

Clewe, Mountjoy Bayly, John Williams and Basil Lucas, dissented from by your body. We have returned them to you for further consideration with the hope they may be assented to by the senate.

By order,

UPTON S. REID, Clk.

The house resumed the consideration of the report of the committee in relation to the pay and rations of the governor, as commander in chief, and on motion by Mr. Mason, the question was put that the following preamble and resolutions be received as a substitute for the report:

Whereas by the 33rd section of the constitution it is provided "that the governor by and with the advice of the council may embody the militia, and when embodied shall alone have the direction thereof, and shall also have the direction of the regular land and sea forces under the laws of this state, but shall not command in person unless advised thereto by the council, and then only so long as they shall approve thereof." And whereas Levin Winder, Esquire, was chosen governor of this state in November 1812, for one year, and did accept thereof and qualified according to the constitution and law. And whereas by the act of November session 1785, ch. 28, entitled, an act to ascertain and establish a permanent salary to the governor, it is provided, that the governor shall receive at the rate of one thousand pounds current money for his salary to be paid him quarterly. It further appears by the votes and proceedings of the house of delegates, that on the 3d of January, 1814, certain resolutions were submitted to the house in the words following:

"Resolved, That the governor of Maryland as commander in chief of the militia, when in actual service is entitled to the pay and rations of a major-general of the militia."

"Resolved, That the council be, and are hereby authorised to liquidate the account of his excellency the governor for services that have been or shall be rendered as commander in chief of the militia of this state while in actual service, and that the treasurer of the Western Shore be, and he is hereby directed to pay the amount when so ascertained by the council, out of any unappropriated money in the treasury."

Which resolutions were on the 15th of the same month, by order of the house of delegates, referred to a committee. That on the 20th of the same month the committee to whom those resolutions were referred, reported in the words following: "The committee to whom were referred the resolutions relative to the pay and rations of the governor whilst in actual service as commander in chief of the militia of this state, beg leave to report, that the existing laws of the state having provided a mode for the settlement of all claims against the state arising from the employment of the militia, they are of opinion that it would be unnecessary to adopt the said resolutions," which report was, on the 26th of the same month concurred in by the house.

And whereas, by the record of the proceedings of the council, it appears that on the 20th of April, 1813, an order of the council was there made in the words following, "The council advised the governor to take the command in person." That by the same record it appears that on the 1st of February, 1814, the council passed an order allowing the account of the governor against the state for the sum of \$1643 63 for his services as commander in chief of this state, from the 20th of April to the 17th of September, 1813, which account was paid by the treasurer upon the order of the governor. And whereas, by an order of this house made on the 20th day of January, 1815, the executive of Maryland were requested to state particularly and fully their reasons for issuing that order to the treasurer; and also to state the act of assembly, resolution or authority under which that order was by them given, and that they lay before this house the record of their proceedings for the year 1813. In reply to this request two of the council, among other things stated to this house in substance, that by the 31st section of the act to regulate and discipline the militia, passed at November session 1811, the governor when in actual service was entitled at least to the pay and rations of a major-general. The question then presents itself to this house for consideration, whether the last recited act to regulate and discipline the militia or any other law of this state, authorised the council to order the aforesaid sum of \$1643 63 to be paid to the governor for his services as commander in chief of the militia while in actual service.

By the facts disclosed it is evident that the governor has received of the state's money for his services for one year, from November 1812 to November 1813, the sum of \$1643 63 over and above the salary fixed by the act of 1785, and it is the duty of this house to enquire whether the payment of that sum is justified by any existing law, and if it is not justified by any existing law, to take immediate steps to ensure its reimbursement to the state and to prevent in future a similar misapplication of the public money.

By the 23d section of the constitution before quoted, the governor is made *ex-officio* commander in chief of the militia, and if so advised by the council, is bound to command them in person, and unless he is so advised, is by the constitution restricted from commanding in person. It results then undeniably that when the governor commands the militia in person he exercises a part of the duties of his office imposed on him by the constitution. It cannot be necessary to prove by argument that a public law which gives to a public officer a salary and attaches to his office certain duties, gives the salary as a compensation for the performance of all those duties, and not for any specific portion of them. If these positions be just it necessarily follows that the salary of \$1000 per annum given by the act of 1785, is a full compensation to the governor for all the services which he can be rightfully called upon to perform or can constitutionally perform, unless there can be shown to exist some subsequent law to increase that compensation. The militia law passed at November session 1811, ch. 182, next presents itself for consideration. The most ordinary and most sensible rule for the construction of statutes is to consider the evil which existed before the statute passed, the remedy which the legislature intended to apply, and so to construe their act (if it can be done) as to make the one commensurate with the other. When this statute was passed, the evil existing was a militia utterly inefficient; the remedy applied was a system of enrollment, organization and training which should make them useful to the state or to the United States, if their aid and assistance should be required, and if so required to sustain and pay them whilst employed in actual service.