

On motion of *Mr. Livingston*, the correspondence in relation to troops in East Florida under Col. Robert Brown, and Maj. Isaac Garrison was taken from the table, when *Mr. Brockenbrough* offered sundry resolutions in reference to and explanatory of certain resolutions before passed by the Legislative Council for the payment of said troops which was read.

On their adoption the yeas and nays were called by Messrs. *Brockenbrough* and *Cooper*, and were :

Yeas—*Mr. President*, Messrs. *Brockenbrough*, *Cooper*, *Dupont*, *Edwards*, *Livingston*, *McLean*, *Pelot* and *Walker*—9.

So said resolutions were unanimously adopted.

The Senate then adjourned until to-morrow.

WEDNESDAY, March 3, 1841.

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

Mr. Edwards offered a resolution for the safe keeping of the papers and furniture of the Senate. Which was read and ordered for to-day.

Mr. Dupont offered sundry resolutions requiring the Auditor to report to the Legislative Council, at the first day of each session thereof, all officers charged with the collection of any part of the Territorial revenue, who may have failed to make their report in conformity with the existing laws, &c. Which was read and ordered for to-day.

Mr. Edwards from the committee on the Militia made the following report :

The committee on Militia to whom was referred the report made by the chairman of the Committee on Claims, from the lower House, on the petition of *Capt. S. J. Perry*, have had the same under consideration, and ask leave to report :

That they do not concur in the report made by the committee, as no specific sum is named in the report, and it appearing that the petitioner has not made application to the General Government for an adjustment of his claim.

And further are of opinion, that the report should have been referred to the Committee on Claims. Therefore ask leave to be discharged from further consideration of the matter referred.

J. D. EDWARDS, Chairman.

Which was read and ordered for to-day.

Mr. Brockenbrough from the minority of the Committee on Banks made the following report: -

MINORITY REPORT.

The Chairman of the Committee on Banks to which was referred an act entitled an act amendatory to the several acts incorporating the Central Bank of Florida, which was reported to the Senate yesterday without amendment by himself on behalf of the majority of the committee, report:

That he has received the annexed letters from Mr. Hixon of St. Joseph, and Mr. Gautier, the Representative from Calhoun, and Speaker of the House of Representatives.

The persons mentioned in these letters are known in the Territory, and of a highly respectable character, and the charter is generally less loose and objectionable in its character than those instruments generally are. And the Bank always sustained a high character under the old charter, by judicious management. But the whole Union has suffered so much from excess of Banking, and Florida, especially West Florida, has been so peculiarly cursed with bad Banks, and as at this time the Banks generally have been unable to continue specie payments in the wealthy cities and States south of New York, it was feared by the chairman of the committee, contrary to the opinion of the majority, that an attempt to establish a specie paying Bank at St. Joseph, would end in one of those unhappy failures, which have hitherto followed such enterprises in West Florida. But the character of the gentlemen named precludes the idea, that a fraudulent bubble is intended. And their fortunes, which are rendered liable by the charter, will be some security to the community against any errors in judgement which they may commit.

Another objection entertained to this act was that a former Legislative Council had required this charter among others to be forfeited by judicial proceedings which are yet pending, for non user. And it was thought objectionable to revive by any act of ours, any one of these institutions which had once been put to sleep.

If this charter is *now* liable to such forfeiture under those judicial proceedings, an amendment is proposed to prevent this act from being considered a resuscitation and revival of the charter, which will remove this objection.

If this charter is *not* liable to such forfeiture, it is the property of the Union Bank, and liable to be sold at any time and to any persons, without the amendments proposed by the bill before the Senate, which improve the charter by adding safeguards to the community. And if not liable now to such forfeiture, it may be

recuscitated nominally at Tallahassee with an agency to transact business at St. Joseph or elsewhere, without our consent and without our amendments.

Preferring that it should be sold to respectable persons, and with judicious amendments, if it still has a legal existence, to the possibility of its being put in force by persons less worthy of confidence and without the amendment. The objections to the bill will be removed if the following amendment is adopted.

