

“Ours are the plans of life, delightful Peace,
“Unwarped by party rage, solve like Brothers.”

VOL. XXIII.

COL. TOWSON & COL. GADSDEN.

(Proceedings continued from last week's paper.)

FRIDAY, APRIL 12, 1822.

The two following written messages were received from the President of the United States:

To the Senate of the United States:

Having cause to infer that the reasons which led to the construction which I gave to the act of the last session, entitled "An act to reduce and fix the peace establishment of the United States," have not been well understood, I consider it my duty to explain, more fully, the view which I took of that act, and of the principles on which I executed the very difficult and important duty enjoined on me by it.

To do justice to the subject, it is thought proper to shew the actual state of the army before the passage of the late act, the force in service, the several corps of which it was composed, and the grades and number of officers commanding it. By seeing, distinctly, the body in all its parts, on which the law operated; viewing also, with a just discrimination, the spirit, policy, and positive injunctions of that law, with reference to precedents, established in a former analogous case, we shall be enabled to ascertain, with great precision, whether these injunctions have, or have not been strictly complied with.

By the act of the 3rd of March, 1815, entitled "An act fixing the military peace establishment of the United States," the whole force in service was reduced to ten thousand men, infantry, artillery, and riflemen, exclusive of the corps of engineers, which was retained in its then state. The regiment of light artillery was retained as it had been organized by the act of the 3d March, 1814. The infantry was formed into nine regiments, one of which consisted of riflemen. The regiments of light artillery, infantry, riflemen, and corps of engineers, were commanded each by a colonel, lieutenant colonel, and the usual battalion and company officers; and the battalions of the corps of artillery, of which there were eight, four for the northern, and four for the southern division, were commanded by lieutenant colonels, or majors, there being four of each grade. There were, therefore, in the army, at the time the late law was passed, 12 colonels belonging to those branches of the military establishment. Two major generals and four brigadiers were likewise retained in service by this act; but the staff, in several of its branches, not being provided for, and being indispensable, and the omission inadvertent, proceeding from the circumstances under which the act was passed, being at the close of the session, at which time intelligence of the peace was received, it was provisionally retained by the President, and provided for, afterwards, by the act of the 24th of April, 1816. By this act, the Ordnance Department was preserved as it had been organized by the act of February 8, 1815, with one colonel, one lieutenant colonel, two majors, ten captains, and ten first, second and third lieutenants. One adjutant and inspector general of the army, two adjutant generals, one for the northern and one for the southern division, were retained. This act provides, also, for a paymaster general, with a suitable number of regimental and battalion paymasters, as a part of the general staff, constituting the military peace establishment; and the pay department, and every other branch of the staff, were subjected to the rules and articles of war.

By the act of March 2, 1821, it was ordained that the military peace establishment should consist of four regiments of artillery, and seven of infantry, with such officers of engineers, ordnance, and staff, as were therein specified. It is provided, that each regiment of artillery should consist of one colonel, one lieutenant colonel, one major, and nine companies, with the usual company officers, one of which to be equipped as light artillery; and that there should be attached to each regiment of artillery one supernumerary captain to perform ordnance duty, thereby merging the regiment of artillery and ordnance department into these four regiments. It was provided, also, that each regiment of infantry should consist of one colonel, one lieutenant colonel, one major, and nine companies, with the usual company officers. The corps of engineers, bombardiers excepted, with the topographical engineers & their assistants, were to be retained under the existing organization. The former establishment, as the number of major generals and brigadiers, was curtailed one half, and the office of inspector and adjutant general to the army, and of adjutant general to each division, annulled, and that of adjutant general to the army instituted. The quartermaster, paymaster, and commissary departments, were, also, specially provided for, as was every other branch of the staff, all of which received a new modification, and were subjected to the rules and articles of war.

