RALEIGH REGISTER.

AND

NORTH-CAROLINA GAZETTE.

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

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COL. TOWSON & COL. GADSDEN.

[*Proceedings concluded from last week's paper.*]

The committee have examined with great care, the message re-nominating colonel Gadsden to be adjutant general, and have looked in vain for an argument which could convince them that the decision lately made by the Senate was erroneous. It has been urged, "that general Atkinson, who had been *arranged* to the office of adjutant general, declined accepting it, and colonel Gadsden was *appointed* by the President to fill the vacancy, in conformity to the provisions of the tenth section of the act of the 24th of April. 1816."

If the provisions of this act were inconsistent with the provisions of the act of the 2d March, 1821, so much of the former act as is so inconsistent, is repealed by the last mentioned act, and, of course, the appointment is not supported by the authority relied on. But the committee are in possession of a copy of a letter from general Atkinson to general Brown, dated St. Louis, 6th April, 1821, in answer to one which had been written to him on that subject, in which gen. Atkinson *positively* declines accepting the office of adjutant general. This letter was received by general Brown on the 27th of the same month, and *before* general Atkinson was arranged by the board to the office of adjutant general. When it was known, *positively*, that general Atkinson would not accept this office, why was he arranged to it? This arrangement was nominal, and could not have the effect of evading the law, or creating a vacancy which did not before exist; and the committee are of opinion that the tender of this office to gen. Atkinson, with a knowledge that he would not accept, did not produce a vacancy, and that, in deciding on the legality of col. Gadsden's appointment, this arrangement of general Atkinson must be left out of view. The 6th section of the act of the 2d March, 1821, is in the following words: "That there shall be one adjutant general and two inspectors general, with the rank, pay, and emoluments, of colonels of cavalry." Before the passage of the act there was one adjutant and inspector general, two inspectors general, and two adjutants general. The object of the act was "*reduction*," and, with that view, the office of adjutant and inspector general was dispensed with; and, also, that of one adjutant general, and the two offices of inspector general, and one of adjutant general, retained. This section having retained the two officers of inspector general, and the 11th section, before cited, having *retained* the incumbents, it was not supposed by any one that either or both of them could be discharged as *supernumeraries*, under the provisions of the act. By referring to the general order of May 17th, 1821, it will be seen that those who were charged with the reduction of the army were of this opinion. The law left these officers where it found them, and the general order announced that they remained in the offices they before held. But a very different construction was given to that part of the same section which relates to the adjutant general. There were two adjutants general in service, colonels Butler and Jones, and the committee insist, by a fair construction of the act, one of them was "*retained*," and the President was authorised only to elect which of the two should be "*discharged*" as a "*supernumerary*."

It is contended in the message that this was an "*original vacancy*," and it was competent for the President to discharge both Butler and Jones, and fill this office by *appointing* any other person. As the object of the act was to reduce the army, and not create officers, it is fair to presume that exclusion was intended to be applied only where there was an excess, either in number or organization. This rule was applied to that part of the same section relating to the inspectors general. As it regards them, there was no excess, and all agree that they were retained by the law. Colonels Butler and Jones had the rank, pay, and emoluments, of colonels of cavalry; the precise attributes of the adjutant general secured to the army by the act. But it is said that the adjutant general of a *division* was deemed not to be coordinate with the adjutant general of the *army*. On the subject of their duties nothing has been prescribed. The laws are silent. Their rank, pay and emoluments, are the same; and there is a perfect coincidence in all their endowments. The fifth section of the act provides that there shall be one major general and two brigadier generals. There were then in service two major generals and four brigadier generals, making an excess of one half. According to the principle applied to the adjutant general, the commission of a major general commanding a *division* is inferior to the same commission when the same person commands the whole *army*: but the major general of the late northern *division* is now major general of the *army* of the United States in virtue of his former commission. The two cases are precisely similar. There were two major generals, making an excess of one: it cannot be inferred that they were *both* to be disbanded, and some citizen, or non combatant staff officer to be *appointed* to command the army. Perfectly analagous is the case of the two adjutants general; but the rule applied to them by the board has been different. The major general of the late northern division now commands the whole army; but the two adjutants general are *both* and *singular* "*supernumerary officers*," and as "*adjutants general*" have both been discharged from the service of the United States. The committee cannot believe that this is a fair construction of the act; particularly when the board of general officers, charged with the reduction of the army, have adopted a different rule in their *own case*, which is precisely parallel to the case of the adjutant general retained; and more especially when it is distinctly remembered that the construction now given to the sixth section of the act, by the committee, is the same which it received when the bill was discussed on its passage in the Senate. It has been further insisted, in support of the "*appointment*" of colonel Gadsden, that it was fully justified by the retention of colonel Hayne, in 1815. It is true that in 1815, at the close of the war, there were eight adjutants general in service; and it is equally true that the law of 1815, "reducing and fixing the army," disbanded the whole of them, not retaining even one; but the law of 1821 says, "there shall be one adjutant general," with all the attributes of the two officers of that rank then in service.

