

MONDAY, JAN. 13th, 1840.

The Senate met pursuant to adjournment, and there being no quorum present, adjourned until to-morrow 11 o'clock.

TUESDAY, JAN. 14th, 1840.

The Senate met pursuant to adjournment, and the proceedings of the previous day were read.

The following communication was received from the Secretary of the Territory, viz :

To the Honorable the Senate of the Legislative Council of the Territory of Florida.

In compliance with the request of the Senate contained in their resolution of the 9th inst. I transmit eleven copies of the Compilation of the Laws of Florida, and the same number of copies of the Laws of Congress, relative to Florida, in pamphlet form.

Very respectfully,

Your ob't serv't,

J. MCANTS.

Secretary of Florida.

His Excellency, the Governor, transmitted to the Senate the following message :

Fellow Citizens of the Legislative Council :

The past year has been to us, remarkable, for the chastisements and mercies of Providence. In portions of the Territory where diseases was scarcely known, sickness and death appeared in their most formidable guise, and many valuable lives have been lost to the country ;—the Seminole insurrection has continued with unabated violence, and the excitements and heats of a factious spirit, have sometimes made society—what it should never be—a scene of anxiety and disorder. On the other hand, the *general health* of the Territory is a subject of congratulation, and the labors of the Planter are rewarded with a large increase. It is our duty to bow with fear, resignation and thankfulness before that great Being, whose wrath and whose blessings have been poured in a mingled stream upon our People.

The efforts of the General and Territorial Governments to quell the Indian disturbances, which have prevailed through four long years, have been unavailing, and it would seem, that the prophecy of the most sagacious leader of the Indians will be more than fulfilled ;—the close of the fifth year will probably find us, still struggling in a contest remarkable for magnanimity, forbearance and credulity on the one side, and ferocity and bad faith on the other. We are waging a war with beasts of prey—the tactics that belong to civilized nations are but shackles and fetters in its prosecution ;—we must “fight fire with fire,”—the white man must, in a great measure, adopt the mode of warfare, pursued by the red man, and we can only hope for success, by continually harrassing and pursuing the enemy. If we

drive him from Hammock to Hammock and from Swamp to Swamp—if we penetrate the recesses where his women and children are hidden—if, in self-defence, we show as little mercy to him as he has shown to us—the anxiety and suspense induced by such operations will not fail, it is believed, to produce prosperous results. It is high time that *sickly sentimentality* should cease. “Lo, the poor Indian!” is the exclamation for the Fanatic and Pseudo-Philanthropist;—“Lo the poor whiteman!” is the ejaculation, which all will utter, who have witnessed the inhuman butchery of women and children, and the massacres that have drenched the Territory in blood.

In the future prosecution of the war, it is important that a generous confidence should be reposed in the General Government. It may be, that mistakes and errors have been committed on all hands, but the peculiar adaptation of the country to the cowardly system of the foe, and its inaptitude to the operations of a regular army—the varying and often contradictory views and opinions of the best informed of our citizens—and the embarrassments which these causes must have produced to the authorities at Washington, furnish to the impartial mind, some excuse at least, for the failures that have hitherto occurred. It is our duty to be less mindful of the past than of the future. Convinced that the present incumbent of the Presidential chair regards with a sincere and intense interest, the afflictions we endure—relying upon the patriotism, talent and sound judgment of the distinguished Carolinian who presides over the Department of War, and confident in the wisdom of Congress—let us prepare to second, with every nerve, the measures that may be devised for our relief. Feeling as we do, the immediate pressure of circumstances, let us exert to the extremest point, all our powers to rid us of the evil by which we are oppressed. Let us by a conciliatory course, endeavor to allay any unkindness of feeling which may exist between the United States Army and the militia of Florida, and by union of sentiment among ourselves, advance the happy period when the Territory shall enjoy—what she so much needs—a long season of peace and tranquility.

It is not in my power to present to you a detailed account of the military operations within the Territory, of the past year. Three Companies employed in defending the country this side of the Ocilla, acting under Territorial Officers, and independently of the Regular Army, have been retained by me in the service, together with the Major commanding them, a quartermaster and a Surgeon. The Secretary of the Territory, will prepare and submit to you, as soon as possible, statements showing the amount of money raised for military purposes, upon the credit of the Territory, the sums disbursed, and the quantity of stores and provisions now on hand.

