# EASTON GAZETTE.

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## MR. KERR'S LETTER.

*Communication addressed to Thos. B. W. Randall, Esq. Chairman of a committee of the House of Delegates of Maryland, &c.*

Washington, Jan. 24th, 1842

Sir:—Your communication of the 14th inst., directed to myself and the Honorable William D. Merrick, as "Senators in Congress," was duly received. My first impulse, from a perusal of it, prompted me to make an immediate reply, protesting, unreservedly and emphatically, against the measure of authority, which seemed to be assumed over me, as a senator of the United States; and yet I was not unwilling, but desirous rather, to afford to the House of Delegates of Maryland such lights on the novel inquiry, proposed by your letter, as I could impart, consistently with the grave obligations, resulting from my official station and the rules of the Senate; because, for myself, I had nothing to conceal, and I desire, at all times, when I lawfully can, to render a faithful account of the proceedings of that branch of the national legislature, in which, through the favor and confidence of the General Assembly of Maryland, I have the honor to hold a seat. But sir, on a requisition of the House of Delegates, so entirely unusual, and I may add, wholly without a precedent in the history of the intercourse of the legislatures of the States of this Union with either branch of Congress, I felt that it was proper I should pause, in order more deliberately to decide what sort of answer might best comport with my duty to that *entire constituency*, which I represent, and at the same time with the respect I bear towards the House of Delegates, by whose order you have addressed us. On this point, I soon formed a dispassionate judgment, and will endeavour now to pursue the course, which that has indicated to me, pleased to be conscious that I cannot do unless my pen be guided by truth and the dictates of a just independence.

Before I offer to you the explanations and suggestions, which have occurred to me as proper to be made, in order to satisfy, as far as lies in my power, the wishes and expectations of the House of Delegates of Maryland, whose organ you are, it is necessary and proper that I should accurately recite the communication, which we had the favor to receive from you and the special inquiries proposed. You write as follows:

Annapolis, January 14th, 1842.

"Gentlemen:

As chairman of the committee I am instructed to call your attention to the following order, adopted by the House of Delegates on the 5th of January 1842. In discharge of the duty devolving upon them by this order, the committee deem it proper to address themselves first to you and to request you to inform the House of Delegates, through them, for what reasons and under what circumstances the claims of General Towson, your illustrious fellow citizen were overlooked by the Senate when they had under consideration the vacancy caused by the death of Macomb, and confirmed the nomination of General Wool of New York?"

"With great respect, yours, &c.

THOMAS B. W. RANDALL, Chairman."

You append to this letter what is doubtless intended as a literal copy of the order, under which you act, to wit: "Ordered That the committee already raised upon the subject of presenting a sword to Captain John A. Webster, referred to by the Governor in his annual message, be instructed to inquire into the proceedings of Senators Kerr and Merrick as regards the matter of General Towson's memorial to the United States Senate, when a nomination to fill the vacancy occasioned by the death of General Alexander Macomb was before that body."

One remark is obviously suggested upon this communication, taken as a whole—that the inquiry which you make in behalf of your committee, from my colleague and myself, is far wide of the apparent object presented by the order under which you have proceeded, and instead of calling upon us to aid you in gaining a knowledge of our *own* "proceedings," upon a very different matter, —"General Nathan Towson's memorial to the United States Senate, when a nomination to fill the vacancy occasioned by the death of General Alexander Macomb was before that body,"—you apply yourselves *first* to us, for the reasons and the circumstances under which the claims of General Towson, were overlooked by the Senate," on the occasion of their confirmation of the nomination of General Wool. For the one purpose, entirely personal to themselves, the Senators of Maryland might, perhaps have had but little hesitation in yielding to any *joint* request of the two Legislative branches which compose, the General Assembly of Maryland, in cases wherein no constitutional obstacle interposed, as it regards their own rights and independence, or forbade them to reveal the proceedings of the Senate. But, for a disclosure of the reasons, opinions or arguments, urged by Senators, in secret session, they could find no warrant or excuse but in a previous resolution of their body for the publication of them, without which they would incur the punishment and disgrace.

