

# The National Intelligencer, A N D WASHINGTON ADVERTISER.

VOL. I. WASHINGTON CITY, PRINTED BY SAMUEL HARRISON SMITH, NEW-JERSEY AVENUE, NEAR THE CAPITOL. No. 117.

Five DOLLARS PER ANNUM.

FRIDAY, MARCH 6th, 1861.

PAID IN ADVANCE.

## REPORT.

The committee appointed to enquire into the official conduct of Winthrop Sargent, governor of the Mississippi Territory; and to whom also was referred the petition of *Cato Wirt*, and others.

### REPORT.

IN the above mentioned petition, the administration of governor Sargent is criticised on the grounds of improper and arbitrary misbehavior—an unconstitutional exercise of the legislative authority of the governor and judges; and of unlawful exactions of office fees.

First. Of improper and arbitrary misbehavior.

As the particular infractions and acts of improper and arbitrary misconduct imputed to governor Sargent are not specified, nor evidence adduced whereby to verify the general charges alleged against him, your committee have not been able to investigate them. Such reports as relative thereto ad have come to their possession, accompany this report.

Second. Of an unconstitutional exercise of legislative authority by the governor and judges.

On this point it is alleged, that the governor and judges have made and published laws not derived from the codes of the original States.

By governor Sargent, this fact is admitted.

The President of the United States, by the act, entitled "An act for an amicable settlement of limits within the State of Ohio, and authorizing the establishment of a government in the Mississippi territory," was empowered to establish there a government in all respects similar to that exercised in the territory north-west of the river Ohio, excepting and excluding the last article of the ordinance made for the government thereof by the late Congress, on the 13th of July, 1787.

In the ordinance referred to in the foregoing act, are the following clauses:

"The governor and judges, or a majority of them, shall adopt and publish in the district such laws of the original States, criminal and civil, as may be necessary and best adapted to the circumstances of the district; and report them to Congress, from time to time; which laws shall be in force in the district until the organization of the General Assembly, unless disapproved by Congress; but afterwards the legislature shall have authority to alter them as they shall think fit. The governor for the first time being shall be commander in chief of the militia; appoint and commission all officers in the line below the rank of general officers; all general officers shall be appointed and commissioned by Congress. Previous to the organization of the general assembly the governor shall appoint such magistrates and other civil officers in each county or township as shall find necessary for the preservation of the peace and good order of the same. After the general assembly shall be organized, the powers and duties of other civil officers shall be regulated and defined by the said assembly; but all magistrates and other civil officers, not herein otherwise directed, shall during the continuance of the temporary government, be appointed by the governor. For the prevention of crimes and injuries, the laws to be a *vised or made* shall have force in all parts of the district; and for the execution of process, criminal and civil, the governor shall make proper divisions thereof, and he shall proceed from time to time, as circumstances may require to lay out the parts of the district in which the Indian titles shall have been extinguished, into counties and townships; subject however to such alterations as may thereafter be made by the legislature."

Your committee are of opinion that the legislative authority of the governor and judges by virtue of the above mentioned ordinance, is restricted to the *adopting of laws from the codes of the original States*, and cannot be extended to the *making or revising of laws not derived from those*