The immediate and direct operation of this act on the military peace establishment of 1815, was that of reduction, from which, no officer belonging to it was exempt, unless it might be the topographical engineers; for, in retaining the corps of engineers, as was manifest, as well by the clear import of the section relating to it, as by the provisions of every other clause of the act, reference was had to the organization, and not to the officers of the corps. The establishment of 1815 was reduced from 10,000 to about 6,000 men. The eight battalions of artillery, constituting what was called the corps of artillery, & the regiment of light artillery, as established by the act of 1815, were to be incorporated together, and formed into four new regiments. The regiments of infantry were to be reduced from nine to seven, the rifle regiment being broken. Three of the general officers were to be reduced, with very many of the

officers belonging to the several corps of the army, and particularly of the infantry. All the provisions of the act declare, of what number of officers and men the several corps provided for it should thenceforward consist, and not that any corps, as then existing, or any officer of any corps, unless the topographical engineers were excepted, should be retained. Had it been intended to reduce the officers by corps, or to exempt the officers of any corps from the operation of the law; or in the organization of the several new corps, to confine the selection of the officers to be placed in them to the several corps of the like kind, then existing, and not extend it to the whole military establishment, including the staff; or to confine the reduction to a proportional number of each corps, and of each grade in each corps, the object, in either instance, might have been easily accomplished by a declaration to that effect. No such declaration was made, nor can such intention be inferred. We see, on the contrary, that every corps of the army, and staff, was to be re-organized, and most of them reduced in officers and men; and that, in arranging the officers from the old to the new corps, full power was granted to the President to take them from any and every corps of the former establishment, and place them in the latter. In this latter grant of power, it is proper to observe, that the most comprehensive terms that could be adopted were used, the authority being to cause the arrangement to be made from the officers of the several corps, then in the service of the United States; comprising, of course, every corps of the staff, as well as of artillery and infantry, and not from the corps of troops, as in the former act, and without any limitation as to grades.

It merits particular attention, that, altho' the object of this latter act was reduction, and such its effect, on an extensive scale, five new offices were created by it; four of the grade of colonel for the four regiments of artillery, and that of adjutant general for the army. Three of the first mentioned were altogether new, the corps having been newly created; and, although one officer of that grade, as applicable to the corps of light artillery, had existed, yet, as that regiment was reduced, and all its parts re-organized, in another form, and with other duties, being incorporated into the four new regiments, the commander was manifestly displaced, and incapable of taking the command of either of the new regiments, or any station in them, until he should be authorized to do so by a new appointment. The same remarks are applicable to the office of adjutant general to the army. It is an office of new creation, differing from that of adjutant and inspector general, and likewise from that of adjutant general to a division, which were essentially annulled. It differs from the first in title, rank and pay, and from the two latter, because they had been created by law, each for a division; whereas the new office, being instituted without such special designation, could have relation only to the whole army. It was manifest, therefore, that neither of those officers had any right to this new station, nor to any other station, unless he should be specially appointed to it, the principle of reduction being applicable to every corps. It is proper also to observe, that the duties of adjutant general, under the existing arrangement, correspond, in almost every circumstance, with those of the late adjutant and inspector general, and not with those of an adjutant general of a division.

To give effect to this law, the President was authorized, by the 12th section, to cause the officers, non-commissioned officers, artificers, musicians, and privates, of the several corps, then in the service of the U. States, to be arranged in such manner as to form, and complete out of the same, the force thereby provided for, and to cause the supernumerary officers, non-commissioned officers, artificers, musicians, and privates, to be discharged from the service.

In executing this very delicate and important trust, I acted with the utmost precaution. Sensible of what I owed to my country, I felt strongly the obligation of observing the utmost impartiality in selecting those officers who were to be retained. In executing this law I had no personal object to accomplish, or feeling to gratify; no one to retain, no one to remove. Having, on great consideration, fixed the principles on which the reduction should be made, I availed myself of the example of my predecessor, by appointing, through the proper department, a board of general officers to make the selection, and whose report I adopted.

In transferring the officers from the old to the new corps, the utmost care was taken to place them, in the latter, in the grades and corps to which they had respectively belonged in the former, so far as it might be practicable. This, though not enforced by the law, as appearing to be just and proper, was never departed from, except in peculiar cases, and under imperious circumstances.

