

do not find, in that Charter of our Rights, any grant of power, after conviction in criminal and penal cases, but the power to reprieve and pardon; and to remit fines and forfeitures, &c. The right to commute punishment, under similar circumstances, would seem to be the exercise of a new power, not therein delegated, and, of course, in violation of the letter, as well as the spirit of the Constitution.

Apart from other objections, which might, it is believed, with propriety be urged to its approval, I feel myself constrained by a sense of duty, and a proper regard for what I believe to be the true intent and meaning of the Constitution, to return the bill, with this objection to its passage into a law, to the House in which it originated.

Very respectfully, W. D. MOSELEY.

On motion, the Senate took a recess for 30 minutes.

At the expiration of which time the Senate resumed its session.

A Committee from the House informed the Senate that there was no further business before that body, and that they were ready to adjourn *sine die*.

The question coming up relative to the bill vetoed by His Excellency the Governor;

The previous question was moved and carried.

The main question, Shall the bill pass over the veto of the Governor? being about to be put,

The President informed the Senate that the said bill had been torn and burnt up by Mr. Floyd, the Senator from Franklin.

Mr. J. M. Smith moved that Mr. Floyd be granted leave to explain his conduct, and to excuse himself.

Said motion was lost.

The President having vacated the Chair, Mr. White offered the following resolutions:

*Resolved*, That the thanks of this Senate be hereby tendered to the Honorable President for the able, impartial and dignified manner in which he has discharged his duties during the present session.

*Resolved further*, That the thanks of the Senate be hereby tendered to the Secretary, and other officers, for the faithful manner in which they have discharged their respective duties.

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

Yeas—Messrs. Aldrich, Austin, Brown, Burritt, Costin, Forward, Lorimer, J. M. Smith, Tweed, Watts and White—11.

Nays—Messrs. Floyd and Ghent—2.

Said Resolutions were adopted.

The President having resumed the Chair, responded in a feeling and eloquent address.

On motion of Mr. Burritt, the Senate adjourned *sine die*.

Attest: C. W. DOWNING,  
Secretary of the Senate.

## APPENDIX.

### Documents Accompanying the Governor's Message.

#### COMPTROLLER'S REPORT.

OFFICE OF COMPTROLLER OF PUBLIC ACCOUNTS,  
TALLAHASSEE, November 1, 1848.

To His Excellency WILLIAM D. MOSELEY, Governor, &c.

Sir: I have the honor to present herewith the report, required by law, of all the acts and proceedings of this office, for the fiscal year ending 31st ult.

I.—The Receipts into the Treasury during said year are the following named sources of revenue, to wit:

1. Auction taxes—for 1847,	-	-	\$982 76
1848,	-	-	780 99—\$1,763 75
2. License taxes—for 1845,	-	-	107 88
1846,	-	-	66 50
1847,	-	-	508 62
1848,	-	-	599 30—1,282 30
3. Fines, forfeitures, costs and fees—			
for 1845,	-	-	20 61
1846,	-	-	986 52
1847,	-	-	956 75
1848,	-	-	495 06—1,858 94
4. General revenue—for 1845,	-	-	108 20
1846,	-	-	4,875 63
1847,	-	-	32,874 42
1848,	-	-	14,005 87—51,864 12
5. Amount of an advance, in 1847, to the United States, refunded,			50 0
6. Profit and loss—for amount premium on sale of draft on New York,			18 61
Total,			56,832 72

II.—The Expenditures are the following, and upon the following accounts, to wit:

1. Legislative Department:		
(1.) Second General Assembly—		
(1846-'7)—pay and mileage of		
Thos. M. White, Senator,		137 00
(2.) Third General Assembly—		

