

VOTES AND PROCEEDINGS, NOVEMBER SESSION, 1802. 115

commissioners on the part of this state, under your resolution. On this submission the council have refused to act, and as their whole conduct appears to me so flagrant a violation of your resolution, and so personally disrespectful to myself, I consider it as my duty to submit the whole to the legislature. With the most entire respect and perfect esteem, I have the honour to be, Gentlemen, your obedient servant,

JOHN F. MERCER.

The honourable the President of the Senate, }
and Speaker of the House of Delegates. }

SATURDAY, JANUARY 8, 1803, POST MERIDIEM.

THE council met. Present the honourable Francis Digges, Allen B. Duckett, Edward Hall, Reverdy Ghiselin and Davidson David.

The Board having under consideration the resolution empowering the appointment of three commissioners on the part of this state to meet such commissioner or commissioners as may be appointed on the part of the state of Pennsylvania and on the part of the Susquehanna canal company, to settle and adjust, by mutual compact, such measures as may be most effectual for the improvement of Susquehanna river.

Whereupon RESOLVED, That Alexander Contee Hanson, James Houston and John Montgomery, Esquires, be and they are hereby appointed commissioners on the part of this state in pursuance of, and for the purposes mentioned in, the said resolution.

By order,

NINIAN PINKNEY, Clk. Coun.

COUNCIL CHAMBER, 10th January, 1803.

GENTLEMEN,

HIS excellency the governor having communicated to the council a letter addressed by him to the general assembly, on the subject of appointments made by the council on Saturday evening, in his absence, the undersigned deem it a duty they owe to themselves to state the circumstances of that transaction. It was discovered on Saturday morning, in the course of conversation, that a difference of opinion existed between his excellency and the council, with respect to the persons to be appointed on the part of this state to meet commissioners to be appointed on the part of the state of Pennsylvania and the Susquehanna canal company respectively. With a view of obtaining a coincidence of sentiment on this subject, and in order to have a full council, (one of the members intending to leave the city the next day,) an adjournment till 5 o'clock, P. M. of the same day, was in the presence of, and the approbation of the governor, agreed to. At that hour the council met, and after having waited until all expectation of his excellency's attendance was exhausted, proceeded to make the appointments. The undersigned solemnly aver, that in this procedure they neither intended, nor do they feel themselves justly chargeable with, the slightest degree of personal disrespect toward the governor. The general assembly cannot fail to perceive, that the real difference between the governor and the council, is with regard to the right of nomination. The undersigned believe, that ever since the adoption of the constitution of this state, this right has been exercised concurrently by the governor and the council, and the undersigned will be permitted to add, that in their opinion, the construction of the constitution, thus evidenced by the practice of every former executive, is a correct one. Were the right of nomination exclusively vested in the governor, the undersigned cannot suppose, that the governor, whoever he may be, will nominate any other than such persons as he himself wishes to be appointed. A construction that "the advice and consent" of the council is thus limited to the governor's nomination, would in effect be conferring upon the governor a negative upon all appointments, and would reduce the constitutional powers of the council to a simple assent to the governor's propositions. The undersigned submit this diversity of opinion between his excellency and the council, as to their respective powers, to the wisdom of the general assembly. And are, with the highest respect, your obedient servants,

FRANCIS DIGGES,
ALLEN B. DUCKETT,
EDWARD HALL,
REVERDY GHISELIN,
DAVIDSON DAVID.

Severally endorsed; "By the senate, January 10, 1803: Read and referred to the consideration of the house of delegates.

"By order,

J. B. DUCKETT, clk."

Which were read.

And the following message:

BY THE SENATE, JANUARY 10, 1803.

GENTLEMEN,

THE business before us is nearly closed. We propose to adjourn until this evening half after 4 o'clock, when an end can be put to the session.

By order,

J. B. DUCKETT, clk.

Which was read.

Mr. M'Pherson,