

THURSDAY, Feb. 6, 1840.

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

Mr. Duval, agreeable to previous notice, asked and obtained leave to introduce a bill, to be entitled an act to prevent breaches of the peace, and more effectually to preserve order and quiet, which was read a first and second time by its title, and referred to the committee on the state of the Territory.

The Senate received from the House as passed, the following bills—an act to amend an act incorporating the Roman Catholic Church at St. Augustine, called St. Augustine Church, which was read a first and second time by its title, and referred to the committee on the state of the Territory.

An act for the relief of Robert R. Towers, was read a first and second time by its title, and referred to the committee on the Judiciary.

A bill, to amend the act incorporating the Bank of Apalachicola, was read a first and second time by its title, and referred to the committee on Finance.

An act to amend the act incorporating the city of St. Augustine, was read a first and second time by its title, and referred to the Judiciary committee: and,

A bill, to be entitled an act to incorporate the town of Iola, was read a first and second time by its title, and referred to the committee on the Judiciary.

Mr. Mills, from the committee on the state of the Territory, reported a bill, to be entitled an act to incorporate the Apalachicola Association, without amendment, which report was concurred in—said bill was made the order of the day for today.

Mr. Wright, from the committee on Finance and Banks, reported a bill, to be entitled an act to suspend the operations of the Revenue Laws for the year 1840, and to provide for the settlement of all arrears due to and from the Territorial Treasury, which was read a first time.

Mr. Berthelot, from the majority of a select committee to whom was referred, an act to increase the number of Senators and to lay off the Territory into Senatorial Districts, made the following report.

The select committee of the Senate, to whom was referred a bill entitled an act to increase the number of Senators, and to lay off the Territory into Senatorial Districts, have the honor to report:

That your Committee have maturely considered said bill, and have also read and examined attentively the act of Congress re-organizing the Legislative Council of Florida, approved July 7th, 1835. Your committee is of the opinion, that although full power and authority is vested by said law in the Governor and Legislative Council, to apportion the representation of either house of said Legislature, as may seem best and proper, according to the population of the Territory. Yet still, no power is vested in this, or any future Legislature, to

change the Senatorial Districts, nor the mode of voting, as is therein prescribed. The first section of the act of Congress, and that part of it which relates to the Senate, reads in these words: "The Senate shall consist of eleven members, to be chosen as follows: Three shall be chosen from the Western Judicial District, including the county of Franklin, by general ticket of the qualified voters of the counties of said district, including the said county of Franklin: four from the Middle Judicial District, &c.;" which words by general ticket, imports that the entire districts, and not counties, shall be represented in the Senate. Your committee deem that the act of Congress is so clear and explicit upon this subject, and believe so fully that it is not in the power of this Legislative Council, or any other Legislative Council, to frustrate the great end, which the Congress of the U. States had in view in passing the act re-organizing the Legislative Council, and particularizing and designating the districts, nor has it the power to repeal an act of Congress, [which by the very nature of things is our Constitution,] and which would be virtually done if this Legislative Council should pass into a law the bill referred to your committee. Other strong and cogent reasons might with propriety be urged by your committee for reporting unfavorably on the bill now before them, but your committee deems the above argument sufficient in itself, and beg leave to be discharged from the further consideration of the bill referred to them. All which is respectfully submitted.

JAMES A. BERTHELOT, Chm'n Select Committee.

On the question of concurring in said report, the yeas and nays were called by Messrs. Wright and Berthelot, and were:

Yeas—Messrs. Bailey, Berthelot, Duval, Dupont, English, Hawkins and Walker—7.

Nays—Mr. President, Messrs. Hart, Mills and Wright, 4.

So said report was concurred in.

Mr. Wright, from minority of same committee, made the following report.

The undersigned one of a select committee appointed to report upon the bill from the House of Representatives, to increase the number of Senators and lay off the Territory into Senatorial Districts, dissenting from the opinion of a majority of the committee, has the honor to report that the whole subject rests first upon a rational construction of the act of Congress creating the Senate, which it is believed, furnishes the power to district the Territory in the manner proposed by the bill under consideration; and secondly, upon the question of expediency, or in other words, the question whether the Territory would be better represented under the arrangement proposed by this bill, giving one Senator to each Senatorial District, or under that proposed by a bill which has already passed the Senate, requiring the Senators to be elected by general ticket, in the respective Judicial Districts.

