

MARYLAND GAZETTE.

THURSDAY, APRIL 21, 1803.

From the AMERICAN.

BY REQUEST.

(Concluded from our last.)

THE constitution commands the governor to sign a commission, where a majority of the board advise that it should issue, the responsibility, it is true, rests upon himself. But that responsibility is perhaps double, it is due to the representatives of the people, from whom he derived all his authority, and to the individual from whom the commission is withheld. But no signature of the governor is necessary to attest the appointment of the *Susquehanna commissioners*. The resolutions of the legislature contain their instructions, and a copy of the proceedings of the council, attested by the clerk, constitute the credentials in appointments like these. Commissions issue to civil or military officers of the state, signed by the governor; and in all cases where a law authorizing the appointment (which usually prescribes the form) positively directs it. To obviate the inconvenience of sending after the governor to sign those testimonials of appointments by the board, it has been the practice with the predecessors of the present governor, to leave a number of blank commissions in the council chamber. This practice does not rest upon assertion alone, for there are at this time blank commissions, signed by governors Lee, Stone, Henry and Ogle, as the clerk can attest, should the fact be denied.

But waving for the present, all inferences from practice; let us see which construction is attended with fewer inconveniences to the public. Agreeably to that which the council say, is the only correct construction that can be put upon the constitution, no prejudicial consequences can be experienced by the public, because no collision of opinion, like that on the *Susquehanna commissioners*, can in any possible event ever occur. The will of the majority becomes final and effective, and the minority, however opposed to that will, can never retard the administration of justice, or impede the execution of law. But once arm a governor with his controlling veto, and from caprice, from passion, or the pompous desire of displaying power, the state may be involved in considerable inconvenience.—A single instance may serve to illustrate the tendency of this construction. In the act of February session, 1777, ch. 19, is this clause, "Whereas it is uncertain by our constitution what body has the power of determining the validity of elections for sheriffs: Be it enacted, That the governor, for the time being, with the advice of the council, is hereby empowered to judge of and determine the validity of all elections for sheriffs, and if it shall appear that such elections have not been made fairly and freely, and agreeably to the constitution of this state, shall issue new writs of election for sheriffs agreeable to the directions of the form of government." If the council, on a contested election, should be unanimously of opinion, that the first on the return was fairly elected, and the governor should think differently, an obnoxious perseverance on his part would totally deprive the county of a sheriff. No writ could issue for a new election, without the advice of the council, and that advice could never be given, when they believed the first election had been fairly conducted. There is but one instance known to the writer, where any thing like the power claimed by the present governor was ever attempted to be exercised under the constitution of Maryland.—It occurred under this law in the year 1797. Upon a contested election in Prince-George's county; the majority of the council decided that the first person on the return was entitled to a commission.—The then governor hesitated for several days about signing one, but at length yielded.—The attorney-general and a gentleman who was formerly a member of the council, appeared in behalf of the person first returned, and thought the withholding of the commission, had it been persisted in, would have furnished sufficient grounds for the institution of a suit. This law, which was also passed the first session after the formation of the constitution, strengthens the construction of the council. The plain inference from the preamble is, that the governor and council were considered as one body or board, and as such were authorized to determine in a case unprovided for, by the constitution itself.

But the council do not rest their justification upon these grounds alone. They have the additional weight of precedent and practice, derived from the authority of the many respectable characters who have preceded them in office. During the three years that Mr. Johnson was governor, the journals afford little information on the question in dispute. A great part of that time, they do not notice the attendance of either the governor or the council, and the absence of the governor is but four or five times particularly mentioned, during the term of his continuance in

office. It is believed the Civil Officer is incorrect in stating, that a great part of the business was done by governor Johnson himself, when not a single counsellor was present. This is probably conjectured to have been the case, when the proceedings do not state the attendance either of the governor or the council. Admit the fact alleged by the Civil Officer, and, (if the expressions may be allowed) by proving too much it would prove nothing—for by the exercise of authority confessedly unconstitutional his proceedings could never be the evidence of correct construction on questionable or controverted powers.

In each of the three years that Mr. Lee first served as governor, his presence and that of the council is entered upon their first appearance at the board, and no further notice is ever taken of the attendance of either; but when Mr. Lee was again governor, the proceedings distinctly mark the attendance of himself and every member of the board, during this period, there are various instances of appointments in his absence. To establish the fact, reference need only be had to the proceedings of the 23d of July, 1792, when associate justices were appointed for Baltimore and St. Mary's counties—August the 8th, 1792, when a register of wills was appointed for Worcester county—and to those of the 15th of the same month, when a commission issued to justices of the orphans court of Dorchester county. It is unnecessary to refer to all the appointments made in the absence of Mr. Lee, during his last three years. The above instances, connected with the circumstances of the blank commissions now in the council room, signed by that gentleman, must be strong evidence of the practice that prevailed when he was first chosen governor. It may also be worthy of remark, that Mr. Lee was elected a member of council in March, 1777, and continued to act, until the expiration of Mr. Johnson's constitutional term as governor. He must consequently have known the construction that obtained under the first administration, and his own conduct whilst governor, is almost conclusive testimony, to establish that construction.