This serious difficulty could not surely have occurred to the Honorable House of Delegates, when passing the order under which you act, and must have been no less overlooked by the committee, when they instructed you to make the request, which we have had the honor to receive.

By the Constitution of the United States, each House of Congress is invested with a power to determine the rules its proceedings, and, amongst the rules established by the Senate, and approved, is that which keeps secret its proceedings on Executive nominations to office, until the injunction be taken off by a formal vote, and any exposure of information or remarks touching the character or qualification of persons nominated is expressly forbidden.

Seeing me, therefore, under these prohibitions and restraints, the House of Delegates of Maryland will, I trust excuse me from a compliance with their request, as transmitted by you, to inform them of the reasons which governed the Senate of the United States, or were urged by any members of it, when they confirmed the nomination of General Wool; and they will be disposed, I am sure, on mature reflection, to rid me, in their most generous thoughts, of all suspicion, which the object presented by their order seems necessarily to imply, of a desire to conceal any proceedings on the part of the Maryland Senators, "as regards the matter of General Towson's memorial, of which you speak, when I assure that honorable body, that whatever may have occurred upon any such memorial before the Senate of the United States, or in an any of its committees, yet remains confidential, under its rules, and that if thereupon any proceedings or discussion have taken place, I am precluded at present from unfolding them. Nevertheless, sir, such is my desire to manifest my respectful consideration of the House of Delegates, and to aid in their appropriate sphere of action, representing the people of Maryland, whom I serve, in mine and to whom as my lawful constituents, I will ever bow with reverence, I will not withhold my knowledge of "the circumstances," so far as I am at liberty to state them, under which the Senate confirmed the nomination of General Wool of New York, as a Brigadier General. I will relate them as succinctly as possible, lest I should trouble the House of Delegates with a too tedious detail of particulars, with which, as public men, most of them are probably familiar; for, they consist in well know facts and plain constitutional provisions, to which all, who desire it may readily refer. They will afford, I humbly hope, to the members of the House of Delegates, the means of an ample apology to their own immediate constituents, for desisting from any further prosecution of a fruitless design to draw from the Senate of the United States their *reasons* for having overlooked the pretensions of any individual, howsoever distinguished or wheresoever born, to an office under the General Government, to which the President, in the exercise of his unquestionable power and discretion, has not deemed it his duty to *nominate* him. I am, sir, further induced to go through this brief process for the purpose of disabusing the public mind of the effect of intimations and doubtful queries about some supposed dereliction of duty on the part of the Maryland Senators, which, not being defined or specially charged against them, cannot be at this time more effectually dissipated

Upon the death of our late distinguished and lamented commander in chief, Maj. Gen. Macomb, it was very soon known that General Winfield Scott would be called to succeed him. He was accordingly nominated to the Senate, and by it promptly confirmed. Upon this appointment being made, it devolved on the President to choose a Brigadier for the Army. General Wool being then a Colonel, and Inspector General in active service, and a Brigadier General, by brevet, was nominated by the President and deliberately confirmed by the Senate to fill the vacant post.—There was, at that time, a long line of *Colonels* in the service alike holding the *brevet* distinction of Brigadier. The distinguished Jessup held the rank also of a Major General, *by brevet*. Amongst these officers of the Army, General Atkinson and General Brady were *senior* to all in rank

I shall not attempt to compare or treat of the relative merits or qualifications of these gallant men, who have received the full mede of honor from their grateful country. General Nathan Towson, a native of Maryland, was, I believe, as brave a soldier as any in the late war with Great Britain. He was repetedly distinguished and honored, during his service,—as others of his compatriots were,—with promotions by brevet, for conduct of gallant and noble daring, in the face of the enemy; and, in 1834, he was *brevetted* as a Brigadier by General Jackson, then President of the United States.

