

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

the term of five years." Secondly, that "at the expiration of the five years, *Jstauices of the Supreme Court* and Judges of the Circuit Courts shall be elected for the term of, and during good behavior."

In the opinion of the undersigned, therefore, the constitution contemplates and recognises two distinct and separate organizations of the Judiciary—the one *temporary provisional*—for a specific term, preparatory to entering upon the second, which in contemplation of the constitution was to be *permanent*, enduring through all time.

If correct in this view, it follows as a legitimate deduction that at the expiration of the aforesaid term of five years, the present organization ceases, and determines; and consequently, instead of any vacancy occurring in these offices, which could be filled by the Executive, by virtue of the constitutional provision contained in section 15th, art. 3—which authorizes him to fill certain vacancies—these offices have by express limitation in the constitution ceased to exist; and a new and different office has already been provided for by the constitution to take effect and date from the expiration of the said term of five years. It is believed the amendment to the constitution will not vary the case. It is unnecessary to remark that the Executive has no authority to fill by appointment those offices, which are to be, but never have been, filled by the General Assembly. Thus, then if these Judges are not elected at the present session, either the General Assembly will of *necessity* be called together in July, A. D. 1850, for the purpose of electing these officers, or there will be a period of near five months, during which there will be no Judiciary in the State; for the present incumbents cannot hold over till their successors are qualified, as is contended by some, there being no provision in the constitution authorizing them so to hold over. The undersigned regrets that the majority of the committee have not given their views more fully as to the time when those officers could be *constitutionally* elected, and if not, whether a vacancy would occur, and the power of the Executive to fill such vacancy.

The majority report says, "the language" (referring to the expression)—"at the expiration of five years" 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 used 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."

It is evident from the foregoing language that the opinion of the committee is, that the election of those Judges must take place at the precise moment the five years shall have elapsed—consequently the General Assembly *must be in session on the very day* their commissions shall expire, and *elect* the new Judges *on that day* or they cannot be elected at all; for if they can be elected *one day sooner or one day later*, the whole question is yielded. Can this have been the intention of the framers of the constitution? Is it not more reasonable to suppose, they had not so much in view the *precise time when*

the last election should take place as the period *at which* the successors of the old Judges should commence their term of office? And that they meant rather to confide the power of electing these successors to that Legislative body which should happen to be in existence at the expiration of the said five years. As the present Legislature will be in existence at the expiration of said period, can there be a well-founded doubt that the power under the constitution to elect these Judges resides with the present General Assembly—and that, that power may be properly exercised during its present session? Suppose the commissions of the present Judges expired on the 20th January inst., and the General Assembly had by joint resolution, resolve to adjourn on the 10th inst., will any one contend that we should prolong the session till the 20th solely for the purposes of such election? *Or if the General Assembly had continued to meet annually, would any one doubt the power of the Legislature while in session in A. D. 1849, to have elected those Judges?* Would it not have been expected as a matter of course? The undersigned is clearly of the opinion that no question would arise if we were in session under the constitution at its annual session in 1849 instead of 1848.

Let us examine the history of the election of these officers, and see what has been the practice.

During the first session of the General Assembly, judges of the Circuit Courts in the several circuits in the State were elected for the term of five years, as prescribed by the Constitution. Two out of four of these judges thus elected declined to accept the office, and the places thus left vacant were subsequently filled in the manner contemplated by the constitution: first, by appointment of the Executive—and then, by election of the General Assembly. Now, it is provided by the Constitution, in filling vacancies, that the Governor "shall grant commissions, which shall expire at the end of the next session." Has it ever been contended that the General Assembly should wait till the end of the session, to elect the officers to fill these vacancies? On the contrary, the practice has been in such cases to elect them at any convenient time during the session; yet the officers did not take their seats on the bench until after the adjournment of the session. Is it not as reasonable to suppose that a like course should be pursued in electing their successors? Does not a reasonable and fair construction of the constitution sanction such a course.

