

Nays—Messrs. Aldrich, Brown, Burritt, Costin, Forward, Moseley, Sanderson, J. M. Smith, Tweed, Watts—10.

Said motion was lost.

On motion of Mr. Forward, the rule was waived, and he allowed to move that the House resolution, relative to the adjournment *sine die* of the General Assembly on the 10th instant, be taken from the table, and placed among the orders.

Which motion prevailed.

Said resolution was read a second time.

Mr. White moved to amend by inserting "12th" in lieu of "10th."

On which the yeas and nays were called for by Messrs. Forward and Floyd, and were:

Yeas—Mr. President, Messrs. Aldrich, Austin, Brown, Crawford, Forward, Sanderson, J. M. Smith, Tweed, Watts, White—11.

Nays—Messrs. Avery, Burritt, Costin, Floyd, Ghent, Lorimer, Moseley, D. J. Smith—8.

Said motion prevailed.

Said resolution was, on motion, passed over informally to be called up at any time at the will of the Senate.

The following communication from the Comptroller was read:

COMPTROLLER'S OFFICE, January 2, 1849.

Honorable President of the Senate:

SIR:—I have the honor to enclose herewith an estimate of the income and expenditure of this State for this and the next fiscal year, in accordance with resolution passed by the Senate the 1st instant.

I am, &c., very respectfully,

SIMON TOWLE, Comptroller.

On motion of Mr. Forward, ordered that 250 copies of the accompanying documents be printed.

On motion of Mr. Sanderson, the rule was waived, and he allowed to introduce the following preamble and resolutions:

WHEREAS, a Rail Road is about to be constructed from the St. Mary's River, on the Atlantic Coast, to Cedar Keys on the Gulf, thereby rendering it highly important that every facility to commerce should be afforded at that point, as a port: *And whereas*, the nearest port of entry and delivery is St. Marks, a distance of a hundred miles from Cedar Keys: *And whereas*, great inconvenience and delay is now occasioned, without any corresponding good to the citizens residing in that section of country, and doing business at that point, in consequence of the port of Cedar Keys not being a port of entry and delivery. Therefore

*Be it Resolved by the Senate and House of Representatives of the State of Florida, in General Assembly convened*, That our Senators and Representative in Congress be requested to procure the establishment of a port of entry and delivery at Cedar Keys, on the Gulf of Mexico, situate in Levy county.

*Be it further Resolved*, That certified copies hereof, signed by the proper officers of the General Assembly, be transmitted by the Governor to our Senators and Representative in Congress.

Which were read the first time, the rule waived, read a second and third time by their title, and passed.

Ordered to be certified to the House.

The following communication was transmitted to his Excellency the Governor:

HOUSE OF REPRESENTATIVES, January 1, 1848.

To His Excellency W. D. MOSELEY, Governor, &c.:

SIR—We have the honor to inform your Excellency that at a Joint meeting of the General Assembly, held this day, for the purpose of electing an United States Senator, and Solicitors for the several Judicial Circuits of this State, Mr. Jackson Morton, of Escambia county, was declared duly elected Senator to the Congress of the United States;

Mr. John P. Sanderson, of Columbia county, was declared duly elected Solicitor for the Eastern Judicial Circuit;

Mr. James Landrum, of Walton county, was declared duly elected Solicitor for the Western Judicial Circuit;

Mr. Samuel B. Stephens, of Gadsden county, was declared duly elected Solicitor for the Middle Judicial Circuit;

And Mr. Ossian B. Hart, of Monroe county, was declared duly elected Solicitor for the Southern Judicial Circuit of this State.

Respectfully,

C. W. DOWNING,

Secretary Senate.

W. B. LANCASTER,

Clerk House of Representatives.

On motion of Mr. White, the Senate adjourned until to-morrow, 10 o'clock, A. M.

WEDNESDAY, January 3, 1849.

The Senate met pursuant to adjournment.

Rev. Mr. Choice officiated as Chaplain.

A quorum being present; on motion of Mr. Aldrich, the reading of the Journal was dispensed with.

On motion of Mr. Sanderson, the rule was waived, and he allowed to introduce a bill to be entitled, An act to provide for the payment of the salary, travelling and other expenses of the Register of the Public Lands, out of the public moneys in his hands;

Also, a bill to be entitled, An act in relation to the Comptroller's Office;

Which were read the first time, and ordered to a second reading to-morrow.

Mr. Costin presented the memorial of certain citizens of Duval county, which was read, and referred to a Select Committee, consisting of Messrs. Costin, Forward and Tweed.

