

Our are the plans of fair, delightful Peace, Unwarp'd by party rage, to live like Brothers.

COL. TOWSON & COL. GADSDEN.

Proceedings continued from last week's paper.

THURSDAY, APRIL 25, 1822.

Mr. Williams, of Tennessee, from the Committee on Military Affairs, to whom was referred the army nominations, and the two messages of the President on that subject, reported as follows:

That they have carefully examined the reductions of the army, made in 1802 and 1815, for the purpose of discovering if there were precedents which would justify the course pursued in the reduction of 1821. The result of the examination is, that the three acts of Congress are substantially the same, but the practice under them has been widely different. In 1802, Mr. Jefferson executed the law strictly. In 1815, Mr. Madison departed from the law, by retaining officers in a grade below the rank they formerly held in the army; and, in 1821, not only was the precedent of 1815 pursued, but principles were introduced unknown to our military code. The provisions of the law of 2d March, 1821, were disregarded in many particulars. The committee have examined the argument in the message, which is intended to justify the transfer of Colonel Lindsay from the infantry to the artillery, subsequent to the first of June, 1821, and have formed an opinion different from that entertained by the President. The transfer is attempted to be supported on the exception alleged to exist in the 75th article of the rules and regulations established for the government of the army, which articles in the following words: "The transfer of officers will only be made by the War Department, in orders, on the mutual application of the parties, except in extraordinary cases. See 63d article of war. Nor shall an officer be transferred into a regiment to the prejudice of the rank of any officer thereof. When officers are transferred at their own request, the order for change of station will specify the fact." On referring to the 63d article, which is in the following words: "The functions of the engineers being confined to the most elevated branch of military science, they are not to assume, nor are they subject to be ordered on any duty beyond the line of their immediate profession, except by the special order of the President of the United States; but they are to receive every mark of respect to which their rank in the army may entitle them, respectively, and are liable to be transferred, at the discretion of the President, from one corps to another, regard being paid to rank." It will be seen that this article relates exclusively to the engineer corps, and consequently there is no legal authority for the transfer of Colonel Lindsay, from the infantry to the artillery. The 75th article, referred to by the President, determines the principle, and in fact the rule, by which transfers can be lawfully made. The article provides, "that the transfer of officers will only be made by the War Department, in orders, on the application of the parties, except in extraordinary cases. See 63d article of war." &c. It is not pretended, in this case, that the parties applied for a transfer. But on the contrary, the transfer gave great displeasure, because it took away the rank and the right of promotion from all the officers under Colonel Lindsay, in the corps of artillery, and gave to the infantry officers a fictitious rank to which they were not entitled.

Independently of this view of the subject, which the committee consider conclusive, there is another ground which places this question beyond the possibility of doubt. During the last session of Congress, the book of regulations was printed, and each member furnished with a copy. By comparing the 75th article in this book with the same article in the book lately printed for the use of the army, it will be found that the exception relied upon by the President, is an interpolation, and is not in the original submitted to Congress when that body was called on last session to enact these regulations into law. The President, however, submits to the Senate for confirmation, only the names of the officers on the list accompanying the message. On examining this list, the name of Colonel Lindsay is not to be found. It is, therefore, in the opinion of the committee, not competent for the Senate, at this time, to control this illegal transfer.

The committee, on examining the new register of the army, find many irregularities, and beg leave to refer to one in the Inspector's Department. The 6th section of the act, passed the second of March, 1821, to reduce and fix the military peace establishment, provides that there shall be two inspectors general, with the rank, pay, and emoluments, of colonels of cavalry. The terms of the act in relation to these two officers are precisely the same; but a construction has been given to the act very different as regards these two officers. One of them, Colonel Wool, is in service without, and the other, Colonel Archer, with lineal rank. This arrangement is calculated to produce great sensibility among the officers of the army, and to embarrass the service.