It appears to your committee, that the governor and judges of the Mississippi territory misconceived at the nature and extent of their authority in this particular. Justly to appreciate their motives, it is essential to state the principles on which they have acted. By them the ordinance appears to have been understood as vesting in the governor and judges a plenary legislative authority. Governor Sargent justified its exercise on the ground of confinement, and of the principle being avowed and acted on by the governor and judges, in making laws in the North-Western territory; and being implicitly, if not directly, received by Congress. In his letter of the 13th of June, 1800, to the secretary of state, he observes, "Upon the subject of making or adopting laws, I have written you largely and at length. It is not directly for me to give my own opinions; may letters in your office evince my anxiety to have published the codes of the original States. We began by legislating, however, with the view of ascertaining the laws which had been subject to the disapprobation of the honorable Congress; and daring not to doubt their attention, we believed them good. They were uniformly confirmed here, and in the North-Western territory, and we had respect- authenticated information for the quiet and interests of this people." In another letter of the 25th of August 1800, to the secretary of state, already referred to, he says, "I have advised that the honorable Mr. Davis seems to have been as much troubled to establish what the governor and judges are very willing to adopt, 'that they have laws.' As secretary of the North-Western territory, and with the powers of the governor, I fully concur with the judges that we never heitated to manifest this to Congress, and the laws by Governor S. Davis, enacted as early as 1788, demonstrated that such was their opinion. I do not wish to be acknowledged (as Mr. Davis asserts) to have been the sole author of laws of Congress in the thus enacting of laws; for the ordinance, in my acceptance thereof, professes to do so; in strong presumptive proof which I shall offer, as the honest Mr. Davis and myself seem to have differed nearly the same, that the laws which were regularly transmitted to the general government, in one solitary instance only, were disapproved; this evincing their perfect concordance in sentiment with us upon this very important subject. As a further proof of their unanimity and pleasure that we should 'make laws,' they have enacted nearly in the words following: 'that the laws of the territory that have been, or hereafter may be enacted by the governor and judges,' &c. and again, 'that the governor and judges shall be authorized to repeal their laws by them made, whenever the same may be found to be improper.'"

With respect to the practice which governor Sargent alleges, obtained with the governor and judges of the North-western territory on this point, your committee are informed that at their first meeting in 1793, a difference of sentiment arose between the governor and judges on this subject; they asserting, and he denying the power of the legislature to make laws not derived from the codes of the States. After protesting against their assumption of that power, the governor yielded to the opinion of the judges. The subject was again resumed in 1795, when the governor published the laws of the territory, and judges, bearing his disapprobation of the principle of making laws; on their part the judges also published the reasons and grounds of their opinion and conduct in making laws. The governor again yielded to that opinion, and from time to time, till the second grade of government was established, the legislature enacted laws not derived from the codes of the States.

The laws of that territory being voluntary, a complete test whereof is to be had, for examination only, in the office of the secretary of state, your committee have not been able from their own inspection to ascertain how far the produce of

making laws obtained, or how constantly it was adhered to in successive periods as the judges have succeeded to each other. They find that several of the laws passed before the year 1795, were not taken from the statutes of either of the States. Mr. Wagner, clerk in the office of the secretary of state, who at the request of the committee, has examined the laws of the territory in reference to this point, certifies, "that he has examined the laws of the North-western territory from the commencement of its legislation, to the first of August, 1792, but it does not appear from the face of them, which, or what parts of them have been adopted from the codes of the original States, or have been originally made by the legislature of that territory." How far, therefore, they have been taken from the codes of the original States, or be established by comparison. This is not the case with respect to the printed laws of the territory published since May, 1795, in which they are invariably taken from the face of the laws, except in the instance of repealing laws; to which, the governor and judges were expressly authorized by the act of Congress of the 8th of May, 1792, and except in an instance, in which, a law, after ascertaining the fees of the several officers and persons therein named, published at Cincinnati on the first of May, 1798, by Winthrop Sargent, acting as governor, and John Davis Symmes, John Gillman, and Return J. Meigs, judges, which is not related to have been adopted. Your committee further find, that on the 21st day of January, 1794, the President of the United States laid before the two houses of Congress, a copy of such laws of the territory of the United States north-west of the river Ohio, as had been passed from July to December, 1792, inclusive: That on the 21st day of May, 1794, they were by order of the House of Representatives referred to a special committee, who on the 21st day of May, 1794, among other things reported, that on examination of the said laws, they found many of the provisions contained in them objectionable, but that they conceived it would be immaterial for them to detail the particular objections, as one applying to the whole of the said laws, and having not sufficient reason for disapproving them. That those laws appeared to have been passed by the secretary and judges, on the idea that they were passed generally of legislative power, and have not in whole or in part been adopted from laws of the original States;—that on the 12th of February, 1795, an enrolled resolution, in the form of a concurrent resolution of the two houses, disapproving all those laws, except such as were agreed to by the House of Representatives and sent to the Senate. In the Senate, on a report of a special committee, the resolution was disagreed to. The concurrent resolution of the two houses does not appear to have been retained.

