

THURSDAY, 10th December, 1846.

The Senate met pursuant to adjournment; and a quorum being present, the journal of yesterday's proceedings was read and approved.

Mr. McLean moved a reconsideration of the vote taken on yesterday, refusing to engross for a third reading a bill introduced heretofore by Mr. Lorimer, to be entitled an act to provide for the payment of grand and petit jurors, in the several counties in this State.

On the question of reconsideration, the ayes and noes were called by Messrs. Floyd and Carter, and were as follows:

Yeas—Messrs. Austin, Bird, Broward, Fairbanks, Floyd, Lorimer, McLean, and White—8.

Nays—Mr. President, Messrs. Bradley, Carter, Goodbread, Kelly, McMillan, Priest, Tabor, and Walker—9.

So the motion was lost.

Mr. Carter gave notice that he would, at an early day, ask leave to introduce a bill to be entitled an act to permit Charles H. Cooper to practice law in the courts of this State.

Mr. Fairbanks, from the Judiciary Committee, offered the following report:

The Judiciary Committee, to whom was referred the bill providing for the payment of solicitor's fees, and designating the mode of collecting the same, have had the same under consideration, and

REPORT:

That there exists some doubt whether there is now any law in this State authorizing costs of court to be taxed up against the defendant in criminal prosecutions. As the bill does not provide fully for such cases, the committee deem it better to amend the same by striking out the first and second sections, and leaving that branch of the bill to be incorporated in some more general law. The committee, therefore, report back the bill, striking out the first and second sections.

G. R. FAIRBANKS, Chairman.

Which was received and read, and the bill, with the reported amendment, ordered for to-morrow.

Mr. Bird, from the Committee on Federal Relations, made the following report:

The Committee on Federal Relations, to whom was referred the reports and joint resolutions in relation to the southern boundary of the State of Ohio.

REPORT:

That they have examined with care and interest the difference between the State of Ohio and the State of Virginia, without entering into the merits of this controversy, and hope that a mutual spirit of concession and forbearance may govern them.— And find nothing for any action on the part of the General As-

sembly of this State; and return the same to the Senate, and ask to be discharged from the further consideration thereof.

Respectfully submitted.

DANL. BIRD, Chairman.

Which report was received, read, and agreed to.

Mr. White, from the Committee on Propositions and Grievances, made the following report:

The committee on Propositions and Grievances, to whom was referred a House resolution in relation to the lot purchased by Frederick Hoc of the Commissioner of the Tallahassee Fund, have had that subject under consideration and ask leave to

REPORT:

That they have conferred with the treasurer on the subject and from the facts obtained from him are satisfied that it would be the interest of the fund to pass said resolution and allow the treasurer to make a deed for the lot described on the terms proposed in said resolution. The committee, therefore, report the said resolution without amendment and would recommend its passage; and ask to be discharged from the further consideration of the subject.

All of which is respectfully submitted.

THOMAS M. WHITE, Chairman.

Which was received and read, and the bill reported back ordered for to-morrow.

Mr. Fairbanks, from a select committee, presented the following report:

The select committee, appointed by the Senate relative to the public arms, &c.

REPORT: That they have ascertained that the quota of arms to which this State is entitled, under act of Congress of 1808, has been forwarded by the Government, and consist of the following arms, &c.

List of arms received by R. A. Shine, Quartermaster General of Florida, from the Department at Washington, through N. W. Walker, collector port of St. Marks, viz:

Four six pounder brass guns, 4 stock trail carriages, four six pounder sponges and rammers, 2 4 pounder worms and staves, 4 6 pounder sponge buckets, 4 6 pounder tin buckets, 4 6 pounder linestocks, 4 6 pounder port fire stocks, 4 6 pounder port fire cases, 4 6 pounder port fire shears, 4 6 pounder tube pouches, 8 navre sacks, 4 priming wires, 4 vent pouches, 4 priming horns, 4 gimblets, 4 vent covers, 4 tangent scales, 8 thumb stalls, 4 prolonges, 8 sponge covers, 8 trail handspikes, 4 sets of artillery harness for 4 horses, 4 ammunition chests, 300 muskets and bayone's, browned barrels, 2d class; 300 wipers, 300 screw drivers, 300 ball screws 30 spring vices, 300 spare flint caps, 300 cartridge boxes, 300 bayonet scabbards, 300 cartridge box belts and plates, 300 bayonet bolts with frogs, 300 picks and brushes, 300 gun slings, 125 Halls rifles with bayonets, 125 bayonet scabbards, 125 wipers, 125 screw drivers, 13 spring vices, 13 bullet moulds, 125 ball pouches, 125 flasks, 125 waist belts, 125 picks and brushes, 13 ball screws, 600 pistols, 300 holsters, 300 pistol cartridge boxes, 300 sabre belts and plates.