On the list accompanying the message of the 17th of January, Colonel Towson is nominated to the Senate in the following words: "Second regiment of artillery, Nathan Towson, late captain light artillery, to be colonel, 1st June 1821." This nomination shews what is the fact, that Colonel Towson, some years ago, was a captain in the light artillery, which office he resigned before he was appointed paymaster general. It is usual, both in the army and naval nominations, to state the former rank of the officers, to enable the Senate to determine whether their promotions are regular, and according to the principles of seniority. If this description of Colonel Towson's former rank in the army was given with this view, it is evident that the promotion is irregular, because it is to the prejudice of all the officers, under the

grade of a colonel, who ranked this gentleman whilst he was an officer in the artillery. The President in his message does not rest the claims of Colonel Towson to the command of a regiment on the ground taken in the list of nominations, but further insists, that the pay department, being a part of the military establishment, within the meaning of the act of 2d March, 1821, "constituted one of the corps of the army," and it was competent for him, under the provisions of said act, to appoint Col. Towson to the command of one of the regiments of artillery; Colonel Towson having resigned the captaincy which he formerly held in the army, and accepted the office of paymaster general.

The message does not furnish the rule whereby he was translated from the pay department to the command of a regiment, in preference to his old rank of captain, or to a majority, or to the rank of lieutenant colonel. The message not having furnished a rule on this subject, the committee were compelled to look into the law and former usage; and they come to the conclusion, that the paymaster general could not legally be transferred from that situation to the command of a company, battalion, or regiment, and that he did not constitute one of the corps of the army; that he was a salary officer under bond and security; and the duties required of him were those of the quill, and not of the sword. The 12th section of the act of 2d March, 1821, is in the following words: "Sec. 12. And be it further enacted, That the President of the United States cause to be arranged the officers, non-commissioned officers, artificers, musicians, and privates, of the several corps now in the service of the U. States, in such manner as to form and complete out of the same the force authorized; by this act, and cause the supernumerary officers, non-commissioned officers, artificers, musicians, and privates, to be discharged from the service of the United States." The question arises, on the construction of this section, "whether the pay department constituted one of the corps of the army," out of which the President was required to arrange and complete the force retained by said act. The committee hold the negative of this proposition, and rely upon the law of the land and military usage, to sustain them in this position.

It is provided in the 6th section of the act of the 24th April, 1816, that all paymasters, commissaries, and store-keepers, shall be subject to the rules and articles of war, in the same manner as commissioned officers: Provided, also, that all officers of the pay and commissary departments be submitted to the Senate for their confirmation, in the same manner as the officers of the army.

Here are but two points wherein the three classes of officers, above enumerated, are likened unto officers of the army. But these apparent assimilations are not confined alone to these public agents. Officers of marines, when on shore, are subject to the "rules and articles of war"; and judges, foreign ministers, and most other officers under the federal government, are submitted to the Senate for confirmation. To be classed, therefore, with the officers of the army, so as to come within the obvious meaning of the above recited 12th section of the act of 2d March, 1821, the paymaster general should be clothed, by law, with other and more important military properties than the two above mentioned. But the President, in his message, insists that the pay department is a part of the military establishment. This is admitted. Military establishment is a comprehensive term, and includes every one subject to martial law. By recurring, however, to the 12th section of the act before cited, the words "military establishment" are not to be found. The terms used are, "the several corps now in service," out of which the President was to "arrange" the force retained by the act. Admitting the paymaster general to be a staff officer, his duties are of a civil character, and may be classed with the commissary of purchases, the surgeon general, chaplains, storekeepers, wagon masters, sutlers, &c. These officers have neither rank nor command in the army. They have no prescribed uniform; nor do they wear either swords or epaulettes. Their duties are peaceful. They are non-combatants. In civilized warfare, if taken prisoners, they would be liberated like other citizens; and the laws and usages of service distinctly mark their civil character. Army corps signifies a body of forces; not civil, but warlike forces; such as have prescribed uniforms and epaulettes, wear swords, or carry arms, such as muskets and bayonets, with which they meet and combat the enemy in the field. Major generals, brigadier generals, adjutant and inspector generals, and the like, properly speaking, constitute the staff of the army. They have command and "assimilated rank" in the army. They are men at arms, and wear prescribed uniforms, swords, and epaulettes, and the laws and usages of service distinctly mark their warlike and military character. The argument in the message, that the President had the whole range of the military establishment out of which he could, at pleasure, select the commanders of regiments, if it prove anything, proves too much. It has already been shewn that this is a comprehensive term, and it includes not only paymasters, surgeons, chaplains, storekeepers, sutlers, &c. but, also, all retainers of the army who are subject to martial law. According to the usages of service, the President could, with the same military propriety, arrange any one of these civil characters to the command of regiments, as he could transfer Colonel Towson from the pay to the military department.