Your attention is respectfully directed to the act of last year authorising the employment of troops on the Territorial account, by it, the Governor is empowered to detail or appoint field officers, captains, and commissioned officers. Is the precedent affording so ample a power, entirely prudent;—should not those who take up arms in defence of the country, be entitled to the selection of their own officers;—would not the strength and efficiency of the corps be promoted by the mutual confidence of the commanding and commanded, springing from the preference evinced on the one side, and the trust and honor conferred on the other? These are questions which, it occurs to me, deserve some consideration. Whatever measures you may adopt, having for their object, the defence and protection of the Territory, will meet with an earnest effort on my part, to carry them into execution—and may Heaven grant, that the darkness that now settles upon all our prospects, may soon be dispelled by a bright and cheering morning.

The Banks and the currency of Florida are topics, which can scarcely be touched without exciting sensibilities and, it is feared, producing irritation. This should not be so. If the corporations of the country have performed their duty to the public and kept themselves strictly, within the limits prescribed by their Charters—a generous and intelligent people will sustain them. If it be otherwise—if they have advanced the interests of the few, and disregarded those of the many—if they have considered their charters as mere paper barriers which may be broken down at pleasure—it must be expected that the people will sooner or later, do themselves justice, and that frown or resist who may, they will detect the abuse of those privileges, for which the very corporators themselves are indebted to the popular kindness and generosity. The people have a right to investigate and enquire into the affairs of the Banks, which have been created by their Representatives, who derive all their powers from the General Government, and hold them in trust for their constituents. The veil of mystery overshadowing these creations of the Legislature—and which is one of the chief evils incident to the system—should not be impenetrable to those, whose duty it is, to scrutinize every cause which may have the remotest tendency, for weal or woe, upon the destinies of society.

The public mind has for some time past been actively alive to this important subject. On the one hand, it has been insisted, that the banks have been mismanaged, and are in the broad road to ruin;—on the other, it is declared that they are entirely solvent and have been conducted with prudence and skill. Thus, is an issue made up, and it remains to be tried. The adduction of facts and an impartial investigation will lead to a correct judgment. It may not be denied that the currency of the Union

Bank is in a depreciated state; in the extremes of the Territory—to the East and to the West—it is almost valueless, and, at the threshold of the banking house, high prices—particularly of the great staple of the country, which sells in Tallahassee at a considerable advance over the markets of other southern cities: prove; that whatever may be the soundness of the institution, its promises to pay are held in some suspicion and its credit is impaired. The connexion of the Bank of Pensacola with the projected Alabama, Florida, and Georgia Railroad, has not it is believed, been prosperous. It is said that the construction of the road is for the present, at least, abandoned, and that the iron, locomotives, cars and materials collected for the work have been withdrawn from the Territory. It is understood that the bank, as a bank, has been and is conducted with prudence, and that specie is forthcoming at its counter in payment of its notes; but fears are entertained that its affairs are inextricably entangled with those of the railroad company, for which it is responsible to a very formidable extent. Its circulation does not run into East Florida, and its notes are said not to be receivable at the Union Bank. There are complaints also against the Southern Life Insurance and Trust Company. There are many who think its operations are conducted more for the benefit of persons abroad than of our people at home—that it “waves the flag of its displeasure” over those who demand the specie to which its currency purports to be equivalent, and dispenses its favors only and largely, to its friends. To all these institutions it is objected, that they have entered the political arena and are struggling to produce a conflux of money and political power, whose overwhelming tide would threaten with destruction the best interests of a free people.

With these impressions and suspicions circulating far and wide, it is due both to the banks and the people that the true situation of things should be distinctly understood. If the banks have been wronged they are entitled to redress in its most ample form. On the other hand, if it be found that there are just grounds of complaint, no effort should be spared to apply the appropriate remedy and to introduce a thorough reformation. The Territory possesses another motive for strict and rigid scrutiny into the affairs of these institutions. It is the guarantee of the Pensacola Bank to the amount of \$500,000—its bonds have been given to the Union Bank, and for its use, to the amount of three millions—to what amount a credit has been afforded to sustain the Southern Life Insurance and Trust Company, it is not in my power at present to say. There are those who contend against any authority in the Legislative Council to cast such responsibilities upon the people of the Territory—but, without venturing to touch this question at all—it is the obvious duty of those charged with the ad-

Territorial Government to see, that the public credit receives to detriment from the conduct of the corporations, to which it has been so liberally dispensed. In ordinary life, the security or endorser who would satisfy himself of the solvency or ability to pay, of the principal for whose debt he is liable, would not be considered impertinent or intrusive; should the case be different, where a fictitious personage is the principal, and the Territory the security? But, if doubt could rest on such a question, there can be none, surely, where the Territory is the principal, and the Bank the security, as is the case, in an instance in which millions are involved.

