

SATURDAY, March 2nd, 1838.

The Senate met pursuant to adjournment, and yesterday's proceedings were read.

On motion of Mr. Dupont the resolution offered by him on yesterday to rescind the 26th and 39th rules was made special order of to-day.

Mr. Mills from the committee on claims reported a bill for the relief of Levi J. Bell back to the Senate and asked to be discharged from its further consideration; on the motion the bill was placed amongst the orders of to-day.

Mr. Berthelot from the committee on enrolled bills reported as correctly enrolled an act to incorporate the trustees of the Presbyterian Church, Tallahassee; a resolution appropriating \$2000 for the compilation of the laws; an act to authorize the Governor of Florida to raise troops for the defence of the frontier and for other purposes; an act to amend an act, passed January 31st 1838, entitled an act to incorporate the City of Apalachicola.

Mr. Duval from a select committee, reported a bill entitled an act, to alter and fix the terms of the Superior Courts in the Middle District of Florida without amendment; on motion the bill was made the order for to-day.

Mr. Mills from the committee on the state of the Territory, made the following report.

The committee to whom was referred the bills for the relief of Hezekiah Wyncoop and John R. Stanley, which were passed in the House of Representatives, and transmitted to this body for its concurrence, have had the same under consideration and beg leave to report, that the cases to which these bills relate are of very peculiar character and of great hardship; that although the relief proposed is not such as would in general be allowed, yet considering the unusual circumstances which attend the cases, the passage of the bills by the House of Representatives, and also that the precedent has existed in cases similar in principle the committee recommend their passage by this body and have directed me to report them without amendment.

W. J. MILLS,

Chairman.

The resolution to rescind the 26th and 39th rules was again read; on the question of its adoption, the yeas and nays were called by Messrs. Berthelot and Marvin, and were yeas Messrs. Duval, Dupont, Hawkins, Marvin, Walker, and Wright 6; nays Mr. President Messrs. Berthelot, Hart, and Mills, 4; so the resolution was adopted.

The Senate went into committee of the whole on an act to authorize the Brunswick and Florida Rail Road Company to extend their improvements within the Territory of Florida, Mr. Mills in the Chair; after some time spent in its consideration the committee rose and reported the bill as amended, concurred; the bill was read a third time, on the question of its passage, the yeas and nays were called by Messrs. Berthelot and Mills, and were yeas Messrs. Baily, Duval, Dupont, Hawkins, Walker and Wright 6; nays Mr. President,

Messrs. Berthelot, Hart, Mills, Marvin 5; so said bill passed, with the preamble stricken out; ordered that the title be as above.

The House passed and sent back to the Senate an act to amend an act, entitled an act, to incorporate the St Andrews and Chipola Canal Company, with amendments, which were concurred in by the Senate.

Also an act for the relief of Major Charles Mapes, without amendment.

Also an act to raise by lottery a sum of money to build a Masonic Hall in the City of Tallahassee, and for other purposes, with amendments which were concurred in.

Also an act to authorize the Governor to locate one quarter section of land &c. with the title changed so as to read; an act to provide for building a Capitol and for other purposes; which was agreed to by the Senate.

A resolution passed by the House requesting our Delegate to procure an appropriation of \$5000 for the repair of the road from Jacksonville to Roses Bluff on the St Marys River; was twice read and adopted.

An act to amend the several acts now in force in relation to elections, was read again; on the question to strike out one year and insert six months the yeas and nays were called by Messrs. Wright and Mills, and were yeas Mr. President, Messrs. Hart, Mills, and Wright 4; nays Messrs. Bailey, Berthelot, Duval, Dupont, Hawkins, Marvin, and Walker 7; so the words were not stricken out; on the question of its passage the yeas and nays were called by Messrs. Mills and Marvin, and were yeas Messrs. Bailey, Berthelot, Duval, Dupont, Hart, Hawkins, Marvin, Walker and Wright 9; nays Mr. President, and Mills 2; so the bill passed, ordered that the title be as above.

An act to amend the several acts to incorporate the Lake Wimico and St. Joseph Canal and Rail Road Company, was read a third time and passed; ordered that the title be as above.

An act to organize the County of Call and for other purposes, was again read and lost.

The Governor sent to the Senate the following message.

EXECUTIVE OFFICE

Tallahassee, 2d March, 1839.

To the Senate and House of Representatives of the Legislative Council.

GENTLEMEN: At the request of the President of the Convention, lately held at St. Joseph, I transmit for your information, a copy of the constitution formed by the Delegate of the people of Florida.