In the sixth paragraph of the third article of the army regulations it is provided, "that no officer of the staff, not having lineal rank, or rank assimilated thereto, shall command any officer whatever having such rank, but, on the other hand, the former shall be subordinate to the latter, under the following restrictions: 1st, the commissary general of purchases, the surgeon general, the paymas-

ter general, & the apothecary general, to general officers only," &c. Here a clear distinction is taken between officers of the army having rank, and staff officers having no rank; the latter, to wit, purchasing commissaries, the surgeon, paymaster, and apothecary generals, are prohibited from commanding even a second lieutenant.

The position taken by the Committee, in behalf of the army, is applicable to the navy also. The duties of a purser in the navy are analogous to the duties of a paymaster in the army. The principle which would justify the appointment of a paymaster to command a regiment, would authorize the appointment of a purser to command one of our ships of the line, to the exclusion of the long list of gallant officers who have, by their valor, acquired so much renown for the country.

In the 8th sec. of the 1st art. of the constitution of the United States, it is provided, that Congress shall have power "to make rules for the government and regulation of the land and naval forces." In virtue of this power, Congress have directed, both in the land naval service, that promotion shall be according to seniority. This principle has heretofore been held sacred. The army and navy were created for national purposes.— By adhering to the principle of promotion, which is coeval with their existence, they will retain their national character. The individuals who compose these arms of national defence, have rights secured by law, and when these rights are violated, it is their privilege to appeal to the tribunals of the country for redress, (as many officers have done on this occasion to the Senate,) as a part of the Executive council of the nation. A departure from this principle would have the most fatal effect. It would verify the adage, that one campaign to Washington was worth two upon the lines. A system of favoritism in promotion would supply the place of law and regulation. The army and navy, instead of retaining their national character, would become the creatures of the Executive. Men of honor, whose rights had been violated, would be driven from the service, and those only retained who would patiently submit to any indignity. An army and navy composed of such materials, in times less virtuous than the present, would be dangerous instruments in the hands of those who would have the power to wield them. The committee believe that both law and policy unite in resisting every attempt to introduce such doctrines into our service.

The great object of the act of the 2d of March, 1821, was to reduce and not to increase the military force of the country. But, with the view of improving the organization of the artillery, the battalions were converted into regiments, and four colonelcies were created. But it is denied that the office of adjutant general was created by that act, as will be hereafter shewn. The question again recurs, whether these four offices were to be filled by officers then in service, or by citizens, or by non-combatant staff officers. The President insists that he had the right to fill those offices from the latter description of persons. The committee hold the negative of that proposition. Before the passage of the act of the 2d of March, 1821, there were eleven regiments in service, to wit: one of riflemen, one of ordnance, one of light artillery, and eight of infantry. By said act, eleven regiments were retained; to wit: four of artillery, and seven of infantry. By the third section of the act, the Corps of Engineers was retained as then organized. When it is remembered that before the passage of the act there were eleven regiments, and the same number were retained by the act, it is a fair presumption that all the colonels, lieutenant colonels, and majors, were intended to be retained. This presumption is strengthened, when it is distinctly recollected, that this exposition was given of the act, by the committee who reported it, when the bill was discussed in the Senate. By recurring to the 11th section of the act, this question rests no longer on presumption, but is made manifest by positive law. The 11th section is in the following words: "That the officers, non-commissioned officers, artificers, musicians, and privates, retained by this act, except those specially provided for, shall have the same rank, pay, and emoluments, as are provided in like cases by existing laws; and that the force authorized and continued in service under this act, shall be subject to the rules and articles of war." The 12th section of the act before referred to, directs that "the President cause to be arranged the officers &c. of the several corps now in service, in such manner as to form and complete out of the same, the force" authorized by the act. The word "arrange" signifies "to put in proper order for any purpose." The purpose was to reduce the army to the standard pointed out by the preceding sections of the act, and to put in proper order the officers &c. "retained" by said act. The committee believe they cannot be mistaken in this conclusion; and that the term "arrange" does not mean, to create, and put out of order, as it has been interpreted in the late reduction of the army. The words of the act in relation to the four regiments of artillery are the same; but, a construction has been given to it widely different. It has been made to mean "to put in order," as regards the first and third, and to "create and put out of order," as relates to the 2d and 4th regiments. Colonel Porter, who takes rank from the 12th March, 1812, is "arranged" to the first regiment of artillery, and Colonel Armistead, who takes rank from the 12th November, 1818, is "arranged" to the 3d. But Colonels Towson and Fenwick are "appointed" to the 2d and 4th regiments, taking rank from the 1st of June, 1821. The President's message of the 12th of April, 1822, when treating of the regiment of light artillery, formerly commanded by Colonel Porter, says "that the regiment was reduced and all its parts re-organized in another form, and with other duties; being incorporated into the four new regiments, the com-