Added to these considerations is another of much weight; the subject is not only of deep interest within the Territory, but it has been deemed of sufficient importance at Washington to occupy a place in the annual message of the President to Congress. When this wise and eminent statesman considers it proper to advert to this topic, we should feel some mistrust of our own judgment were it even to suggest that it should be avoided.

What course may be pursued is left to your wisdom to decide. *Scrutiny* appears to me to be necessary—it should be thorough, deliberate and impartial; divested of party heat and political prejudice.

It is hoped, that what has been said may not be considered as evincing hostility to the banks; such a feeling is now, and has always been, sedulously resisted. The banks are entitled to every thing which by their charters and the laws of the land, they have a right to claim, and they should be protected with care and pertinacity, in the enjoyment of their just rights and privileges; but it can never be forgotten, that in every corporation there are elements unfriendly to republicanism, and over which an unceasing vigilance should be exercised.

Our Statute Book is thronged with acts creating corporations. Bank, Railroad and Canal charters figure prominently in your laws, and even a favorite amusement has been clad in the fashionable livery of a charter. Some of the banks have no longer any other existence than on paper, and it is respectfully suggested that measures—in addition to those already adopted—be taken, to obtain a legal forfeiture of these charters, and the settlement of their affairs. In relation to all other corporations, might it not be well, in such manner as to the Legislature may seem meet, to institute an examination for the purpose of ascertaining if they have been discreetly or improvidently conducted. The visitatorial power vests in the representatives of the people, and it seems to me, it should be immediately exercised.

The Constitution of the State of Florida adopted twelve months since at St. Joseph, having been approved and accepted by the People of Florida, the question of admission into the Un-

ion is added to those, by which we are agitated. It will be settled of course, as all questions should be, where Republican Institutions prevail, by the will of the majority. The people have several times announced their determination, to claim admission into the Union, in which, if they still persevere, it is not for a minority, however respectable and intelligent, to oppose their wishes. But the time for admission might be so regulated, as to furnish a proof on the part of the majority, of a desire to accommodate as far as practicable, the lesser number who are opposed to immediate action. Our fellow-citizens of the East and the West, believe, that their views and the sufferings, of our people, especially in the Eastern District, should be permitted to abate the eagerness, with which, many desire to hasten into the Sisterhood of the States. Whenever a favorable opportunity of successfully urging our claim to admission, before Congress presents itself, it should doubtless be embraced and improved; but the time at which the State Government shall go into operation, might be so arranged, as to satisfy the scruples of those of our fellow-citizens, who think that a speedy change in our form of Government, would be grievous and oppressive.

The proposition to divide the Territory and to establish two Territorial, and finally, two State Governments, has been much urged and discussed by its Partizans, before the People. There are great and inherent difficulties attending the accomplishment of such a purpose. It is said there is little intercommunication and no community of interests between the Eastern and Western portions of the Territory; but if this be a good reason, it is also valid to effect a division of the Country into numerous fractions. What common feeling and interest is there between Tallahassee and Pensacola—St. Joseph and Apalachicola—Jacksonville and St. Augustine—Key West and Tampa? The truth perhaps is, there is no point at present prominently presenting itself, if we except the mouth of the Apalachicola or St. Joseph, where the products of an extensive and rich back country may be expected to concentrate and give life to commerce. The country is not calculated for the support of an Emporium, but of numerous small and flourishing towns, scattered along our rivers and around our bays; each the receptacle of commerce from abroad, and of the agricultural products of a circumjacent region. These geographical tendencies to the estrangement so to speak, of one section or portion of country from the rest, can only be counteracted by Rail Roads, Canals and other internal improvements, in after time, to be established,—established, not for the purpose of favoring speculations, but for the general good; binding us together by the strong ties of kinness and interest, and making us one people. If such causes should be without effect, and the inclination to disunion shall remain, it will then be time enough, when each portion of the

country possesses a permanent population and a fixed character—for the East to separate from the West :—and such a separation might be prospectively provided for, in the act admitting Florida into the Union.

It would be difficult to decide upon the line of Division—some would insist upon the Apalachicola, others the Suwannee, others again, a line drawn across the Peninsula to the St. Johns, at or below Jacksonville, or elsewhere. No point of separation could be suggested without encountering grave objections and angry discussions.

