here miſtated the expreſſions of the act. There is no proviſion in any part of the law that authoriſes the firſt named of the council to *preſide*. Nor does it provide that *in ſuch caſes of abſence*, (as the Civil Officer has quoted,) that the firſt named ſhall preſide; but by that act, in caſe of the death or abſence *generally* of the governor, *all the powers* of that officer devolve upon the firſt named of the council. Whether it was the *practice* under the proprietary government for the governor to preſide in the council is not a ſubject worth our inquiry; but it is believed the Civil Officer can ſhew no public act prior to the conſtitution that poſitively directed it. If, however, it be conceded, that the governor *did* preſide, yet no aid can be drawn from the act of 1716 to ſtrengthen the general power claimed by the governor. If this act be the ſource from whence the firſt named of the council derives his authority *in the abſence of the governor*, he would, in *that* event, poſſeſs not only the right of *preſiding*, (if at all veſted in the governor,) but he would, *ipſo facto*, be created governor, ſo far as he could become ſuch by the poſſeſſion of *his* powers. But whether this act did or did not authoriſe the firſt named of the council to preſide in the abſence of the governor, it yet remains for the Civil Officer to prove, (not by general aſſertion, but by *the records themſelves*,) that the powers contended for by the preſent governor have ever been claimed from the firſt ſettlement of the colony to the period of framing the conſtitution of Maryland. To do this, he muſt ſhew where the *adviſe of council* has been *rejected* by the governor; ſhould he fail in this attempt, it will be record proof, which is as ſtrong as any tradition that, even during the proprietary government, *nothing like the conduct of the preſent governor was ever practiſed*. Governor Hart himſelf conſented, that in the event of his abſence, the firſt named of the council ſhould be inveſted with *all his authority*. Not attempting to graſp at *more* power than what his predeceſſors poſſeſſed, he *in this caſe* created a ſubſtitute, and tranſferred to that ſubſtitute *all the privileges of his office*. This delegation of authority, if not accordant with his own feelings, could have been eaſily prevented by *his negative* upon the law. But this act was probably cited to ſhew what the convention meant by the *abſence* of the governor. That the ſickneſs of the governor might cauſe his *abſence*, or that when out of the ſtate, or at the head of the army, he could not be conſidered *as preſent*, is readily admitted; but the convention, by their general term *abſence*, meant to provide for the tranſaction of the public buſineſs, whether that abſence ſhould ariſe from *theſe or any other cauſes*. Whenever the governor knows that the board are to meet, and does not *chooſe* to attend, his abſence is as complete, in every *public* point of view, as if he were at the head of the militia of the ſtate.

In this abſence then, the council are authoriſed to tranſact buſineſs. Does this mean that they are merely to prepare buſineſs for the *rejection* or *approbation* of the governor, when he may again *chooſe* to attend? Or does it intend that their acts ſhould be *conclu*ſive, and that the affairs of the ſtate ſhould not be interrupted during his abſence? If the latter is underſtood to be the meaning of this clauſe in the conſtitution, it proves that all buſineſs committed to the *governor and council*, by particular laws, or to the governor *with the advice and conſent* of the council, may be tranſacted in the abſence of the governor. But if the Civil Officer is correct, that the council, under the conſtitution, can do but two acts without the *concurrence* of the governor, then the ſage framers of that inſtrument intended, that the council, *in the abſence* of the governor, ſhould be amuſed with planning new *devices* for the ſeal of the ſtate, or with making *conſtant inquiry* into the *conduct* of their clerk (after his firſt appointment) to know if it be expedient to remove him