

FRIDAY, Jan. 31, 1840.

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

Mr. Duval, gives notice that he would introduce a bill, more effectually to provide for the prompt punishment of breaches of the peace and the preservation of order.

Mr. Duval, from the committee on the Judiciary, reported a substitute for a bill, to be entitled, an Act to legitimate the children of D. A. Northrop, and to change their names.

Also, a bill, entitled, an act to establish a board of Port Wardens and Commissioners of Wrecks, for the port of Apalachicola, without amendments.

Also, a bill entitled, an act for the relief of G. D. Fisher, as amended.

Also, an act for the relief of John Bryan, amended.

Also, a bill, entitled an act in relation to auctioneers.

Also, a bill, to provide against the suspension of specie payments by the banks of this Territory—without amendment.

Also, unfavorably to a bill, to be entitled an act to authorize John J. Clark, to vend goods, wares and merchandize, as a pedlar, free from tax.

Also, unfavorably to a bill, to be entitled an act to provide for the election of Judges of the county Court, and for other purposes—said bill on motion, was laid on the table.

Also, unfavorably to a bill, to be entitled an act concerning partition of property—said bill was also laid on the table.

Mr. Wright, from the committee on Finance and Banks to whom were referred certain joint resolutions from the House of Representatives, respecting the compilation of the laws of the Territory, as contracted by James D. Westcott, jr. and John P. Duval, Esqrs. report the same without amendment.

The same committee to whom was referred the resolution directing them to enquire into the expediency of taxing law process, have the honor to report that they deem it inexpedient at present to legislate on the subject.

On motion, said resolutions were made the order of to day.

Mr. Hawkins from the committee to whom was referred that portion of the Governor's Message in relation to the division of the Territory, offers the following

### REPORT.

TO THE SENATE OF FLORIDA :

The advocates for division of our Territory, and principally found in its Eastern portion, contend, that owing to the diversity and contrariety of interests and opinions subsisting between East and Middle and West Florida, and the large extent of domain embraced within those divisions, propriety, justice, and a proper regard for the interests of all, demand, that a separation and dismemberment should take place.

Your committee cannot concur in these views and opinions, and differ as to its expediency and justice.

Political communities, like individuals, will certainly become estranged in their feelings, if they wish and resolve to be so; but the strongest tie of affinity which can exist between them is that where all parties of that community are mutually dependent upon each other, living under the same laws and possessing the same interests. Under this state of things, any diversity of feeling would soon pass away and a people connected with these ties, would in a short period become as one.

In case there were two states or territories, the cause of internal improvements would receive a severe shock, and instead of having rail roads and canals throughout the whole extent of our present territory, they would in all probability be confined to small and limited districts, for it would be extremely problematical, whether the two future states would co-operate in any enterprise for the construction of those works across their respective domains, with that cordiality so requisite to ensure success.

Florida, from the general features of its country, its admirable adaptation to works of this nature, must in the course of human events, be the country over which will be constructed a work that will unite the Gulf of Mexico with the Atlantic by rail road or canal; and when completed, while bringing the people of either extreme and other portions into frequent contact, will create that most potent of all cements, interest, with its concomitants, harmony and regard.

For a considerable period of time, there cannot exist amongst us the wealth requisite to carry through the works alluded to, and to stimulate individual enterprise, it might be necessary perhaps to invoke the aid of the state, either by partaking in it, or lending its assistance by legislative enactments, offering such inducements and conferring such privileges, as would tempt capitalists to embark in the undertaking.— If two states existed, it is but fair to suppose, that obstacles would be much increased by questions arising, involving sovereignty, right of soil and expediency, and which would tend to render abortive all schemes of this nature.

Should division ensue, emigration to either territory would be seriously retarded, for citizens of the states, with their notions of the wild and loose legislation generally found in territories, will be loth to leave homes where life and property are secured by salutary laws, to seek new ones in a country where the constituted authorities are not amenable to the people for any dereliction from duty, where they will have no voice in the selection of rulers, who are generally sent from abroad, and in all respects as dependent upon the will of Congress, as the colonies were upon Great Britain, previous to the revolution. Chancellor Kent on this subject, uses the following language, and which your committee deem pertinent to the subject under consideration—"Such a state of absolute sovereignty on the one hand, and of absolute dependence on the other, is not congenial with the free and independent spirit of our native institutions; and the establishment of distant territorial governments, ruled according to will and pleasure, would have a very natural tendency, as all proconsular governments have had, to abuse and oppression.