At the period of the late appointment, which is the subject of your inquiry, General Towson, holding the office of Paymaster General, at Washington under the immediate eye of the President, was doubtless amongst those, to whom his attention was drawn, when making choice of a Brigadier. Upon the principle of *selection*, which the President was authorised to pursue, unrestrained by the pretensions of mere seniority in commission, it was as fully in his power, if he chose, to fix his choice on General Towson, as to have conferred the honor on General Wool, or any other of the distinguished officers of the Army, whether in the line or staff. General Towson was ranked at least by Atkinson and Brady; and many other officers claimed precedence of him, under their views of subsisting rank in the Army. It may be proper to state, that which I derive from other sources than any confidential matter in the Senate,—that General Towson is of opinion, that there is an error or omission as to the date of his last brevet; which, if it could have been corrected by some competent authority, he thinks, would have placed him in *rank* before General Wool: but, if that could have been effected, the result would not have given him precedence of General Atkinson and General Brady and others. Yet whatever actual relation General Towson bore to them, in rank, he was as *eligible* as they, had it been the will of the President to nominate him to the vacant place of a Brigadier; and the power of that high officer to withdraw or alter his nomination, at any moment before its confirmation, would never be denied by the Senate. I speak with perfect sincerity, when I say, that, had the nomination fallen on that gallant son of my own native State, I would have cherished, with satisfaction, the opportunity in my hands of confirming it by my vote; and this is all, I think, that the occasion calls upon me to say on that point.

The President nominated General Wool—not on account of *seniority*, for that could not be pretended, but of his own sound discretion, according to an undoubted authority to do so under the Constitution, military usage, over... and the expressed rules and regulations of the army. Those rules declare that original vacancies shall be supplied by *selection*, or free choice, and accidental vacancies *to the rank of Colonel*, by *promotion*, according to *seniority*, except in extraordinary cases: but appointments to the rank of *Brigadier* or Major General are to be made by *selection*, independently of the claims of seniority. The force of the reasons for such provisions is well understood even in the Militia of the States To the President belongs, under the Constitution, the power to *nominate* all officers of the United States, civil and military, and to the Senate is as exclusively assigned the authority to confirm or reject his nominations. As he has the *sole* power to nominate, the entire responsibility for the wisdom and integrity of his selections rests upon him The Senate, as an independent body, has the right to examine into the fitness of the candidate nominated, and to approve or reject him; but their decision should be fairly regulated by their opinion of the character and qualifications of the individual presented. Should the Senate, at any time, adopt the principle that, whenever a majority of that body happens to prefer another, they will reject every nomination made until the President fall back upon their favorite, it would be a plain usurpation of the constitutional prerogative of sole nomination, and thus the whole power of appointment would be rendered nugatory. If this right of the President to nominate be conceded, and, in the case of an appointment to a military office above the rank of *Colonel* he be not bound to make the selection according to seniority of rank then the Senators must rest their assent or dissent to the nomination on the criterion of the character and qualifications of the individual actually nominated. They may reject him, but neither the merit nor rank of any other person can confer on the Senate a power to appoint that other to the office in question, since the President will still have the right of selection, and may again and again nominate agreeably to his preference and judgment

If, in the case of the nomination of General Wool, the claims of his admitted *seniors*, Atkinson and Brady, were passed over, it is irresistably to be inferred that his nomination was confirmed upon the principle of the right of the President to make a selection of a Brigadier, without regard to rank, and from the absence of well founded objections to the character and competency of the *nominee*.

I have thus, sir, stated to you, for the satisfaction of the House of Delegates, the precise "circumstances," in point of fact, and the constitutional authority under which the President made and the Senate confirmed the nomination of General Wool.—so far as I am at liberty to unfold them, and as I understand them. Now, sir, if to know the reasons or motives, which actuated the President of the United States, in making that nomination, or the several members of the Senate, in confirming it, shall be still deemed important by the honorable House of Delegates of Maryland, or the reasons why they did not nominate to that vacancy in the Army, our distinguished fellow citizen, General Towson, I think I have considered most respectfully for their reasons, and offered irrefragable proof that no just expectation can be entertained of my peculiar position, as a Senator of the United States, I can be in any other instrumental in affording such information.