It is contended by the committee that convenience or economy should have no weight in this discussion. The undersigned, on the other hand, thinks both convenience and economy should receive consideration in the examination. Manifest inconvenience, or extravagant, useless expenditure, should, when it can without manifest wrong, have great force, in forming a correct view of a doubtful provision in the Constitution. The framers of that instrument would, in all its provisions, consider well the convenience and burden upon the people, any such provision would be likely to impose. The ex-

pense and inconvenience attendant upon an extra session of the Legislature, is of too much consequence to the tax payers of this State to be lightly incurred. If the election is delayed, as recommended by a majority of the committee, is not an extra session *necessary*? Such, if their report is properly understood, is by them regarded as *necessary*. Then, it is asked, will an adequate, correspondent good be realized—a good commensurate with the inconvenience and expense. The undersigned can conceive of no good resulting from such a course. The only difference will be, that in point of *time* only. If the election takes place during the present session, the same agents of the people, clothed with all the requisite power, will execute a duty *now*, instead of executing it in July, 1850.

The only reason the committee have adduced in this connection, is based upon the idea, “that the people, 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.” Is this suggestion entitled to such weight or force as to call for the imposition of the inconvenience and expense consequent upon strictly carrying out this view? Let us see. The constitutional convention was held in 1839. Ten years have already elapsed since that instrument was submitted to the people; and if time was required, that period has twice elapsed. Again: if it is contended that it had reference solely to the admission of the State into the Union, and State organization, it is believed by the undersigned, that all that the framers of the constitution had in view is already accomplished. The constitution prescribes certain qualifications as prerequisite and essential for every officer known to the constitution, viz:—The Governor shall have been a resident of Florida *five years*—Senators and Representatives “a residence of *two years*—every voter shall also have resided in the State *two years*. Now, if the election be held at the present session, it takes place eighteen months earlier than those contend for, who adhere to a strict construction of the term, “at the expiration of five years.” It is not reasonable to suppose, that those men who were so particular in requiring these qualifications for officers less important to the constitution, having and exercising a less power over the weal of the commonwealth than the judges, would be willing that men should be selected to hold and exercise the high and important trust confided to the judiciary of the State, without possessing like qualifications in an equal, or even a greater degree than a simple voter. If, then, Judges to be elected shall be required to have the qualifications of a voter, as originally prescribed by the Constitution, before they can take a seat on the bench, nothing will be lost to the State in this respect, in consequence of the election being had at the present session. While on the other hand, the people are saved from the great inconvenience and expense of an extra session, simply for the election of four Judges.

The undersigned conceives, therefore, that a fair and reasonable construction of this portion of the constitution, authorizes the election of these Judges at the present session. Such a construction seems more consistent with the situation of a young State, struggling to sustain the burden incident to her changed condition, and more in accordance with the provisions and spirit of the constitution, and in entire conformity to the experience and practice of the world.

J. P. SANDERSON.

The following messages from the House were read:

HOUSE REPRESENTATIVES, January 3, 1849.

*Honorable President of the Senate:*

SIR:—The House have concurred in Senate resolution “to 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.”

Respectfully,

W. B. LANCASTER,  
Clerk House of Representatives.

HOUSE REPRESENTATIVES, January 3, 1849.

*Honorable President of the Senate:*

SIR:—Messrs. Coleman, Tanner, and Moore have been appointed a joint committee on the part of the House, to act with a similar committee from the Senate, in the examination of the office of Register of Public Lands.

Respectfully,

W. B. LANCASTER,  
Clerk House Representatives.

HOUSE REPRESENTATIVES, January 3, 1849.

*Honorable President of the Senate:*

SIR:—Messrs. Walker, Long, and Coleman have been appointed a committee of conference on the part of the House, to act with a similar committee appointed by the Senate, upon the disagreement as to Senate bill to be entitled, An act relating to Capital Punishments.

Respectfully,

W. B. LANCASTER,  
Clerk House Representatives.

HOUSE REPRESENTATIVES, January 3, 1849.

