

The Pennsylvania Assembly, Saturday, 29 September 1787

Assembly Proceedings

Mr. Speaker with forty-three members met, and the roll having been called, it appeared there was no quorum.

On motion, Resolved, That the sergeant at arms require the members absenting themselves to attend, and that the assistant clerk accompany the sergeant.

The Speaker left the chair for a short time.

The assistant clerk and sergeant at arms being returned, the assistant clerk reported, they had been to the house of Major Alexander Boyd; that he there saw Mr. M'Calmont and Mr. Miley, informed them of the resolution of Congress dated September 28th instant, and published this day, which Mr. M'Calmont said he had [not] seen or heard of. The assistant clerk told the two members of his instruction, requiring them to attend; they answered, they would not attend. Before he got to Boyd's house, he saw Mr. Piper and some other members, does not recollect who, and followed them to the corner of Arch and Seventh streets, then saw Mr. Piper, Mr. Findley and Mr. Barr walking towards Market Street. Mr. Findley looked round and, perceiving him, mended his pace, and turned the corner of Seventh down Market Street, but before he could arrive at the corner of Seventh Street, lost sight of Mr. Findley. He then informed Mr. Piper and Mr. Barr of the resolution of Congress before mentioned, and told them the Speaker and members present had sent for them; they said they would not attend. From thence he proceeded to the lodgings of Mr. Whitehill and there saw a woman, who said Mr. Whitehill was above stairs; she went up and, returning, said he was not at home. At Mr. Whitehill's lodgings he saw Mr. Mitchell and acquainted him with his message; Mr. Mitchell answered, he would not attend. He also saw Mr. M'Dowell and acquainted him with the order requiring the attendance of members absenting themselves, who said he would consider and do what was just. He found Mr. Dale and Mr. Antes at their lodgings, and, after informing them as he had done the others, Mr. Dale said he would not attend as he was going out of town. Mr. Antes said the resolve of Congress was not come officially, therefore he would not attend. He likewise saw Mr. Clark, and having acquainted him in the same way with the rest, he answered he would not attend.

Mr. M'Calmont and Mr. Miley appeared in the Assembly chamber, and there being a quorum, the House resumed the consideration of the remainder of the motion postponed yesterday.

And in debating the following resolution, viz.:

“Resolved, That the persons so elected to serve in Convention shall assemble on the third Tuesday of November, at the State House, in the city of Philadelphia.”

It was moved by James M'Calmont, seconded by Alexander Lowrey, to strike out the words "at the State House, in the city of Philadelphia," and in lieu thereof to insert, "at the courthouse, in the borough of Lancaster."

And on the question, "Will the House agree to the amendment," the yeas and nays were called by James M'Calmont and Daniel Clymer, and were as follow, viz.:

YEAS [15]	John Canon
Alexander Lowrey	James M'Calmont
Adam Hubley	Jacob Miley
Emanuel Carpenter	John carson
Joseph Work	
George Ross	
James Clemson	NAYS [30]
David M'Conaughy	William Will
Michael Schmyser	Robert Morris
David M'Clellan	Thomas Fitzsimons
Joseph Heister	George Clymer
Gabriel Heister	Jacob Hiltzheimer
Isaac Gray	Townsend Whelen

William Robinson, Jr. Joseph Lilley

John Salter Philip Kreemer

George Logan David Davis

Samuel Foulke Daniel Clymer

Gerardus Wynkoop Peter Trexler, Jr.

John Chapman Peter Burkhalter

Valentine Upp Hugh H. Brackenridge

James Moore Charles Moore

Richard Willing Samuel Wheeler

Robert Ralston James Hockley

Samuel Evans Jacob Reiff

Richard Thomas

So it was carried in the negative, and the resolution adopted.

And in debating the preamble to the motion,

It was moved by George Clymer and Hugh H. Brackenridge to insert after the words "and ratification," the words, "And whereas Congress, on Friday, the twenty-eighth instant, did unanimously resolve, that the said Constitution be transmitted to the several legislatures of the states, to the intent aforesaid."