In filling the original vacancies in the artillery, and in the newly created office of Adj. General, I considered myself at liberty to place in them any officer belonging to any part of the whole military establishment, whether of the staff or line. In filling original vacancies, that is, offices newly created, it is my opinion, as a general principle, that Congress have no right, under the constitution, to impose any restraint, by law, on the power granted to the President, so as to prevent his making a free selection of proper persons for these offices from the whole body of his fellow-citizens. Without, however, entering here into that question, I have no hesitation in declaring it as my opinion, that the law fully authorized a selection from any branch of the whole military establishment of 1815. Justified, therefore, as I thought myself, in taking that range, by ever, the highest sanction, the sole object to which I had to direct my attention was the merit of the officers to be selected for those stations.

Three generals, of great merit, were either to be dismissed, or otherwise provided for. The very gallant and patriotic defender of New-Orleans had intimated his intention to retire, but, at my suggestion, expressed his willingness to accept of the office of Commissioner to receive the cession of the Florida, and of Governor, for a short time, of that territory. As to one, therefore, there was no difficulty. For the other two, provision could only be made in the mode which was adopted. Gen. Macomb, who had signaled himself in the defence of Plattsburg, was placed at the head of the corps of engineers to which he had originally belonged, and in which he had acquired great experience, Col. Armistead, then at the head of that corps, having voluntarily accepted one of the new regiments of artillery, for which he possessed very suitable qualifications. Gen. Atkinson, likewise an officer of great merit, was appointed to the newly created office of Adjutant General. Brevet General Porter, an officer of great experience, in the artillery, and merit, was appointed to the command of another of those regiments. Colonel Fenwick, then the oldest Lieutenant Colonel of artillery, and who had suffered much in the late war by severe wounds, was appointed to a third; and Col. Towson, who had served with great distinction in the same corps, and been twice breveted for his gallantry, in the late war, was appointed to the last remaining one. Gen. Atkinson having declined the office of Adjutant General, Col. Gadsden, an officer of distinguished merit, and believed to possess qualifications suitably adapted to it, was appointed in his stead. In making the arrangement, the merits of Col. Butler and Col. Jones were not overlooked. The former was assigned to the place which he would have held in the line, if he had retained his original lineal commission; and the latter to his commission in the line, which he had continued to hold with his staff appointment.

That the reduction of the army, and the arrangement of the officers, from the old to the new establishment, and the appointments referred to, were, in every instance, strictly conformable to law, will, I think, be apparent. To the arrangement, generally, no objection has been heard; it has been made, however, to the appointments, to the original vacancies, and particularly to those of Col. Towson and Col. Gadsden. To those appointments, therefore, further attention is due. If they were improper, it must be either that they were illegal, or that the officers did not merit the offices conferred on them. The acknowledged merit of the officers, and their peculiar fitness for the offices, to which they were respectively appointed, must preclude all objection on that head. Having already suggested my impression, that, in filling offices newly created, to which, on no principle whatever, any one could have a claim of right, Congress could not, under the constitution, restrain the free selection of the President, from the whole body of his fellow-citizens, I shall only further remark, that if that impression is well founded, all objections to these appointments must cease. If the law imposed such restraint, it would, in that case, be void. But, according to my judgment, the law imposed none. An objection to the legality of those appointments must be founded, either on the principle that those officers were not comprised within the corps then in the service of the U. States, that is, did not belong to the peace establishment, or that the power granted by the word "arrange," imposed on the President the necessity of placing in these new offices, persons of the same grade, only, from the old. It is believed, that neither objection is well founded. Col. Towson belonged to one of the corps, then in the service of the United States; or, in other words, of the military peace establishment. By the act of 1815—'16 the Pay Department, of which the Paymaster General was the chief, was made one of the branches of the staff, and he, and all those under him, were subjected to the rules and articles of war. The appointment, therefore, of him, and especially to a new office, was strictly conformable to law.