But let us examine into the practice under Mr. Paca, the third governor after the formation of the government and a leading and influential member of the convention that framed the constitution. An act passed while he was governor, giving the council a PER DIEM allowance, which necessarily imposed a duty on the clerk of entering each day, the attendance of the several members. During Mr. Paca's time, B. Stoddert, J. T. Chase, James Brice, J. H. Stone and G. Duvall, Esquires, were members of the council, and the four first named of those gentlemen filled the same office, a great part of the period that Mr. Lee was governor. That appointments took place in the absence of Mr. Paca, the Civil Officer will find ample proof by referring to the proceedings of the 26th of April, 23d of May and 25th of August, 1783—Also to those of the 26th of April, 4th of June and 15th of September, 1784. One circumstance illustrative of the correctness of these remarks, may be found in the letter of G. Duvall, Esq; entered in the proceedings of the 20th of April, 1786. By this letter he resigned his seat as a member of the council, and assigned as a reason, the unconstitutionality of a law of the preceding session, vesting certain powers in the governor and council. The only objectionable clause in that law, prescribed a different manner for the transaction of business at the board, than what the constitution had directed. It is in these words: "That all and any of the powers vested by this act in the governor and council, may be exercised by any three or more of them, the governor always being present and having a vote." These references will prove the correctness of the Civil Officer's strict investigation, under succeeding governors to Mr. Johnson. To trace the practice to the present period would be a work of supererogation, totally uninteresting to the public at large. A uniformity of construction has since prevailed, until the time of electing the present governor. It was reserved for him, "to cut the Gordian knot" and free himself from those fetters, that had so long entangled his predecessors in office. But let it not be said that the hint was taken from the resignation of Mr. Henry. Always attentive to the injunctions of his oath, that gentleman (with the sentiments indirectly ascribed to him) could never have signed blank commissions to be filled up at the pleasure of the council. A majority of that council too, it is well known, was directly opposed to his political opinions. If Mr. Henry ever doubted on the constitutional question he acted like a wise and unassuming judge in yielding his impressions to the authority of repeated and uniform decisions. Perhaps far different motives than those assigned by the Civil Officer induced his resignation. He had expressed his confidence in a distinguished individual, opposed to the party then in power. This at that time, was sufficient ground at least for their neglect.

The Civil Officer observes, that at the time of the appointment of the *Susquehanna commissioners*, there was no precedent of an adjournment of the council to meet in the evening, since the governor and they had acted together. He had surely forgotten that the governor himself attended at one afternoon's session when an associate justice was appointed for Anne-Arundel county—and at another, when measures were taken to demand of the commonwealth of Virginia, a fugitive from justice. With a knowledge of these meetings how could he have made the above assertion? Did he mean to quibble on the term precedent, because they were not entered as *post meridiem* meetings on the proceedings of the council? He must have known that they were not thus entered, because the same members attended in the evening as were present in the morning; and the clerk considers it unimportant in such cases, to state the particular hour or time of day when the business is transacted.

The Civil Officer has introduced different points unconnected with the present dispute. Whenever they shall be exhibited as specific charges, it is believed the council will be prepared to repel and to confute them. But there is an oblique insinuation about the resolutions of the senate, which the writer is constrained particularly to notice. Their resolutions involve nothing mysterious in their origin or their progress. They were not the offspring of midnight association, but the production of the gentleman alone, who moved and supported them.—They were prepared in the senate room, while the house of delegates were discussing the subject, in a different form. Confident, that there is nothing in the proceedings on these resolutions, that can compromise the character either of the assembly or the council, the "Civil Officer" is invited to submit his prepared history to public inspection. But as general allegation unsupported by proof, is more the evidence of meanness than candour, the history (it is hoped) will be authenticated, by a reference to his authority.

As connected with this subject it may be observed, that the insinuation of "Republicanism" against the few republican members of the house of delegates who voted in opposition to the senate's last resolution, is certainly unfounded. He is equally incorrect in the agreement that he states to have taken place in the council, on the subject of a late election. No such agreement was ever made. This writer's good sense, will on a little reflection, cause him to retract these errors, which it is believed have entirely flowed from misinformation.

A FRIEND TO CANDOUR.

VIENNA, February 13.

The health of the archduke Charles is so much ameliorated, according to the last bulletin of it, that his physicians announce, that no further bulletin of it will appear.

Our political relations with Russia are to be re-established on the same footing as before the war. The archduke Palatine of Hungary, certainly sets out for Petersburg at the end of the month.

The report of the approaching cession of Sardinia to England is contradicted by several persons in spite of the affection and tone of assurance with which it has been spread. Doubtless France and Russia would oppose a sale, which would augment almost without measure, the maritime preponderance of Great-Britain, besides adding to its territorial power. It is easy to conceive that the court of London may have employed every means to engage the king of Sardinia to give up his island. Twenty millions are very little for a state, which no longer calculates, because the deficit in its finance will no longer admit of calculation.

According to letters from Semlin, it is feared that new troubles have broken out at Belgrade.

PARIS, February 21.

The gun was fired at one o'clock, to announce the opening of the session of the legislative body.

The great number of passports asked for every day by Switzers, to go to America, having attracted the solicitude of general in chief and minister Ney, he has drawn the attention of the Helvetic government to the prejudicial consequences of these emigrations if they continue; and has invited them to devise, in their wisdom, the means of remedying them. It is asserted that more than 300 passports have been granted these few days past.

MARSEILLES, February 17.

The body of gen. Le Clerc was deposited in the exchange of this city, which was hung with black, where it remained until the constituted authorities, principal citizens, &c. formed in procession, to attend it to the church of St. Martin. The church was also hung with black. In the centre of the principal hall, a temporary pedestal was erected, over which was displayed a splendid canopy, from which depended four