

the order of the day for to-morrow. The House then proceeded to the consideration of the Resolutions from the Legislative Council on Saturday respecting the nomination made by this House for a person to fill the seat of Samuel Gwathmey in the Council, whereupon Mr. Johnston introduced the following resolutions.

Whereas Samuel Gwathmey Esq. as a member of the Legislative Council of this Territory did as has satisfactorily appeared to this House in the month of August last resign his seat as such member—and did as was done in the case of Shadrach Bond send a member of the Legislative Council from the County of St. Clair, transmit by the hand of the Hon. Walter Taylor to the Governor of this Territory from whom he had received the Commission as such Counsellor by directions of the President of the United States his resignation—and whereas this House on the ninth day of its present session, being the fourth day of October Instant entered into the following resolution.

Resolved that a committee be appointed on the part of this House to wait on the Governor of this Territory, and request information whether Samuel Gwathmey Esq. has resigned his seat as a member of the Legislative Council in order that the House may proceed to the nomination of fit persons to the President of the United States to fill the said vacancy, and that Messrs. Johnston and Messinger be that committee, the committee named therein in virtue thereof waited upon the Governor on the day of the passage thereof who returned them for answer, that he would answer the request of the House of Representatives in writing, and upon the following day being the fifth instant, he by his Secretary Gen. Gibson made this House the following answer.

To the House of Representatives of the Indiana Territory.

Gentlemen.

The Legislative Council having requested me by a resolution passed this day to send for their absent members B. Chambers and Samuel Gwathmey Esq.—I expect to be able in the course of a few days to give the House of Representatives some certain and definitive information upon the subject of the enquiry made of me yesterday relative to the last named Gentleman—which answer the House immediately proceeded to consider of, and not conceiving the same either satisfactory or sufficient they entered into the following resolutions.

Whereas by a Law of the Territory it is declared that no person shall be eligible to a seat in either branch of the Legislature who holds a commission during pleasure directly under the President of the United States or this Territory—and whereas upon examination of Robert A. New and Jonathan Jennings being first sworn it appears to this House that Samuel Gwathmey now exercises the office of Register of the land office for the district of Jeffersonville whereby his seat has become vacated. Resolved therefore that this House in pursuance of the ordinance do now proceed to nominate two persons to be returned to the President of the United States in order that he may appoint one of them to fill the place of the said Samuel Gwathmey in the Legislative Council and that the Speaker be and he is hereby directed to transmit the same to the President by the ensuing mail together with this resolution—which this House conceived itself authorized to do from the Revised Laws of the Territory page 241 being a Law to regulate elections, in the 13th section whereof it is thus provided, no sheriff, under sheriff, Clerk of any court or person holding a commission during pleasure directly under the United States or this Territory except Justices of the peace and militia officers shall be eligible to a seat in either branch of the Legislature—and the said nomination took place accordingly, when Hugh McIlly and Charles Biggs was duly nominated as will appear by the nomination accompanying this resolve—and whereas the Legislative Council without being officially informed of the above nomination have from what cause this House will not express, but the world easily can and the President of the United States may conjecture entered into the following resolutions.

Whereas the Legislative Council have been informed that the House of Representatives have proceeded to the nomination of two persons to be submitted to the

President of the United States to fill the seat of Samuel Gwathmey Esq. a member of this House and have undertaken to examine witnesses at their bar to shew that the said Samuel Gwathmey has forfeited his right to a seat in the Council in consequence of his having accepted another commission under the President of the United States an enquiry which according to all the laws usages and customs which prevail throughout the United States properly and exclusively belongs to this House.

Therefore resolved that the House of Representatives in making a nomination to fill the seat of Samuel Gwathmey Esquire under the circumstances above mentioned have violated the right and usurped the power of the Legislative Council.

Resolved that the members of the Legislative Council being appointed and commissioned by the President of the United States their commission can only be vacated by death resignation or removal, and as this House has not been informed that either of them has happened they still consider the said Samuel Gwathmey as a member of this body and entitled to all the rights and privileges thereto belonging.

Resolved that this House is alone competent to decide on the eligibility and necessary qualifications of its own members, and that the pretended exercise of that right by another body is derogatory to the honor and privilege of this House, of unparalleled example and pregnant with the most dangerous consequences.