Having declined making to you, the authorised interpreter of the wishes of the House of Delegates, any answer, and having relied upon my own just sense of independence of the Senate of the States, of the authority which the Senate of any State may assume to itself in inquiring into its proceedings, to have been deemed fastidious towards the honorable body, in whose name you have proceeded; and I do not fear that by such degree of compliance as that, which I have limited myself, I shall be chargeable with the imputation of having in the least compromitted the dignity of that branch of the National Government to which I have the honor to belong, which, with its co-ordinate powers, participates, also, in the Executive function of appointment.

I have, sir, stated with freedom, though with great deference, what I thought best adapted to this peculiar occasion to my own fair purposes, and not to presume to speak briefly of that part of your communication, which alone concerns Maryland Senators personally.

If the ... which I draw from the order of the House of Delegates, itself, be not affected by an undue sensibility, on my part to the slightest implication of a charge against me, as one of the representatives of my honored native State, it behoove me to notice it with special attention I have already stated that, in the enquiry contained in your letter, you do not ask of us to give to the House of Delegates, any information, or report of our own proceedings in any case before the Senate, except so far as being constituent members of that body, we are embraced in its general designation. It may be, sir, that in telling the particulars, their information making an issue not intended to be raised, but it was impossible to see, although, at all times, most anxious to obviate the necessity for self-defence, to blink so hard as not to have seen in the first introduction of that order, that there was implied some dissatisfaction with the conduct of the Maryland Senators. To incur the just censure of any portion of the people of Maryland or of their representatives, would give me infinite pain and I am therefore ever teelingly alive to the semblance of an accusation that might lead to such a consequence. The frankness which belongs to my character, prompts me, on all occasions, when I may with propriety do so, to meet openly and firmly and to remove if I can, either misapprehensions or misrepresentations of my conduct I might confide in the magnanimity or justice of the honorable House of Delegates of Maryland, if a serious charge of any sort were really intended to be alleged against me that a full and certain specification of it would have been made and furnished me, so that I might if I pleased plead to the jurisdiction, or confess or deny the impeachment. But if it be the sure, though undesigned effect of their order to 'Just hint a fault ——' and the grave proceeding have instantly become a prolific topic for ambiguous interpretations and malignant surmises, shall the intended victims of popular displeasure evade or rest quietly without notice of them, when a breath of theirs may dispel the cloud? A plain, blunt man, as I am, and not accustomed to rest quietly under the injurious operation of such a state of things, I will not now forbear to avail myself of the fair opportunity, which is presented, for repelling unfounded and unjust insinuations; nor do I think that any ground of self-respect forbids me, in such a case, to speak out. I confidently trust, therefore, that in taking part in this irregular proceeding, which has called from me a large reply for the satisfaction of the honorable House of Delegates, I shall be pardoned if I further use the occasion to give immediate circulation of what I deem a necessary and proper explanation to the public, for my own sake.

When first saw the order of the House of Delegates, a copy of which has since been transmitted by you, my solicitude to ascertain its object so far as it might be interesting to myself, as none was therein defined,—I used some endeavor to obtain information of what it really meant. The result of my inquiry was that although no allegation of any improper official act, on the part of my colleague or myself, had been stated before the House of Delegates, yet that in the political circles of Annapolis, it had been suggested as the basis of that order, that the Maryland Senators, on the occasion of confirming the appointment of General Wool, had PURPOSELY *absented themselves from their seats, so that the nomination might not be rejected* This is the mildest form, in which I can state that gross imputation, which I learn that rumor has trumpeted to and fro, until it has become rife in the State.