R. K. CALL,
Governor of Florida.

Which was read and laid on the table.

The House passed and sent to the Senate a joint resolution to change the time of adjournment to the 4th March, instead of the 2d, which was read and adopted.

Mr. Marvin in the chair, the committee of the whole again took into consideration a bill entitled an act requiring the institution of legal proceedings against certain banking incorporations, and after some time rose and asked to be discharged from its further consideration; which was concurred in.

A bill entitled an act to amend the several acts incorporating the City of Tallahassee; was read and indefinitely postponed.

An act concerning tax collectors, assessors, and auctioneers was read and made the last order.

An act to prevent the future exercise of corporate privileges by certain banking corporations, was read first and second time, when the Senate went into committee of the whole, Mr. Wright in the chair; after some time spent in its consideration, the committee rose and reported all but the title stricken out and a substitute for said bill concurred in, the bill was again read and passed; ordered that the title be as above.

The Senate went into secret session on certain nominations of his Excellency the Governor on motion the doors were again opened.

On motion the Senate adjourned until 3 o'clock.

3 o'clock.

The Senate met pursuant to adjournment.

The Senate went into committee of the whole on a bill entitled an act for the compensation of the members and officers of the Legislative Council, and for other purposes, Mr. Bailey in the chair; after sometime spent in its consideration the committee rose and reported progress, and asked leave to sit again, which was concurred in.

The Senate adopted and sent to the House the following resolution: Resolved that a message be sent to the House of Representatives requesting the transmission to the Senate of all accounts on which the compensation bill is founded, which the House laid on the table.

The Senate went into committee of the whole on an act concerning tax collectors, assessors, and auctioneers, Mr. Dupont in the chair; after sometime spent in its consideration the committee rose and reported the bill as amended, concurred in, read second time; on the question of its passage the yeas and nays were called, and were, yeas—Messrs. Duval, Hawkins, Mills, Walker, and Wright, 5; nays—Mr. President, Messrs. Bailey, Berthelot, Dupont, Hart, and Marvin, 6; so the bill was rejected.

Mr. Berthelot, from committee on enrollments, reported as correctly enrolled the following:

An act for the relief of Major Charles Mapes.

An act to raise by lottery a sum of money to build a Masonic Hall in the City of Tallahassee and for other purposes.

An act to amend an act, entitled an act to incorporate the St. Andrews and Chipola Canal Company.

An act to provide for building a Capitol, and for other purposes.

The House passed and returned to the Senate, without amendment, an act in relation to public defaulters; also a resolution requiring payment for forage subsistence furnished the Territorial troops during the last year.

Also a resolution to have the laws of the present session printed with the compilation by John P. Duval, Esq.

Also an act to amend the several acts incorporating the town of Marianna.

Also an act in addition to the military laws now in force.

Also a bill for the relief of William Kelly, with amendments, which were concurred in by the Senate.

An act concerning the introduction into, and traffic in slaves in this Territory, before passed by the House and sent to the Senate, was amended and passed by the Senate, and sent to the House; the House refused to concur in the amendment of the Senate, and certified the same to the Senate: the Senate receded from its amendments on the question of the passage of the bill of the House; the yeas and nays were called, and were, yeas—Messrs. Bailey, Duval, and Dupont, 3; nays—Mr. President, Messrs. Berthelot, Hart, Hawkins, Mills, Marvin, Walker and Wright, 8; so the bill was rejected.

The Senate went into committee of the whole on a bill entitled "an act to incorporate a company to be called the St. Marks Rail Road Company, Mr. Hart in the chair; after sometime the committee rose, reported progress, and asked leave to sit again, which was concurred in, and said bill was laid on the table.

An act for the relief of Levi J. Bell, Jailor of Gadsden county, was a third time read and lost.

A bill to be entitled "an act to alter and fix the terms of the Superior courts in the Middle District of Florida," was read a third time and passed; ordered that the title be as above.

An act entitled "an act to alter and fix the terms of the Superior courts of the Apalachicola District," was read a third time and passed; ordered that the title be as above.

A resolution before passed by the House, in relation to tax collectors and auctioneers, was read a first and second time, and passed.

The Senate took a recess until half-past 7.

Half-past 7 o'clock.

The Senate went into committee of the whole on a bill entitled "an act to incorporate the Bank of Apalachicola;" after sometime spent in its consideration, the committee rose, reported the bill as amended—report concurred in—was read a third time; on the question of its final passage the yeas and nays were called by Messrs. Duval and Berthelot, and were, yeas—Messrs. Bailey, Dupont, Hawkins, Mills, Marvin, Walker and Wright, 7; nays—Mr. President, Messrs. Berthelot, Duval, and Hart, 4; so said bill passed; ordered that the title be as above.