Mr. Crawford offered the following, which was adopted:

*Resolved*, (the Senate concurring,) That the General Assembly proceed, on Friday next, 12 o'clock, M., to the election of Attorney

General, Secretary of State, Comptroller, Treasurer, Register, and Clerk of the Supreme Court.

Mr. Floyd, from the Committee on Corporations, presented the following Report :

The Committee on Corporations, to whom was referred a bill to be entitled, An act to incorporate the Florida and Georgia Rail Road Company, have had the same under consideration, and report the same back, with an amendment.

R. J. FLOYD, Chairman.

Mr. White, from the Committee on Taxation and Revenue, presented the following Reports :

The Committee on Taxation and Revenue, to whom was referred a bill to be entitled, An act providing for the purchase, on the part of the State, of lands offered for sale for taxes,

#### REPORT :

That they have examined said bill, and have instructed me as Chairman, to report the same back, with the following amendment, to wit:—Strike out in the second line of the fourth section the word "three," and insert *one*; strike the *s* off the word years—so as to make it read one year—and ask to be discharged from the further consideration of the subject. T. M. WHITE, Chairman.

The Committee on Taxation and Revenue, to whom was referred a bill to be entitled, An act amendatory of the several acts now in force in relation to the assessment and collection of the Revenue,

#### REPORT :

That they have examined the subject, and have come to the conclusion that the Revenue would be more certainly collected and paid into the Treasury, by imposing both the duty of Assessor and Collector in the poorer counties on the Sheriffs of such counties. They therefore report a substitute for said bill, and ask to be discharged from the further consideration of the subject.

T. M. WHITE, Chairman.

The Committee on Claims and Accounts, to whom was referred the petition of Craven G. Fife, Clerk Circuit Court of Jefferson county, asking the General Assembly to make provision for the payment of his account, amounting to \$23 93; also, another petition of the said Fife and James R. Tucker, Sheriff of the county aforesaid, asking that provision be made for certain other accounts,

#### REPORT :

That they have carefully examined the subject, and find that the account alluded to in the first petition, was for fees in cases of the State vs. Henry Popell, and the State vs. George Moore, for assault and battery, and for issuing subpoenas and swearing witnesses to go before the Grand Jury, Fall Term of said Court, 1846. This account was allowed by Judge Douglass. The Comptroller has felt it his duty to disallow the charges for the fees in cases of indict-

ment, because the law requires that these fees shall be paid by the prosecutor; the items for issuing subpoenas, and swearing witnesses, were suspended for further information. The items of Clerk's fees in the account alluded to in the other petition was for fees in cases the State vs. John Stafford, and the same vs. W. Anderson, indicted for assault and battery, at Fall Term, 1848, amounting to \$10 90, disallowed by the Comptroller, for the reason that the prosecution failed, whereby the prosecutor became liable. The accounts of the said James R. Tucker, Sheriff, are for fees in the aforesaid cases of the State vs. Popell and Moore, amounting to \$12 58, disallowed by the Comptroller for the same reasons which compelled him to disallow the accounts of the said Tucker. Although the law does not justify the Comptroller in the allowance of such charges against the State, yet your Committee are satisfied that they are just and equitable, and ought to be paid. They therefore report a bill to be entitled, An act for the relief of Craven G. Fife and James R. Tucker, and ask to be discharged from the further consideration of the subject.

THOMAS M. WHITE, Chairman.

Mr. Burritt, from the Judiciary Committee, presented the following Report :

The Committee on the Judiciary to whom was referred the Resolution, that the election of Judges for the several Circuits shall be held on Wednesday, the 3d day of January, 1849, with instructions to said committee to report at an early day, respecting the propriety of electing Judges at the present session of the General Assembly, have had the same under consideration and have instructed me to

#### REPORT :

That by the 12th section of the 5th Article of the Constitution it is provided, that "at the expiration of five years;" from the first session of the General Assembly, Judges shall be elected to succeed those elected at the first session.

The language used is plain and explicit. If it is meant that those Judges *may* be elected *before* the expiration of five years, the Constitution has not only failed to express that meaning, but has employed plain and unambiguous language to express quite a different thing. The Constitution *may* not have intended that these Judges should be elected at the expiration of five years, but, that it says so, no one can doubt.