The only difference between the 5th section of the act of 1815, for reducing the army, and the 12th section of the act of 1821, for still further reducing it, by which the power to carry those laws into effect was granted to the President, in each instance, consists in this, that, by the former, he was to cause the arrangement to be made of the officers, non-commissioned officers, musicians, and privates, of the several corps of troops then in the service of the United States; whereas, in the latter, the term troops was omitted. It cannot be doubted, that that omission had an object, and that it was thereby intended to guard against mis-construction in so very material and important a circumstance, by authorising the application of the act, unequivocally, to every corps of the staff, as well as of the line. With that word, a much wider range was given to the act of 1815, on the reduction which then took place, than under the last act. The omission of it, from the last act, together with all the sanctions which were given by Congress, to the construction of the law; in the reduction made under the former, could not fail to dispel all doubt as to the extent of the power granted by the last law, and of the principles which ought to guide, and in which it was thereby made the duty of the President to execute it. With respect to the other objection, that is, that officers of the same grade, only, ought to have been transferred to these new offices, it is equally unfounded. It is admitted, that officers may be taken from the old corps, and reduced, and arranged in the new, in inferior grades, as was done under the former reduction. This admission puts an end to the objection in

this case; for, if any officer may be reduced and arranged, from one corps to another, by an entire change of grade, requiring a new commission, and a new nomination to the Senate, I see no reason why an officer may not be advanced in like manner. In both instances, the grade, in the old corps, is alike disregarded. The transfer from it to the new, turns on the merit of the party; and, it is believed, that the claim in this instance is felt by all with peculiar sensibility. The claim of Col. Towson is the stronger, because the arrangement of him to the office to which he is now nominated, is not to one from which any officer has been removed, and to which any other officer may, in any view of the case, be supposed to have had a claim. As Col. Gadsden held the office of Inspector General, and, as such, was acknowledged by all to belong to the staff of the army, it is not perceived on what ground his appointment can be objected to.

If such a construction is to be given to the act of 1821, as to confine the transfer of officers from the old to the new establishment, to the corps of troops, that is to the line of the army, the whole staff of the army, in every branch, would not only be excluded from any appointment in the new establishment, but altogether disbanded from the service: it would follow, also, that all the officers of the staff, under the new arrangement, must be filled by officers belonging to the new establishment, after its organization and their arrangement in it. Other consequences not less serious would follow. If the right of the President to fill these original vacancies, by the selection of officers from any branch of the whole military establishment, was denied, he would be compelled to place in them officers of the same grade, whose corps had been reduced, and they with them. The effect, therefore, of the law, as to those appointments, would be to legislate into office men who had been already legislated out of office, taking from the President all agency in their appointment. Such a construction would be not only subversive of the obvious principles of the constitution, but utterly inconsistent with the spirit of the law itself; since it would provide officers for a particular grade, and fix every member of that grade in those offices at a time when every other grade was reduced, and among them generals and other officers of the highest merit. It would also defeat every object of selection, since colonels of infantry would be placed at the head of regiments of artillery, a service in which they might have had no experience, and for which they might, in consequence, be unqualified.

Having omitted, in the message to Congress at the commencement of the session, to state the principles on which this law had been executed, and having imperfectly explained them in the message to the Senate of the 17th of January last, I deem it particularly incumbent on me, as well from a motive of respect to the Senate, as to place my conduct in the duty imposed on me by that act in a clear point of view, to make this communication at this time. The examples under the law of 1815, whereby officers were reduced and arranged from the old corps to the new, in inferior grades, fully justify all that has been done under the law of 1821. If the power to arrange, under the former law, authorized the removal of one officer from a particular station, and the location of another in it, reducing the latter from a higher to an inferior grade, with the advice and consent of the Senate, it surely justifies, under the latter law, the arrangement of these officers, with a like sanction, to offices of new creation, from which no one had been removed, and to which no one had a just claim. It is on the authority of these examples, supported by the construction which I gave to the law, that I have acted, in the discharge of this high trust. I am aware that many officers of great merit, having the strongest claims on their country, have been reduced, and others dismissed; but, under the law, that result was inevitable. It is believed that none have been retained, who had not, likewise, the strongest claims to the appointments which have been conferred on them. To discriminate between men of acknowledged merit, especially in a way to affect so sensibly and materially their feelings and interests, for many of whom I have personal consideration and regard, has been a most painful duty; yet, I am conscious that I have discharged it with the utmost impartiality. Had I opened the door to change, in any case, even where error might have been committed, against whom could I afterwards have closed it, and unto what consequences might not such a proceeding have led? The same remarks are applicable to the subject, in its relation to the Senate, to whose calm and enlightened judgment, with these explanations, I again submit the nominations which have been rejected. JAMES MONROE.