But agree or disagree as we may upon this matter; will Congress favor the project? Will sagacious Statesmen consent to an arrangement, by which Florida may be retarded for a long series of years, in violation of the treaty with Spain, which evidently contemplated her speedy admission into the Union? That Treaty, it will be remembered, refers to no ratio of representation, no such ratio is declared to be necessary by the Constitution of the United States to the admission of new States into the Union; but if it be necessary, as some insist, is it obvious, that a continually increasing ratio connected with a division of the Territory, may defeat *forever* the intentions of the high contracting parties expressed in the Treaty of Cession and the Royal Edict of the Spanish King which followed it. Besides, will it be acceptable to the United States, to fasten upon themselves, the expenses of two Territorial Governments, instead of one, *ad infinitum*? Would it be acceptable to Florida, to remain so long in a state of political nonage or pupillage, and dependent for support upon the General Government, when she might rise into importance and independence; exert her own energies, make herself heard in the Halls of Congress, govern herself, and aid in the government of the Union.

But why is the State form of Government looked to with any apprehension or alarm? In the east, the answer is, because it will produce taxation, and we are not prepared to pay taxes. It is perfectly true, that the East, covered with affliction, is unable to pay taxes; but is it true, that so soon as the machinery of State Government is put in motion, the tax gatherer will be sent abroad to wring from our citizens the poor remains of what Indian devastation has left them? If the credit of the Territory has been invoked for the purpose of pouring millions into Bank Coffers, would not the credit of a state—much more valuable, and in consequence much more effective—be resorted to for providing the ways and means of government, until our bleeding wounds are healed, and a capacity to support the government returns with returning prosperity. And, this fearful power of taxation: where does it abide? In the hands of the people! It would be their province and

their privilege to control it. Will they doubt their own patriotism, good sense and sound discretion?

But let us have a care—there may be more than meets the eye in this matter of division. Those beyond the Potomac, who profess a heresy dangerous to southern rights and institutions, will favor division: those who would palm upon us the great grant to the duke of Alagon—a grant annulled by Treaty, King and *Cortes*—will zealously support the same measure.

Although expressing myself with freedom, it is not intended to offer the slightest disrespect to the opinions of others.—Theirs may be right and mine wrong; but sometimes the conviction presses upon me, that disastrous as her fortunes are, were Florida a State, this Indian War—our chiefest ill—would not be of long duration.

It seems to me that the criminal law requires revision. It is remarkable that the crimes of mayhem and assault upon the person of a citizen with intent to commit murder are not as severely punished as the offence of maiming or wounding cattle—and the punishment of the latter is but little less severe than that of manslaughter. The laws in relation to duelling require attention; they should be amended with a care comensurate with the known evasions of all statutory regulations on this subject. It were but common place, to inveigh against the cruelty of this practice; but the experience of every day shows that all its influences are evil. It ministers to bad passions, exults in bloody triumph over the laws of the land, and entails unspeakable distress upon hapless widows and innocent children. In a country where civilization is a boast, nothing should be unessayed to drive from society its own bitter enemy, and the foe of domestic happiness. The punishment of libel is perhaps inadequate; it should not be by fine only, but imprisonment should be superadded. In connection with the criminal law, may be stated, the general want of jails throughout the country. In East Florida there is not a secure jail in any one of the counties, and it is believed that the South, Middle and Western districts, are almost or quite as destitute. Without prisons the criminal law cannot be enforced—with them, and an appropriate discipline, the cause of humanity might be advanced, by abolishing the barbarous punishments of whipping, branding and pillory.

There is an act of 1833, entitled "An Act for the removal of Justices of the Peace," &c., the first section of which inflicts too summary a punishment; it empowers the Governor or any Judge of the Superior Court, on motion and ten days notice, for cause shown, to remove any Justice of the Peace, Auctioneer, or other person holding office by appointment, from the Governor and Legislative Council," and to appoint others in their pla-

ces." The offences for which such persons may be removable, should be defined by law, and the removal follow as a punishment after trial by jury and conviction. It is, besides, quite a novel provision to vest the appointing power in a Judge. I respectfully submit to your better judgement, that this law should be, in part, at least, repealed.

The power of taxation so much dreaded in a State Government, is at present possessed by the Territorial Legislature.— The same regard to public opinion, which has hitherto generally controlled it, will continue to control it, so long as its exercise belongs to the representatives of the people, whatever may be the form of the government. It is believed that the Tax act of last session has not proved agreeable to the people, and your attention is invited to its provisions, which require modification or repeal. The collection of taxes is a subject of difficulty and delicacy. The laws for that purpose have been hitherto unequally enforced; and here, it is repeated, that many persons in East Florida, driven from their homes, and clustering around military posts for safety and protection, are unable to pay taxes. Light taxes, just in sufficient amount to meet the actual exigences of the Territorial Treasury, should be imposed, and those who cannot pay them, in consequence of the unfortunate circumstances of the time, which have made them homeless wanderers, and rendered their property valueless, should be exempted from their payment.