Resolved that a copy of these resolutions be signed by the President and attested by the Clerk and sent to the President of the United States through the Governor should he think proper to transmit them, and that the President be respectfully requested to appoint no person in the room of the said Samuel Gwathmey until he shall be officially notified of his resignation.

Resolved that the Clerk be directed to transmit a copy of the above resolutions to the House of Representatives and inform them that when there is a vacancy in this House we shall inform them of the same. H. Hurst Clk. C. 8th October 1808.

The House of Representatives take it as a correct position that was there no other way than that pointed out by the Legislative Council in the aforesaid resolution for this House to gain information of the seat of one of the members of the Legislative Council becoming vacant the Council might never be full, nor nominations by this House ever take place because the information from the Legislative Council to this House through political or other views might never be given.

Resolved therefore by the House of Representatives of the Indiana Territory nem. con. that a copy of the above statement and this resolution be immediately made out, attested by the Clerk and signed by the Speaker of the House and forwarded to the President of the United States by the ensuing mail.

The further orders of the day being postponed until to-morrow the House adjourned until to-morrow morning 9 o'clock.

Tuesday 11th October. 1808.

The House met according to adjournment.

Mr. Johnston laid before the House the following Resolutions which being read was agreed to by the House and were as follows.

Whereas by the ordinance the right of electing a Delegate to Congress is vested in the Council and House of Representatives of this Territory and whereas it is more congenial to the principles of free Governments and it is the wish of our constituents that the organs of the public will should be elected immediately by the free citizens: Resolved therefore that our Delegate to Congress be and he is hereby authorized to procure at the ensuing session of Congress the passage of a law providing that the citizens of this Territory entitled to vote for Representatives to the General Assembly shall at the time of electing their Representatives to the said General Assembly also elect one Delegate from the said Territory to the Congress of the United States who shall possess the same powers heretofore granted to the Delegates from the several Territories of the United States.

Resolved, that our Delegate endeavour to procure a repeal of that part of the ordinance which vests in the Governor of this Territory, an absolute negative, on all acts and also that part which confers on him the power of proroguing and dissolv-

ing the general assembly when in his opinion it shall be expedient, and that he use his endeavours to procure a law to be passed vesting in the said Governor powers in those respects, similar to those exercised by the President according to the constitution of the United States—and whereas it appears to this House that the powers vested in the General court of the Territory, of hearing and determining all civil and criminal causes without appeal to any other Tribunal is dangerous in itself, and may be pregnant with the greatest mischiefs, to the lives, liberty, and property of the citizens.—Resolved therefore that our delegate be further instructed to use his endeavours to have a law passed at the next session of the national Legislature allowing of appeals from the said General court, to the Federal Circuit court of the district of Kentucky in all cases above a determinate value to be ascertained by law, and that the decision of the said Federal Circuit Court shall be final.

On motion,

Resolved that three copies of the aforesaid Resolutions be immediately made out attested by the Clerk and signed by the Speaker, one of which shall be forwarded by the Speaker to the President of the United States, another to the Speaker of the House of Representatives of the United States, and the other delivered to our Delegate to Congress.

Mr. Jones laid before the House a resolution which being read as follows.

Whereas it appears to this House that great and increasing discontents prevail among the people in the Counties of this Territory west of the Wabash in consequence, and growing out of their connection with the people eastward of the said River, principally arising from the circumstances of their being united for the purpose of temporary government only—and it is manifest to this House that a separation by law, of the Western from the eastern part of this Territory is the only means now left of restoring harmony terminating those discontents and quieting the minds of the people so essential to the prosperity of an infant country, and whereas it is considered to be unnecessary to enter into a detail of the various other causes which have produced those discontents, as it appears they have been already laid before Congress and are of such a nature as can be removed only by an act of the General Government—and whereas it hath been alleged by those counties and is believed by this House that as they contribute to the revenue considerably more than the expences of the Government they pay for would draw from the public Treasury and considering also that it is the right of every free people to have a Government of their choice, and has ever been the liberal and enlightened policy of the United States to extend the benefits thereof to their Territories when it was consistent with the general good, resolved therefore that our Delegate to Congress be and he is hereby instructed to use all the means in his power to procure at the ensuing session of the National Legislature a Division of this Territory as provided by the ordinance of Congress, and as hath heretofore been frequently prayed for by the people of that portion of the Territory.