The territory is bound for the redemption of certain bonds, and the whole territory is so bound. It may be contended, that as a territory, we had no power to pass laws binding on the future state, though the case in *H. Martin's Reports, State v. New Orleans N. Company*, seems to militate against that position; yet be it as it may, the question of ratifying or denying the pledges made may come up for future disquisition and future action. Might not East Florida contend, that inasmuch as she had not received an equal portion or share of the benefits of the

Union and Pensacola Banks, that equity would decree that she should not be bound for the responsibilities incurred by the territory for those Institutions? In case the holders of the bonds issued should fail in receiving the interest on them, and should have recourse on the territories or states for payment, the most serious questions would arise, fraught with embarrassment and perplexing in their nature. That there would be efforts made to shift responsibilities from one state to the other, little doubt can exist, and a never ending source of dispute would be created between them, while a singular spectacle would be exhibited of two sovereign states quarrelling and wrangling, which should or should not assume liabilities contracted jointly.

Already has Congress, by its munificence, given large sums of money for our public buildings at the present site of our capitol. Those works are now in progress and will soon be completed. If a new territory should be formed, the citizens of West Florida would contend most strenuously for the removal of the present capitol to a more western and central position, and if the ends of justice were attained, a new site would be selected, and again large sums lavished upon it by the General Government. The contest growing out of the question as to the location of this site, would inevitably give rise to angry and violent discussion. A question might here arise, how far that country is in the main benefitted by those acts of pecuniary liberality, and if they have not a tendency to teach and accustom us to be mere dependents on the bounty of Government, and while palsying our industry, render us careless and neglectful of our own resources

It is urged as an argument in favor of division, both here and elsewhere, that it is a southern measure, and by creating two states, in lieu of one, the balance of the union will be better preserved. Years must elapse, ere in case of separation, the two states could have more than one member in the popular branch of the national legislature, though it may be granted, that two senators would be gained. The confederacy being created in a spirit of compromise, and based on the virtue and intelligence of the people; to that virtue and intelligence it must be indebted for its permanence and endurance.

That day will indeed be a dark one for the cause of freedom in our Country and the stability of our Union, when the vote of a small state can decide its destinies, and the ballots of two Senators are the only barriers between revolution and anarchy. The union of the States would hang together but by a brittle tenure, and like the sword suspended by a single hair over the head of Damocles, would ruin and destruction impend over our country. If there were but one state, the members of the Congressional House of Representatives would increase more rapidly than if there were two; for in the first instance, there would not be two distinct fractions of numbers over and above the ratio of representation; whereas in the latter case, these fractions would more or less exist, and if added together, might enable one state to have an additional and one other Representative.

Your committee are of opinion, that the moral and political influence of one large and respectable State would be greater and more deeply felt in the councils of the Nation, than that exercised by two smaller ones, equalling, when united, the one State. In the first, there being but one people to be represented, one in interest and united in policy, its representatives would naturally act in that concert which would tend to produce more important and happier results, than if separated in two portions, and divided politically and in interest.

In case of war, a single state by a concentration of its resources would be more efficient in repelling an enemy than two weak and ineffective ones; for should such a crisis or event take place, and always

likely to do so from conflicts between the General Government and foreign nations, Florida indubitably would be deemed the weak point to be assailed, the *point d' appui* from which an assault would be made as well on the peculiar *Domestic Institutions* of our Territory, as those of the whole Southern portions of the Confederacy.

It might afford a curious problem in political arithmetic worthy of solution to ask, how long a period of time would elapse (should the sought for division occur) ere the two Territories would possess sufficient population to enter the Confederacy. It is true, that States may have been taken in, without possessing the ratio of representation at the time of their admission. There is every reason to suppose, that the present ratio will be increased on the completion of the census, and it is equally probable, that it will continue so to increase hand in hand with the population of the Union and that it will outstrip the increase of our own population. If Congress should decide, that we must come up to that ratio, whatever it may be, difficult as it would be for our present Territory, how utterly impossible, at least for a long time, would it be for two territories.

From the spirit of deadly hostility manifested in certain portions of the union to the admission of new slave States, there are well grounded fears, that in the ratio as the time is postponed for our admission, so will that spirit display itself by throwing obstacles and barriers in our way. There are unquestionable proofs of that feeling gaining ground, if we are permitted to judge from the *criteria* furnished us by Executive messages, Judicial decisions, local laws and the refusal to deliver up those fugitives from justice, who after being guilty of the most serious infractions of the laws of slave holding states, have fled for protection to those states, where slavery is not acknowledged, and availed themselves of it under their municipal regulations.

