

It is believed that in the passage of this act the governor was never thought of by the legislature; they knew they could not reach him by any legislative act in such a manner as to increase his powers or his duties, they being defined and limited by the constitution. By no sound construction, can the militia law of 1811 be applied to the governor. The 31st section referred to, subjects those to whom it gives pay and rations to the rules and regulations of the articles of war, but the governor cannot be subjected by the legislature to the rules and articles of war unless the constitution be changed. That section gives pay and rations to the militia created by the law of which it is a part, but the law no where makes the governor a militia man. To ascertain who are entitled to pay and rations under the clause in question, we must first determine who are the militia meant by this law. The first section of the law describes with precision what description of persons, in its own words, "shall be subject to do militia duty under this act." This description of persons when called into actual service, constitute the militia of this state that are entitled to the pay and rations provided in the 31st section of the law. But this does not embrace the governor of Maryland. Again, the rules and regulations by which the militia of this state shall be governed, at the end of the 4th section of the law, embraces every militia man and every militia officer. A provision is therein made for trying by courts martial every militia man and every militia officer, for offences against the militia law—but there is nothing in these provisions which extends to the governor. There is no court to try him, there can be none—he is no commissioned officer—the legislature can by no act of theirs make the governor a militia man or a militia officer. The constitution makes the governor commander in chief of the militia of the state, and obliges him to command in person when the council advise it, but it does not by any means follow, that because he is commander in chief of the militia that he is a militia officer. He is also commander in chief of the regular land and sea forces, under the laws of the state. Yet he is neither a general or an admiral. He is emphatically governor of Maryland, and in virtue of his office as governor has alone the direction of the militia and of the regular land and sea forces under the laws of the state, yet he is neither a part of the militia or of the regular land or sea forces of the state.

By the constitution of the United States, article 1st, section 8, congress have power "to provide for calling forth the militia," and by article 2, section 2, "the president shall be commander in chief of the militia of the several states when called into the actual service of the United States." The constitution of the United States is paramount to and controls the state constitution. Congress and the president acting together have full power over the militia. If then the governor can be, by a legislative act, made a part of the militia, he may be called into the service of the United States. The constitution would then in this particular be rendered a nullity and the state deprived of both its governor and commander in chief—then indeed he would be subject to martial law; but this never can be admitted.

The proceedings of the house of delegates at their last session remain to be considered. The resolutions submitted to the house on the 3d of January, 1814, contain a clear and specific proposition to give to the governor an additional compensation for his services in case he had been or should be called to command the militia in person. Had these resolutions been adopted by the house of delegates without any reference to a committee, this act would have given no right to the governor to an additional compensation for his services, because by our constitution the public money cannot be paid away or appropriated to any purpose without a concurrent vote of both branches of the legislature. If then, an adoption of these resolutions by the house of delegates could not justify the payment of this money, it would be a useless waste of time to prove that no report of a committee of this house upon those resolutions, although approved and adopted by the house could justify that payment. If it be urged that this report is evidence of the opinion of this house, that a law pre-existed to entitle the governor to this pay and rations, it is answered that it is the province of this house in conjunction with the senate to legislate, and not to expound laws, but the exposition of one branch of the legislature without the concurrence of the other is a slender foundation indeed whereupon to presume a law. The executive council of the state are men capable of expounding the law for themselves, and must be held responsible to the state for a sound and just exposition. But the report expresses no opinion as to the pre-existence of a law that entitled the governor to pay and rations if called to command the militia in person, unless it can be shewn that the governor is a part of the militia.

At the last session of the legislature no application of the public money had been made which imposed upon the house of delegates a necessity to act upon the question now under consideration. The situation of the house of delegates is at this time very different; the public money has been paid away, and we, the house of delegates are bound by the constitution to say whether rightfully or not. Therefore,

*Resolved*, That the governor was not under any existing law entitled to the \$1643 63, paid to him by the treasurer of the Western Shore, on the first day of February, 1814, and that he be requested to refund the same to the treasurer aforesaid. The yeas and nays being required, appeared as follow:

**AFFIRMATIVE**—Messrs. Randall, Warner, Stansbury, Harryman, Duvall, Emory, Burgess, Wright, Stevens, Forwood, of Jb. Dallam, Barney, Kell, Tilghman, Schnebly, Gabby, Mason.—17

**NEGATIVE**.—Mr. Speaker, Messrs. Millard, Neale, Blackistone, Causin, Hood, Worthington, Hopkins, Gray, Reynolds, Turner, Jenkins, Caldwell, Hambleton, Seth, A. Hands, Bayly, Cottman, Long, Griffith, Beard, Hogg, Evans, Beall, Waring, Van Horn, Williams, Quinton, J. Thomas, Howard, J. H. Thomas, Jones, Kilgour, Crabb, Riggs, Hilleary, M. Mahon.—37.

So it was determined in the negative.

The question was then put that the house concur in the report of the committee and adopt the order therein contained. The yeas and nays being required, appeared as follow:

**AFFIRMATIVE**.—Mr. Speaker, Messrs. Millard, Neale, Blackistone, Causin, Hood, Westhington,