It is not considered necessary to say more in relation to roads and highways, than that for those which have been used for military purposes, by the United States troops and the wagons in their service, we may reasonably expect, upon the proper application, appropriations from the Federal Treasury.

Upon the subject of Internal Improvements, it cannot be necessary to enlarge, while the Indian war continues: upon that of education, a communication will, if possible, be offered you at some future time during your session.

The Agent deputed to Cuba, has returned, after a prompt and successful performance of the duty with which he was charged. His report, when presented, will be transmitted to you.

The Commissioner of the Tallahassee Fund has presented a long and able report which will be submitted to you in a few days. The fund, including the appropriation, by Congress, for public buildings, is estimated at \$58,007. Doctor English has done much to unravel the intricacies in which the affairs of the fund were involved, from looseness and mismanagement; and it is much to be regretted, that the Territory is about to lose the services of an intelligent, persevering and valuable officer.

The outrage recently committed upon the whole community and upon the person of the gentleman who was subsequently honored by the House of Representatives, in his appointment to

the Chair of that body, cannot be too much deplored; as also the fact, that the offender has not been arrested and brought to answer to the laws for their signal violation. Is it to be tolerated, that in this country, and at this time of day, resort is had to the most atrocious weapons, and the avenger lifts his "red right arm" in defiance of all authority, both human and divine? It is hoped that the laws will be strengthened, for the purpose of preventing such occurrences in future; but we must all be aware, that though carried to the intensest point of severity, they would be unavailing, unless approved and seconded by an enlightened public opinion. The truth has been admitted through all time, that where the people are virtuous, bad laws do no harm; where it is otherwise, good laws do no good. Upon public indignation then, as well as the laws, must we rely to bring us back, when we have wandered, to the paths of peace and good order.

Prepared as it is in haste, and in the midst of pressing employments, this communication is commended to your kindness and indulgence. Its errors and defects will be supplied and corrected by your wisdom and experience.

Fellow-citizens, the most important duties await you. Perhaps never since the first Council, after the exchange of flags, has there been a crisis of Legislative action, so interesting and momentous as the present. May "wisdom, justice and moderation," preside over your Councils, and give to them—with the blessing of Heaven—such direction as may best promote the best interests of the whole Territory.

ROBERT RAYMOND REID.

EXECUTIVE DEPARTMENT, 13th Jan. 1840.

Which was read, and 500 copies ordered to be printed.

Mr. Duval gives notice that he will, on some future day, introduce a bill to be entitled "An Act to repeal an act granting writs of error in criminal cases." Also,

A bill to be entitled "An Act to repeal in part the Revenue Laws. Also,

A bill to be entitled "An Act to amend the several acts concerning Notaries Public."

Mr. Dupont introduced the following resolution:

Resolved, That the hour of meeting of the Senate shall, unless otherwise ordered, be 11 o'clock A. M., which was read.

The President appointed the following standing committee's.

Judiciary.

Messrs.—Duval,
Hawkins,
Dupont,
Walker,
Wright,
Berthelot,

Finance and Banks.

Messrs.—Wright,
Dupont,
Mills,
Hawkins,
Hart,
English,

State of the Territory—Charge of Claims, Elections and Militia.

Messrs.—Mills,
Hart,
Bailey,
Walker,
English.

Schools, Colleges and Enrolled Bills.

Messrs.—Berthelot,
Hawkins,
Mills,

Which were read.

The resolution of Mr. Dupont respecting the hours of the meeting of the Senate, was again read and adopted.

Mr. Berthelot, from the select committee appointed to draft rules for the government of the Senate, reported the rules of the last Senate, without any amendment, modification or addition, as proper for the government of the present session of the Senate, and in regard to the joint rules of both houses, asked for their leave to report.

The Senate then adjourned until to-morrow 11 o'clock.

WEDNESDAY, Jan. 15, 1840.

The Senate met pursuant to adjournment and the proceedings of yesterday were read.

Mr. Berthelot, gives notice that he will on some future day, introduce a bill to be entitled, an act to provide against the suspension of Specie payments by the Banks of this Territory, and for other purposes.

Also, a bill to be entitled, an act to repeal an act in addition to the military Laws now in force, approved March 4th 1839.

Mr. Wright, gives notice that he will on some future day, ask leave to introduce a bill to be entitled, an act concerning fees.