In the absence of law, therefore, President Madison, on his responsibility, chose "*provisionally*" to *add* to the army what the law had omitted, to wit: two adjutants general. This being the case, neither of the eight adjutants general had a right to demand of the Executive places of his own temporary creation. The Executive could select any one he chose to act as adjutants general, as he had exercised the power of creating those offices. Colonel Hayne could not have been "*retained*" as inspector general, because that office was abolished by law. For what purpose, then, can it be said, that colonel Hayne, inspector at the time, was "*retained*" as adjutant general? It certainly cannot be to elucidate the subject. It is evident, therefore, that the appointment of col. Gadsden is, in no particular, parallel with the appointment of col. Hayne. The latter *avowedly* was in the absence of all law on that subject, and the former *professedly* in pursuance of law. By tracing the progress of the principles for which the committee now contend, thro' the vicissitudes of the Revolutionary war, it will be seen that the basis of our rules for the government of the army, was established as early as the 30th of June, 1775, and by these rules "sutlers, retainers, and other persons of the army," (not being soldiers,) were made subject to the articles of war.

By a resolution of the 10th January, 1778, reducing the number of regiments on the continental establishment, it was directed, in order to avoid just cause of complaint, as to rank, those charged with the reduction were confined, as nearly as possible, *to the military line*.

By a resolution of the 27th May, 1778, it was ordained that aids-de-camp, brigade majors, and quartermasters *heretofore* appointed from the line, were to hold their present rank, and be admitted again to the same, but were not to *command any one who commanded them while in the line*.

On the 3d of October, 1780, among other things, it was directed for the regiments to be *raised*; the commander in chief was to direct the officers of regiments to meet and agree upon the officers for them from among those who inclined to serve; and, when it could not be done by agreement, it was to be determined by *seniority*.

On the 22d of April, 1782, it had been found necessary to reduce the lieutenants of each regiment to ten, and it was provided that the reduction should be made from the supernumerary *junior* lieutenants in each regiment.

On the 7th August, 1782, it became necessary further to arrange the army, according to the resolutions of the 3d and 21st October, 1780, and for this purpose it was provided that the *junior* regiments should be drafted to fill the *senior* regiments, and the commander in chief should direct the officers of the line of each state to meet and agree who should command the troops so arranged; and when they could not agree, *the junior officers of each grade were to retire*. Under this resolution, it became doubtful whether a senior officer could retire with honor, if he would; and, on the 19th November, it was, by another resolution, provided that the *senior officers of each grade* should, under the act of the 7th August, be retained, and that the redundant *junior officers* of the several grades should retire; but the commander in chief might permit a *senior* to retire. The committee appeal with veneration to this period of our military history for the correctness of the doctrines they now contend for, and cannot but mark the contrast between the principles then held sacred, and those which were introduced in the late reduction of the army.

In the 2d section of the 2d article of the constitution of the United States, it is provided, that "the President shall have power to fill up all vacancies that may *happen* during the recess of the Senate, by granting commissions which shall expire at the end of the next session." If the offices to which Colonels Towson and Gadsden are nominated, were original vacancies created by the act of the 2d March, 1821, the committee contend that they were not filled agreeable to the provisions of the constitution. The words "all vacancies that may *happen* during the *recess* of the Senate," evidently mean vacancies occurring from death, resignation, promotion, or removal; the word *happen* must have reference to some casualty not provided for by law. Original vacancies must mean offices created by law, and not before filled.—Admitting then, that the offices to which Cols. Towson and Gadsden are nominated, were original vacancies, created by the law to reduce the army, the Senate was *then in session*, and these nominations were not made during that session. From whence does the President derive his power to fill those offices in the *recess* of the Senate? Certainly not from the constitution, because the Senate was in session when the law passed, and the appointments were made after the adjournment of Congress; and he had no power to make them in the recess, because the vacancies did not *happen* in the recess of the Senate. The committee believe this is the fair construction of the constitution, and the one heretofore observed. For many instances have occurred where offices have been created by law, and special power was given to the President to fill those offices in the recess of the Senate; and no instance has before occurred, within the knowledge of the committee, where the President has felt himself authorized to fill such vacancies, without special authority by law. Hence, the committee conclude, from the President's own showing, that the appointments of Cols. Towson and Gadsden were not authorized either by the constitution or law.

