

Mr. Charles W. Downing, of Duval County, was declared duly elected Secretary of State of this State.

Mr. Simon Towle, of Leon County, was declared duly elected Comptroller of Public Accounts of this State.

Mr. William R. Hayward, of Leon County, was declared duly elected Treasurer of this State.

Mr. Robert S. Hayward, was declared duly elected Clerk of the Supreme Court of this State.

Respectfully,

C. W. DOWNING,
Secretary Senate.

W. B. LANCASTER,
Clerk House of Representatives.

On motion of Mr. Floyd, the Senate adjourned until Monday, 10 o'clock, A. M.

MONDAY, January 8, 1849.

The Senate met pursuant to adjournment.

Rev. Mr. Choice officiated as Chaplain.

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

Pursuant to previous notice, Mr. Sanderson introduced a bill to be entitled, An act to authorize the Register of the Land Office to appoint a Deputy, and for other purposes.

Which was read the first time, and ordered to a second reading tomorrow.

On motion, a committee, consisting of Messrs. Sanderson, White, and Forward, was appointed, to act with a similar committee on the part of the House, to draft a bill providing appropriation for the expenses of the present General Assembly, and to take all necessary action thereon.

The following message from his Excellency the Governor was read:
EXECUTIVE DEPARTMENT, January 8, 1849.

Gentlemen of the Senate

and of the House of Representatives:

The following acts and resolutions passed at your present session are approved, to wit:

An act permanently to locate the county site of Washington county, and for other purposes therein contained;

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 Court, of the Circuit Courts, and of the Executive Offices;

Resolution authorizing the Governor to employ a fit person to copy the Laws;

Resolution relative to the boundary line between Georgia and Florida;

An act to authorize the County Commissioners of Jackson county to lay a tax to build a court house, and for other purposes;

An act to provide for recording marks and brands of cattle shipped from this State, and for other purposes;

An act to authorize the Circuit Court of Washington county to be held at Mossy Hill meeting house;

An act to extend the tenure of office of Register of Public Lands;

An act in relation to the laws now in force in regard to patrols;

An act to change the names of persons therein contained;

Resolution for a quarter section of land for the county site of Calhoun county;

Resolution for a mail route in the county of St. Lucie;

Resolution for a quarter section of land for the county site of Holmes county;

Resolution for a quarter section of land for the county site of Washington county;

Resolution for a quarter section of land for the county site of Benton county;

An act to authorize the construction of the Magnetic Telegraph, and for other purposes;

An act to reduce the salary of the Secretary of the Governor;

An act to examine the office of the Register of public lands;

An act in relation to the town of Milton;

An act to change the southern boundary of Leon county;

An act to provide seals for the Circuit Courts of this State;

An act in relation to manufacturing companies;

An act to incorporate the Medical Board of Florida;

An act to remove the county site of Walton county;

Resolution in relation to the port of Cedar Keys.

Very respectfully,

W. D. MOSELEY.

Also the following:

EXECUTIVE DEPARTMENT, }
Tallahassee, January 8, 1849. }

Gentlemen of the Senate

and House of Representatives:

I hereby nominate G. G. Holt and John Denham, Auctioneers for the County of Wakulla, and John G. Putnam, Auctioneer for the County of Levy.

Very respectfully,

W. D. MOSELEY.

The nomination therein contained, relative to Levy County, was advised and consented to by the Senate.

The following message, and accompanying document, from his Excellency the Governor, was also read:

EXECUTIVE DEPARTMENT, }
Tallahassee, January 8, 1849. }

Gentlemen of the Senate and House of Representatives:

You have herewith transmitted, a copy of a communication from the Register of Public Lands, in relation to the pre-emption law passed at your present session.

If, upon a critical examination of that act, it shall be found defective, it is most earnestly recommended that a supplemental act be passed, without delay, to insure, with reasonable certainty, the object manifestly desired by a large majority of the General Assembly, as well as by their constituents, and which, if attained, it is believed will promote the interests of the great mass of the people, by securing a cheap and permanent homestead, and, at the same time, add to the wealth and prosperity of the State, by increased immigration, and the consequent increase of the revenue by the sale of land, which, under existing laws, must remain many years without being sold, and, of course, of but little value to the State.