Washington, April 22, 1822.

To the Senate of the U. States:

I re-nominate Nathan Towson, to be Colonel of the 2d Regiment of Artillery. James Gadsden to be Adjutant General of the army of the United States. JAMES MONROE.

Washington, April 12, 1822.

The messages were severally read, and on motion, ordered, that they be severally

referred to the Committee on Military Affairs, to consider and report thereon; and that they be printed for the use of the Senate, under an injunction of secrecy.

On motion, ordered, that the message of the 21st January last, nominating to promotions and appointments in the army, be re-committed to the Committee on Military Affairs, further to consider and report thereon, and that it be reprinted for the use of the Senate, under an injunction of secrecy.

On motion, ordered, that the message of the 26th March, withdrawing certain nominations to appointments in the army, be referred to the Committee on Military Affairs, to consider and report thereon, and that it be printed for the use of the Senate, under an injunction of secrecy.

Proceedings to be continued.

Laws of the United States.

An act to continue in force "An act declaring the consent of Congress to acts of the State of South Carolina, authorizing the City Council of Charleston to impose and collect a duty on the tonnage of vessels from foreign ports; and to acts of the state of Georgia, authorizing the imposition and collection of a duty on the tonnage of vessels in the ports of Savannah and St. Mary's."

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the act entitled "An act declaring the consent of Congress to acts of the State of S. Carolina, authorizing the City Council of Charleston to impose and collect a duty on the tonnage of vessels from foreign ports; and to acts of the State of Georgia, authorizing the imposition and collection of a duty on the tonnage of vessels in the ports of Savannah and St. Mary's," passed the twenty-ninth of April, one thousand eight hundred and sixteen, shall be, and the same is hereby continued in force for three years, and to the end of the next session of Congress thereafter: Provided always, and it is hereby further enacted, That it shall be the duty of the City Council of Charleston, and of the Collectors of the ports of Savannah and St. Mary's, to transmit to the Secretary of the Treasury an annual account of the sums collected, and of the application of the same for the purposes aforesaid. Approved—May 7, 1822.

An act in addition to the act concerning navigation, and also to authorize the appointment of deputy collectors.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That on a satisfactory evidence being given to the President of the United States that the ports in the islands or colonies in the West-Indies, under the dominion of Great Britain, have been opened, to the vessels of the United States, the President shall be, and hereby is, authorized to issue his proclamation, declaring that the ports of the United States shall thereafter be open to the vessels of Great Britain employed in the trade and intercourse between the United States, and such islands or colonies, subject to such reciprocal rules and restrictions as the President of the United States may, by such proclamation, make and publish, any thing in the laws, entitled "An act concerning navigation," or an act, entitled "An act supplementary to an act concerning navigation," to the contrary notwithstanding.

Sec. 2. And be it further enacted, That in the event of the signature of any treaty or convention concerning the navigation or commerce between the United States and France, the President of the United States be, &c. is hereby, authorized, should he deem the same expedient, by proclamation, to suspend, until the end of the next session of Congress, the operation of the act entitled "An act to impose a new tonnage duty on French ships and vessels, and for other purposes," and also to suspend, as aforesaid, all other duties on French vessels, or the goods imported in the same, which may exceed the duties on American vessels, and on similar goods imported in the same.

Sec. 3. And be it further enacted, That the aforesaid first and second sections of this act shall continue in force to the end of the next session of Congress, and no longer.

Sec. 4. And be it further enacted, That the third, fourth, and seventh sections of the act, passed the third day of March, one thousand eight hundred and seventeen, entitled "An act to continue in force an act further to provide for the collection of duties on imports and tonnage, passed on the third day of March, one thousand eight hundred and fifteen, and for other purposes," be, and the same are hereby, revived and made perpetual. Approved—May 6, 1822.

INTERNAL IMPROVEMENTS.

THE Board for Internal Improvements for this State, will meet, agreeably to adjournment, at the Executive Office in Raleigh, on Monday the 17th of June next; of which all persons concerned will take notice. J. GALES, Sec'y.

May 2, 1822. 809a