The committee take great pleasure in admitting the merits of these gentlemen, but believe that this consideration cannot fairly enter into the construction of the law and constitution. But they do not admit that their claims on the country are superior to those who have been put out of their proper places in the army, in order that these gentlemen might occupy them. And, whilst the committee forbear entering into a comparative view of the merits of all the officers illegally discharged, and those put into their places, they must be permitted to say that Gen. Bissell entered the service, as a soldier, about the year 1790, and for his distinguished bravery at St. Clair's defeat, was promoted from a sergeant to an ensign, and has risen through every rank to that of a brigadier general in the late war; and that, in every situation, he has been distinguished for his bravery and correct military conduct. Col. Smith has lately been recommended in the warmest terms, by Gen. Brown, for the important office of Governor of Florida, and has been actually nominated by the President to the Senate for the office of judge of that territory.

The committee are of opinion, if those officers merited dismissal in the judgment of the board, the reasons for their discharge should have been stated, and the necessity of the act justified, but that it cannot be correct to attribute it to the operation of the law of 1821, when the provisions of that act had no effect on the measure.

When the committee add their acknowledgment to the assertion of the merits of Colonels Towson and Gadsden, it is proper they should repel the inference that the rejection of their nominations, by the Senate, evinces a disregard of their merits, or an indifference to their just reward. Whether a suitable provision ought to be made for Col. Towson, is not now the question. That was done by the act. By it he was left in the office of Paymaster General, a place of distinction and superior emolument. Col. Gadsden, too, was left by the act in the office of Inspector General, in which he might have been continued, and the necessity thereby avoided of reducing Col Jones, who had been twice brevetted for distinguished gallantry during the late war, to the rank of captain, which he had held at its commencement.

The committee regret that there exists a difference of opinion between the President and Senate, and must express an unfeigned regret that, in the discharge of a paramount duty, they should have induced a suspicion of an arraignment of his motives, or a want of due consideration, on their part, of these nominations when first presented. The questions at issue are not of a personal or political character, in which the merits of the officers are at all concerned, but are of law and constitution.

On such questions, the President and Senate might differ, as do the highest judicial tribunals of our country, without a suspicion of unkind feelings. With that disposition to harmony and good feelings which does, and it is to be hoped always will exist on the part of the Senate towards the chief magistrate of the nation, the committee have carefully examined the message of the 12th of April, 1822, and have not been able to discover any views in that message which were not presented, and duly considered during the deliberations which occupied the serious attention of the Senate for more than two months before these nominations were rejected. However delicate the measure of sending back to the Senate nominations rejected by them; or, however liable to abuse the practice, in other times, might become, the constitution does not prohibit the President from doing so; but, whilst it imposes no restriction on his discretion in this particular, the right belongs to the Senate to confirm or reject them. If a difference is thus produced, the Senate have no means of avoiding it, and it rests with the President to create or continue such collisions at his discretion. Under the foregoing views, your committee believe it to be their duty to submit to the Senate the following resolution:

Resolved, That the Senate do not advise and consent to the "re-nominations" of Cols. Towson and Gadsden.

MONDAY, APRIL 29.

The Senate proceeded to consider the message of the 12th of April, nominating Nathan Towson and James Gadsden to military appointments, together with the report of the military committee thereupon.

On the question, "Will the Senate advise and consent to the appointment of Nathan Towson to be colonel of the second regiment of artillery?" it was determined as follows:

YEAS—Messrs. Barbour, Brown, of Lou. Brown of Ohio, Eaton, Edwards, Findlay, Holmes of Miss. Johnson of Ken. Johnson, of Lou. King of Al. Knight, Lanman, Parrott, Rodney, Southard, Stokes, Talbot.—17.

NAYS—Messrs. Barton, Benton, Chandler, Dickerson, Gaillard, Holmes of Maine, King, of N. Y. Lloyd, Lowrie, Macon, Morril, Noble, Palmer, Pleasants Ruggles, Seymour, Smith, Taylor, Thomas, Van Buren, Van Dyke, Walker, Ware, Williams, of Miss. Williams of Tenn.—25.

On the question, "Will the Senate advise and consent to the appointment of James Gadsden to be Adjutant General?" it was determined as follows:

YEAS—Messrs. Barbour, Brown, of Lou. Brown, of Ohio, Eaton, Edwards, Findlay, Holmes, of Miss. Johnson, of Ken. Johnson, of Lou. King, of Alab. Knight, Lanman, Parrott, Rodney, Southard Stokes, Williams, of Miss.—17.

