

chosen shall be transmitted to the governor, whose duty it shall be forthwith to cause a notification of his or their election to be delivered in writing to each and every of the electors last chosen as aforesaid; and the said person or persons so notified, and not the person or persons in whose places he or they shall be chosen as aforesaid, shall be electors, and shall meet on the same day, together with the other electors, and perform the duties enjoined on them by the constitution and laws of the United States.

Section V. (Section V, P. L.) And be it further enacted by the authority aforesaid, That in case of any election of a president and vice-president of the United States, at any other periods than those hereinbefore specified, the same shall in all respects be held, conducted and concluded, as is provided by this act, in the case of an election held at the ordinary period prescribed by the constitution and laws of the United States for holding the same.

Section VI. (Section VI, P. L.) And be it further enacted by the authority aforesaid, That each of the said electors shall receive three dollars daily wages, when traveling to, remaining at, and returning from the place of meeting aforesaid, the same to be paid by the treasurer of the state, on a warrant or warrants signed by the president of the meeting of the said electors, if any they shall choose, or by a majority of such electors, exclusive of persons in whose favor the warrant is drawn.

Approved February 2, 1802. Recorded L. B. No. 8, p. 33.

Note (†) Chapter 2020, 16 Statutes at Large, p. 163.

CHAPTER MMCCXXXII.

AN ACT DECLARING THE HOLDING OF OFFICES OR APPOINTMENTS UNDER THIS STATE INCOMPATIBLE WITH THE HOLDING OR EXERCISING OFFICES OR APPOINTMENTS UNDER THE UNITED STATES.

Whereas, the eighth section of the second article of the constitution of this commonwealth provides that no person holding or exercising any office of profit or trust under the United

States, shall at the same time hold or exercise any office in this state, which the legislature thereof shall declare incompatible with offices or appointments under the United States. Therefore:

Section I. (Section I, P. L.) Be it enacted by the Senate and House of Representatives of the Commonwealth of Pennsylvania, in General Assembly met, and it is hereby enacted by the authority of the same, That every person who shall hold any office or appointment of profit or trust under the government of the United States, whether a commissioned officer or otherwise, a subordinate officer or agent, who is or shall be employed under the legislative, executive or judiciary departments of the United States, and also every member of congress, is hereby declared to be incapable of holding or exercising at the same time, the office or appointment of justice of the peace, mayor, recorder, burgess or alderman of any city, corporate town or borough, resident physician of the lazaretto, constable, judge, inspector or clerk of election, under this commonwealth.

Section II. (Section II, P. L.) And be it further enacted by the authority aforesaid, That the holding of any of the aforesaid offices or appointments under this state, is hereby declared to be incompatible with any office or appointment under the United States; and every such commission, office or appointment, so holden under the government of this state, contrary to the true intent and meaning of this act, shall be, and the same is hereby declared to be null and void.

Section III. (Section III, P. L.) And be it further enacted by the authority aforesaid, That if any person, after the expiration of six months from the passing of this act, shall exercise any offices or appointments, the exercise of which is by this act declared to be incompatible, every person so offending, shall for every such offence, being thereof legally convicted in any court of record, forfeit and pay any sum not less than fifty nor more than five hundred dollars, at the discretion of the court, one moiety of the said forfeiture to be paid to the overseers, guardians or directors of the poor of the township, district, county or place where such offence

shall have been committed, to be applied to the support of the poor, and the other moiety thereof to the prosecutor who shall sue for the same.

Recorded L. B. No. 8, p. 33.

IN THE HOUSE OF REPRESENTATIVES.

Wednesday, February 3d, 1802.

Mr. Thompson, the Secretary of the commonwealth, being introduced, presented to the chair, a message from the Governor, which was read as follows, viz:

TO THE SENATE AND HOUSE OF REPRESENTATIVES
OF THE COMMONWEALTH OF PENNSYLVANIA.

Gentlemen:

I HAVE read and considered the act of the general assembly, entitled "An Act declaring the holding of offices or appointments under this state, incompatible with the holding or exercising offices or appointments under the United States." I have reconsidered and deliberated most seriously its operation, and do not approve of it. I have directed it to be returned to the house of representatives, in which it originated, together with my objections, which are as follows, to wit:

First.—Since the present constitution of Pennsylvania was established, on the second day of September, 1790, until this period, no complaint or application has been made, by petition or otherwise, to any branch of our government, suggesting that any officer under the government of the United States, or member of congress, held an office in this state, that was supposed to have a tendency to affect the sovereignty or freedom thereof; from which I conclude that the separation made by the constitution between the government of the United States and of this state, with respect to the administration of their respective powers, has been carried far enough, and is perfectly satisfactory to the people.

Second.—I cannot conceive a reason for introducing such an act at this time, when the good people of this commonwealth, can entertain no apprehensions, of a wish of the pres-

ent providential and most fortunate representation in the executive and legislative departments of our national government, to impair the constitutional sovereignty of the individual states.

It appears to me to intimate an unreasonable jealousy and distrust, not only of the virtuous and great chief magistrate of the union, but also of the chief-magistrate of Pennsylvania; both chosen by the people themselves, and known to be unequivocally disposed to secure and promote their happiness.

Third.—Because a few months ago I persuaded a gentleman, not less distinguished for probity than talents, to accept the commission of recorder of the city of Philadelphia, during his good behavior, though then attorney of the United States, for the eastern district of Pennsylvania, in the holding of which, at the same time, I am not happy enough to discover any collision or incompatibility; and therefore it must appear very extraordinary indeed, in me, to co-operate in an act that declares his commission shall not only be vacated, but, if he exercises the office for a time, he shall be considered as a criminal; when there has not been, nor can be, even the slightest suggestion of misbehavior or incapacity.