It was carried in the affirmative, and the original motion, as amended, adopted as follows, viz.:

“WHEREAS the Convention of Deputies from the several states composing the union, lately held in this city, have published a constitution for the future government of the United States, to be submitted to conventions of deputies chosen in each state by the people thereof, under the recommendation of its legislature, for their assent and ratification: And whereas Congress, on *Friday*, the twenty-eighth instant, did unanimously resolve, that the said constitution be transmitted to the several legislatures of the states, to the intent aforesaid: And whereas it is the sense of great numbers of the good people of this state, already signified in petitions and declarations to this House, that the earliest steps should be taken to assemble a convention within the state, for the purpose of deliberating and determining on the said constitution:

“*Resolved*, That it be recommended to such of the inhabitants of the state as are entitled to vote for representatives to the General Assembly, that they chuse suitable persons to serve as deputies in a state convention, for the purpose herein before mentioned; that is, for the city of *Philadelphia*, and the counties respectively, the same number of deputies that each is entitled to of representatives in the General Assembly.

“*Resolved*, That the elections for deputies as aforesaid be held at the several places in the said city and counties, as are fixed by law for holding the elections of representatives to the General Assembly, and that the same be conducted by the officers who conduct the said elections of representatives, and agreeably to the rules and regulations thereof; and that the election of deputies as aforesaid shall be held for the city of *Philadelphia*, and the several counties of this state, on the first *Tuesday of November* next.

“*Resolved*, That the persons so elected to serve in Convention shall assemble on the third *Tuesday of November*, at the State-House, in the city of *Philadelphia*.

“*Resolved*, That the proposition submitted to this House by the deputies of *Pennsylvania* in the General Convention of the states, of ceding to the United States a district of country within this state, for the seat of the General Government, and for the exclusive legislation of Congress, be particularly recommended to the consideration of the Convention.

“*Resolved*, That it be recommended to the succeeding House of Assembly, to make the same allowance to the attending members of the Convention as is made to the members of the General Assembly, and also to provide for the extraordinary expences which may be incurred by holding the said elections.

“Whereupon, *Resolved*, That 3000 copies of the resolutions which the House have this day adopted, for calling a Convention on the Foederal Constitution, recommended to them by Congress, be struck off, and transmitted by the Clerk to the members of the city of *Philadelphia*, and the different counties of this state; 2000 of said copies to be in the *English*, and 1000 in the *German* language.”

Assembly Debates

Mr. Speaker took the chair and, on calling over the roll, it appeared there were but forty-four members present, namely, all those who appeared yesterday, but Mr. Robert Brown from Northampton, who has now withdrawn himself. And by order, the sergeant at arms, accompanied by the assistant clerk, was dispatched in pursuit of the seceding members. But first George Clymer presented to the chair the unanimous resolution of Congress, which he said had been agreed to yesterday and was forwarded by Mr. [William] Bingham to him express, having chosen this mode in preference to the ordinary conveyance by post. Whereupon,

The following resolution was read and sent by the assistant clerk to the seceding members (as was observed by the Speaker) in order to remove that objection, which they had taken yesterday against the measure.

[A copy of the congressional resolution of 28 September appears at this point.]

The Speaker left the chair, and in a few minutes James M'Calmont and Jacob Miley entered the House. The Speaker resumed the chair, and the roll was called, when the following gentlemen answered to their names.

From the city of Philadelphia: Messrs. Will, Morris, Fitzsimmons, G. Clymer, and Hiltzeimer.

From the county of Philadelphia: Messrs. Gray, Robinson, Salter, and Logan.

From Bucks: Messrs. Foulke, Wynkoop, Chapman, and Upp.

From Chester: Messrs. J. Moore, Willing, Thomas, Ralston, Evans, and Wheelen.

From Lancaster: Messrs. Lowry, Hubley, Carpenter, Work, Ross, and Clemson.

From York: Messrs. M'Conaughty, Schmyser, M'Lellan, and Lilley.

From Cumberland: None.

From Berks: Messrs. J. Heister, Kreemer, G. Heister, Davis, and D. Clymer.

From Northampton: Messrs. Trexler, and Burkholter.

From Bedford: Mr. Cannon.

From Northumberland: None.

From Westmoreland: Mr. Brackenridge.

From Washington: None.

From Fayette: None.

From Franklin: Mr. M'Calmont.

From Montgomery: Messrs. J. Wheeler, C. Moore, Hockley, and Riffe [Reiff].

From Dauphin: Messrs. J. Miley, and Carson.

Being 45, and with the Speaker 46, the number which constitutes a quorum.

After reading over the Minutes of yesterday,

JAMES HOCKLEY presented a petition and memorial from forty-three inhabitants of the county of Montgomery, desiring the House would take the necessary measures to have a convention of the people assembled as speedily as possible.

Which was read and ordered to lie on the table.

The committee appointed to select such business from the files of the House as would be proper to recommend to the attention of the succeeding General Assembly made report, which was also read and ordered to lie on the table.