*Honorable President of the Senate:*

SIR:—The House have passed engrossed Senate bill to be entitled, An act to remove the county site of Walton county, with enclosed amendment, in which the concurrence of the Senate is respectfully requested.

Respectfully,

W. B. LANCASTER,  
Clerk House Representatives.

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

Mr. Aldrich, from the Committee on Enrolled Bills, presented the following report:

The Committee on Enrolled Bills beg leave to report as correctly enrolled,

Resolutions authorizing the Attorney General to file a bill in the

Supreme Court of the United States to confirm and quiet the boundary line between the State of Florida and the State of Georgia ;

A bill entitled, An act to change the name of Robert Benjamin Smith.

LOUIS ALDRICH, Chairman.

#### ORDERS OF THE DAY.

Resolution relative to the election of Judges of the Circuit Courts of this State, was, on motion of Mr. Forward, made the special order for Saturday next.

Bill to be entitled, An act amendatory of the several acts now in force in relation to the assessment and collection of the Revenue, was read the second time, and ordered to a third reading to-morrow.

Bill to be entitled, An act to incorporate the Atlantic and Gulf Rail Road Company, was read the second time.

Mr. Aldrich offered the following additional section, viz :

SEC. 17. *Be it further enacted*, That this act shall not be construed to prevent public or private roads from crossing the track of said Rail Road.

Which was adopted.

Mr. Avery offered the following additional section, viz :

SEC. 18. *Be it further enacted*, That this act shall not be so construed as to prevent the construction of any Rail Road which may be built by the fund for Internal Improvement of the State ; and should any Rail Road be authorized to cross the road hereby authorized to be constructed, the proprietors of the said road shall be allowed such facilities as are necessary to enable them to do so.

Which was adopted.

On motion, the rule was waived, and the bill 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, Brown, Burritt, Costin, Crawford, Floyd, Forward, Lorimer, Moseley, Sanderson, D. J. Smith, J. M. Smith, Tweed, White—17.

Nays—None.

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

Mr. Forward, from the Committee on Engrossed Bills, presented the following report :

The Committee on Engrossed Bills beg leave to report as correctly engrossed,

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 ;

Amendments to House bill to be entitled, An act relating to the mode of appointment and duties of Auctioneers.

W. A. FORWARD, Chairman.

House bill to be entitled, An act relating to the mode of appointment and duties of Auctioneers, was read the third time, and on the question of its passage, the yeas and nays were :

Yeas—Mr. President, Messrs. Avery, Brown, Burritt, Costin, Crawford, Forward, Lorimer, Moseley, D. J. Smith, J. M. Smith, Tweed, White—13.

Nays—None.

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

House bill to be entitled, An act for the relief of Occupying Claimants, 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, Avery, Brown, Burritt, Costin, Crawford, Ghent, Lorimer, Moseley, Sanderson, D. J. Smith, J. M. Smith, Tweed—14.

Nays—None.

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 read the second time.

Mr. D. J. Smith moved to strike out the word "February," in the seventh line of the first section, and insert in lieu thereof "May."

Which motion prevailed.

Mr. J. M. Smith offered the following as an additional section, viz :

SEC. 5. *Be it further enacted*, That before the said Judges of Probate are commissioned, they shall enter into a bond, payable to the Governor or his successor in office, with two or more good and sufficient securities, in such sum and with such conditions as may be approved of by the Judge of the Circuit Court in the circuit.

Which was adopted.

Ordered that the amendments be engrossed, and the bill read a third time on to-morrow.

House bill to be entitled, An act to authorize the people of Wakulla county to select their county site, was read the second time, and ordered to a third reading to-morrow.

House bill to be entitled, An act to require licenses to be taken out by persons, and subjects not hitherto taxed, was read the third time, and on the question of its passage, the yeas and nays were :

Yeas—Mr. President, Messrs. Aldrich, Austin, Avery, Burritt, Lorimer, Sanderson, Tweed—8.

Nays—Messrs. Costin, Floyd, Forward, Ghent, Moseley, D. J. Smith, J. M. Smith—7.