No argument need be used to prove that the Constitution means what it says, until some reasons are presented to show that it means otherwise. The reason presented, (and the committee believe, the only one,) to shew that it means otherwise, is founded in supposed public inconvenience. It is said, the Legislature will not be in session at the expiration of the said five years, *unless* called together for the express purpose of electing these Judges. This is doubtless so. Whether the Convention anticipated this supposed inconvenience or not, no one is able to say—but, if they did, they did not provide against it, by declaring that the election should take place at the ex-

piration of five years from the first session. The inconvenience which is the result of the law, is used as an argument to prove that the law itself has no existence. If, however, the Convention did not anticipate the inconvenience, then no reason is perceived why they should not have intended precisely what they say. It is admitted that what the Constitution says, be it never so explicit, must be disregarded, if it is clearly and beyond doubt ascertained that it means otherwise.

The Committee have been most anxious to give a construction to this clause of the Constitution which would seem most to conduce to public convenience, and without being able to see clearly that the one construction or the other will be productive of serious inconvenience, after much care and anxious deliberation on the subject, and with a sincere desire to arrive at the true meaning and intention of those who framed the Constitution, they are inclined to the opinion that they intended that this power should not be exercised by any legislature before the expiration of five years after the election of Judges at the first session of the General Assembly. The Committee have reason to believe that the people of this State, through their representatives in the Convention, intended to reserve to themselves by constitutional compact and agreement, the full term of five years from and after the first election, within which to ascertain and select talent, probity and wisdom most suitable to fill the Judicial Bench for life or good behavior. They incline to the opinion, therefore, that the constitutional power to elect Judges of the Circuit Courts of this State to succeed those now in office, when their times shall have expired, cannot be exercised by this Legislature at its present session.

S. L. BURRITT, Chairman.

Mr. Floyd, from a Select Committee, reported back to the Senate, House bill to be entitled, An act to require licenses to be taken out by persons and subjects not hitherto taxed, and recommended its passage.

The House returned the following Senate bills and resolutions as passed by the House without amendment, viz:

Bill to be entitled, An act to empower William Newsom, a minor, to assume the management of his own estate;

Bill to be entitled, An act for the purpose of levying a tax in Jackson county, for the purpose of building a Court House in said county;

Bill to be entitled, An act to change the name of Robert Benjamin Smith;

Resolutions relative to the boundary line between Georgia and Florida;

Resolution authorizing His Excellency the Governor to employ a fit person to copy the Laws, &c.;

Ordered to be enrolled.

The following message from the House was read:

HOUSE REPRESENTATIVES, December 19, 1848.

Honorable President of the Senate:

SIR—The House has passed Senate bill to be entitled, An act reducing the salary of the Governor's Private Secretary, with the following amendment:

In section second, second line, after the word Florida, insert the words in "General Assembly convened."

In which the concurrence of the Senate is respectfully requested.

Respectfully,

W. B. LANCASTER,

Clerk House Representatives.

Said amendment was concurred in by the Senate, and the bill ordered to be enrolled.

On motion of Mr. Forward, engrossed bill to be entitled, An act prescribing a general method for the issuing of licenses, and the payment of the tax thereon, was taken from the table, and placed among the Orders.

#### ORDERS OF THE DAY.

House bill to be entitled, An act to encourage and facilitate Internal Improvements, and to authorize and regulate Partnerships for that purpose, was read the second time, and ordered to a third reading to-morrow.

Bill to be entitled, An act amendatory of the several acts of force in this State relative to trading with slaves.

On motion of Mr. Moseley the Senate resolved itself into a committee of the Whole on said bill, Mr. Sanderson in the Chair.

After sometime spent therein, the Committee rose and by their Chairman reported progress, and asked leave to sit again.

Which was granted.

Bill to be entitled, An act to authorize and provide for the election of Register of Public Lands for the State of Florida by the qualified voters within the same.

On motion of Mr. Avery the Senate resolved itself into a Committee of the Whole on said bill, Mr. Tweed in the Chair.

After some time spent therein the Committee rose, and by their Chairman reported the bill back to the Senate with amendments, and asked to be discharged from the further consideration thereof.

Said bill was read a second time.

Mr. White moved to amend by striking out "May" in 4th line of 2d section, and inserting in lieu thereof "October."

On which the yeas and nays were called for by Messrs. Floyd and Costin, and were:

Yeas—Mr. President, Messrs. Austin, Crawford, Lorimer, D. J. Smith, Tweed and White—7.

Nays—Messrs. Aldrich, Avery, Burritt, Costin, Floyd, Forward, Moseley, J. M. Smith and Watts—9.

Said motion was lost.

Mr. Floyd offered the following as an additional section, viz:

SEC. 3. *Be it further enacted*, That in case of death or resignation of the Register as aforesaid, it shall be the duty of the Governor to fill such vacancy by appointment; and the person so appointed shall give the same bond as is prescribed by this act, and be under the same penalties as is now prescribed by law, and who shall continue in said office until his successor be elected and qualified under this act; and that the amount of the bond to be given by the Register of this State shall be in the sum of fifty thousand dollars, and to be approved of by the Governor of this State.