Fourth.—There are at present, in my recollection, but two gentlemen of this state, who have been appointed by me, that can be effected by this act, one has been mentioned; another, a member of congress, was lately appointed resident-physician at the lazaretto. What possible evil can arise to Pennsylvania from these appointments, I do not comprehend; especially when it is considered that these gentlemen have been distinguished for patriotism, talents, and attachment to our revolutionary and republican principles. It will be very difficult to find a gentlemen of the law qualified for the office of recorder of the city of Philadelphia, that has not been admitted to practice in some of the courts of the United States; and all such are excluded by this act. Nor can I perceive the danger to be apprehended for the liberties of the state, from the same person officiating as constable, &c., under both branches of our government.

Fifth.—I conceive the act to be not only unnecessary and inexpedient, but in the precedent alarming to all persons holding offices during good behavior. The tenure of such commissions ought not to depend on every gale that blows. The legislature cannot vacate or impair a contract solemnly made between the commonwealth and an individual; having even the power, will not sanction it. Besides, as at present advised, I very much doubt its constitutionality. The office may be abolished in many cases, but the officer cannot be removed without being convicted of a misdemeanor in office, unless where otherwise specially provided in our state constitution; and I cannot, from a confidence in the legal knowledge, integrity and fortitude of my former brethren in the supreme court, risk my character in a judicial decision on this question, when I do not foresee any advantage to be derived to my country from a possibility of success. What conscience warns me not to do, I must avoid; however anxious to gratify a legislature, by me, so much respected and esteemed.

THOMAS M'KEAN.

Lancaster, February 3, 1802.

Ordered to lie on the table.

Whereupon, On motion of Mr. Mitchell, seconded by Mr. Conrad, the house, in conformity to the mode prescribed (in such cases) by the twenty-second section of the first article of the constitution of this commonwealth, proceeded to the reconsideration of the said bill, returned to the Governor; which was read, and

On motion of Mr. F. Smith, seconded by Mr. Rose, Ordered, That the further consideration thereof, be postponed until Wednesday next.

Wednesday, February 10, 1802.

In conformity to the twenty-second section of the first article of the constitution, relative to bills returned by the governor (without having received his approbation or signature, and with his objections to the same) the house again resumed the consideration of the bill, entitled "An Act declaring the holding of offices or appointments under this state, incom-

patible with the holding or exercising offices or appointments under the United States;" and

On the question,—“Shall this bill pass?”

Agreeably to the mode prescribed by said constitution, the votes were taken by yeas and nays, when it appeared the yeas were seventy-six, nays four.

So there being a constitutional majority, it was determined in the affirmative, and

Ordered, That said bill pass, and that it be transmitted to the senate, with the Governor's objections to the same, as directed by the twenty-second section of the first article of the constitution of this commonwealth aforesaid.

Lancaster, February 10, 1802.

Extract from the Journal,

MATTHEW HUSTON, C. H. R.

SENATE.

Thursday, February 11, 1802.

Mr. Huston, clerk of the house of representatives (agreeably to the twenty-second section of the first article of the constitution of this commonwealth, in the case of bills returned by the Governor without having received his approbation and signature) presented the bill, entitled “An Act declaring the holding of offices or appointments under this state, incompatible with the holding or exercising offices or appointments under the United States,” together with the Governor's objections to the same; and informed the senate that the house of representatives had re-considered the said bill, and by a constitutional majority, passed the same; and the said bill, and the Governor's objections were severally read, Whereupon,

It was moved by Mr. Barton, seconded by Mr. Gurney, and agreed,

That the further consideration thereof at this time be postponed, and that the same be the order of the day for tomorrow.

Friday, February 12, 1802.

According to the order of the day, the senate proceeded to the further consideration of the bill, entitled "An Act declaring the holding of offices or appointments under this state, incompatible with the holding or exercising offices or appointments under the United States," together with the Governor's objections to the same.

After debate,

The question,—“Shall this bill pass?” being put, agreeably to the twenty-second section of the first article of the constitution, the yeas and nays were taken; and there appeared to be eighteen yeas and seven nays.

So that the said bill was passed by a constitutional majority, Whereupon,

Ordered, That the said bill be returned to the house of representatives, with information that the senate hath passed the same by a constitutional majority.

Extract from the Journal.

GEORGE BRYAN, C. S.

CHAPTER MMCCXXXIII.

AN ACT FOR THE RELIEF OF WILLIAM HILL OF THE STATE OF MASSACHUSETTS AND ESTHER HIS WIFE, AND TO CONFIRM IN BURTON WALLACE AND HIS HEIRS FOREVER, THE TITLE TO A CERTAIN MESSUAGE AND LOT OF GROUND THEREIN MENTIONED.

Whereas, William Hill now resident in the state of Massachusetts, and Esther his wife, have, by their petition, represented that at the time of the intermarriage of the said petitioners, the said Esther was under the last will of her late father the reverend Jacob Duche, deceased, seized in fee of a moiety of a certain messuage and lot of ground situated in Chestnut street, in the city of Philadelphia, and possessed of a moiety of certain personal estate, consisting of forty-six shares in the capital stock of the president, directors and company of the bank of Pennsylvania, one share in the capital stock of the president, directors and company of the bank