Let us not be deluded by the "cry of peace, peace, when there is no peace," let us not be told, that a sect who under the specious guise of philanthropy are now warring against our dearest rights and endeavoring to snap the chord that binds our Confederacy, a sect, who have "stolen their banners from the altars of Christ, and congregated their allies from the abysses of Hell," are but few in number and that their efforts will prove futile and vain; when they boast of rapidly increasing numbers, that they have controlled the elections of the largest state of the Union, that the Legislature of a sovereign state has instructed its representatives in Congress to vote against the admission of any state tolerating slavery, it is time for a Territory, where slavery exists and coming within the purview of those instructions, to look to itself and oppose a division, that might tend to render those instructions available against it. Iowa and Wisconsin, are nearly ready to enter the Union, and before we could hope to set off our strength against these in Congress as *two States*, an issue may be made and decided in relation to the questions above alluded to, and we become the victims of its consequences and results. It is urged, that East Florida, assisted by the bill for the armed occupation of Florida and now before Congress, would of itself soon be prepared to enter the Union. This argument is used by some Southern Statesmen in favor of the bill, independent of its being the means of ending the war; and they contend, that its passage would go far to produce results favorable to keeping up the balance of the confederacy. The bill is not yet a law, and should it become so, though your committee are in favor of it, yet, would its passage induce that kind of population to avail themselves of its provisions and settle amongst us, who would be considered as valuable acquisitions further than mere numbers? Those, allured hither by the inducements held out in the bill, would unquestionably be a

hardy and enterprising race of yeomanry, their only wealth, stout hands and hearts, their rifles and munitions of war. Not till the termination of the war, an event extremely uncertain, would the lands be given them and not till then, would their swords be turned to plough shares, or would they cultivate that soil, they had won by their valor. Something more than mere *numerical* strength is to be sought for in a State and it must depend for its support upon that pecuniary fund created by, and arising from its agricultural and commercial resources. The bill alluded to is as yet an untried expedient and its results cannot be foretold or safely calculated upon; and your committee contend, that the rights of the people of Florida should not be subject to the hazard of an *experiment*, a dernier resort to end a long protracted and ruinous war.

But, admitting all that its advocates ask, Middle and West Florida have a right to look to East Florida for its co-operation and assistance in their efforts to become a State, when they can be asked without doing injustice to any portion of the whole Territory. They have a right to invoke its aid, and become partakers of the burthens incident to a State Government, and as an equivalent therefor, to share in the benefits. If she acted otherwise, she would not be guided by that side of justice that should characterize the people of a common Territory.

It cannot be denied, that the domain under the appellation of Florida, is sufficiently large for two States; but it should be recollected that a comparatively small portion of it will admit of successful cultivation, or repay the husbandman for his labors; that those portions susceptible of that cultivation are scattered in bodies, and their cultivators, in many instances, will have to depend for getting their produce to market, upon the Internal improvements already referred to. Florida could cover many Rhode Islands or Delawares, but as yet, she has not, and it may be long ere she has the population of those states.

In the treaty between Spain and the United States, for the cession of East and West Florida, there is a guaranty in these words: "The *inhabitants* of the Territories which his Catholic Majesty cedes to the United States, by this treaty, shall be incorporated in the union of the United States, as *soon as* may be consistent with the principles of the Federal Constitution, and admitted to all the privileges, rights and immunities of the citizens of the United States."

The division sought for, would conflict with the letter and spirit of this provision of the Treaty, and deprive us of a right by postponing the period of incorporation into the union of the United States. It was the evident intention of Spain, the ceding power and party of the compact, that the provinces ceded should be considered as one and indivisible, and be admitted as such. The words "East and West Florida" are mere terms of description, including one domain; and so must they have been understood by the United States at the time, for since the treaty, they have been included in one Territorial Government; if otherwise, they would have been severed.