WM. H. BROCKENBROUGH, Chairman.

SEC. 6. *Be it further enacted*, That this act shall not be construed to suspend or diminish the force or operation of any act of the Council hitherto passed requiring the District Attornies to proceed by judicial proceedings to forfeit certain charters for non user, or to relieve from any such forfeiture or the liability to such forfeiture which may have been incurred, or to annul or suspend any legal proceedings which have been commenced or may be commenced under the act approved March the fourth, 1839, or any other act to declare any charter forfeited, or in any manner to revive or resuscitate any charter so forfeited or liable to forfeiture, but the Ditric Attornies are required to prosecute such proceedings with all possible dilligence, and judgment shall be obtained on the same, in the same manner and have the same effect as if this act had not been passed.

TALLAHASSEE, March 1st, 1841.

WM. H. BROCKENBROUGH, Esq.,

Chairman of Committee of Banks.

Dear Sir: At your request, I address you in relation to the bill now before the Senate, having for its object the removal of the Central Bank to St. Joseph.

As you are aware, by a recent arrangement, a portion of the old stockholders of the St. Joseph Company, have been induced to abandon the enterprize, for a consideration, which was intended to be exclusively appropriated to themselves, leaving a heavy and a much larger interest ruined and abandoned by their desertion.

Believing that St. Joseph yet possesses all the commercial advantages and facilities which its first projectors maintained it possessed, there are those who are willing to take up the enterprize at the point at which it has been abandoned.

The location of the Central Bank at St. Joseph will, it is confidently expected, induce the introduction of new capital into the place, which its friends think is all that is required to ensure its success.

A negotiation has been concluded with the Union Bank for the purchase of the Central Bank charter, and the present application for its removal to St. Joseph, is made at the immediate application of the Messrs. Chaires, Judge R. C. Allen, Mr. W. P. Craig, Mr. H. W. Cater, Col. H. W. Braden, and myself.

St. Joseph contains a population of nearly one thousand souls. Investments have been made to perhaps the amount of one million of dollars.

lars. The citizens have been ruined by the arrangement alluded to, and their property rendered valueless. The new enterprise will restore to a great extent the value of their property, and at the same time save a corresponding amount of the public wealth of the Territory from almost total annihilation.

I am, Sir,

Yours respectfully,

FLEMING HIXON.

TALLAHASSEE, March 2d, 1841.

To WM. H. BROCKENBROUGH, Esq.,

Chairman of the Senate's Committee

on Banks and Finance.

Sir: As a representative from the County of Calhoun, I beg leave to explain the objects of the law passed in the lower house, relative to the removal and location west, of the charter of the Central Bank.

You are aware of the condition of the currency, and of the want of proper trading facilities of the people in our section of the Territory. It is important that we have a bank whose bills should be on a par with those of the Columbus Banks; and it is proposed by those to be interested in the Central Bank, to make it a specie paying institution. The stock is to be taken by individuals of means and character in Middle and West Florida, and by persons in Alabama and Georgia. The Chaireses, the Gambles, Col. Braden, Judge Allen, Craig, Wyatt, and a number of others with whom you are acquainted, and whose character in the community is a guarantee that nothing unfair is intended, are interested in the operation. Assurances have been received that a fair portion of the stock will be taken by capitalists in Georgia, and the measure, if carried out, will be productive of much relief and benefit to a large number of your constituents. Trusting that your duties as a Senator may harmonize with the local interests likely to be promoted by the proposed arrangement, I respectfully ask you to give the bill a fair support.

Yours, &c.,

PETER W. GAUTIER, Jr.,

Member for Calhoun.

Which was read and ordered for to-day.

An act concerning roads, highways and ferries, was again read and passed—ordered that the title be as above.

The Senate went into committee of the whole, Mr. Cooper in the chair, on an act amendatory to the several acts incorporating the Central Bank of Florida. After some time spent in its consideration, the committee rose, and reported the bill without amendment.