Very respectfully,

W. D. MOSELEY.

SIR:—The act which has been passed at the present session, allows pre-emption rights to settlers, at the "minimum price of such land, but does not specify what that minimum shall be.

The act of 1846, relating to Internal Improvement Lands, fixes three minimum prices on said lands, viz: \$2.50 for the first quality; \$1.50 for the second quality; and \$1 for the third quality; "the classification to be made by the Register from the returns of the locating agents, or personal inspection, and notice given of the classification of the lands on the day of sale."

By the act of 1846, relating to Seminary Lands, the Register is required to have each tract appraised previous to offering for sale.

In regard to the former class of lands, I would remark, that it would be impracticable for the Register, (without neglecting, for a long period, all other official duties,) to inspect the lands with such minuteness as to enable him to appraise them; and it would be almost, or quite, as difficult to appraise them properly from the returns of the locating agents.

As to the Seminary lands, I have thought it judicious not to incur the expense of appraising them all at once, but only in such quantities, and immediately before such times as they were to be offered for sale—because the lapse of a short time often brings to bear causes which materially affect the temporary value of, or demand for, lands.

If these views be correct, it will be necessary to alter the mode of classifying Internal Improvement lands, and to have them, as well as the Seminary lands, *all appraised at once*—otherwise, I apprehend, that the difficulty of ascertaining the prices of particular tracts would defeat the great object of the law just enacted—the encouragement of immigration.

Until to-day I did not know the precise features of this law. I feel much reluctance, especially at this late day in the session, to offer any suggestions in reference to a matter which has received the deliberate consideration of the Assembly; but feeling, as all do, a deep interest in the subject, I hope I shall be pardoned for calling your attention to it, and asking you, if you concur with me in opin-

ion, to bring it again before the Assembly, in order that, if they deem it necessary, they may pass a supplemental act.

Very respectfully,

Your obedient servant,

JOHN BEARD, Register, &c.

(Signed)

To Gov. Moseley.

January 6, 1849.

On motion, said message and accompanying document, were referred to a select committee, consisting of Messrs. Aldrich, Avery, and Forward.

Pursuant to previous notice, Mr. Lorimer introduced a bill to be entitled, An act to provide for the payment of services rendered by Overseers of Public Roads in the County of Leon.

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

Mr. Tweed presented the memorial of certain citizens of Franklin County, relative to the time of holding election, &c.

On motion of Mr. Avery, the vote had on the 6th inst., on House bill to be entitled, An act to empower James C. Evans, a minor, to assume the management of his own estate, was reconsidered, and said bill placed among the orders.

Mr. Sanderson offered the following:

Resolved by the Senate and House of Representatives of the State of Florida in General Assembly convened, That the Secretary of State be authorized, and he is hereby required, to furnish each of the members of the General Assembly with a copy of the Journals of the Senate and House of Representatives, and a copy of the acts of the present session to Judges of Probate, Judges and Clerks of the Circuit Courts, Judges of the United States District Court, and Justices of the Peace.

The following reports from standing committees were presented:

The Committee on the Judiciary, to whom was referred a bill entitled, An act to amend an act authorizing the United States of America to purchase real estate in Florida for locations of Arsenal, Dock Yards, Magazines, Forts, &c., passed in 1845, have had the same under consideration, and have instructed me to report the bill back, with the following amendment. S. L. BURRITT, Chairman.

The undersigned, members of the committee to which was referred the resolutions relative to the term of office of Governor Moseley, and to the expediency of the governor elect taking the oath prescribed by the constitution in presence of both Houses of the present General Assembly, differing in opinion from the members of the committee who made a report on the 5th inst., beg leave to present *some* of the reasons for their opinions in the following

REPORT:

Two distinct propositions are presented by the resolutions: The first relates to the term of office of the present Governor. The sec-

and has reference to the expediency of the Governor elect taking the oath of office at the present time. Your committee will examine each in its order.