I remember well, sir, that during the 'civil dudgeon,' in the party canvass of October last, a friend of mine, with the best intentions, sent to me a newspaper printed in the city of Baltimore, in which this malignant surmise was embodied, as a direct charge, in language which my self-respect will not allow me to repeat. It was then the object of my ineffable contempt and I let silence speak my scorn. I thought it had fallen still-born from the press. But if it be now the object of any one to resuscitate the despicable offspring of personal malignity and party rancor, and he shall avow such a charge, I cannot apprehend that one individual can be found in the House of Delegates of Maryland there to foster so base—so low—so unjust an imputation; or that any honorable man, whether political friend or adversary, who ever heard of my humble name and character, will hesitate to stand forth in my vindication upon the bare ground of my reputation against naked falsehood — None but one, who is conscious of his own destitution of every feeling of virtue and independence, could invent the slander, and he who would propagate it, without proof or even plausible pretext, deserves no better title than the foul disgrace of society.

I have not deemed it too serious to utter these expressions of indignant self-defence, for the purpose I have declared, since I know well how easily the purest intentions may be blackened by malice, and false insinuations if suffered to pass without notice, may be worked into a manufacture of public opinion, producing excitements and ill-blood, difficult to be allayed.

I beg your, sir, to assure the House of Delegates of Maryland of my high consideration, and I remain, respectfully,

Your Obedient Servant,

JOHN LEEDS KERR

To THOMAS B. W. RANDALL Esq. Chairman of a Committee of the House of Delegates of Maryland, &c.

## THE CASE OF GENERAL TOWSON

Correspondence of the Baltimore Patriot.

Annapolis Feb. 8, 1842.

As a part of the proceedings connected with the nomination of General Towson, I herewith enclose you a copy of the action of the United States Senate in regard to it. You will perceive that the order of the House of Delegates refers to the proceedings of Senators Kerr and Merrick on that memorial; but the injunction of secrecy not having been removed until the 2d instant, no one out of the Senate knew what had been done in relation to it.—You will further perceive that Colonel Merrick introduced it, and carried it through its several stages, but he failed to secure the favorable action of the Senate. He made in its behalf a most zealous and animated speech, but with what avail the result demonstrates. You will please publish the proceedings of the United States Senate in your paper for the information of the public, and also the following extract from the order of the House of Delegates, exhibiting the connexion between them. The order is as follows:

"And that the committee be instructed further to inquire into the proceedings of Senators Kerr and Merrick as regards the matter of General Nathan Towson's memorial to the United States Senate when a nomination to fill the vacancy occasioned by the death of General Alexander Macomb was before that body.'"

*Proceedings of the Senate on the memorial of Nathan Towson, from which the injunction of secrecy has been removed.*

IN EXECUTIVE SESSION, SENATE UNITED STATES.

MONDAY, August 23, 1841.

Mr. Merrick presented the memorial of Nathan Towson, a Brigadier General by brevet in the Army of the United States, stating that from an omission in the nomination made by the President on the 30th of June, 1834, the date of his brevet rank was made to take effect from the day on which it was confirmed by the Senate, instead of the 15th of August, 1824, and praying that justice may now be done to him.

Mr. Merrick also submitted the following resolution:

"Resolved, That the omission of the date in the brevet conferred on Brigadier General Nathan Towson on the 30th June, 1834 be supplied by inserting the 15th of August 1824, it being for ten years faithful service based on his brevet for the defence of Fort Erie on the 15th August, 1814."

Ordered, That the said memorial and resolution be, severally, referred to the Committee on Military Affairs.

MONDAY September 13, 1841.

Mr. Merrick, from the Committee on Military Affairs, to whom were referred, on the 23d August, the memorial of Nathan Towson and the resolution submitted by Mr. Merrick, relating to the date of the brevet rank of General Towson, reported the said resolution without amendment.