To which Mr. Brockenbrough offered as amendment the amendment proposed by him in his report on the subject this morning. On which the yeas and nays were called by Messrs. Brockenbrough and Duval, and were:

Yeas—Messrs. Brockenbrough, Edwards, McLean, Pelet and Walker—5.

Nays—Mr. President, Messrs. Cooper, Dupont and Livingston—

so said amendment was adopted.

On motion to lay said bill on the table the yeas and nays were called by Messrs. Brockenbrough and Livingston, and were:

Yeas—Mr. President, Messrs. Cooper, Dupont, Edwards, Livingston and Walker—6.

Nays—Messrs. Brockenbrough, McLean and Pelot—3.

An act for the relief of Levi F. Mosher, was read a second time, and referred to a select committee consisting of Messrs. Cooper, Edwards and McLean.

An act for the relief of John D. Parish & Co. was referred to the same committee.

The resolution offered by Mr. Dupont this morning, making certain requisitions of the Auditor, relative to defaulters was again read and adopted.

The resolution for the safe keeping of the papers and furnitures of the Senate, was laid on the table, until called for.

A resolution for the relief of Capt. S. J. Perry, was again read and laid on the table.

An act supplementary to the act approved on the 8th day of February, 1838, entitled, an act to incorporate the Tropical Plant Company of Florida, was taken from the table—on its passage, the yeas and nays were called by Messrs. Dupont and Walker, and were:

Yeas—Messrs. Brockenbrough, Cooper, Livingston, Pelot and Walker—5.

Nays—Mr. President, Messrs. Dupont and Edwards—3.

So said bill passed—ordered that the title be as above.

The Senate then took a recess until 4 o'clock.

4 o'clock, March 3, 1841.

The Senate met pursuant to adjournment.

Mr. Brockenbrough from the Committee on the Judiciary, made the following report:

The Committee on the Judiciary, to which was referred act to alter and amend the several acts in force respecting judicial proceedings, and those respecting appeals and writs of error in civil cases," report:

That the first section renders it impossible for any plaintiff,

however just may be his claim, to obtain judgment by any possibility (except by consent,) until the third term; and renders it possible that he may be retarded still more by vexatious delays in establishing his claim.

The second section gives a right of appeal on giving bond, which shall operate as a supercedea, and prohibits the Court of Appeals from giving more than *five per cent* damages for appeals, however frivolous.

The third section requires that the summons shall be issued forty days before the terms of Courts, and served thirty days before Court, and returned by the first day of the term, which will prevent suits at this spring term on paper now due, and on which the further delays mentioned in the act may take place when suit shall be brought.

The fourth section extends the provisions of the act to all suits now pending in the Courts.

The fifth section gives a lien during the pendency of the Appeal.

The sixth section authorises the *grand jury* of the Counties to call upon the Judge to hold an additional regular term, a provision which will be inoperative, and excepts *East and South Florida* from the operation of the bill.

We consider the provisions of this act as inexpedient and unjust. The law now prevents a plaintiff from having a judgment earlier than the second term, and allows an arbitrary appeal, and the damages on frivolous appeals cannot exceed ten per cent, which is little enough for a defendant to pay for the advantages of delay, and to prevent a sacrifice of his property. The plaintiff, to whom a just debt is due, after all the injury of the delay, has to pay his lawyer 5 per cent, and a fee in the Court of Appeals. We consider our laws as they now stand exceedingly favorable to debtors, and therefore report that any legislation upon the subject is inexpedient.

The manifest purpose of the act is to prevent the collection of debts, and not to reform our judicial proceedings, of which no complaint has been made, and which cannot be charged with doing injustice by improper haste, and insufficient investigation. And in preventing the collection of debts, this act also prevents the obtaining of judgments, which excessively aggravates all the evils and injustice of a stay law.

WM. H. BROCKENBROUGH, Chair'n.
GEO. WALKER.

Which was read.