JAMES M'CALMONT informed the House, that he had been forcibly brought into the Assembly room, contrary to his wishes, this morning by a number of the citizens, whom he did not know, and that therefore, he begged he might be *dismissed* the House.

ALEXANDER LOWREY: I hope, as the gentleman says he was forcibly brought, he will give some reason why force was necessary to make him do his duty; and what reason can he give now he is here, that should induce us to part with him again? Surely his being brought by force and against his wishes is not a reason that he should be suffered to go off again.

THOMAS FITZSIMONS would be glad to know if any member of the House was guilty of forcing the gentleman from the determination of absenting himself; if there was, he thought it necessary that the House mark such conduct with their disapprobation. But we are to consider, sir, that the member is now here, and that the business of the state cannot be accomplished if anyone is suffered to withdraw; from which consideration I conclude, it will be extremely improper for any member to leave this House until the laws and other unfinished business is completed.

WILLIAM ROBINSON: I believe my sentiments, sir, are well known on the subject of the new Federal Constitution, and I yesterday declared my strong disapprobation of the conduct of those members, who, by leaving the House, have forsaken that obligation they owe their God, their country, and their conscience. But at the same time that I decidedly condemn their

conduct, I would not wish to act by any means unfair in completing that business which they have neglected. No, sir, I consider that there are but forty-five members here if the gentleman is retained by compulsion. He cannot, sir, be detained against his will; and if the member is so callous as to refuse the calls of his country to do her service, and forsakes his duty, when much is required, he must stand responsible to his constituents, and to his God, and must suffer the general odium and reproach of every friend to decency or order. But, sir, we have no authority to confine him within these walls; if any gentleman suppose so, they will find upon a due consideration that their opinion is not well founded. If any improper method has been used to bring him here, and he is detained against his will, I do conceive we are not a house.

HUGH H. BRACKENRIDGE: It may be a proper question for the House to discuss, whether their officers by force have brought this member here or whether other members have by violence compelled him. I suppose in either of these cases, the House might have cognizance. But if the member has been conducted by the citizens of Philadelphia to his seat in the legislature, and they have not treated him with the respect and veneration he deserves, it must lie with him to obtain satisfaction, but not with us. The gentleman [James M'Calmont] by answering to his name, when the roll was called, acknowledged himself present, and forms a part of the House. Well, sir, I conceive the question is, what is to be done now he is here, for how he came here can form no part of our inquiry, whether his friends brought him (and I should think they could not be his enemies, who would compel him to do his duty and avoid wrong), I say, sir, whether his friends brought him, or by the influence of good advice persuaded him to come, and he did come; or whether to ease his difficulty in walking to this room, they brought him in a sedan chair, or by whatever ways or means he introduced himself among us. All we are to know is that he is here, and it only remains for us to decide, whether he shall have leave of absence. Now, if the gentleman can show that his life will be endangered by staying with us (for I should think the loss of health on the present occasion an insufficient reason) we may grant him the indulgence he asks for—waiving the whole story of his coming, I presume the House can immediately decide whether he may retire or not.

JAMES M'CALMONT: I desire that the rules may be read, and I will agree to stand by the decision of the House.

The rules were read accordingly, and it appeared that every member who did not answer on calling the roll should pay two shillings and six pence, or, if there was not a quorum without him, five shillings.

JAMES M'CALMONT then rose from his place, and putting his hand in his pocket took out some loose silver and said, well, sir, here is your five shillings, so let me go.

This ludicrous circumstance occasioned a loud laugh in the gallery. And the Speaker told him that the person who had been appointed to receive the fines was not in his place; but if he was, the member ought not to pay it, as he had not broke the rule, which declared those persons only finable, who did not appear and answer to their names; he had done both and therefore might retain his money.

THOMAS FITZSIMONS hoped the member would not be dismissed; for he thought no one man ought to be allowed to break up the Assembly of Pennsylvania, which could be done agreeable to constitution, only by the time expiring for which it was chosen.