NAYS—Messrs. Barton, Benton, Chandler, Dickerson, Gaillard, Holmes of Maine, King, of N. Y. Lloyd, Lowrie, Macon, Morril, Noble, Palmer, Pleasants, Ruggles, Seymour, Smith, Talbot, Taylor, Thomas, Van Buren, Van Dyke, Walker, Ware, Williams, of Tenn. —25.

So it was resolved that the Senate do *not* advise and consent to the appointments of Nathan Towson and James Gadsden.

Laws of the United States.

An act relating to Treasury Notes.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That from and after the passing of this act, no Treasury Note shall be received in payment in account of the United States, or paid, or funded, except at the Treasury of the United States.

Approved—May 4, 1822.

An act for the relief of certain insolvent debtors.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That so much of the seventeenth section of the act, entitled "An act for the relief of insolvent debtors within the District of Columbia," approved on the third day of March, one thousand eight hundred and three, as declares that the provisions of the said act shall not be construed to extend to any debtor who has not resided in the District of Columbia one year next preceding his application for relief under the said act, shall be, and the same is hereby repealed: *Provided*, That no discharge under this act, or the act to which it is amendatory, shall operate against any creditor residing without the limits of the District of Columbia, except the creditor at whose instance the debtor may be confined. This act shall commence and be in force from and after the passing thereof.

Approved, May 6, 1822.

An act to provide for paying to the State of Missouri, Mississippi, and Alabama, three per cent. of the nett proceeds arising from the sale of the Public Lands within the same.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That the Secretary of the Treasury, shall from time to time, and whenever the quarterly accounts of public moneys of the several land offices in the said state of Missouri shall be settled, pay three per cent. of the nett proceeds of the sales of the lands of the United States, lying within the state of Missouri, which, since the first day of January, one thousand eight hundred and twenty-one, have been, or hereafter may be, sold by the United States, after deducting all expenses incidental to the same, to such person or persons, as may or shall be authorised by the Legislature of the said state of Missouri to receive the same; which sum or sums, thus paid, shall be applied to the making of public roads and canals, within the said state of Missouri, under the direction of the Legislature thereof, according to the provisions on this subject contained in the act of Congress of the sixth of March, one thousand eight hundred and twenty, entitled, "An act to authorize the people of the Missouri Territory, to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states, and to prohibit slavery in certain territories," and to no other purpose. And an annual account of the same shall be transmitted to the Secretary of the Treasury, by such officer or person, of the state, as the legislature thereof shall direct, and of its application, if any be made; and, in default of such return being made, the Secretary of the Treasury is hereby required to withhold the payment of any sum or sums, that may then be due, or which thereafter may become due, until a return shall be made, as herein required.

Sec. 2. *And be it further enacted*, That the Secretary of the Treasury shall, from time to time, and whenever the quarterly accounts of public moneys of the several land offices in the state of Missippi, shall be settled, pay three per cent. of the nett proceeds of the sales of the lands of the United States lying within the state of Mississippi, which, since the first day of December one thousand eight hundred & seventeen, have been, or hereafter may be, sold by the United States, after deducting all expenses incident to the same, to such person or persons as may or shall be authorized by the legislature of the said state of Mississippi, to receive the same; which sum or sums thus paid, shall be applied to making public roads and canals within the said state, according to the provisions on this subject contained in the act, entitled "An act to enable the people of the western part of the Mississippi territory to form a constitution and state government, and for the admission of such state into the Union on an equal footing with the original states," and to no other purpose; and an annual account of the same shall be transmitted to the Secretary of the Treasury, by such officer or person of the state, as the legislature thereof shall direct, and of its application, if any be made; and, in default of such return being made, the Secretary of the Treasury is hereby required to withhold the payment of any sum or sums that may then be due, or which thereafter may become due, until a return shall be made as herein required: *Provided*, that the Secretary of the Treasury shall not allow to either of the said states of Mississippi and Alabama three per cent. on the nett proceeds of the sales of public lands within the limits of the late Mississippi Territory, after deducting incidental expences, until the sum of one million two hundred and fifty thousand dollars stipulated to be paid by the United States to the State of Georgia, for the cession of the Mississippi Territory, now composing the states of Mississippi and Alabama, shall have been first paid and deducted; nor until the stock created under the provisions of the act of Congress of the thirty-first of March, one thousand eight hundred and fourteen, entitled "An act providing for the indemnification of certain claimants of public lands in the Mississippi Territory," and the act supplementary thereto, shall have been redeemed, or if not entirely redeemed, the residue to be deducted from the nett proceeds.

Approved—May 3, 1822.