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

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 third time, and on the question of its passage, the yeas and nays were :

Yeas—Mr. President, Messrs. Avery, Brown, Burritt, Lorimer, Moseley, Sanderson, D. J. Smith, J. M. Smith, Tweed, White—11.

Nay—Mr. Floyd—1.

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

Bill to be entitled, An act to provide for the payment of the salary, travelling, and other expenses of the Register of Public Lands out of the public moneys in his hands, was read the second time, and ordered to be engrossed for a third 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 read a second time.

Mr. Sanderson moved to insert after the word "travelled" in 14th line of 1st section, the words "by water."

Which motion prevailed.

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

House bill to be entitled, An act to incorporate the Florida and Georgia Rail Road Company, was read the second time.

Mr. Floyd offered the following amendment, viz:

Add at the end of the 1st section, the words "Provided, that nothing herein contained, shall be so construed as to create this a close or private corporation; but that it shall be free and open to all citizens of the United States to take and hold stock therein, and to sell and dispose of and transfer the same as effectually and as fully as any of the members herein particularly named could or might do."

Which was adopted.

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

Sec. 21. *Be it further enacted,* That nothing herein contained shall be so construed as to allow the said company at any time to engage in banking."

Which was adopted.

Mr. Avery moved that all after the word "State" in 7th line of 16th section, be stricken out, and that there be inserted in lieu thereof, the words "or to prevent any Rail Road from crossing the Road authorized to be constructed by this act."

Which motion prevailed.

Mr. Tweed moved that all after the word "river," in 3d line of 3d section, to the word "company," where it first occurs in the 6th line of said section, inclusive, be stricken out, and that there be inserted, in lieu thereof the words "to any point on the Gulf of Mexico, or to the waters of any navigable stream flowing into said Gulf."

Which motion was lost.

Mr. Avery moved to add the following to the 16th section, viz:

*Provided also,* That nothing in this act contained, shall be so construed as to prevent the building of a Rail Road by other persons or companies from any point on the Apalachicola or Chattahoochie rivers to any point on Pensacola Bay.

Which motion prevailed.

Ordered that the amendments be engrossed and said bill read a third time on to-morrow.

House bill to be entitled, An act for the relief of Nathan S.

Watson, John T. Myrich and James Griffin, was read the second time and ordered to a third reading to-morrow.

Bill to be entitled, An act for the relief of Craven G. Fife and James R. Tucker, 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, Brown, Burritt, Crawford, Floyd, Forward, Lorimer, Moseley, D. J. Smith, J. M. Smith, Tweed, White—15.

Nays—None.

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

Bill to be entitled, An act in relation to the Comptroller's office, was read the second time, and ordered to be engrossed for a third reading to-morrow.

Bill to be entitled, An act to organize the county of Hilaka, was read a second time, and ordered to be engrossed for a third reading to-morrow.

House resolution relative to William H. Sever, 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:

The Senate resumed, in Committee of the Whole, the consideration of said bill, Mr. Sanderson 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, 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. Avery, Burritt, Costin, Crawford, Floyd, Lorimer, Moseley, Sanderson, Tweed, White—11.

Nays—Messrs. Austin, D. J. Smith, J. M. Smith—3.

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

Mr. Aldrich, from the Committee on Enrolled Bills, presented the following report:

The Committee on Enrolled Bills beg leave to report as correctly enrolled:

An act to authorize the County Commissioners of Jackson county to levy a tax for the purpose of erecting a Court House and other necessary public buildings.

LOUIS ALDRICH, Chairman.

On motion of Mr. Sanderson the rule was waived, and he allowed to present the following Reports:

The Joint Committee of both Houses, appointed in pursuance of law to examine the Office of Comptroller, have performed that duty, and

REPORT:

That in the opinion of the Committee, much credit is due to the

present officer for the attention, industry and zeal exercised by him in arranging and reducing this office to system and order. The committee, in the language and in conformity to the requirements of law, further state that the Comptroller "has discharged his duty strictly according to law."