After the cession of Mississippi to the United States by Georgia, the *permission* of Georgia to *divide* it, was first asked and obtained; but the *people* of the Territory *objected*, and asked permission from Congress to enter the Union. The committee of Congress, to whom was referred their petition for admission, in the report used this language: "It is known to your committee, that the consent of Georgia to a division of this Territory, has been asked and obtained, and should it be divided before it is admitted, the admission of either part would, from a want of members, be subject to additional objection and further delay. But doubts were entertained, whether the Territory can, with *strict propri-*

ety, be divided without the *consent* of its inhabitants, as well as that of Georgia and the United States. Although the people of the Territory had no agency in the agreement above granted, they were the *object* of it, and as such became a *third party* to it, and vested by it of a *right* which is explicitly defined."

Your committee would direct the attention of your honorable body to the strong and complete analogy existing between Florida as she is, and Mississippi as she was; and adopting the language and reasoning of this report, we contend that inasmuch as we were the *objects* of the Treaty with Spain, we constitute a third party to it, and before we are dismembered, we have a right to be heard. If division should be decided upon by a majority of the *whole* people of Florida, the minority must silently acquiesce; and if on the other hand, the minority should only be in favor of that division, and opposed to the majority, they, too, should give way to the largest number. Your committee deem these propositions to be in strict accordance with the spirit and principles of republican institutions.

The people of Florida have solemnly decided on a State Government—that question has been acted upon in compliance with a law passed by their representatives. A Convention of the people has been held, and a Constitution has been formed. If we are to be denied admission, the refusal to admit us must be based upon something else than a *projet* at variance, and inconsistent with our rights—the point to the treaty of Spain as the guaranty of those rights, and placing us on a level with other citizens of our country. Upon that treaty we throw ourselves, and if we comply with the requisitions of the Constitution necessary to admittance, we do not come as mere supplicants, begging to be admitted into our great Confederacy: but with that charter in one hand, and the Constitution in the other, we demand as matter of right, as a sovereign State, with sovereign rights to be taken into the family of the American Republic.

Your committee beg leave to offer the following resolutions, all which is respectfully submitted.

Regarding any law of Congress dividing the Territory of Florida without the consent of the majority of our whole People, as unjust to us, unconstitutional and invalid.

We hereby respectfully, but solemnly and earnestly protest against the passage of any such law, as militating against those rights secured to us by the Treaty with Spain, and the laws of the land, and

*Be it resolved by the Governor and Legislative Council of the Territory of Florida,* That our Delegate in Congress be instructed to oppose the passage of any law dividing our Territory; by separating East and South Florida from Middle and West Florida or in any other way or manner.

*Be it further Resolved,* That copies of this Protest and Resolution, after due authentication, be forwarded to the Honorable Charles Downing, our Delegate in Congress, the President of the Senate of the United States, and the Speaker of the House of Representatives, to be by them laid before the respective bodies over which they preside.

Which was read and 200 copies ordered to be printed.

A bill, to be entitled an act to incorporate the St. John's Silk Company in East Florida, was read a second time, and referred to the Judiciary committee.

An act to establish a board of Wardens and Commissioners of Pilotage for the Port of Key West, was read a second time,

and amended—on motion (the rule being waived) said bill was read a third time and passed—ordered that the title be as above.

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

EXECUTIVE DEPARTMENT, )  
Tallahassee, Jan. 30, 1840. }

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

I herewith communicate to the Senate the report of the late Commissioners of the Tallahassee Fund, together with an account current ; and I respectfully ask that the report may be printed for the use of both houses, as from its length I have been unable to cause a copy to be prepared for the House of Representatives.

R. RAYMOND REID.

Which was read, and with the accompanying documents, referred to the committee on Finance.

Also the following :

[insert no. 21]

Which was read and referred to a joint select committee. Messrs. Berthelot, Wright and Mills were appointed said committee on the part of the Senate.

A Bill, entitled an act to repeal the 1st section of an act entitled an act providing for removal of Justices of the peace in certain cases, and for other purposes, approved Feb. 14th, 1835, was read a third time and passed—ordered that the title be as above.

An engrossed bill entitled an act to authorize the Judges of the Superior Courts to hold extra terms for the trial of criminal cases, was read a third time and passed—ordered that the title be as above.

An act to authorize Edwin G. Booth to establish a ferry across the Apalachicola river, below Ochesee, was ordered for Monday.

Certain resolutions in relation to a former contract of J. P. Booth and James D. Westcott, Jr., to publish and compile former laws of Florida, was again read and adopted.

Messrs. Wright, English and Bailey were appointed a joint committee on the part of the Senate in accordance with said resolutions.

The Senate then went into secret session on executive business.

On motion, the doors were opened, and—

The Senate then adjourned until Monday 11 o'clock.