(1847'-8)—per diem and mileage of members,	9,892 60	
Pay of clerks,	1,268 00	
Pay of messengers, &c.,	576 00	
Pay of chaplains,	100 00	
Printing journals and daily slips,	2,092 54	
Printing and publishing laws,	196 00	
Contingent expenses, such as repairs, stationary, &c.,	245 17—14,507 31	
2. Executive Department:		
Salaries of officers,	4,189 52	
3. Judicial Department:		
Salaries of Judges, Attorney General, and Solicitors,	11,104 62	
4. Military Department:		
Salaries of officers,	345 96	
Pay of armorer for 1847,	250 00	
Rent of armory,	318 33— 914 29	
5. Department of Public Lands:		
Salary of Register,	1,000 00	
(The amount paid for the travelling expenses of the Register, \$285 15, included under the head of "Contingent Expenses," below.)		
6. Expense of public printing:		
Publishing Amendments to Constitution,	175 00	
(For other amounts paid for public printing, see above, expenses Legislative Department, \$2,288 54, and "Contingent Expenses," below, \$881 61—total, \$3,170 16.)		
7. Taxes refunded by order of General Assembly,	30 00	
8. Expense of the Supreme Court, (session 1848:)		
1. Per diem of clerk, (43 days, at \$3,)	129 00	
2. do. sheriff, (43 days, at \$3,)	129 00	
3. Servant hire,	32 25	
4. Candles,	90	
5. Stationery,	77 25	
6. Pay of clerk for copies of opinions of judges furnished to Attorney General, for the printer,	112 76—481 16	
9. Expense digesting laws—for amount paid L. A. Thompson, Esq., per act General Assembly,	2,500 00	
(See other expenses under this head, under item "Contingent Expenses," \$2,617 45.)		

10. Expense taking census of children between the ages of 6 and 18, &c., as per act General Assembly.		
Paid tax assessor, &c., of Wakulla county,		13 15
(The accounts for this service from the other counties not yet presented.)		
11. Contingent expenses of State Government:		
1. Public printing—(amendments to Constitution, blanks, proclamations, &c., &c.,)	881 62	
2. Contingent expenses of Capitol, Executive offices, &c.,	1,058 34	
3. Amount paid travelling expenses of Register of Public Lands,	285 15	
4. Distributing laws and journals,	250 00	
5. Digesting laws—expense of printing and binding Digest, &c.,	2,617 45	
6. Fitting up basement rooms in Capitol, paid by order General Assembly,	462 70	
7. Expense running Alabama boundary line,	100 00— 5,655 26	
12. Expense of criminal prosecutions, and the contingent expenses of the Circuit Courts amount, exclusive of solicitor's salaries, paid within this year:		
For Spring term, 1846,	36 75	
Fall-term, 1846,	60 48	
Spring term, 1847,	783 39	
Fall term, 1847,	4,634 10	
Spring term, 1848,	1,774 18—\$7,288 90	
13. The amount of accounts, certified by the Clerks and Sheriffs, for the payment of Jurors and State witnesses, which have been, up to this date, taken up at Treasury, as per Treasurer's report,		855 00
Total,		48,714 21

As to the last item above of expenditure, I remark, that the amount of certificates actually taken up at the Treasury, is not the true amount of expenditure under that head, nor can that amount now be ascertained. The reports of the clerks show a total for the Spring Terms alone, of \$4,304 60. The reports for the Fall Terms are not yet in, but I have reason to believe their amount will exceed that at the Spring Terms. Perhaps it may be set down at \$5,500, making a total at both terms of \$9,804 60. These certificates are to be redeemed by the Tax-Collectors—and the amount, which is, properly, to

be set down as expended, under this head, during the fiscal year 1848, is the amount which the Tax-Collectors shall actually redeem, out of the funds in their hands, belonging to the *revenue for that year*. This amount we cannot ascertain, until the Tax-Collectors shall make a final settlement. They will, in all probability, redeem *all* for the Spring Terms, \$4,304 60  
and (say) *one half* for the Fall Terms, 2,750 00

Making a total of	\$7,054 60	
From which deduct the amount taken up, as above stated, at the Treasury,	855 00	
Leaves this amount to be added to the above,		6,199 60

And makes a total of expenditure, 54,913 81

III. Present financial condition of the State:  
Treasury Certificates reported by the Treasurer to be outstanding this day, \$28,254 86