ASSISTANT CLERK: The sergeant at arms and assistant clerk had, by this time, returned from hunting up the seceding members, and appearing in the House, the clerk was examined at the bar, and related as follows:

I went, sir, in pursuance of your order, with the sergeant at arms, in search of the absent members. First, sir, I went to Major Boyd's and there saw Mr. Miley and Mr. M'Calmont. I informed them that the Speaker and members present had sent me for them and showed them the resolution of Congress. They told me in answer, that they *would not attend*. Before I got from that door, I saw Colonel Piper and some other member, who I do not recollect, at a great distance. I went after them to the corner of Arch and Sixth streets. I saw Mr. Bar, and Mr. Findley, Colonel Piper, and some other member going toward Market Street. *Mr. Findley looked round and saw me, as I supposed, for he mended his pace.* I followed Mr. Piper and Mr. Bar, who kept on to Market Street, and soon turned the corner; before I got there, *I lost sight of Mr. Findley, who, I supposed had got into some house.* I went forward after Piper and Bar, and came up with them and told them of the unanimous resolution of Congress, but they answered me in the same manner, that they *would not attend*. From them I went to Mr. Whitehill's lodging and saw a woman that I supposed to be the maid of the house. *She informed me, that Mr. Whitehill was upstairs; she went up, and stayed some time; when she returned and told me he was not at home.* I saw also Mr. Clark and Mr. M'Dowell in the street, and Mr. M'Dowell told me, he would consider of the matter, and he would do what he thought just. I saw Mr. Mitchell at Mr. Whitehill's lodging, and he said he *would not attend*. Mr. Dale, and Mr. Antis I found at their lodgings, and Mr. Dale told me *he would not attend*. Mr. Antis said, this resolution of Congress had not come officially, and therefore *he would not attend*.

DANIEL CLYMER asked, if Mr. M'Calmont had offered any excuse, when he was desired to attend?

CLERK: No, he said, he had heard of the resolution of Congress but *he would not attend*.

Thus ended the report of the clerk.

GEORGE LOGAN entered into a long detail of the benefits and advantages which would result from the adoption of the proposed confederation; when several of the members desired he would confine himself to the question. He went on to remark, that the member was a part of the House, he had answered to his name, and after this it lay entirely with the House, whether they would dismiss him or no.

WILLIAM ROBINSON: I do not conceive the question to be, whether he shall be dismissed or not; but as the doors are open, he may go out, and if he does, he is only responsible to his constituents for his conduct. I conceive he cannot be detained as in prison, and it rests with the gentleman whether he will stay or go.

GERARDUS WYNKOOP expressed some amaze at the argument of the gentleman. The member, Mr. M'Calmont, had sworn to do the duties he was delegated to; there had been nothing of force in that, and he should not, for his part, think himself at liberty to withdraw, until the business was completed, nor could he think any member ought. He would call on the gentleman to assign his reasons for absconding from his duty, at the bar of the House, where he might be heard as to his complaint; but the House could not be formed without him.

JAMES M'CALMONT replied, he was not to be called to the bar of this House, he had to answer for his conduct at another bar.

DANIEL CLYMER was of opinion the member was within the power of the House by being present and instanced the case of General Gansell, who was arrested by the sheriff's officers in a protected place. The determination of the judges was that as he was taken, he should be confined until the debt was paid; though he had his action for damages against the officers, who had broken the law of the realm in arresting him. So, he was for punishing every person who had ill treated the gentleman; however faulty his conduct was, it belonged not to individuals to punish; that was to be left to the judges, who, no doubt, will see the laws properly executed.

THOMAS FITZSIMONS was a friend to good order and decorum, but he believed the gentleman's complaint was not to be redressed by the House. The member himself has trespassed, maybe inadvertently, since he had taken his seat. He had perhaps offered the greatest indignity to the legislature of Pennsylvania which could be offered. He has, sir, tendered you a fine of five shillings in order to be permitted to destroy the business, if not the good government of the state. On this, sir, I will make no reflections; the member is now here, and we may determine that he shall stay, not only on constitutional ground, but from the law of nature that will not suffer any body to destroy its own existence prematurely.

WILLIAM ROBINSON: The question, sir, is whether the member shall have leave of absence. Now suppose the House determine that he shall not, and yet he should attempt to withdraw. Certainly you will not lock your doors. (Thomas FitzSimons interrupted with, yes, sir, if no other method could retain him.)

This can't be proper, sir, for it appears to me inconsistent with the rules of every house to return a person as a member by compulsion. With respect to calling a convention, I apprehend the recommendation of forty-four members will have as good effect, as if the consent of that gentleman was obtained; for the citizens of Pennsylvania will not lose their rights or liberty, because nineteen members absconded this House. But, sir, I can't admit the idea that there is a house, while the member declares he is retained by compulsion, but as long as he answers to his name, and keeps his seat, there surely is a house.