His Excellency, the Governor, sent to the Senate certain nominations which were confirmed, and sent to the House.

Mr. Berthelot, from the committee on enrollments, reported as correctly enrolled the following resolutions:

A resolution requiring that the acts of the Legislative Council, passed previous to the present session, and which have been compiled by John P. Duval, Esq., be printed and bound with the acts of the present Legislative Council.

A resolution directing the Auditor of the Territory to audit any accounts that may be presented for supplies of subsistence, &c., which may have been furnished by any of the citizens of the Territory, for the Territorial troops during the last year, &c., which was concurred in.

The House sent back to the Senate an act to incorporate the Bank of Apalachicola, with the amendment of the Senate—all concurred in, except the 18th section, to which amendment the House disagreed; on motion of Mr. Marvin the Senate receded from said amendment.

Mr. Berthelot reported the following bills as correctly enrolled:

An act for the relief of William Kelly.

An act to amend the several acts incorporating the town of Murianna.

An act in relation to public defaulters.

An act for the relief of Hezekiah H. Wyncoop was again read and indefinitely postponed.

Also an act for the relief of John R. Stanley was read and indefinitely postponed.

A message from the House in relation to the compensation bill was, on motion of Mr. Berthelot, referred to a select committee of three, said committee consisted of Messrs. Marvin, Dupont, and Duval, with instructions that the Senate cannot agree to the report of the finance committee of the House of Representatives, and to refer them specially to the ninth joint rule, which says, "that each House shall transmit to the other all papers on which any bill or resolution shall be founded."

The committee made the following report:

The select committee of the Senate to whom was referred a message from the House of Representatives upon the subject of the expenses to be provided for in the annual compensation bill respectfully report,

That a bill to be entitled "an act for the compensation of the members and officers of the Legislative Council and for other purposes," having passed the House of Representatives, was sent to the Senate for its action. The bill contained a provision authorizing and requesting the Governor to pay to William Wilson, for stationary, fourteen hundred and fifty dollars, and for repairs and fitting up the House, four hundred and sixteen dollars and eighty-two cents. To Samuel S. Sibley, for miscellaneous printing for Senate and House of Representatives,

dollars. No documents, accounts, or vouchers, accompanied the bill in its transmission from the House of Representatives to the

Senate. The bill coming up for consideration in the Senate, the accounts of Mr. Wilson and Mr. Sibley were desired in that body for a proper understanding of the provisions of the bill. A message was, therefore, transmitted from the Senate to the House of Representatives requesting the transmission to the Senate of all accounts on which the compensation bill is founded. Upon the receipt of this message in the House, it was laid upon the table and the Senate notified thereof. No answer was then returned. During the evening of the same day, the Senate received from the House the following answer :

To the Hon. the Speaker of the House of Representatives :

The finance committee of the House of Representatives have not had under consideration any of the bills against the Senate, not deeming the expenses of that body within the contract of this House. Consequently they have not recommended such appropriations.— The finance committee in the discharge of their duty, took it for granted that the expenses of the two Houses were and ought to be under the control of each respectively.

Signed,

A. F. DUVAL,
Chairman.

A resolution of the Senate requesting the transmission to the Senate of all accounts on which the compensation act is founded, was, on motion of Mr. Tradowell, taken up from the table, and Mr. Duval, from the finance committee, made the foregoing report, which is ordered to be certified to the Senate in answer to their resolution.

Ait.

JOS. B. LANCASTER,
Clerk H. R.

The ninth joint rule for the government of the two Houses provides that "each House shall transmit to the other all papers on which any bill or resolution is founded." Your committee believe that the House of Representatives in refusing to transmit to the Senate the accounts referred to, as requested, has inadvertently overlooked the above rule. Your committee cannot believe that the House of Representatives would intentionally refuse to comply with a rule adopted by both Houses, for the government of both, and which cannot be vacated or annulled, but by the assent and concurrence of both.