J. P. SANDERSON,  
Chairman of Senate Committee,  
O. M. AVERY,  
WILLIAM A. FORWARD,  
THOMAS M. WHITE.  
JNO. P. BALDWIN,  
Chairman House Committee.  
GEO. E. McCLELLAN,  
JAMES W. BRYANT,  
JOHN COLEMAN.

The Joint Committee of both Houses, appointed in pursuance of law to examine the office of Treasurer, have performed that duty, and

#### REPORT:

That the present Treasurer has performed the duties of the office highly creditable to himself, and with a proper regard to the interests of the State.

The Committee, in accordance with the requirements of the law organizing this office, further certify, that the accounts of the Treasurer for the last fiscal year are regularly stated and balanced, and that there is a balance, and that balance is actually in the Treasury; and that the present officer has, in every respect, performed the duties of his office as required by law.

Which is respectfully submitted.

J. P. SANDERSON,  
Chairman of Senate Committee,  
O. M. AVERY,  
WILLIAM A. FORWARD,  
T. M. WHITE,  
JNO. P. BALDWIN,  
Chairman House Committee,  
GEO. E. McCLELLAN,  
JAMES W. BRYANT,  
JOHN COLEMAN.

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

- An act to change the Southern boundary of Leon county;
- An act relating to fines, forfeitures, costs, and other moneys adjudged to the State;
- An act to authorize the construction of the Magnetic Telegraph, and providing for the protection of the same;
- An act to provide for Seals for the Circuit Courts of this State;
- An act relating to the act of incorporation of the town of Milton;
- An act relating to manufacturing companies;

An act relating to the examination of the Office of Register of Public Lands;

An act to incorporate the Medical Board of Florida;  
Ordered to be enrolled.

The following communication was transmitted to His Excellency the Governor:

SENATE CHAMBER, Jan. 4, 1849.

His Excellency W. D. MOSELEY, Governor, &c. :  
SIR: I have the honor herewith to transmit for the approval of your Excellency the following bills and resolutions, viz:

An act to empower William Newsom to assume the management of his own estate;

An act to change the name of Robert Benjamin Smith;

An act in relation to the contingent expenses of the Supreme and Circuit Courts of this State, and of the Executive Offices;

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

Also, Resolution relative to the boundary line between the States of Florida and Georgia;

Also, An act to authorize the County Commissioners of Jackson county to levy a tax for the purpose of erecting a Court House, and other necessary Public Buildings;

Passed by the two Houses of the General Assembly, and signed by the presiding officers thereof.

Respectfully,

C. W. DOWNING,  
Secretary Senate.

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

#### ESTIMATE,

(Prepared in accordance with Senate Resolution of 1st January, 1849,) of the income and expenses of this State for the fiscal year ending 31st October, 1849, and the fiscal year ending 31st October, 1850.

I. EXPENSES.	Year end-	Year end-	Total.
	ing 31st Oct. 1849.	ing 31st Oct. 1850.	
1. Salaries of officers—			
Executive Department,	\$ 3,900 00		
Judicial do. (Judges, Solicitors and Atto. Gen.)	11,700 00		
Register of Public Lands,	1,000 00		
Military Dep't., (including rent of Armory,)	550 00		
	17,150 00	17,150 00	34,300 00
2. Contingent expenses of the State Gov't,	5,000 00	5,000 00	10,000 00
This is the amount annually appropriated heretofore, and it cannot safely be reduced.			
3. Legislative Dep't—Pay and mileage of members, pay of officers, and contingencies, say	15,300 00		15,300 00