To meet which we have the following, to wit:—  
General Revenue for 1848, \$61,144 16  
Auction Tax, arrears, &c., estimated at 3,000

\$64,144 16

Deduct estimated amount for collecting, insolvencies, &c., \$10,000

Deduct also this amount likely to be applied in redeeming certified accounts of jurors and state witnesses, as above estimated, 7,054 60

Deduct also amount Revenue 1848, already paid in 14,005 87— 31,060 47

Total amount of means, \$33,083 69

This amount, less the amount for which land has been advertised for sale, is due, and will, no doubt, be paid on the fourth Monday in his month; and it is believed enough will come in to pay off all the liabilities of the State which are outstanding at this date.

I take this occasion to remark that the several Tax Collectors of the State have, without exception thus far, exhibited a zeal and promptness in the discharge of their responsible duties, worthy of all praise. I trust and believe that no one will fail, by the fourth Monday in this month, to pay every dollar due from him at that time.

We have been very successful in the collection of arrears due the State, as will appear by reference to the items (above) under the head of receipts. A few accounts of that class are still open, but are in process of settlement.

The total amount of general revenue assessed for 1848, (\$61,144 16,) is an increase of about 18 1-5 per cent over that of last year. The assessment has fallen off in one or two countries—in two or three it is about the same—but generally there is a considerable increase.

As regards expenditure, the item of criminal prosecutions and the expenses of the Circuit Courts continue large. Under this head the following accounts have been paid during the past year, viz:

1. Fees of Solicitors, for services prior to the passage of the law giving them a salary,	\$720 00
2. Salaries of do. since 1st January, 1848,	2,400 00
3. Costs of clerks, sheriffs, bailiffs, witnesses, rent of Court-Houses, and the contingent expenses of Courts,	6,568 90
4. Pay of jurors and state witnesses, (as per estimate above, being for one term and part of another,)	7,054 60

Total, \$16,743 50

It must continue, under the laws now existing, a large item. As a general rule, we may expect to pay, annually, as follows:

1. Salary of four Solicitors, \$800 each,	\$3,200
2. Costs of sheriffs, clerks, bailiffs, &c., say	6,500
3. Pay of jurors and state witnesses, say,	9,500

Total, \$19,200

Nineteen thousand two hundred dollars—exceeding in amount, any other item of expenditure. This is an item, too, over which this office has little or no control, and which, for that reason, especially requires strict investigation and restraint on the part of the Legislature.

Though perhaps not strictly within the line of my duty, as it is prescribed by law, I venture to suggest the following amendments of the laws now in force affecting the public income and expenditure:

The law, above referred to, for the payment of jurors and State witnesses, needs explanation, at least, if not revision. In some parts of the State, it is contended that they are to be paid by the State, by virtue of a former law, which is not expressly repealed, mileage, in addition to the one dollar per day. The intention of the Legislature was, I believe, different, but the question should be placed beyond doubt. The amounts to be paid the Clerk and Sheriff for certifying the accounts and making reports, and by whom to be paid, should be specified by law.

The amounts paid for stationery, lights, wood, record books, and other contingent expenses of the Circuit Courts, is an expense which should, in all justice, be paid by the respective counties.—If distributed among them it would hardly be felt; whereas it makes a large item of State expenditure.

A great saving of expense will be secured by extending to all

cases of misdemeanor,—except, perhaps a few,—that law which requires a prosecutor, who shall be liable for costs, on failure to convict. A large majority of the criminal cases commenced, now fail, and most of them, for the simple reason, no doubt, that the complaints are frivolous. The State is thus put to enormous expense, and innocent parties injured and annoyed, for no other purpose than to gratify malice. Some provision of law is absolutely needed, to prevent such an evil, and it is believed none will be more effectual than that here suggested.

The law on this subject, now on our statute book, at all events, needs explanation. It has for years, until recently, been altogether disregarded; and now, it is held, by some, that it may be disregarded, and "the State" named as prosecutor, at the discretion of the Grand Jury. I have taken a different view of the matter, believing that the law is universal and obligatory, and was intended expressly to forbid and prevent that very practice of putting the State as prosecutor—and I have disallowed all claims against the State for costs in cases where the law requires a prosecutor. I respectfully suggest, however, that it is proper the sheriffs, clerks and others who have performed services in these cases, in good faith and by compulsion, and without fault on their part, should be paid; and that a resolution to that effect should be passed by the Legislature.