First then, as to the power to pass this law, the act of Congress gives power to the first, or any subsequent Legislative Council, to apportion the representation of either house "throughout the Territory," not throughout the respective Judicial Districts—mere artificial divisions of the Territory, made for the

convenient administration of justice, and having no sort of difference to the political convenience of the people, but hastily adopted by the Delegate, in framing the law for the election of Senators, because, perhaps he did not choose to take upon himself the responsibility of making a more minute division of the Territory, into separate Senatorial Districts; that functionary wisely judged that it would be better for the people through their representatives, to perform this task, than for him to attempt it. But when the authority is given to apportion the representation in either house throughout the Territory, it would seem as if no construction could be admitted. Is there any qualification of this power which restricts the Legislative Council to a regard for the Judicial Districts in their apportionment? none whatever, the language is as broad as it could be made; the power is as full and ample as words could make it.

The only ground on which the construction of the act of Congress, as contended for on the other side, can be made to rest, is simply that Congress has chosen to designate the Judicial Districts as election districts; but who does not perceive that the whole of this act is merely temporary in its nature, and was intended to accomplish no other object than to organize the two houses of the Legislative Council for the time being? This done, it was the intention of Congress that the Council itself should apportion the representatives of either house, as to them might seem best and proper, according to the population of the Territory. If any thing was necessary to fortify this view of the subject, it might be found in the fact that throughout the act of Congress, it speaks of the *counties* composing these districts. Now suppose the local and personal knowledge of the Delegate had been so imperfect, as to cause him to add the counties of Madison and Hamilton to the Eastern District, and the county of Gadsden to the Western District, leaving to the rest of the Middle District their four Senators; is it to be believed that so unjust an arrangement would have been borne with even during the first session of the council? Is it to be doubted that a majority of both houses would have found an ample grant of power in the act of congress to remedy such an evil? Then, at least the words "throughout the Territory," would not have been understood to mean *throughout the respective judicial districts* of the Territory. Suppose again, that the act of congress had required the voting for the Senators at the first election to be by general ticket in the counties throughout the Territory, instead of throughout the judicial districts, would it then be denied that under the authority to apportion the representatives of either house, the Territory might be laid off into senatorial districts? It is only to be added that the best possible evidence that it was the intention of congress to leave this subject to the action of the Legislative Council, is that the framers of the act

did not even venture to fill up the number of senators allowed us, in short the mere outlines of a legislature were sketched for us by the act of congress, leaving the details to be filled up according to the wisdom of the Legislative Council and the wants and desires of the people.

So much for the first branch of this subject. Now with regard to the question of expediency—and here it is worthy of observation that the question of power is comparatively a new one, but it is a remarkable coincidence that those who were most thoroughly convinced against the expediency of the measure are those who are now most thoroughly convinced that the power claimed is not given by the act of congress. The question of expediency is nearly swallowed up in the more important question of power.

The great object of representative government is the full and perfect expression of the people's will. The representative is the servant, and the people are his masters—and in proportion as the servant is better acquainted with the wants and wishes of those who he has undertaken to serve, just in that proportion will he be better qualified to serve them effectually. The more direct and immediate his connection with the people, the more full, free and personal his intercourse with them, the better will he be acquainted with their wants and wishes. These are truisms in politics as well settled and as indisputable as the truths of geometry or mathematics. What more can be needed then, than to apply these rules to the subject in hand? Here the question is whether the senators hereafter to be elected shall be chosen from fourteen small districts, into which the Territory is proposed to be subdivided, securing at least one senator to each district, or from four large districts, where the senators are to be elected by platoons of four and six. In the one case the senator is naturally, and necessarily acquainted with all his constituents, their wants, their wishes and their interests—and in the other it is an equal chance if the whole of the senators of the district, widely extended and sparsely populated, as it may be, are not elected from the same town or neighborhood.

