

struction can they be considered otherwise; the right to vote is secured by the constitution. The election laws declare how this right shall be enjoyed; this is apparent upon the face of them, if they had attempted to go further, they would have been met and controuled by the constitution. The framers of those laws seem to have so viewed the subject, they have in some cases imposed penalties for a non compliance with the requisites of the law, but they have in no instance, made the validity of the election, or any part of it, depend upon the acts or omissions of the judges, or other officers; it is presumed they were aware that they could not do so. If the agents, appointed by law to conduct the elections, fail to do any thing required of them by the law under which they act, it is competent for this house, and it is their duty too, to punish such omission or neglect, according to its enormity, and its tendency to defeat the objects of the law, to wit; facility in voting, and purity in elections. But it is not competent to this house to punish the voters, who have done no wrong, and had not the power to prevent or correct the error, by taking from them a right which they claim not under the law, but which is secured to them by the constitution: *Therefore,*

Resolved, That the omission or neglect, on the part of the judges or clerks of an election, to qualify themselves as the election laws require, or to open or close the election at the precise time required by law, may afford good cause for punishing such judge or clerk so offending, but can be no cause for setting aside an election by them held and conducted, provided the said election be in other respects fairly conducted, and a full and fair opportunity to give in their votes, be afforded to all the voters entitled to vote at such election.

Resolved, That when ever any election actually held in any county, shall be set aside as to one or more districts in such county, for any just and proper cause; or when it shall happen that no poll was opened, or election held, for any one or more districts in a county, if the votes in such district or districts, provided they had been taken regularly and properly, would or might have changed or altered the election for the county as returned to this house, it results that no constitutional election has been held in that year for such county; for to admit to seats in this house, persons having the greatest number of legal votes under such circumstances, would be to admit a representation from part of a county only." The yeas and nays being required, appeared as follow:

AFFIRMATIVE.

Messrs. Dorsey, Sellman, Belt, Wm. Hall, Randall, Harryman, Warner, Stansbury, Bennett, Martin, S. Stevens, Claude, Duvall, Wright, Forwood, of Wm. Forwood, of J'b. Dallam, Maulsby, Saulsbury, Culbreth, Willis, Barney, Donaldson, Tilghman, Mason, Kershner, Gabby—27.

NEGATIVE.

Messrs Plater, Millard, Causin, Blackiston, Boyer, Jervis Spencer, Hands, Brown, Reynolds, Turner, Stonestreet, Ford, Rogerson, Bayly, Cottman, Long, Stewart, Griffith, Tootel, Lecompte, J. R. Evans, Lusby, Hogg, R. Evans, F. M. Hall, Somervell, Callis, Quinton, Handy, J. Thomas, Delaplane, J. H. Thomas, Potter, Jones, Kilgour, Crabb, Hilleary, Robinett, M'Culloh, Howard—40.

So it was determined in the negative.

On motion by Mr. Donaldson, the question was put, that the house adopt the following resolution, as an amendment to the report.

Resolved, That the omission of a judge, or clerk, to take the oath which by the act of 1805, Chap. 97, they are severally directed to take before they act as such, shall not vitiate, or set aside, an election in any district, provided the election in other respects, be fairly held and conducted.

The yeas and nays being required appeared as follow:

AFFIRMATIVE.

Messrs. Dorsey, Sellman, Belt, W. Hall, Blake, Randall, Harryman, Warner, Stansbury, Bennett, Martin, S. Stevens, Claude, Duvall, Wright, Forwood, of Wm Forwood, of J'b. Dallam, Maulsby, Saulsbury, Culbreth, Willis, Barney, Donaldson, Tilghman, Mason, Kershner, Gabby.—28.

NEGATIVE.

Messrs. Plater, Millard, Causin, Blackiston, Boyer, Jervis Spencer, Hands, Brown, Reynolds, Barney, Turner, Stonestreet, Ford, Rogerson, Bayly, Cottman, Long, Stewart, Griffith, Tootel, Lecompte, J. R. Evans, Lusby, Hogg, R. Evans, F. M. Hall, Somervell, Callis, Quinton, Handy, J. Thomas, Delaplane, J. H. Thomas, Jones, Kilgour, Crabb, Hilleary, Robinett, M'Culloh, Howard.—40.

So it was determined in the negative.

Mr. Donaldson moved the following resolution, as an amendment to the report:

Resolved, That the returning judges of a county, constituted by an union of the presiding judges from each election district, act in a ministerial capacity only, and that they, or a majority of them, have no power, when met for the purpose of making a general return, to exclude from the general enumeration of votes to be by them made, any poll to them returned by the judges of a district, or any vote stated upon any poll to them so returned.

Mr. Bayly moved to insert the words "legally appointed and qualified" after the word "district" in the latter clause of the amendment.

Mr. Donaldson asked a division of the question, and the question was put, that the words "legally appointed" be inserted? Resolved in the affirmative. The question was then put, that the words "and qualified" be inserted? The yeas and nays being required appeared as follow:

AFFIRMATIVE.

Messrs Plater, Millard, Causin, Blackiston, Boyer, Jervis Spencer, Hands, Brown, Reynolds, Blake, Taney, Turner, Stonestreet, Ford, Rogerson, Bayly, Cottman, Long, Stewart, Griffith, Tootel, Lecompte, J. R. Evans, Lusby, Hogg, R. Evans, F. M. Hall, Somervell, Callis.