In a letter of governor Sargent's to the secretary of state, dated Mississippi territory, January 15, 1799, he writes: "The judge's arrival gives us to understand that the laws of the territory, which you speak of, without delay, though with much regret on my part at the want of the laws of the several States, as we will be compelled to use our code from the volumes of the North-western territory, which by means can be induced to believe a very good band."

And in another letter of the 13th of Feb. 1799, he writes to the secretary of state, "I have already advised you of the arrival of judge Wilson, and in consequence, we are at length legislating, but delusive of the laws of the several States; we necessarily made instead of adopting them—the right to do which has heretofore been a question. Very diligent of my own law knowledge, I feel extremely anxious for the presence of judge McGuire, who I am untaught to believe is a great professional character."

Third. Of unlawful exactions of fees for official acts.

The fees alluded to, are for passport granted to persons travelling from the Mississippi territory to other parts of the Uni-

ted States, through the Indian country, and on marriage and tavern licenses.

Governor Sargent acknowledges his having received fees of the above description. He justifies the practice on the principle of those acts being extra from the duties of the governor's office, and also of proceeds in the North-western territory, known as he pretenses, for a long time, to the general government.

A law of the Mississippi territory, entitled, a law to regulate taverns and retailers of liquors, and concerning Indians, allows to the governor a fee of eight dollars, on a tavern license, which with a like fee on marriage licenses, governor Sargent has received. The amount of the fee on passports is unknown to the committee.

As to the law of that territory, fees are allowed to the judges, on certain processes and official acts.

It is understood, that for a course of years, the governor of the North-western territory has been in the practice of receiving one dollar on marriage licenses, and one dollar on tavern licenses. Laws have also been there passed, allowing to the judges fees on processes and official acts, and on marriage licenses, travelling expenses, one of which was among the laws disapproved by the before-mentioned resolution of the House of Representatives, which was disagreed to by the Senate; the other articles of the law, therefore, to have been adopted from the New-York and Pennsylvania codes. Both of those laws were passed by governor Sargent, when secretary, and acting as governor of the territory. The act of Congress, authorizing the establishment of a government in the Mississippi territory, provides that the officers therein shall receive the same compensation for their services, to be paid in the same manner as is by law established for similar officers in the territory north-west of the river Ohio, and the powers, duties and emoluments of a superintendent of Indian affairs for the southern department, and of a superintendent of the same territory for discharging the duties of that office and those of superintendent of Indian Affairs, is allowed an annual salary of one thousand dollars, and to each of the judges, eight hundred dollars.

As the governor and judges of the territorial governments are officers of the United States, with annual salaries fixed by the laws of Congress, their exactions and receiving fees, as before stated, cannot be otherwise considered than as an abuse, which ought to be corrected.

Although the committee find cause to justice as irregularities in governor Sargent's administration, the making laws not derived from the codes of the original States, and also his receiving fees for certain official acts, yet it appears satisfactory to them, from the circulating reports which they took place, that those irregularities originated from incorrect and misconceived opinions respecting the extent of his powers, and not from impure or criminal motives.

They therefore respectfully submit to the consideration of the house, the following resolution:

Resolved, That there does not appear any ground for proceedings on the matters of complaint for mis-administration, against Winthrop Sargent, as governor of the Mississippi territory.

Thomas Carpenter,  
TAYLOR,

CHARITABLY acknowledges the numerous favours conferred on him, and before his friends sent the public that he has entered into partnership with CHARLES WARDEN, hitherto from Philadelphia, on Capitol Hill, opposite Mr. ROBEY's building, in the city of Washington, where, between the President's House and George Town, from their long and extensive experience in Military, Naval and Fancy dresses, and Ladies' habits, &c. and from their having procured the bill of workmen and materials in most ample and punctuality might be expected.

Two apartments wanted.  
Washington, Dec. 23.