Amount brought forward,	\$37,450.00	22,150.00	59,600.00
4. Printing Laws of this session, (\$196 00 last year,)	200 00		200 00
5. Publishing amendments to the Constitution adopted at the last General Assembly, 12 papers at \$20 each, It is taken for granted there will be no amendments to be published next year.	240 00		240 00
6. Expense of Supreme Court—Per diem Clerk and Sheriff, copying opinions for Printer, and contingencies,	600 00	600 00	1,200 00
7. Expense of enumerating Children, &c., as per act 3d General Assembly, \$584 15 already audited during this year.	600 00		600 00
8. The amount of allowances to individuals to be made by this General Assembly, including exemptions from taxation, say	2,000 00		2,000 00
9. Pay of Jurors and State Witnesses. The amount for the last two terms was \$9912. This item will increase each year, and cannot, it is believed, fall short of this estimate,	10,000 00	10,300 00	20,300 00
10. Fees of Clerks and Sheriffs for certifying the accounts of Jurors and State Witnesses. The average number of accounts certified at the last two terms, was sixty (60) for each term. In twenty-four counties, the number will be for two terms, 2880. If the amount allowed is 15 cents each, the total is	432 00	432 00	864 00
11. Expenses of criminal prosecutions, and the contingent expenses of the Circuit Courts. This item last year was \$7288 90. It will increase, but it is hoped will not exceed the amount here estimated,	8,000 00	8,500 00	16,500 00
12. Printing Reports of the Supreme Court. Last year \$808 was paid. The amount will probably be increased,	850 00	900 00	1,750 00
13. Expense of the Presidential Election for 1848—amount already audited—for mileage &c., of Sheriffs and Electors,	1,298 20		1,298 20
	<u>61,670 20</u>	<u>42,892 00</u>	<u>104,552 20</u>

Total for the two years, one hundred and four thousand five hundred and fifty-two dollars and twenty cents. (See note A.)

II. INCOME.

1. The General Revenue will not, it is supposed, vary much from that of the year 1848. That may be set down, in round numbers, at \$50,000. The amount already paid in is 42,723 03  
The amount outstanding and estimated good is (say) 7,200 00

(See note c.) Total,	49,923 03	50,000 00	100,000 00
2. Auction taxes, licenses, fines, &c., estimated at	2,300 00	2,300 00	4,600 00
	<u>52,300 00</u>	<u>52,300 00</u>	<u>104,600 00</u>

Total income for the two years, one hundred and four thousand six hundred dollars. (See note B.)

(Note a)—The expenditure for the year 1848 was \$54,913 81. The amount here estimated for 1849, exceeds that expense by \$6,756 39. That excess arises principally in the estimate for the payment of Jurors and State Witnesses. It will be recollected that the law for their payment went into operation at the last spring term—and the expense for that term, and a part only of the fall term, was paid during the fiscal year 1848. During each coming year, the expense for the whole of two terms will have to be paid.

(Note b)—The estimate of income from auction taxes, licenses and fines, may be very wide of the mark. There is such confusion and inefficiency in the laws on those subjects, now in force, that there is little or no protection against frauds—and no system, whatever, in their operation. Unless those laws are altered, the amount cannot, by any possibility, exceed that above estimated—it may fall far below. With proper amendments of those laws, the amount might easily be increased one hundred per cent.

It is very possible that the annual income may be materially diminished within the next two years. It has been intimated that the proprietors of some one or more of the large Land grants would abandon all their worthless land, and refuse to pay the tax thereon. This would diminish the revenue to the extent of, say \$3000 per annum.

(Note c)—It may not be amiss to remark that though \$50,000 per annum may appear a small estimate for General Revenue, particularly after the addition of 20 per cent. laid at the last session, yet it is as large as can be safely counted on.

This will, perhaps, appear from the following facts :—The amount of general Revenue for the year 1847, which has been actually collected and paid into the Treasury, (as appears by the Comptroller's Reports of 1 Nov. 1847, and 1 Nov. 1848.) is as follows :

To 1 Nov. 1847,	\$ 6,589 30
To 1 Nov. 1848,	32,874 42—
	<u>\$39,463 72</u>

That is the amount upon which the 20 per cent. is laid  
—and 20 per cent on that amount, is 7,892 74

And gives the total, to be expected at the present rates, \$47,356 46

We have, it is true, within the fiscal year 1848, received into the Treasury the large sum of \$56,832 72; and have nearly or quite paid up all outstanding dues, to the end of the fiscal year 1848. This happy result is owing, not exclusively to the heavy taxation of the past year, but in a great degree to the success in collecting in arrears from former years. The amount of such arrearages collected, is as follows—1845, 236 69  
1846, 5,928 65

Total, \$6,165 34

Of course, this source of income cannot be counted on for future years.