But it is objected that the bill from the House of Representatives, does not propose a fair and equal apportionment of the senators. While it is admitted that this is true in a certain sense, it is believed that no part of the Territory will have any just cause of complaint. It is utterly impossible in the present unsettled condition of our Territory, to give to each portion its exact due. But shall we reject an obvious good, because we cannot make it better? Shall we refuse a proffered benefit because it is not perfect? If we could, without great practical inconvenience divide the population otherwise than by county lines, we might hope to approximate very nearly to an equal

distribution of the senators—but this cannot be done. Some of the districts must of necessity, therefore, be smaller, and some larger. Let us enquire however, what the larger districts suffer. Take Gadsden county with a population of 5540 for an example—with all this population the question might well be asked whether it would not be better for her to be sure of one representative in the Senate, trusted by her people, and who would fairly present her interests—than to have the mere chance of getting two or three members and be obliged to incur the risk of getting none at all? The answer is that she would choose to have her own senator, even though some counties with, at present, only half her population, would have the same weight with herself. The answer commonly made to the objections that under the present system all the members may be elected from one part of the district, is that if a design is known to exist to combine in any part of the district, there will be counter combinations in other parts of it. And is this deemed favorable to a fair, faithful and intelligent representation? The people of Leon combine to elect the six members allowed to Middle Florida, with little or no regard to the fitness of the candidates.— This makes a combination necessary, with just as little regard to the essential qualifications of the candidates, in the other parts of the district. The result is that persons who receive but a meagre minority of the votes and who are therefore not the choice of the people—and never could be chosen by the whole district, are liable to be elected.

The election by Judicial Districts is attempted to be sustained too by analogising our condition to that of the Senate of the United States, but the analogy does not hold to the extent contended for. Admit for the sake of the argument, that we are the conservative body—does it follow that we ought to be elected by a people who do not know us, and whom we do not know. This view of the matter, if it prove any thing, proves that they are better qualified to conserve the interests of the people in the Senate, who know least about the people or their interest. The peculiar organization of the Senate of the U. States, was the result of a compromise of conflicting interests and opinions; but does it follow that because this branch of the General Government, forced as it was, by the pressure of circumstances, upon the acceptance of the framers of the constitution, has worked well, therefore no other plan for getting up a Senate would have answered the purpose. Let us look to the States, and we shall there find that in every instance the less numerous branch of the Legislature is chosen in the manner proposed by the Bill under consideration. It is here that we are to look for the truest and only analogy—and for our safest and best guide. All of which is respectfully submitted.

BENJ. D. WRIGHT.

Which was read.

On motion, the bill was ordered for to-day.

Mr. Berthelot, from the majority of the joint select committee to whom was referred, the message of the Governor, in relation to the location of the site for the public Building, made the following report.

That in conformity with their appointment, they have had a conference with his Excellency the Governor upon the subject referred to in his Message of the 30th ult. That your Committee, after having had an ample and full discussion upon the subject matter therein contained, have arrived at the conclusion that the views and suggestions of the Governor are right and proper in regard to the removal of the site of said Public Building.

Your Committee are induced to agree with the suggestions contained in the Governors Message, from the fact that if the Capitol is erected where it is now contemplated, the capitol square being so very small, and the Capitol so large and massy, it will be out of all proportion, and shew a decided want of taste. Besides this, however, there are other considerations which have weighed in the mind of your Committee: If the new Capitol is suffered to progress where it is now begun, the building which is now used as an Executive office, a Secretarys office and a Senate Chamber, will have to be removed, and that too at the expense of the Territory, on or before the 10th day of April next, according to the terms of the contract, in order that on the same site the contemplated Capitol may be built. Now in the mean time, and until the new Capitol is completed, the Territory will be compelled to lease other offices, and another Senate Chamber at enormous rents, as all buildings in the city of Tallahassee are leased at the very highest sums.

Your Committee has been furnished with the following items by his Excellency the Governor as expenses actually incurred for the laying of the foundation of the new Capitol, as far as progressed with:

Work—Brick laid in foundation 3,500 at \$9 50	\$332 50
Excavating foundation 208 yards at 60c.	131 80
Loss and labor in cleaning brick,	150 00
Moving 23,800 bricks,	179 00

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\$786 30

From this statement it will appear that the sum of \$786 30 is the only amount actually expended for the present foundation and that for work and labor. Your Committee would further state that they have called on the contractor, and he has expressed a willingness to conform to any change which might be made in regard to said Capitol. The contractor also states that for one half of the above amount of \$786 30, the materials

which now compose the foundation of the building can be removed to the new site, whereby the materials will not be lost.