First, As to the term of office of the present Governor. The constitutional provisions having reference to this subject are in these words: "The governor shall be elected for *four years* by the qualified electors, at the *time* and place where they shall vote for *representatives*; and shall remain in office until a successor be chosen and qualified." Const., art. 3. The 3d section of 4th article of the constitution says the *representatives* shall be chosen on the first Monday in the month of *October*, &c. In the ordinance adopted, "In order that no inconvenience might arise from the organization and establishment of the State Government, it is declared" in case the constitution be ratified by the people, and immediately after official information shall have been received that Congress have approved the constitution and provided for the admission of Florida, the president of the convention shall issue writs of election to the proper officers in the different counties, enjoining them to cause an election to be held for Governor, Representative in Congress and Members of the General Assembly in each of their respective counties. The election shall be held on the first Monday after the lapse of sixty days following the day of the date of the president's proclamation. * * * * and the members of the General Assembly so elected shall assemble on the fourth Monday thereafter at the seat of Government.

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 they would have done had they been elected in *October*.

It will be noticed that the 2d section of 3d article of the constitution declares that the Governor shall be elected for *four years*, * * * and shall *remain* in office until a successor be chosen and qualified, &c.; and that he shall be elected at the time when and the place where representatives are elected. The 3d section of 4th article says the representatives shall be chosen in *October*. The ordinance above quoted says the governor shall enter upon the duties of his office immediately after his election, and shall *continue* in office, in the same manner, and during the same period he would have done had he been elected in *October*.

That the present governor is to *continue* in office four years from some *October*, and to remain in office until a successor is chosen and qualified, the undersigned think admits of no question, (although he was declared by the Speaker of the House upon canvassing the votes for Governor in 1845, to be elected for four years from the 26th May, 1845.) The only doubt which appears to exist is as to which *October* is meant—whether it is the one preceding or subsequent to the election. It is unnecessary for your committee to enter into an argument to show that the *October* preceding the elec-

tion could *not* have been meant, or that the *October* succeeding the election *must* have been meant. This matter was fully discussed by the Judiciary Committee of the House at the first session of the General Assembly, in a report found on the 74th page of the House Journal. Also in a report of the Attorney General of Sept. 8th, 1845.

A resolution reported by the above mentioned committee *in effect* declares that the succeeding *October* was the one from which the term of office was to date. This resolution passed both House and Senate without a vote being recorded against it—without an objection being made to appear on the journals, although several members of the constitution convention were members of this Legislature.

The law passed by the last territorial legislature, in March, 1845, to facilitate the organization of the State Government, also points to the *October* of 1845 as being the proper one from which to date. The proclamation of election issued by Messrs. Ward, Westcott and Brown, a committee appointed by the constitution convention for the purpose, and their certificate of election, coincide in the same view, except in this, that they (the committee) declare the governor was to be, and had been elected to hold his office for four years from the 26th May, 1845, and until his successor was chosen and qualified. Our elections have all been held in accordance with the construction which fixes upon the *October* of 1845 as being *the* *October* referred to in the 5th section of the schedule and ordinance; and the "sovereign people" by their acquiescence, have declared this construction correct.

The resolution reported by the other members of the committee as a substitute for the resolutions referred to, in effect declares that the *October* of 1844 is *the* *October* referred to in the fifth section of the schedule and ordinance. If we adopt this resolution we, by our action, declare all elections held under the present construction void. Every member of the legislature elected since 1845, is therefore illegally elected. Florida has had neither Senate, or House of Representatives since the first General Assembly adjourned.

The gentleman who canvassed the returns for governor, not being the Speaker of a constitutional House of Representatives, had no authority to open and publish them; and consequently we have no authority for saying who is, under the constitution, the governor elect.

The undersigned think it unnecessary to pursue this subject further, but briefly remark, to attempt *now* to put another construction upon the constitution than that which has been received and acted upon, and to act upon this other construction, would produce evils innumerable, and no benefit. It would be to declare that wrong which the people by their action have declared to be right.