That a portion of the same, amounting in value by invoice to the sum of \$7,524 75, were shipped from the city of New York, by the ordnance agent at that place of the United States, by the brig Gen. Wilson, for the port of St. Marks, addressed to His Excellency the Governor of this State, and consigned to the collector of customs at St. Marks.

The vessel containing these military stores was unfortunately wrecked at Key West during the late gale, and a portion of the property on board injured and destroyed.

This property, with other goods of said vessel, was reshipped from Key West to St. Marks, by the agent of the underwriters, and considerable expense incurred by such reshipment.

Upon the arrival of this portion of the said munitions at St. Marks, the collector at St. Marks, to whom the same were consigned, was requested by the agent of all concerned in said vessel and cargo to sign the average bond, who declined doing so, for want of authority, or to bind the United States for any contribution on said account.

The average bond was then presented to His Excellency the Governor, who, deeming it extremely important to the safety and interests of a country so exposed as ours, especially during the continuance of hostilities with a neighboring power, for the purpose of obtaining immediate possession of these arms, consented to sign the same, relying upon the prompt action of the Government to assume and arrange said matter without expense to this State.

Your committee entertain no doubt of the legal liability of the Government to pay the expenses which have accrued upon such property; and it is expressly stated in one of the letters accompanying said shipment of arms, that "all the necessary expenses of transportation is made payable, upon evidence from the collector, that the stores have been delivered in good order." For further consideration of the legal questions involved in this matter, the committee refer to the able opinion of the Attorney General of this State, given to the committee upon the above statement of facts, as follows:

ATTORNEY GENERAL'S OFFICE, }
December 10th, 1846. }

Sir:—Upon the statement contained in yours of the 9th instant, I cannot perceive that any legal liability rests on the State of Florida to pay the general average assessed on the arms shipped by the General Government on the Gen. Wilson, and intended for the use of the State. The arms were the property of the United States, and consigned to their agent at St. Marks, whose duty it would have been, upon their reception, to have delivered them to the Governor of the State, free from expense and charge, and taken his receipt. Until this should be done, the State had no property in them, and incurred no responsibility in their preservation from shipwreck, or loss in any other way. The act of Congress of 1838, directs the quota of arms to which each State may be entitled, "to be transmitted" by the General Government; and the letter of Mr. J. W. Jones, Military Store-keeper, of 15th October, to the Collector at St. Marks, enclosing an invoice of a portion of the arms, instructs him, that "all the necessary expenses of transportation is made payable by me upon evidence from you that the stores have been delivered in good order." As these arms had not been delivered to the State, nor shipped at its risk, but remained the property of the United States when the liability for contribution attached, it was discretionary with the General Government either to permit them to be sold to pay the average, and ship others to supply their place; or by paying, or securing to be paid, (by its agent giving the usual bond,) the amount for which they were liable, to have entitled its agent at St. Mark's to receive them from the master of the vessel that they might be delivered to the Governor.

In this case, the agent of the General Government, who was the consignee, having refused to pay or give bond to respond in the amount of average when it should be adjusted, the master of the vessel had *a lien* upon the arms, under which he could retain, and sell them to pay it. The rule of law in cases of this kind is, that the master of the vessel has a *lien in rem*, and cannot be compelled to deliver the goods shipped to the consignees, until the average is paid or secured by bond. The fact that the arms were the property of the United States makes no difference: for the General Government, although no remedy *in personam* exists against it for contribution, is equally with an indi-

vidual, liable therefor; and the refusal to pay it will subject its property, like that of an individual, to the lien *in rem* and sale.

It was, doubtless, with a view to avoid the enforcement of this lien, and to obtain without further delay the quota of arms to which Florida is entitled, that the Governor interposed and gave the bond required, before the arms would be delivered. Had he remained inactive, they would necessarily have been sold at an immense sacrifice, and; judging from the obstacles and difficulties heretofore experienced, the State subjected to great delay before another shipment would have been made. In view, therefore, of the circumstances of the case, and the great advantage which the General Government will derive from the preservation of these arms from an almost total loss, and their being made to fill their original destination, thereby avoiding the expense of transmitting an additional supply, I feel that, should the State authorize the payment of the average out of its Treasury, it will be promptly refunded by the General Government.—Should, however, the General Assembly be unwilling to incur any responsibility in the premises, I would suggest that the arms be returned to the master of the vessel, and the bond given by the Governor cancelled. If I have been properly advised of the facts, this may be done without difficulty.

Respectfully,

JOSEPH BRANCH.