Your Committee are of the opinion, that no house in Tallahassee suitable for an Executive office, a Secretarys office and a Senate Chamber, could be procured at a less sum than \$3000 a year.

From these considerations your Committee cannot but agree with the views and suggestions contained in the Governors Message upon this subject. And for as much as the Governor is fully empowered and authorised by the Act of the Legislative Council of 1839, entitled An Act to provide for the building a Capitol and for other purposes, to act in regard to this matter, your Committee beg to be discharged from the further consideration of said Message.

All of which is most respectfully submitted.

JAMES A. BERTHELOT,  
Chairman Com. of the Senate,  
AUGUSTUS STEELE,  
Chairman Com. of H. Rep.

Which was read and laid on the table.

Mr. Mills, from the minority of said committee, made the following report.

The minority of the Joint Committee appointed to report upon the communication of His Excellency the Governor, in relation to the expediency of changing the precise spot already fixed on in the capitol square as the site of the new Capitol, have the honor to report as follows. The spot fixed on is the middle of the square, whence on the east and west sides of the square, there is a considerable declivity, so that if the building should be placed on either side of the square, it would be in some degree nuder the hill; Tallahassee is essentially a commercial town, the mart of the great staple of the south, and where the supplies of the planter are to be obtained. The capitol square is in the centre of this great mart, so that by placing the Capitol on either side of the square, you bring it into direct and immediate contiguity with the noise and din of commerce, the rattling of carriages, and the confusion of a crowded city. As to the question, whether the square is of sufficient size to justify the erection of so large an edifice as the new Capitol is destined to be, without doing violence to good taste;— your committee have only to say, that they are unable to perceive the incongruity which has so impressed the minds of others, but as this is purely a matter of taste, your committee will not attempt to discuss it.

The great objection, however, to the change proposed is, that it would probably prove to be but the beginning of a series of changes in the execution of the plan, which would result in the expenditure of the fund provided for this object, and leave us as far from its accomplishment as we are at present. The fear of this result, outweighs in the minds of your committee, all the pecuniary and other advantages which are anticipated from the change proposed. It is believed that no changes ought to be made. The contractors should be held strictly to their contracts; they will then know precisely what they are to depend upon; the Territory will know its rights and its obligations, and

will escape the embarrassment which waited on the abortive and ruinous attempt made many years ago to build a Capitol.

All of which is respectfully submitted.

BENJ. D. WRIGHT.

W. J. MILLS.

Which was read and laid on the table.

Mr. Walker, agreeable to previous notice, asked and obtained leave to introduce a bill, entitled an act to repeal an act, entitled an act to prohibit the circulation of notes of foreign Banks of less denomination than five dollars, which was read a first and second time, and ordered for to-morrow.

The Senate in committee of the whole, Mr. Hart in the Chair, again took into consideration the preamble and bill in relation to the Bank of Pensacola; after some time spent in its consideration, the committee rose and reported the bill amended—ordered that the bill be engrossed for a third reading on to-morrow

The Senate went into committee of the whole, Mr. Mills in the Chair, on a bill to be entitled, an act to incorporate the Apalachicola Library Association; after some time spent in its consideration, the committee rose and reported the bill as amended, which was concurred in.

On motion, the bill was read a third time and passed—ordered that the title be as above.

An act to increase the number of Senators, and to lay off the Territory into Senatorial Districts, was ordered for to-morrow.

The Senate then adjourned until to-morrow.

FRIDAY, Feb. 7, 1840.

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

Mr. Mills, from the committee on the State of the Territory, reported a bill, to be entitled an act to prevent breaches of the peace, and the more effectually to preserve order and quiet—and a bill, to be entitled an act to amend an act incorporating the Roman Catholic Church of St. Augustine, called St. Augustine Church, without amendment.

The same from the same committee, to whom was referred a bill, to be entitled an act to amend an act, concerning Patrols, passed Feb. 17, 1833, made the following report.

The committee on the state of the Territory, to whom was referred a bill, entitled an act to amend an act, concerning Pat-