The second matter referred to the committee, is the expediency and propriety of the Governor elect taking the oath of office in presence of both Houses of the *present* General Assembly.

Before a person can assume the duties of Governor, the following pre-requisites must be met:

First—He must possess the qualifications required by the Constitution, to wit: He must have attained the age of 30 years, have been a citizen of the United States ten years, or an inhabitant of Florida at the time of the adoption of the constitution, (being a citizen of the United States,) and have been a resident of Florida at least five years next preceding the day of election.

Second—He must have the "highest number of votes" for the office of Governor, and the Speaker of the House of Representatives must so declare.

Third—He must take the following oath or affirmation: "I, do swear or affirm, that I *am duly qualified*, according to the constitution of this State, to exercise the office to which I have been elected, and will, to the best of my abilities, discharge the duties thereof, and preserve, protect, and defend the constitution of this State, and of the United States."

This done, and but one more thing is requisite to enable the Governor elect "to exercise" the office of Governor; and that is, for the term of office of his predecessor to expire.

This done, the mantle of authority is removed from the shoulders of the ex-Governor, to those of the Governor elect, without any thing to prevent it from sitting gracefully upon him, and none will be disposed to question his right of possession.

In the present instance, two of the pre-requisites are declared to exist; constitutional qualifications, and the reception of the highest number of votes.

It remains, then, first, for the oath to be taken; second, for the acting Governor to serve out his term.

That the Governor elect should take the oath of office in presence of both Houses of the General Assembly, seems most meet. It would add much to the impressiveness of the occasion; the fact of his being sworn would thus be matter of record on the Legislative journals—a fitting place for such a record.

There being no session of the General Assembly other than the present, before the expiration of the term of office of the present Governor, it seems to the undersigned to be proper for the Governor elect to take the oath of office "in presence of both Houses of the present General Assembly," at any time which may suit the convenience of the parties.

If the course proposed by the undersigned is pursued, there will be hereafter no clashing of opposing interest or opinions. As on the first Monday of October next, the constitutional qualifications will all centre in and around one person, he will be enabled to enter upon the discharge of the duties appertaining to his office, without opposition from any quarter; and the constitutional question being settled by the precedent established, will enable him to retain the quiet possession of his office until the expiration of his term in October, 1853.

All of which is respectfully submitted.

O. M. AVERY,
LOUIS ALDRICH.

The following reports from select committees were presented:

The select committee, to whom was referred a bill relative to the time of holding the Circuit Courts in the Middle District, report the same back to the Senate without amendment, and recommend the passage of the same.

J. M. SMITH, Chairman.

The joint committee of conference, appointed by the Senate and House of Representatives, to consider the differences of the two Houses upon the bill entitled, An act relating to capital punishments, ask leave to

REPORT:

That, upon consideration and conference, they have agreed upon reporting the bill with the following amendments, and recommend to the two Houses its passage. The amendments proposed are as follows:

Reinstate the first section as it passed the Senate, striking out the 10th, 11th, 12th, 13th, 14th, 15th, and 16th lines, to, and including the word "Judges."

Also substituting for the fourth section, the following:

Be it further enacted, That in all cases where any person has been, or may hereafter be, convicted of any capital offence, and sentence of death passed, the Governor may commute the punishment, substituting imprisonment for not less than one year in every such case, and imposing a fine or whipping, or both, at his discretion.

C. A. TWEED,

Chairman Senate Committee.

Mr. Aldrich, from a select committee, reported a bill to be entitled, An act supplemental to an act entitled an act to grant pre-emption rights to settlers on State lands, passed at the present session.

Which was read the first time, 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, viz:

A bill entitled, An act amendatory of the several acts relating to jurors and State witnesses;

A bill entitled, An act to declare Yellow River, in Walton County a navigable stream;

A bill entitled, An act to authorize and provide for the election of Register of Public Lands;

A bill entitled, An act relating to fines, forfeitures, costs, and other moneys adjudged to the State;

A bill entitled, An act to amend the revenue laws in force in this State;

A bill entitled, An act to amend the revenue law of this State as regards Hawkers, Pedlars, and itinerant traders;

A bill entitled, An act to compel the Judges of the Circuit

Courts to hold the terms of Court at the times and places prescribed by law;

A bill entitled, An act to provide for the increase, investment, safe-keeping, and disbursement, of the common school fund.