Which was adopted, and the bill ordered to be engrossed for a third reading to-morrow.

Bill to be entitled, An act relating to Auctioneers:

On motion of Mr. Forward, the Senate resolved itself into a Committee of the Whole on said bill, together with House bill to be entitled, An act relating to the mode of appointment and duties of Auctioneers, Mr. Aldrich in the Chair.

After some time spent therein, the committee rose, and by their chairman reported the bills back to the Senate with amendments, and asked to be discharged from the further consideration thereof.

Mr. Tweed offered the following amendment:

SEC. 12. *Be it further enacted*, That hereafter it shall be lawful for any Auctioneer, duly qualified by law to act as such, to sell any lands, goods, wares, or merchandize by deputy; said Auctioneer being held responsible for such sales as if made by himself.

Which was lost.

Mr. Austin moved that said House bill to be entitled, An act relating to the mode of appointment and duties of Auctioneers, be indefinitely postponed.

On which the yeas and nays were called for by Messrs. Moseley and Floyd, and were:

Yeas—Messrs. Austin, Crawford, D. J. Smith—3.

Nays—Mr. President, Messrs. Aldrich, Avery, Burritt, Costin, Floyd, Forward, Lorimer, Moseley, Sanderson, J. M. Smith, Tweed, Watts, White—14.

Said motion was lost.

Mr. Austin moved that the bill to be entitled, An act relating to Auctioneers, be indefinitely postponed.

Which motion prevailed.

Bill to be entitled, An act for the benefit of Craven G. Fife and James R. Tucker, was read the first time, and ordered to a second reading to-morrow.

Bill to be entitled, An act providing for the purchase, on the part of the State, of lands offered for sale for taxes, was read the second time, the rule waived, read a third time by its title, and on the question of its passage, the yeas and nays were:

Yeas—Mr. President, Messrs. Aldrich, Austin, Avery, Burritt, Costin, Crawford, Forward, Lorimer, Moseley, Sanderson, D. J. Smith, Watts, White—14.

Nays—None.

Said bill passed. Title as stated. Ordered to be certified to the House.

House bill to be entitled, An act to require licenses to be taken out by persons, and subjects not hitherto taxed, was read the second time.

Mr. Tweed moved to amend by striking out "court," at the end of the last section, and inserting in lieu thereof "jury."

Which motion prevailed.

Said bill was ordered to a third reading to-morrow.

Engrossed bill to be entitled, An act prescribing a general method for the issuing of licenses, and the payment of the tax thereon, was read the third time.

On motion of Mr. Forward, the words, "with two or more sureties, to be approved in writing by such clerk and sheriff," in the third and fourth lines of the fourth section, were unanimously stricken out.

On the question of the passage of said bill, the yeas and nays were:

Yeas—Mr. President, Messrs. Austin, Avery, Burritt, Costin, Crawford, Forward, Lorimer, Moseley, Sanderson, D. J. Smith, Watts, White—13.

Nays—Messrs. Aldrich, Floyd, J. M. Smith—3.

Said bill passed. Title as stated. Ordered to be certified to the House.

Substituted bill, as reported by the Committee on Taxation and Revenue, to be entitled, An act amendatory of the several acts now in force in relation to the assessment and collection of the revenue, Ordered that 75 copies be printed.

House Bill to be entitled An act to alter and amend the Militia Laws of this State, was read the first time, the rule waived, read a second time by its title, and referred to the Committee on Militia.

House Bill to be entitled, An act to amend an act concerning Roads and Highways now in force in this State, was read the first time, the rule waived, read a second time by its title, and referred to the Committee on Internal Improvements.

House Bill to be entitled, An act for the relief of Nathan S. Watson, John T. Myrick and James Griffin, was read the first time and ordered to a second reading to-morrow.

House Bill to be entitled An act for the relief of the Sheriff and Tax Assessor and Collector of Hillsborough county, was on motion, read the first time by its title and ordered to a second reading to-morrow.

House resolution relative to William H. Sever, was read the first time, and ordered to a second reading to-morrow.

House Bill to be entitled, An act to authorize the people of Waukulla county to select their county site, was read the first time.

Mr. Crawford moved that the rule be waived and said Bill be read a second and third time and put upon its passage.

On which the yeas and nays were called for by Messrs. Floyd and Crawford, and were:

Yeas—Mr. President, Messrs. Austin, Avery, Burritt, Crawford,

Forward, Ghent, Lorimer, Sanderson, D. J. Smith, J. M. Smith, Tweed, Watts, White—14.

