

office." The State Council adjudged the election unconstitutional because the Form of Government required that two persons be chosen. The Council ordered a new writ of election for sheriff in the county. Following this precedent the Council ordered a new writ of election for Anne Arundel County because of a similar return.

An even more formalistic constitutional decision was handed down by the State Council in the same autumn. The justices of Prince George's County had sworn in their clerk who relieved the judges of their ballot counting chores. The Council threw out the election returns on the ground that "examination and casting up of the ballots" was of a judicial nature and "could not be communicated to, or exercised by the clerks."

The keenness of argument leading to these constitutional constructions surfaces only rarely. The minutes merely give the final decision, not the debate leading to the formulation entered on the record by the clerk. Only when a member formally entered his dissent do we have a glimpse of discussions which must often have taken the better part of a day. John Kilty made his mark as the great dissenter.

Kilty first recorded a dissent from council action in May 1786, a month of crisis in Maryland. Hard times—growing out of tight money, sluggish trade, and private debts—had just impelled the assembly to heroic measures. As an alternative to "agrarian legislation"—stay laws, emission of paper money, tender acts, and the like—the assembly passed an "Act to vest certain powers in the Governor and Council," giving the State Council sweeping authority to deal with the financial crisis. One member of the Council, Gabriel Duvall, had resigned his post because he felt the act repugnant to the constitution.

Against this background the Council proceeded to appoint an agent to receive on the credit of the state loans of current money on inspected tobacco, to complete the job of selling all confiscated British property, and to treat with Eastern Shore Indians for lands to sell at auction. Their choice was Daniel of St. Thomas Jenifer, former president of the council of safety and a widely respected administrator. With other powers and duties later added (see April 22, 1786) Jenifer became a kind of finance minister for Maryland. He evidently took the widest view of his charge to rescue the state from its economic plight, even asking permission to trade in pig iron as a money-making venture on behalf of the public. The Council obligingly consented to this suggestion on the ground that the legislature intended to obtain "on loan everything that would immediately command money without loss." This Council action called forth Kilty's first dissent. Even though the act might admit of this general construction, he pointed out, there still remained an objection to iron because the delegates had specifically rejected the inclusion of iron in the bill.

Kilty had the satisfaction of seeing his dissent spread at large on the proceedings and Jenifer the satisfaction of having his way. Kilty watched Jenifer's doings with a sharp eye. A year later he called the agent to account in a barbed resolution which pointed out "that from the low condition of the state in point of Credit and Finances he has been able but in a small degree to carry the purposes of his appointment into effect." Kilty proposed to stop Jenifer's salary (£500 a