The law authorizing, in cases of felony, the peremptory challenge of twenty jurors, is a source of great expense, without corresponding advantage. That law was adopted in mercy to the accused, but it is in practice a frequent means of defeating justice. As a source of expense to the State, it is very objectionable, particularly while the State assumes the burden of paying jurors. At every trial of a case of felony, the County must be ransacked by the sheriff, to find a sufficient number of jurors—they attend at great expense one, two and sometimes as many as five or six days, only at the end to be, nearly all, challenged and dismissed, while the criminal has been able to cull out of the multitude, just such men as he *knows* will not convict him. I respectfully suggest a great reduction in the number of peremptory challenges to be allowed.

It might, perhaps, be wise, as saving expense, to constitute the Judge of Probate, associated with one or two Justices of the Peace, a Court for the trial of minor criminal offences, committed by slaves. In many States such a law is in force, and is found to work well. It would save great expense, and perhaps promote good order and justice.

Our laws are silent as to who shall pay the costs of prosecution, in the case of a slave convicted of a criminal offence. Generally the party convicted is to pay—in the case of a slave, there is a difference of opinion which a positive law should settle, by declaring whether the State, or the owner of the slave should pay the costs.

It might, perhaps, be well to have a law providing that all the property of a person indicted should be bound for the payment of any costs, fines, &c., which should be adjudged against him, and

that the *capias* or execution should relate back to the date of the indictment.

Provision should also be made that a *capias*, issued for the collection of a fine, should have the force and effect of an execution, in order that the property, as well as the body, of a person sentenced to pay a fine, may be made liable therefor.

The law relating to forfeited recognizances is defective. It would, in my opinion, be a wise amendment, to provide that, on forfeiture, execution should at once issue against principal and sureties—the execution specifying the parties and the amount against each, and being, in effect, joint and several, not to abate by the death or discharge of either party—and to relate back and bind property from the date of the recognizance—with a provision, that on proper cause shown, the execution might be stayed by the Judge, or the forfeiture set aside. As the law on this subject now is, great delay and total loss are almost unavoidable.

The law now directs that reports of all fines, &c., shall be made by the clerks to the Treasurer, and he is the officer to order suits in case fines are not paid over. That law was adapted to the old Territorial system of government, and should be so amended as to conform to the present system, by substituting the Comptroller in place of the Treasurer.

An old Territorial law has been hunted up, whereby some of the counties claim a per centage of the State revenue for the education of poor children. Though I believe that law obsolete, and, in fact, repealed, I suggest it be in terms struck from the statute book.

As regards the *income* of the State, our laws need some revision, particularly as relates to the following subjects:

The laws relating to Auctioneers are exceedingly cumbrous and inconvenient. The mode of appointment, of payment of the tax, of making reports, and several other details, should all be altered. With proper management and restraint, this branch of revenue may be made very productive.

The laws in regard to *Licenses*, are contradictory and unintelligible, and have caused great confusion the past year. A general law is needed, specifying who shall receive the tax, who issue the license, who report, the time of report and of payment. Besides, there are a great number of subjects proper to be taxed and licensed, which now are not so.

The general revenue law needs amendment in the following particulars: A large amount of tax is lost; and great expense incurred, from the fact that many of the lands advertised for sale for taxes, are unsaleable. A law would be very beneficial in preventing these evils, and in promoting the good of the State in other respects, providing for the purchase of such lands by the State.—— The time fixed for the advertisement of lands is by far too long. One month for residents and two for non-residents is long enough. A longer time only retards the collection of the revenue, without