mander 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 committee dissent from this proposition, and contend that the interpretation first given by the President, to the 15th section of the act, so far as relates to this officer, was the correct construction, and that he was authorized to "arrange" Colonel Porter to the command of either of the regiments of artillery, as he did "arrange" him to the first, without a re-appointment or nomination to the Senate, and that Col. Porter was in the legal discharge of his official duties, under the commission which he had, long before the reduction of the army. The 12th section of the act authorized the President, after arranging the officers &c. out of the former, so as to complete, out of the same, the retained army, to cause the "supernumerary" officers to be discharged from the service of the United States. By the 13th section of the act, it is provided "that there shall be allowed and paid to each commissioned officer, discharged from the service of the United States, in pursuance of this act, three months' pay, in addition to the pay and emoluments to which he may be entitled by law, at the time of his discharge." The word "supernumerary" signifies above a stated number. The object of the act was reduction, and when the new standard was complete, by arranging from among the materials on hand, the residue or "supernumerary" officers, were to be discharged, with three months' gratuitous pay. To discharge an officer legally, and pay him three months' additional pay, he must have been "in service" in the former army, and no place for him in the reduced army. He would then, and then only, be "a supernumerary," according to the provisions of the act, and then only could be discharged in pursuance of the act. The committee regret to say, that several officers of great merit, who would not suffer by a comparison with those who have been retained, have been discharged with gratuitous pay, on the alleged ground that they were "supernumeraries," or that there was no place provided for them under the law, when, in truth and in fact, to the places provided for them by law, others, not contemplated by the act, were appointed. The message assumes the ground, that Congress could "not, under the constitution, restrain the free selection of the President, from the whole body of his fellow-citizens, to appoint to these places." The constitution of the United States, provides, that "Congress shall have power to make rules for the government and regulation of the land and naval forces." Under this article of the constitution, it is competent for Congress to make such rules and regulations for the government of the army and navy, as they may think will promote the service. This power has been exercised from the foundation of our government, in relation to the army & navy. Congress have fixed the rule in promotions & appointments. Every promotion is a new appointment, and is submitted to the Senate for confirmation. In the several reductions of the army and navy, Congress have fixed the rules of reduction: and no Executive; heretofore, has denied this power in Congress, or hesitated to execute such rules as were prescribed.

The President "approved" and signed the act of the 2d March, 1821, and, at that time, made no declaration of an opinion that the law was unconstitutional, and thereby sanctioned its constitutionality. Having given his assent to this law, the committee believe he is, as well as all others, bound by it. This committee will not dispute the legal power of the President to discharge an officer from the land or naval service; but, in such case, the officer discharged would not be entitled to three months' additional pay, which has been paid to all the officers who have been put out of service in the late reduction. There is, therefore, no pretence for saying, as has been urged, that the President exercised his constitutional power in discharging several officers. He says himself he acted "in pursuance" of the law. In the second section of the second article of the constitution of the United States, it is provided, "That the President shall have power, by and with the advice and consent of the Senate, to appoint all officers of the U. S. whose appointments are not therein otherwise provided for, and which shall be established by law." By the construction heretofore given to this article, the Senate had the same power, and the same range of discretion to withhold their "advice" and "consent," that the President had to nominate; and the Senate would abuse the trust confided to them, if they were to ratify nominations, when either policy or law required their rejection. In the message accompanying the "re-nominations" of Colonels Towson and Gadsden, it is urged, that "if an officer may be reduced and arranged from one corps to another by an entire change of grade, requiring a new commission and a nomination to the Senate, there is no reason why an officer may not be advanced in like manner;" and the example of 1815 is relied upon in support of this position. It is true, that, in the reduction of 1815, the law was departed from in the instance of retaining an officer in the grade below the rank he had before held in the army. A great proportion of the officers in 1815, were retained on this principle; and, in their names were submitted to the Senate, a considerable time after the reduction had been made, that body, with much hesitation, lent a reluctant assent to the arrangement, without supposing that this departure would be set up as a justification for

