

accountant, he was entitled to an order from the council for its payment, if the items appeared correct, and if such payment was authorized by law. The items of his account appear to have been charged according to the rate of pay and rations of a major general in the army of the United States; and it only remains to enquire, whether the laws of this state authorized or justified a settlement of his account according to that rate.

In the resolutions it is argued, that the act of 1785 gave the governor a permanent salary of \$1000, as a full compensation for all the services he was constitutionally bound to perform; and that a public law giving such compensation to a public officer, embraces all the duties of his office, and not any specific portion of them. In answer to this part of the argument, it may be replied, that the committee perceive nothing in the 33d section of the constitution, or any other section thereof, by which the governor, as commander in chief, is bound to command in person, although advised thereto by the council. He is not authorized so to command, unless they advise him; but the terms of the constitution do not oblige him to pursue such advice of the council after it is given; and therefore in contemplation of the committee, the governor, not being constitutionally bound to command in person, it would follow that the argument does not here apply, which only considers a fixed salary as a full compensation to a public officer for all those services which he is constitutionally bound to perform.

But it is further insisted, that his salary is not only a compensation for those services which the governor must perform, but also for those services which he may constitutionally perform; and to sustain this position, great stress has been laid on the provisions of the old act establishing the salary of the governor. That act was passed at November session 1785, about two years after our revolutionary struggle was terminated by a treaty of peace between this country and England. It purports to ascertain and establish a permanent salary for the governor—It was devised and passed, during a recent state of peace, certainly with no other reference than as a compensation to the chief magistrate of the state, for the discharge of those duties which in the ordinary state of things, that is in the state of peace, he was required by the constitution to perform. While its terms do not exclude the idea of a suitable additional allowance to be provided, as future occasion might arise for extraordinary military services, the act did not proceed to declare what further compensation should be allowed to the governor, if called to command the forces of the state in person, because at that enviable period, our forefathers, intent only upon the happy tranquility they just then enjoyed, did not direct their attention to providing for the exigencies of a state of war, which they no doubt fondly hoped was far distant and removed from them. And it had fortunately so happened, that nearly thirty years had elapsed since the passage of the act, before such an occasion had occurred as to produce the agitation of the subject now before the committee. In truth this is believed to be the first instance, since the adoption of the constitution, in which the governor has been called to "command in person."

But although it is the first instance, the committee conceive that the existing laws are not on that account the less clear and satisfactory. At their session which commenced in November 1811, the Legislature, on the 7th of January 1812, little more than five months before the declaration of the present war by congress, passed a new act "to regulate and discipline the militia of this state;" in the 31st section of which it was enacted, that when the whole, or any part of the militia of this state, shall be ordered into actual service, they shall be entitled to the same pay and rations as troops in the service of the United States are entitled to receive.

It is presumed by the committee, that it will not be contended, under those clauses of the constitution which forbid members of the Legislature, and various civil officers, including the executive, from holding any other office of profit, that the governor alone is thereby disqualified from exercising a military command, in which he was to receive pay for his extraordinary services and expenditures. The construction of those clauses of the constitution has been long settled, and there are now members of the Legislature, several members of this house, who have, during the last summer, been actively engaged in military commands, for which they have received, or will be entitled to receive, the proper compensation. It is also to be observed, that the military office of adjutant general of the state, with a regular annual stipend affixed to it, is held and exercised by the register of wills of Anne Arundel county, an office explicitly recognized by the constitution.

The governor, therefore, when acting in person as commander in chief, became clearly entitled, as the committee believe, to his compensation under the provisions of the act of 1811, prescribing the pay and rations of the militia, at the head of which he is placed by the constitution, and an active part of which he became by the constitutional advice of the council.—A question might perhaps have been raised, whether he was not thus entitled to a higher rate of compensation than he did receive. But as, (independent of the personal rank of the present governor, who is a major general of the militia) he was, by virtue of his office as commander in chief, superior to the grade of a major general, your committee are of opinion, that the allowance made to the governor, according to the rate of a major general of the United States army, was perfectly within the letter and spirit of the law.

And, even if a doubt existed on this subject, which the committee do not themselves entertain, they think that the proceedings of the house of Delegates at the last session of the Legislature, ought to preclude this house from giving a moment's countenance to the propositions now before them. At the last session, certain resolutions were introduced, declaring the governor, as commander in chief, when in actual service, to be entitled to receive exactly what he has received, in payment of the account which is now disputed. Those resolutions were referred to a select committee, consisting of Messrs. Leconte, Bayly, and Mr. Mason—which latter gentleman has been the mover of the late resolutions in the house, now condemning the payment made as aforesaid to the governor. That committee reported, that the existing laws, having provided a mode for the settlement of all claims arising from the employment of the militia, they were of opinion that it would be