Resolved also that copies of this resolution be made out, signed by the Speaker and attested by the Clerk whereof one shall be immediately transmitted by mail to the President of the United States one to the President of the Senate, one to the Speaker of the House of Representatives and the other be delivered to our Delegate in case one shall be elected and it shall be the duty of the Speaker of this House to transmit and deliver the copies aforesaid. On the Question that the House do agree to the foregoing resolution the Yeas and Nays being called for by one of the members, those who voted in the affirmative, were Messrs Biggs, Jones and Messinger, and those who voted in the negative were Messrs. Decker and Johnston. Yeas 3 Nays 2.

Mr. Johnston from the committee to whom were referred the petition of Nicholas Jarrot made the following report.—That they have examined into the prayer of the petition and the Law of the Territory which directed from whence and in what manner the expences of elections should be paid and are of opinion that he should be remunerated the expences which he incurred by sending an express to the executive of the Territory as the same was

done for the maintenance of good order, but that the same should be paid him out of the county treasury of St. Clair they have therefore reported for his relief the following bill, a bill for the relief of Nicholas Jarrot the same being read.

On motion,

Resolved that the said bill be read a second time now.

On motion,

Resolved that the said bill be committed to a committee of the whole and made the order of the day for to-morrow.

On motion,

Resolved, that leave be given to bring in a bill supplemental to an act entitled an act to authorize the proprietors of the land in the lower Prairie in the County of Knox to enclose the same and for other purposes and that Messrs. Johnston, Jones and Decker be a committee to prepare and bring in the same: whereupon Mr. Johnston reported the said bill which being read.

On motion,

Resolved that the said bill be read a second time now.

On motion,

Resolved that the said bill be committed to a committee of the whole and made the order of the day for to-morrow.

A message from the Legislative Council by Mr. Hurst their Clerk, Mr. Speaker I am directed by the Legislative Council to inform this House that they do concur in the bill which originated in this House to form a new county out of Knox and Clark with some amendments to which they desire the concurrence of this House and then he withdrew.

The House then proceeded to consider the amendments proposed to the said bill by the Legislative Council and on the Question thereon it was agreed to by the House.

On motion,

Resolved that the Clerk do inform the Legislative Council thereof.

On motion,

Resolved that so much of the report of the committee appointed last session to superintend the printing and distributing the laws as relates to mistakes in the passage of the acts of last session and typographical errors in the printing thereof be referred to a select committee of Messrs. Johnston, Messinger and Decker, and that they report thereon by bill or otherwise.

The House according to the order of the day resolved itself into a committee of the whole on the bill for the relief of Robert Morrison and others, and after some time spent therein Mr. Speaker resumed the Chair and Mr. Biggs reported that the committee had according to order had the said bill under consideration and made some amendments thereto, which he delivered in at the Clerks' table where the same were severally twice read and agreed to by the House.

On motion,

Resolved that the said bill be re-committed to a committee of the whole and made the order of the day for to-morrow.

The House according to the order of the day resolved itself into a committee of the whole on the bill allowing compensation to the members of the Legislative Council and House of Representatives and to the officers of both Houses for the present session, and after some time spent therein Mr. Speaker resumed the chair and Mr. Messinger reported that the committee had according to order had the said bill under consideration and made several amendments thereto, which he delivered in at the Clerks table where the same were severally twice read and agreed to by the House.

On motion,

Resolved that the said bill be engrossed for a third reading on Thursday next.

The House according to the order of the day resolved itself into a committee of the whole on the bill for the relief of the printers of the revised Code and for other purposes and after some time spent therein Mr. Speaker resumed the chair and Mr. Decker reported that the committee had according to order had the said bill under consideration and have made several amendments thereto which he delivered in at the Clerks table where the same were severally twice read and agreed to by the House.

On motion,

Resolved that the said bill be engrossed for a third reading on Thursday next.

A message from the Legislative Council by Mr. Hurst their Clerk—Mr. Speaker I am directed by the Legislative Council to