DANIEL CLYMER would ask, if the power to refuse leave of absence did not imply a power to detain the person, and whether in that case, if it was necessary to lock the doors, the House would not be justifiable. An anecdote had occurred to him, which he would wish to

communicate, though somewhat foreign. *It was remarkable, that three years back from yesterday, a similar secession had taken place; the same number of members, namely nineteen, had then absconded, and there was the same number of laws, ready to be compared at the table.*

GEORGE CLYMER was decidedly of opinion, even had not the gentleman submitted himself to the decision of the House, that they were competent to use measures to compel his stay.

The Speaker now stated the question.

WILLIAM ROBINSON had all along agreed that the member was in the power of the House, after answering to his name, but he had supposed him to be held by compulsion, and if so, then they were not a house.

JAMES M'CALMONT now rose and made towards the door. Mr. Fitzsimons addressed him, but so as not to be heard, and the gallery called out *stop him*, there being a number of citizens at the door he went toward. The commotion subsided in a few seconds, and Mr. M'Calmont returned to his seat, to wait the decision of the House.

THOMAS FITZSIMONS informed the Speaker, that Mr. M'Calmont had told him, he had occasion to go out and was willing to go in company with the sergent at arms; he thereupon hoped the gentleman's wish might be complied with.

The Speaker put the question, shall Mr. M'Calmont have leave of absence? which was determined almost, if not quite, unanimously, in the negative.

The House now proceeded to compare and enact a number of bills, which were lying engrossed on the table.

On motion the House resumed the consideration of the unfinished resolutions which were presented yesterday, by Mr. G. Clymer, when the one fixing the day for holding the election of delegates to convention was read.

Hugh H. Brackenridge moved to insert the first Tuesday in November, to be the day throughout the state.

GERARDUS WYNKOOP thought the last Tuesday in October, would allow sufficient time, but Daniel Clymer approved of the most distant day. None of the gentlemen were anxious about the week, and therefore agreed the question should be on the first Tuesday in November.

JAMES M'CALMONT thought this much too early and moved successively for the last Tuesday, the third Tuesday, and second Tuesday in December, without being seconded.

The question was therefore taken on the *first Tuesday in November*, which was agreed to.

On appointing the place where the convention should sit, it was proposed by James M'Calmont to alter it from the city of Philadelphia, to Carlisle, but in this he was not seconded. He then moved for Lancaster, and after some time was seconded by Alexander Lowry. The yeas and nays were called by him on this question, and are:

Yeas. Lowry, Hubley, Carpenter, Work, Ross, Clemson, M'Conaghy, Schmyser, M'Lellan, J. Heister, G. Heister, Cannon, M'Calmont, Miley, Carson. 15.

Nays. Will, Morris, Fitzsimmons, [G.] Clymer, Hiltzeimer, Gray, Robinson, Salter, Logan, Foulke, Wynkoop, Chapman, Upp, Moore, Willing, Ralston, Evans, Thomas, Wheelen, Lilley, Kreemer, Davis, D. Clymer, Trexler, Burkhalter, Brackenridge, Moore, Wheeler, Hockley, and Riffe [Reiff], 30.

So it was determined in the negative, and afterward the resolution was agreed to as it stood.

GEORGE CLYMER now moved to insert these words in the preamble, "And whereas Congress on Friday the twenty-eighth instant, did unanimously resolve, that the said Constitution be transmitted to the several legislatures of the states to the intent aforesaid." Which being done, the committee who had been appointed to see the seals set to the laws reported they had performed this service.

The warrant for their pay was delivered to the members present, and Mr. M'Calmont received those intended for the members who had withdrawn themselves. Thus closed the business of the eleventh General Assembly of Pennsylvania:

When on motion of Daniel Clymer, the House came to the following resolution.

"Resolved unanimously, That the thanks of this House be presented to the Speaker for his able, upright, and faithful discharge of the important duties of his station."

To which the Speaker returned for answer:

"Gentlemen: Your Speaker is extremely gratified to find the General Assembly of Pennsylvania approve his endeavors to discharge the duties of his station. He has not been wanting in his efforts to render that satisfaction, which you now declare his conduct has given you. This mark of your approbation is a great reward for the highest exertions of an honest man, and it is the only reward an honest man can either receive or wish for."

The House now adjourned *sine die*.

Cite as: The Documentary History of the Ratification of the Constitution Digital Edition, ed. John P. Kaminski, Gaspare J. Saladino, Richard Leffler, Charles H. Schoenleber and Margaret A. Hogan. Charlottesville: University of Virginia Press, 2009.

Canonic URL: <http://rotunda.upress.virginia.edu/founders/RNCN-02-02-02-0001-0002-0009>
[accessed 16 Nov 2012]
Original source: Ratification by the States, Volume II: Pennsylvania