corresponding advantage. — There is a deficiency in that provision of the law, now in force, requiring the Tax Collectors, on pain of losing their commission, to pay into the Treasury all the taxes by the fourth Monday in November. It makes no exception in case of taxes on land advertised, and it fixes no time when the taxes raised by the sale of such lands shall be paid over. It seems to be the understanding, and I suppose the correct one, that property is not to be taxed for the current year, unless it was within the county prior to the first of March. That time should certainly be extended to (say) the first of May, and it might be well to provide for a half tax on property coming in after that date, and prior to (say) the first of October or November. — A law of last session provided that any person, deeming himself illegally taxed, might apply to the Circuit Court for relief. No such right is given to the State, when she may feel herself aggrieved by a decision of the Board of County Commissioners. I suggest the passage of a law for that purpose. — There are a great many persons and species of property and income not now taxed, but which, in all justice, should be, in order to make the taxes more equable. By taxing them, a considerable addition might be made to our revenue, almost without being felt, and, if found in practice to work well, a reduction might be made on property now taxed. — Occasionally taxable property is discovered, which, for some reason, was not assessed for previous years. Provision should be made that, in such cases, any Tax Collector of the proper county, may assess and collect such back dues. — A very large proportion of the taxes upon polls are lost annually, through the insolvencies of the parties. Perhaps some plan may be devised by the Legislature to prevent this.

I have the honor to be, very respectfully, your ob't serv't,  
SIMON TOWLE.

**Treasurer's Report.**

TREASURER'S OFFICE, TALLAHASSEE, }  
November 24, 1848. }

His Excellency WILLIAM D. MOSELEY, Governor of Florida:

Sir:—In conformity with the 6th section of the act of the first General Assembly organizing the office of State Treasurer; I have the honor to submit a "statement of the balance in the Treasury to the credit of the people of this State," on the 31st day of October last, "with a summary of the receipts and payments of the Treasury," during the fiscal year ending on that day.

By reference to account A, herewith enclosed, you will perceive that the receipts during the period referred to, amount to the sum of \$56,832 72

Which, added to the balance reported in the Treasury, November 1, 1847, 3,755 10

Make the gross sum of \$60,587 82

The disbursements for the same period amount to the sum of \$59,259 71

Leaving a balance in the Treasury on the 1st day of November, 1848, of 1,328 10

My account with the Surplus Fund, marked B, shows the sum of \$4,533 73 standing to the credit of that fund, on the 1st day of November last. Since that date, two accounts have been rendered against the State, (one of 808 00, for printing the Laws and the Reports of the Supreme Court; and the other of \$308 75, for the contingent expenses of the Register of Public Lands,) which will reduce this sum, by the balance of the appropriations under these heads—in the one case being \$604, and in the other \$300. No certificates have been issued or payments made for the excess over the respective appropriations. A new appropriation will, therefore, be necessary for these heads of expenditure.

I refer you to account marked C, for a statement of my account, as Commissioner of the Tallahassee Fund. The only resources left to this fund are the eight sections of land granted by Congress "for the purpose of fixing the seat of Government," which, owing to the construction of the act of Congress by the Commissioner of the General Land Office, cannot be made available. An act was passed at the last session of the General Assembly, requesting our Senators and Representative to use their exertions to procure such action by Congress as would authorize the location of those lands "without restriction," &c. No action, however, has been had, and the creditors of this fund are still left in doubt and uncertainty as to when, if ever, they may expect a settlement of their claims. It is to be hoped that some course will soon be adopted for their relief.

I have the honor to be, very respectfully, your ob't. serv't.,  
WM. R. HAYWARD, Treasurer.

A.

The Treasurer in account with the State of Florida.

FISCAL YEAR 1848.

For amount of cash in hand on the 1st Nov. 1847, as reported by B. Byrd, late Treasurer, \$3,755 10

For receipts since that date, to wit:

Revenue 1845,	108 20
Do 1846,	4,875 63
Do 1847,	32,874 42
Do 1848,	14,005 87
Fines, &c.,	1,858 94
Auction tax,	1,763 75
License do.	1,282 30
Premium on exchange on New York,	13 61
Cash refunded by underwriters of Brig Gen. Wison,	50 00—56,832 72

Total, 60,587 82