LOUIS ALDRICH, Chairman.

ORDERS OF THE DAY.

House bill to be entitled, An act respecting weights and measures.

The Senate resumed, in Committee of the Whole, the consideration of said bill, Mr. Lorimer in the Chair.

After sometime spent therein the Committee rose, and by their Chairman reported the bill back to the Senate without amendment, and asked to be discharged from the further consideration thereof.

Said bill was, on motion, read a second time by its title, and referred to a select Committee consisting of Messrs. Brown, White, and Crawford.

Resolution relative to the election of Judges for the several judicial Circuits of this State on 3d inst., was read.

Mr. Avery moved to strike out "3d" and insert "10."

Which motion prevailed.

Said resolution was, by common consent, passed over informally for the present.

House bill to be entitled; An act to empower James C. Evans, a minor, to assume the management of his own estate, was read the third time, and on the question of its passage the yeas and nays were:

Yeas—Mr. President, Messrs. Aldrich, Avery, Crawford, Lorimer, D. J. Smith, Tweed, White—8.

Nays—Messrs. Brown, Costin, Floyd, Forward, Moseley, J. M. Smith—6.

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

On motion, the petition, this morning presented, of citizens of Franklin County, was referred to a select committee, consisting of Messrs. Floyd, Tweed, and Moseley.

House bill to be entitled, An act relating to the sale of real estate, was read the second time, and referred to the Committee on the Judiciary.

House bill to be entitled, An act to alter and change the time of holding the Circuit Courts in the Middle District, 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. Avery, Brown, Crawford, Forward, Lorimer, Moseley, Sanderson, D. J. Smith, J. M. Smith, Tweed, White—12.

Nay—Mr. Floyd—1.

Said bill passed; title as stated; ordered to be certified to the House,

On motion, the Senate took a recess for thirty minutes.

At the expiration of which time, the session was resumed.

Mr. Floyd moved that the Senate adjourn until to-morrow, 10 o'clock, A. M.

On which the yeas and nays were called for by Messrs. Moseley and J. M. Smith, and were:

Yeas—Messrs. Burritt, Floyd, Lorimer, Sanderson, J. M. Smith—5.

Nays—Mr. President, Messrs. Aldrich, Austin, Ghent, Moseley, D. J. Smith—6.

Which motion was lost.

Mr. J. M. Smith moved that the Senate adjourn until to-morrow, 9 o'clock, A. M.

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

Yeas—Messrs. Burritt, Floyd, Lorimer, Sanderson, J. M. Smith, White—6.

Nays—Mr. President, Messrs. Austin, Ghent, Moseley, D. J. Smith—5.

The Senate adjourned until to-morrow, 9 o'clock, A. M.

TUESDAY, January 9, 1849.

The Senate met pursuant to adjournment.

Rev. Mr. Choice officiated as Chaplain.

A quorum being present, on motion of Mr. Crawford, the reading of the journal was dispensed with.

Pursuant to previous notice, Mr. Lorimer introduced a bill to be entitled, An act to establish an asylum for the relief, comfort and protection of the poor and destitute of Leon county, which was read the first time, and 75 copies ordered to be printed.

Mr. Burritt presented the following petition, which by common consent was ordered to be spread upon the journal:

To the Honorable the Senate and House of Representatives of the General Assembly of Florida:

The undersigned members of the Whig party of Franklin county, would beg leave respectfully to represent to your honorable body their views and wishes regarding the election of Judge for the Western District. They now entertain the same opinion which influenced them in their action when, in 1845, they denounced the democratic legislature of that day because they excluded from consideration in the selection of Judges the qualifications and fitness of those who differed from them in POLITICAL sentiment.

We then deprecated most earnestly that political *ultraism* which could make the judicial ermine the reward for political service; and we cannot now see, in the change of party, any reason to forsake an honest and cherished principle. We believe that to noth-