The same from the same Committee made the following report:

The Committee on the Judiciary, to which was referred the

act for the relief of George Fisher, and William Wyatt, and Giles Stuart, his securities, report :

That legislation upon this subject should be exercised with caution, or it will have a tendency to defeat the force of the penal laws of the Territory. It would be an easy matter for parties to defeat prosecutions by postponing trials where witnesses are numerous or come from a distance, when the Territory is ready for trial, and by offering ready for trial when the Territory has not its witnesses present. And if parties can be too easily relieved from a forfeiture of recognizance, they never would come to trial if the testimony was against them. The courts are liberal upon this subject. They will not forfeit a recognizance if the party sends a reasonable excuse at the time when he should appear for trial, or will present such excuse at the return of the *scire facias*. And even the judgment upon the *scire facias* will be set aside if such excuse be presented within a reasonable time. In the case before us, it appears that the cause was continued on the 13th of April, 1837, upon the affidavit of the defendant.

At December term, 1837, it was again continued in the same manner. At the next term, 1838, the defendant did not appear, and his recognizance was forfeited. *Scire facias* issued 15th April, 1838, returnable to May term, 1839. At May term, 1839, final judgment was given on the recognizance.

The defendant thus had three terms to make his excuse before final judgment was rendered, and would doubtless have been relieved from that judgment even at the term afterwards, if such excuse had been made. But such excuse appears never to have been offered.

And no such excuse is now offered. The evidence does not sustain the petition. A highly respectable physician states that the petitioner was under his care from the 11th to the 17th of November, 1838, and during that time he was too unwell to leave his room, and that he, (the physician,) had been absent for some time previous to the 11th of November, during which Col. Fisher had been unwell. But there is no certificate or evidence to show that he was unwell at May term, 1833, when he should have appeared. He presents the certificate of J. D. Westcott, jr., who was his counsel, he says, and he found that he had drawn the bill of indictment, and that Col. Fisher gave him several depositions and certificates, excusing his absence, but that he (said Westcott,) is unable to state *where they now are*. But the certificate does not state what was done with them by said Westcott, or how the same were lost, or in whose custody they last were, or why they were not presented to the Court, or why new certificates and depositions were not presented to the Senate, or copies of the same, or at least a certificate of their con-

tents, or some account of the purport, or by whom the same were made or given.

The said certificate of Westcott does not state that said depositions or certificates were satisfactory; but only that said Westcott "considers Col. Fisher's claim a just one, if he submits to trial, as he is now under bonds to do. If convicted, and this recognizance is collected, it would be unjust."

But the witnesses may never again appear, and as there is no excuse offered for not appearing at the former day for trial, the committee think it would be very mischievous legislation to grant the petitioner's prayer. They have dwelt longer upon the subject than its importance would seem to demand, because the same subject has met with a similar report in the other house, and they wish to put the subject at rest.

WM. H. BROCKENBROUGH,
Chairman Com. on Judiciary.

Which was read.

Mr. Livingston from a joint select committee made the following report:

(To be inserted no. 4.)

Which was read, and ordered for to-morrow.

The Senate received from the House their adoption of certain resolutions, before passed by the Senate, suspending the operation of the revenue laws for the present year.

On motion of Mr. Livingston, a bill to be entitled an act to repeal the 34th section, and the last clause of the 6th section of the Charter of the Union Bank of Florida, was taken from the table.

On the indefinite postponement of said bill the yeas and nays were called by Messrs. Brockenbrough and Pelot and were:

Yeas—Messrs. Brockenbrough, Cooper, Pelot and Walker—4.

Nays—Mr. President, Dupont, Edwards, Livingston and McLean—5.

On motion the Senate went into committee of the whole, on said bill. Mr. Pelot in the chair; after some time spent in its consideration, the committee rose and reported said bill amended.

On the receiving of said report, the yeas and nays were called by Messrs. Brockenbrough and Walker, and were:

Yeas—Mr. President, Messrs. Dupont, Edwards, Livingston and McLean—5.

Nays—Messrs. Brockenbrough, Cooper, Pelot and Walker—4.