another still more dangerous to the rights & character of the army. The principle of razing having been recognized in 1815, the Senate, under the authority of that precedent, in the reduction of 1821, have ratified the nominations of Gens. Maconib and Atkinson, and Major Daliba, officers who were razed. The Senate having, by their decision in the reduction of 1821, gone as far as the precedents of 1815 would justify, the committee think it proper to pause and seriously to reflect, before they give their assent to the doctrines advanced in the message, whereby the President would be sustained in advancing second lieutenants to the head of our regiments, and midshipmen to the command of our ships of the line, to the exclusion of colonels and naval commanders who are in service under the law.

It is correctly stated in the message that the fifth section of the act of 1815, contains the words "corps of troops," and the 12th section of the act of 1821, uses the term "corps," out of which the force retained was to be constituted. It is conceded that omission had an object. But it was not intended that that omission should give to the President a wider range, or place his discretion above the provisions of the law, but was designed alone to improve the phraseology of the section, by omitting a superfluous word, without affecting the obvious meaning of that section. If it were necessary further to prove that the pay department does not constitute one of the "corps" of the army out of which the army retained was to be composed, the committee would refer to the commission issued to Mr. Brent, late paymaster, and signed by Mr. Jefferson, and, also, to the fact, that this officer has heretofore been placed on the civil list in the different appropriation bills. These circumstances also distinctly mark his civil character.

If the committee should be mistaken in the correctness of the views before presented, and they feel confident they are not, there is a document among the proceedings of the board of general officers, which, independent of all other facts and arguments, proves, incontestably, that the construction put by the committee on the act is the correct one, and that the proceedings of the board of general officers, charged with the reduction of the army, were not regulated either by the provisions of the law, or by any construction of it. The document is in the following words:

"The board of general officers, of which Major General Brown is president, being of opinion that Colonels Wadsworth, Bissell, King, and Smith, should not be retained, beg leave, respectfully, to recommend, that Brigadier General Atkinson be arranged to the office of Adjutant General, that General Parker be appointed to the office of Paymaster General, and that Colonels Towson and Bonford, be appointed Colonels of artillery.

JACOB BROWN, President. April 13, 1821.

It is thus seen that the board of general officers, who were called in to aid in the execution of the law to reduce the army, &c. to "arrange" each officer to his proper place, commenced that work by recommending the President to put out four of the eleven colonels then in service. The board did not pretend that these officers were "supernumeraries," or that it was necessary to discharge them as such. It is, therefore, manifest they substituted their own will and pleasure for the rule prescribed by law. It is in proof before the committee, that the original paper, containing this recommendation, was deposited in the Adjutant General's office for safe keeping, and, afterwards, at the request of General Brown, it was delivered to him, who immediately destroyed it. To be concluded in our next.

Laws of the United States.

An act to repeal the act, entitled "An act to encourage Vaccination." Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the act passed the twenty-seventh day of February, one thousand eight hundred and thirteen, entitled "An act to encourage Vaccination," be, and the same is hereby repealed. Approved—May 4, 1822.

An act to alter the times of holding the District Court in the District of New-Jersey. Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, I had the District Court for the District of New-Jersey shall hereafter be held at New-Brunswick on the 2d Tuesdays of March and September, and at Burlington on the 2d Tuesdays of May and November, in every year; any thing in any act, heretofore passed to the contrary notwithstanding. Approved—May 4, 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; at which all persons concerned will take notice. J. B. ALLEN, Secy.