The truth is, that the payment of Jurors and State Witnesses, is, though a righteous act, a very heavy burden. As above shown, it more than absorbs the 20 per cent. addition—and but for the saving to be expected from biennial sessions of the Legislature, would very soon plunge the State in debt.

**SIMON TOWLE, Comptroller.**

January 2, 1849.

FRIDAY, January 5, 1849.

The Senate met pursuant to adjournment.

Rev. Mr. Choice officiated as Chaplain.

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

On motion of Mr. Avery, the rule was waived, and he allowed to introduce a bill to be entitled, An act to authorize William Tenant and John B. Tenant to establish a ferry across Escambia river; which 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, Avery, Burritt, Costin, Crawford, Lorimer, Moseley, Sanderson, D. J. Smith and J. M. Smith—11.

Nays—None.

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

On motion of Mr. Avery, the rule was waived, and he allowed to introduce a bill to be entitled, An act to prevent trespass on the School, Seminary and Internal Improvement Lands, and to recover damages for the use and occupation of the same; which was read the first time, the rule waived, read a second time by its title, and referred to a Select Committee, consisting of Messrs. Sanderson, Avery and Burritt.

On motion of Mr. Avery, the rule was waived, and he allowed to introduce a bill to be entitled, An act relating to the Internal Improvement, Seminary and School Funds; which was read the first time, and ordered to a second reading to-morrow.

The following reports from Standing Committees were presented:

The Committee to whom was referred a bill entitled, An act to amend an act concerning Roads and Highways, now in force in this State:

**REPORT;**

That they have had the same under consideration, and beg leave to report the bill back, with an additional section, and ask to be discharged from the further consideration thereof.

**WM. P. MOSELEY, Chairman.**

The Committee on the Executive Department, to whom was referred the Resolution declaring the term of office of Gov. William D. Moseley would expire on the 1st Monday in October, 1849, beg leave to.

**REPORT:**

That the object of this resolution is to determine whether the term of office of our present Governor has already expired, or whether it continues to the time specified in the resolution. To determine this matter, your committee have not only examined that section of the constitution relating to the subject; but they have also resorted to the Journals of the Convention which drafted the constitution. The section in the constitution respecting this question, after directing that the election for Governor and other officers should be held on the first Monday after the expiration of sixty days subsequent to the date of the President's Proclamation, contains the following language: "The Governor, Representative in Congress, and Members of the General Assembly, shall enter upon the duties of their respective offices immediately after their election under the provisions of this constitution, and shall continue in office in the same manner and during the same period they would have done had they been elected on the 1st Monday in October."—[See Thom. Dig. pp 9.] Now by all the rules of grammatical construction, the framers of the constitution evidently intended by the language used to specify and designate the October preceding the actual election. Now if we examine the Journals of the Convention in connection with this subject this inference is fully sustained. We there find a proposition was made to have the constitution submitted to the people for their ratification in May, 1839, and on its ratification the President of the Convention was to cause writs of election to issue for the 1st Monday in October thereafter. This was amended by substituting the section now contained in our schedule and ordinance previously referred to. Now the ratification of the constitution by the people could not be had before the adjournment of Congress then in session; consequently it was impossible for us to be admitted into the Union until the next session—which commencing in December, would be subsequent to the regular time fixed for holding the elections, viz: the first Monday in October. Now it was evidently the design of the framers of the constitution that the wheels of Government should be put in motion regularly and as speedily as possible; this is evident from both these propositions. By the first it was proposed to avoid the difficulty of having the terms of office commenced from an irregular period, by going into the election at the regular time, though it was prior to our admission into the Union. This same object was obtained by the substitute, as it is there provided that though the election should be held subsequent to the regular period, yet it should be considered as having been held at that time, viz: the first Monday in October. And thus a speedy and regular organization would be had without our electing the different