The Senate proceeded to consider the said resolution; and, after debate, on motion by Mr. Huntington,

Ordered, That it lie on the table.

WEDNESDAY, February 2, 1842.

On motion by Mr. Merrick,

Ordered, That the injunction of secrecy be removed from the memorial of Nathan Towson, which was presented on the 23d of August, 1841, and from all the proceedings of the Senate in relation thereto.

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THE UNCERTAINTY OF THE LAW—It is no unusual thing to see men in this country rise to eminence at the bar, and in the State, by their own unaided energies, and the natural vigor of their minds Of this kind was Judge S ——, of Maryland. He had come to the bar late in life, avoiding or overstepping the dull technical formalities which surrounded the usual approaches to the practice.—Having reached the profits and advantages of his profession without them, he felt or effected for them indifference or contempt, and the old "Martinets" of the law were often made to stare at the liberties he would take with what they deemed indispensable and necessary forms and rules of the practice. To S —— the form was nothing, so that he could seize the right.

A notorious offender, who had long escaped meshes of the law, by means of flaws and holes in the indictments, was to be tried before him. General Mason was his standing counsel; and the fellow's good fortune, and the ingenuity and tact of his counsels, were considered as good as law proof. Judge S. was well satisfied that the fellow deserved punishment, and was determined that he should receive it, maugre the talents of Mason or any legal difficulty that might interpose.

The prosecution went on, and the counsel for the State made out a very clear case. The offence was proved point blank and Mason began to think that his client was rather concerned. when the prosecuting attorney, to "make assurance doubly sure," called one more witness, a very respectable man in the county. He confirmed all that had been proved by the former witnesses, as to the offence and with it this additional important fact, that the offence was committed in Pennsylvania and not in Maryland, it being in one of the border counties. Apparently the Court paid no attention to this ... he need call no witnesses, as the fact, so well ascertained, at once put an end to the prosecution.

"Not at all— not at all!—go on," said the Court

"Your honor will not attempt to try an offence committed in another State!"

"I tell you I will, sir, and show you good reason for it:—The offence has been clearly proven, and deserves punishment; we have got him here, and can punish him. In Pennsylvania they cannot catch him, and the law is not to be baulked by such technicalities."

The counsel here remarked that he could convince the Court of its error, if he had time to look up authorities—he had not the books with him, but could procure them in half an hour.

"Oh! I will give you as much time as you want," replied the Judge. "Take half a day, if you choose."

So soon as Mason had left the court, in search of these unanswerable authorities, the Judge turned, and remarked to the jury, that they had heard the testimony, and could no doubt make up their verdict, and he would take care of Tom Mason. The Court sentenced him to receive fifty lashes on the bare back, and ordered the sheriff to execute the sentence forthwith. His counsel returned with the least possible loss of time, and without noticing the absence of his client, commenced quoting his authorities, and arguing therefrom—the Court taking notes and listening very attentively all the time. Mason at last missed his client, and enquired where he was.

"Never mind—never mind—go on Mr Mason," said the Judge.

But Mason had become alarmed—had refused to go on, until satisfied of the whereabouts of his client.

"Well, Mr. Mason," said the Judge, "if you will step to yonder window you can see him"

Mason proceeded in the direction indicated by the Judge's gestures, and had no sooner looked out than he turned to the Court with the exclamation: "By G—d, sir, they are flogging him!"

"That makes no difference," replied the imperturable Judge—proceed in your argument."

"What good will my argument do?—the man is already sentenced and punished. I have nothing to gain by convincing the Court."

"O yes, I will grant you," said the Judge, "a new trial"—*Pittsburg Aster.*

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In the Ohio Legislature on the 22d ult. a petition for a divorce was presented, when the following scene occurred:

"Mr. Byington inquired if it would be in order to move that the *petition be sent to HELL!* Mr. McNulty moved that the gentleman from Pike *be appointed the special messenger for its despatch!*"

After this the House dispersed for dinner.

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