To Hon. G. R. FAIRBANKS,
Chairman of Select Committee. }

Your committee are of opinion, that under the circumstances of the case, the course pursued by the Governor was necessary and proper, in providing at once for the defence of the State, by obtaining possession of these arms without further delay, and looking to the Government for a prompt assumption of these expenses; but inasmuch as it will probably require a considerable period of time to arrive at the amount of the contribution to be paid upon these arms, and to go through with the necessary forms for obtaining a reimbursement of the same, your committee deem it proper that the Governor should be authorized to advance from the contingent fund such amount as may be required, and be instructed to take immediate steps to have the same repaid by the Government. The amount is estimated at from fifteen hundred to two thousand dollars.—Your committee report the following resolution, to meet the case presented:

Resolved, by the Senate and House of Representatives, in General Assembly convened, That the Governor of this State be, and he is hereby, authorized to draw his warrant upon the treasury of this State, to be paid out of the contingent fund, for such sum or sums as may be necessary to pay the share or proportion to which the arms and accoutrements forwarded for the use of this State by the Government of the United States, by the brig Gen. Wilson, may or shall be liable for general average; and that the Governor be required to take immediate steps to procure the reimbursement of the sums so advanced by him from the Government of the United States.

G. R. FAIRBANKS,
Chairman Select Committee.

Which report was received, and the resolution reported read the first time, and ordered for to morrow.

The Senate received from the House the following bills which had passed in that body, viz:

A bill to be entitled an act to admit George W. Stewart to practice law in the several courts in this State; also,

A bill to be entitled an act to admit Wilkinson Call to practice law in the several courts in this State; also,

A bill to be entitled an act to regulate pilotage at the port of Cedar Keys; also,

A bill to provide for holding extra terms of the circuit courts ; also,

A bill to be entitled, an act to fix permanently the County site of Calhoun county : also,

A bill to be entitled an act to alter and define the boundary lines of Marion county ; also,

A bill to be entitled an act to declare the river Miami a navigable stream ; also,

A bill to be entitled an act to extend the time of making election returns in Monroe and Dade counties ; also the following preamble and resolutions adopted by the House, to wit :

Preamble and resolution for clearing out the Oclawaha river ; also,

Resolution to go into the election of Comptroller and Treasurer on Tuesday next.

Which several bills and resolutions were read the first time and ordered for to-morrow.

The House returned to the Senate a bill to be entitled an act so to amend the constitution of this state as to extend to all free white male inhabitants, being citizens of the United States who shall have resided in the State one year the elective franchise, accompanied by the following message :

HOUSE OF REPRESENTATIVES, Dec. 16, 1846.

Hon. President of the Senate :

Sir—The House have passed Senate bill to be entitled an act so to amend the Constitution of this State as to extend to all free white male inhabitants being citizens of the United States who shall have resided in the State one year the elective franchise, with the following amendment, to wit : Strike out the words "and who shall be enrolled in the militia thereof, (unless by law exempted from serving in the militia,") in the 12th, 13th and 14th lines.

The concurrence of the Senate in said amendments is requested.

Respectfully, your obedient servant,

M. D. PAPY, Clerk Ho. Rep.

Which message and proposed amendment were read.

The House also returned a bill to be entitled an act to authorize Reason F. Swilley, administrator of Calvin E. Swilley, deceased, to sell the real estate of said deceased at private sale, which had passed in the House without amendment ; also,

A bill to be entitled an act to authorize Jesse Coe to establish a ferry across the Apalachicola river, lost in the House.

ORDERS OF THE DAY.

A bill to be entitled an act to provide for the payment of jurors, being the unfinished business of yesterday, came up on its passage. Mr. Floyd offered the following as an amendment:

Section 1. *Be it further enacted*, That this act shall not be enforced within the county of Franklin ; nor shall said county

contribute to the payment of other counties; and that the law now in force be, and the same is hereby still continued in said county. There not being an unanimous vote in favor of said amendment, the same was lost.

On the question, "Shall this bill pass?" the vote was as follows, viz:

Yeas—Mr. President, Messrs. Bradley, Carter, Fairbanks, Goodbread, Kelly, McLean, McMillan, Priest, Tabor, Walker, and White—12.

Nays—Messrs. Austin, Bird, Broward, Floyd, and Lorimer—5.

So the bill passed—with the title as stated. Ordered, that the same be certified to the House of Representatives.

Mr. Lorimer obtained leave to spread the following protest on the journal:

The Senator from Leon votes against the bill introduced by the Senator from Columbia for the payment of jurors, for the reason that he believes it would operate unequally and unjustly on those counties of the State, which now pay the largest amount of taxes. Leon county for instance, will have to pay by the operation of that bill, an increased tax of not less than eighteen hundred dollars, and will receive back in payment to its jurors eight hundred and twenty-five dollars. Such a law will be much more objectionable to the large counties, than the one which now exists.

The Senator from Leon wishes to see a law enacted for the payment of jurors, but would have such a law as will operate justly and equally on each and every county of the State.

A bill to be entitled an act to alter the southern boundary line of Benton county, and to establish the line dividing Hillsborough and Benton counties, was read a second time, and laid on the table.