On motion to adjourn, the yeas and nays were called by Messrs. Dupont and Livingston, and were:

Yeas—Messrs. Brockenbrough, Cooper, Pelot and Walker

Nays—Mr. President, Messrs. Dupont, Edwards, Livingston and McLean—5.

On the motion to concur in the report of the committee of the whole, the yeas and nays were called by Messrs. Brockenbrough and Pelot, and were:

Yeas—Mr. President, Messrs. Dupont, Edwards, Livingston, and McLean—5.

Nays—Messrs. Brockenbrough, Cooper, Pelot and Walker—4.

Mr. Brockenbrough offered the following amendment to said bill, viz:

Section — *Be it further enacted*, That said bonds shall not be sold for more than thirty three and a third percent discount, or for any other thing than gold and silver, to be paid at the time of delivering of the bonds, or the same shall be void.

On which he, seconded by Mr. Pelot, called for the yeas and nays, and were:

Yeas—Messrs. Brockenbrough, Cooper, Pelot and Walker—4.

Nays—Mr. President; Messrs. Dupont, Edwards, Livingston and McLean—5.

The same offered the following amendment:

Be it further enacted, That said bonds shall not be pledged as collateral security for the loan of money, and that if the same shall be so pledged, the same shall become void.

Which he, seconded by Mr. Pelot, called for the yeas and nays, and were:

Yeas—Messrs. Brockenbrough, Cooper, Pelot and Walker—4

Nays—Mr. President, Messrs. Dupont, Edwards, Livingston and McLean—5.

On the question of the decision of the chair, that a bill may be considered engrossed, the yeas and nays were called by Messrs. Brockenbrough and Dupont, and were:

Yeas—Mr. President, Messrs. Dupont, Edwards, Livingston, McLean and Walker—6.

Nays—Messrs. Brockenbrough, Cooper and Pelot—3.

On the passage of said bill, the yeas and nays were called by Messrs. Pelot and Cooper, and were:

Yeas—Mr. President, Messrs. Dupont, Edwards, Livingston and McLean—5.

Nays—Messrs. Brockenbrough, Cooper, Pelot and Walker—4

On motion for an adjournment, the yeas and nays were called by Messrs. Dupont and Duval, and were:

Yeas—Mr. President, Messrs. Brockenbrough, Livingston and Walker—4.

Nays—Messrs. Cooper, Dupont, Edwards, McLean and Pelot—5.

An act to alter and amend the several acts in force respecting judicial proceedings and those respecting appeals and writs of error in civil cases, was again read by sections. On the question of striking out the first section, the yeas and nays were called by Messrs. Brockenbrough and Pelot, and were:

Yeas—Mr. President, Messrs. Brockenbrough and Dupont—3.

Nays—Messrs. Cooper, Edwards, Livingston, McLean and Walker—3.

On the passage of said bill, the yeas and nays were called by Messrs. Brockenbrough and Pelot, and were:

Yeas—Messrs. Cooper, Edwards, Livingston, McLean and Pelot—5.

Nays—Mr. President, Messrs. Brockenbrough, Dupont and Walker—4.

So said bill passed without amendment.

On motion of Mr. Brockenbrough to amend the title of a bill so as to read an act to prevent the collection of debts or the liquidation of the same, by judgment in Middle and West Florida. The yeas and nays were called by him and Mr. Duval, and were:

Yeas—Mr. President, Messrs. Brockenbrough and Walker—3.

Nays—Messrs. Cooper, Dupont, Edwards, Livingston, McLean and Pelot—6.

An act for the relief of George Fisher and William Wyatt, and Giles Stewart his securities, was again read and indefinitely postponed.

The Senate then adjourned until to-morrow.

THURSDAY, March 4, 1841.

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

The Senate received from the House of Representatives the following message:

HOUSE OF REPRESENTATIVES, March 4, 1841.

Be it resolved by the Senate and House of Representatives, That a joint committee of the two Houses be appointed to contract for the printing of the laws of the session, and that they be instructed to report immediately.

Adopted by the House.

Attest.

JAMES H. GIBSON, Clerk.