But the report of the finance committee of the House of Representatives sanctioned and concurred in by that body, in its being ordered to be transmitted to the Senate in answer to its message, contains a doctrine which, in the opinion of your committee, the Senate ought never to accede to. The report says that "the finance committee took it for granted that the expenses of the two Houses were and ought to be under the control of each respectively." This declaration, taken in consideration with the refusal of the House to transmit the accounts requested, is an assertion of the exclusive right of the House of Representatives to appropriate as much as it pleases of a joint fund provided by Congress for defraying the expenses of the two Houses, and may exhaust that fund by its own

appropriations. It is also an assertion of an exclusive right of legislation, by demanding that the Senate take the appropriations made by the House to defray its expenses, as infallibly and incontrovertibly correct; and thereby converting the Senate into a mere echo of the House. Correct and useful legislation requires an exercise of the judgement and mind, and no legislator can faithfully and honestly discharge his duty if he take every assertion and declaration made by one branch of the Legislature as infallibly correct. Whatever confidence the one branch of the Council may be disposed to entertain, in the wisdom, integrity, and intelligence of the other, the moment that the one branch takes the acts and proceedings of the other, to be conclusively correct, that moment the usefulness of the two branches is destroyed.

The powers of the two Houses are co-ordinate, co-equal, and concurrent. Neither House can consummate any act binding upon the other: The concurrent action of both are essential to the passage of a bill; and each House is bound in duty to transmit to the other any information in its possession in regard to any matter to be acted upon by both, in order to enable the other to act independently and understandingly.

In passing upon the compensation bill, the Senate in courtesy to the House and believing it best able to determine and settle the amount of its own expenses, would feel greatly disinclined to interfere with the amounts as settled by that body. But neither House is infallibly correct; both Houses must pass upon this bill like any other bill, and each is entitled to the information which it is in the power of the other to afford.

Harmony, courtesy and kindly feeling ought to be cultivated between the two Houses, and no jealousies or rivalries ought to exist, except such as tend to the public good.

Your committee recommend the appointment of a committee of conference on the part of the Senate to meet any committee that may be appointed on the part of the House, to confer upon the proper construction of the ninth joint rule, in relation to the matter in difference.

Respectfully submitted,

WM. MARVIN,

Chairman.

Mr. Tradewell, from a committee on the part of the House, transmitted to the Senate the following message, viz:

Mr. Tradewell moves that a committee be appointed to wait on the Senate and propose that the two Houses will meet to-morrow at 12 o'clock, to receive from his Excellency, the Governor, any communication he may have to make; and also that the joint committee on enrolled bills be authorized to report to the President of the Senate and Speaker of the House of Representatives, the bills that may be enrolled during the recess.

Passed by the House of Representatives, March 2d, 1839.

Att.

JOS. B. LANCASTER,

Clerk H. R.

Which was disagreed to, except so far as relates to the committee on enrolled bills be authorized to report to the President of the Senate and Speaker of the *House* of Representatives, the bills that may be enrolled during the recess.

Messrs. Duval and *Hawkins* were appointed a committee to communicate said resolution to the *House* of Representatives.

On motion of Mr. Duval, a committee was appointed on the part of the *Senate*, to inform the *House* of Representatives that the *Senate* has refused to set on to-morrow it being the Sabbath, as some of their members, from conscientious scruples, cannot attend; but the *Senate* concur in the request of the *House* so far as to agree that the President of the *Senate* and Speaker of the *House* may receive and sign any enrolled bills during the recess of the two *Houses*.

Passed by the *Senate* March 2, 1839.

L. F. MOSHER,

Sec'y, pro tem.

A resolution from the *Senate* in relation to the improvement of the Capitol Square, was read, the rule being waived, and adopted.

Mr. Berthelot, from the committee on enrolled bills, reported as correctly enrolled, an act in addition to the military laws now in force.

On motion of Mr. Duval, a committee of conference was appointed to confer with any committee that might be appointed on the part of the *House* in relation to the construction of the ninth joint rule; whereupon Messrs. *Marvin* and *Dupont* were appointed said committee. Said committee made the following report, viz:

The committee of conference between the two *Houses* in relation to the construction of the ninth joint rule respectfully report,

That they have conferred together, and cannot agree; the committee on the part of the *Senate* insist that the rule requires the transmission to the *Senate* of all papers, accounts, and vouchers in relation to the compensation bill to enable that body to pass upon such bill. The committee on the part of the *House* of Representatives insist that the *Senate* ought to regard the expenses of each branch of the Legislative Council, as within its separate control; and meet the transmission of bills and accounts, embracing the expenditures of either *House* can be of no service.

Respectfully submitted,

WM. MARVIN,
C. H. DUPONT,
T. M. BLOUNT,
S. L. BURRITT.

Which report was concurred in.

The *Senate* then adjourned until Monday 10 o'clock.