A bill to be entitled an act so to amend the constitution of this State, as to make the sessions of the legislature biennial, instead of annual, with the amendments reported on yesterday, was read the second time, the amendments adopted, and the bill ordered to be engrossed for to-morrow.

The Senate took a recess until 3 o'clock, P. M.

3 o'clock, P. M.

A quorum being present, the Senate proceeded with the
ORDERS OF THE DAY.

A bill to be entitled an act to authorize Wilkinson Call, to practice law in the several courts of this State, was read a second time and laid on the table. A bill to be entitled an act giving a lien to steam boat men navigating the Apalachicola river, was read the second time. Mr. Floyd moved to amend the bill by inserting

"all lighters running in the bay of Apalachicola," after the words "Steam boats and other water crafts" wherever those words occur in the bill, which amendments were concurred in, the consideration of the bill postponed for the present and the same ordered to be printed.

A bill to be entitled an act to provide for the sale of lands granted to the State for the purposes of internal improvement was read a second time by the title, and seventy-five copies ordered to be printed.

A bill to be entitled an act to provide for the filling vacancies in boards of county commissioners, was read the second time and ordered for to-morrow.

A resolution in relation to captain William H. Payne's company amended by the House, was taken up, the amendments concurred in, and the same ordered to be certified to the House.

A Bill to be entitled an act for the relief of persons unjustly sued in the circuit courts of the State of Florida, was read the third time and on the question "shall the bill pass?" the vote was as follows:

Yeas—Messrs. Austin, Bird, Bradley, Broward, Lorimer, McLean, Tabor, and Walker—8.

Nays—Mr. President, Messrs. Carter, Fairbanks, Floyd, Goodbread, Kelly, McMillan, Priest, and White—9.

So said bill was lost.

Preamble and resolution from the House, requesting the Governor to transmit to our Senators and Representative in Congress, copies of the resolutions in relation to the Seminary lands &c., adopted by the last General Assembly, was read the third time and adopted, ordered that the same be certified to the House.

Preamble and resolution from the House, relative to the establishment of a complete Educational system, was read the third time and adopted with sundry amendments; and ordered to be certified to the House.

A bill to be entitled, An act to alter and change the name of Theodora Caroline Trezvant, was read the third time and upon the question "shall this bill pass" the vote was as follows:

Yeas—Mr. President, Messrs. Austin, Bird, Bradley, Broward, Carter, Fairbanks, Floyd, Goodbread, Kelly, Lorimer, McLean, McMillan, Priest, Tabor, Walker and White—17.

Nays—None.

So the bill passed with the title as stated.

The following communication was received from the Comptroller, viz:

COMPTROLLER'S OFFICE,
Tallahassee, December 16th, 1846.

To the Hon. President of the Senate:

I respectfully submit the accompanying statement, showing "the nature

and number of criminal prosecutions throughout the state," returned to this office, agreeable to a Resolution of the Senate of the 14th inst.

Very respectfully, Your Ob'd't servant,

N. P. BEMIS, Comptroller.

(For statement referred to see Appendix.)

Which was read and referred to the committee on claims and accounts.

Having gone through with the orders, the Senate adjourned until to-morrow 10 o'clock.

FRIDAY, 18th December, 1846.

The Senate met pursuant to adjournment, and a quorum being present the journal of yesterday's proceeding was read and approved.

Mr. Floyd pursuant to previous notice introduced the following bill to wit:

A bill to be entitled an act to amend an act giving a lien to mechanics, overseers and others, which was read the first time and ordered for to-morrow.

Mr. Austin obtained leave to have the following protest spread upon the journal, viz:

The undersigned, Senator from the county of Gadsden, claims his privilege of having his protest spread at large on the journals of the Senate, against the bill entitled "an act to authorize the payment of Jurors," as passed by a vote of the Senate on yesterday.

Because, it is unequal in its operation, as it is believed that the jury fees of a large number of the counties of this state will amount to more than the revenue which they pay into the state treasury; and consequently the burden of supporting the expense of state government must fall upon a few of the larger counties of the state.

Because, it is irregular, inasmuch as it provides that the clerks of the respective counties, shall certify the accounts of the jurors, which, "when approved by the Judge of the circuit court, shall be redeemable by the collectors of taxes, in the payment of taxes, or in cash, at their certified value," thereby giving to the clerks and judges, the power of auditing public accounts, and to the collectors the power of paying them. Which is in direct conflict with the laws defining the powers and duties of the Comptroller and Treasurer.

Because, it is impolitic, inasmuch as it opens a door for speculation and imposition upon the Treasury Department.

And, because, it is unjust, inasmuch as it creates a favored class of creditors, who have a summary and extraordinary mode provided for the liquidation of their accounts, and can arrest the public money before it reaches the treasury; whilst all other