Nays—Messrs. Aldrich, Brown, Floyd, Moseley—4.

Said motion was lost.

House bill to be entitled, An act to authorize the administrators of the estate of Micajah Deen to sell real estate at private sale,

Was read the first time, the rule waived, read a second and third time by its title, and on the question of its passage the yeas and nays were :—

Yeas—Mr. President, Messrs. Aldrich, Austin, Avery, Burritt, Crawford, Floyd, Ghent, Lorimer, Moseley, Sanderson, D. J. Smith, J. M. Smith, Tweed, Watts, White—16.

Nays—Mr. Forward—1.

Said bill passed—title as stated. Ordered to be certified to the House.

House bill to be entitled, An act to provide for the election of Judges of Probate by the people, was, on motion, read the first time by its title and ordered to a second reading to-morrow.

Mr. Aldrich, from the Committee on Enrolled bills, presented the following Report :

The Committee on Enrolled Bills beg leave to Report as correctly enrolled, the following bills and resolution, viz :

A bill entitled, An act in relation to the contingent expenses of the Supreme and Circuit Courts of this State and of the Executive Office ;

A bill entitled, An act to employ William Newsom to assume the management of his own estate ;

Resolution authorizing his Excellency the Governor to employ a fit person to copy the laws, &c.

LOUIS ALDRICH, Chairman.

On motion of Mr. D. J. Smith the Senate adjourned until to-morrow 10 o'clock, A. M.

THURSDAY, January 4, 1849.

The Senate met pursuant to adjournment.

Rev. Mr. Choice officiated as Chaplain.

A quorum being present, on motion of Mr. D. J. Smith, the reading of the Journal was dispensed with.

Mr. Avery moved that the Committee on Taxation and Revenue, to whom was referred the bill entitled, An act to prescribe an equal and uniform mode of taxation, and for other purposes, be instructed to report upon said bill at as early a period as is practicable.

Which motion prevailed.

Pursuant to previous notice, Mr. Watts introduced a bill to be entitled, An act to amend the law of attachments in force in this State.

Which was read the first time, and 75 copies ordered to be printed.

On motion of Mr. Forward, House bill to be entitled, An act for

the relief of Occupying Claimants, was taken from the table, and placed among the orders.

On motion of Mr. Aldrich, the bill to be entitled, An act to incorporate the Atlantic and Gulf Rail Road Company, was taken from the table, and placed among the orders.

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

Mr. Sanderson, from the Judiciary Committee, presents the following Minority Report upon the Resolution, "that the Election of Judges for the several Circuits, shall be held on Wednesday the 3d day of January, 1849," referred to the Judiciary Committee, with instruction to report at an early day, respecting the propriety of electing Judges at the present Session of the General Assembly—

#### REPORT :

The undersigned in approaching this subject feels all the embarrassment incident to the peculiar position in which he is placed. The majority of the Judiciary Committee, composed of gentleman of high professional reputation, and whose opinions are entitled to every respect, have on examination, come to the conclusion, that the present General Assembly, have no right under the constitution, at its present Session, to elect the Judges of the Circuit Courts.

The undersigned, however, entertaining views differing from those expressed in the report of the majority of the committee, feels it not only due to himself, but a duty, as a member of that committee, to present those views for the consideration of the Senate.

The portions of the constitution having reference to this subject are as follows: By Art. V. sec. 11, "Justices of the Supreme Court, Chancellors, and Judges of the Circuit Courts, shall be elected by the concurrent vote of the majority of both Houses of the General Assembly." Same Art., sec. 12, declares that the "Judges of the Circuit Courts shall at the first session of the General Assembly, to be holden under this constitution, be elected for the term of five years, and shall hold their offices for that term, unless sooner removed," &c. Also, that "at the expiration of five years, the Justices of the Supreme Court and Judges of the Circuit Courts, shall be elected for the term of and during good behavior."

The difference of expression, contained in this section, to wit: in the first line, "*Judges of the Circuit Court*" only are spoken of, while after the words "expiration of five years," "*Justices of the Supreme Court* and Judges of the Circuit Courts" are again used in connection, the same as in the eleventh section. This difference clearly indicate two separate and distinct Judicial systems. Section eleventh contains a general provision of the constitution, applicable to all elections of said officers, prescribing in general terms the manner of their election without reference to time. The 12th section on the other hand, is more specific in the character of its provisions. It prescribes, in the first place, that "at the first session of the General Assembly, the *Circuit Judges* shall be elected for