ATTORNEY GENERAL'S REPORT.

ATTORNEY GENERAL'S OFFICE,
NOVEMBER 11, 1850.

To His Excellency, THOMAS BROWN,

SIR: In compliance with the act of July 23d, 1845, I submit a report to be laid before the Legislature, as the law directs, "with your first message."

With respect to the effect and operation of the laws passed at the last session of the General Assembly and the decisions thereon, upon which I am required to make a written report, very little can be said by me worthy of special notice that will not be embraced in your message, or in the communications and reports made to the Executive by other officers whose peculiar duties have enabled them to observe the effect of that legislation upon the general interests of the State.

The laws passed at the last session, so far as they relate to taxation and revenue, come under the immediate supervision of the Comptroller of Public Accounts, who, besides being acquainted with the details of the whole system, has had ample opportunity, in the last two years, of testing the suitableness and efficacy of the most recent acts, as well as of previous legislation upon this most important and delicate branch of legislative duties. To his report, therefore, and to such suggestions as he may feel it his duty to make, having for their object any improvement, amendment or modification of the system, based, as such suggestions must necessarily be, upon an intimate acquaintance with the nature and operation of such laws as relate to this subject, I respectfully refer, as affording more useful and accurate information than I could possibly give.

A very large portion of the legislation of the last General Assembly had reference to the establishment of Common Schools—the sale of the Sixteenth Sections granted by Congress for the support of Schools—the consolidation of the School Fund, its increase, investment, safe-keeping and disbursement—the pre-emption rights to settlers on State lands, and the classification of such lands. These subjects are all referred to in the report of the Register and superintendent of Public Schools; and the effect and operation of the laws in reference to them, together with the manner in which the duties imposed upon that officer have been performed, and the results of the discharge of those duties, are fully and satisfactorily explained.

It will be seen by reference to the report of the Register, that the act of the last session respecting the increase and investment of the Common School Fund, having confined and limited the investment to stocks of this State and of the United States, has been inoperative, for the very satisfactory reasons assigned by that officer, in producing an augmentation of the fund from those sources. The interest of the money arising from the sale of the Sixteenth Sections,

and of all other money which has been appropriated to the support of Common Schools, is all that is distributable under existing laws among the several Counties for that purpose. There can be no very great increase of the fund, so long as the Governor and Comptroller are restricted to these two modes of investment; and, if it is designed, that the distribution provided for, shall be of any moment or avail in the establishment of Common Schools, some more effectual plan must be devised and resorted to for the investment of money in the Treasury belonging to the Capital of the School Fund. The suggestions and recommendations made by the Register, in my opinion, deserve, as they will doubtless receive, the serious attention and grave consideration of the Legislature.

The subject of internal improvements attracted the attention of the last session of the General Assembly, and constituted no inconsiderable part of the labors of the session. Several acts were passed embracing and contemplating large and extensive improvements, none of which, it is believed, have been completed, or have even as yet been commenced. Some of the acts referred to, require that the route of the works shall be surveyed and the construction commenced within a year from the approval of the law by which they were authorized. It may be that amendments may be deemed necessary, or that some other satisfactory reason can be given for the failure to prosecute any or all of the improvements for which charters were granted or limited partnerships authorized at the last session of the General Assembly.

I beg leave to bring to the notice of the Legislature the peculiar provisions of an act of the last Legislature entitled, "An act to compel the Judges of the Circuit Courts to hold the terms of Court at the times and places required by law." The first section provides, that upon a failure to comply with the requirement thereof a Judge shall be subject to a deduction of one hundred dollars from his salary for each and every default; and upon the certificate of such default by the Clerk of the Court to the Comptroller of Public Accounts, this officer is required by the third section to deduct from the Warrant on the Treasurer thereafter to be issued in favor of the Judge making such default, the sum of one hundred dollars. The Warrant here referred to is, of course, that which is issued for the payment of the salary of the Judges. I regard the provisions of this law, so far as they attempt or aim to affect the salary of the Judges, as palpably in violation of the Constitution of the State. By the Constitution, the salary of the Judges of the Circuit Courts cannot be *less* than two thousand dollars. The law has fixed that precise amount as the salary of the present Circuit Judges; and the Legislature cannot either directly or indirectly diminish it, during their continuance in office; or, under any circumstances, make it less than the Constitutional minimum. As an attempt to carry out the provisions of the law alluded to would, if successful, have such an effect, I would advise its repeal.

I deem it my duty, in this connection, to refer briefly to another law of the State which, in my opinion, requires a slight change in its provisions. When an injunction issues to stay proceedings at law, after verdict or inquest of damages, the party obtaining the injunction is required to enter into a bond payable to the plaintiff in the action at law, and conditioned to pay not only the amount of the judgment but ten per cent. on the same, if the injunction shall be dissolved, or the bill upon which it has been granted shall be dismissed. This right to the recovery of ten per cent. in all cases where the injunction shall be dissolved, however just and well founded the reasons may have been for granting it, is the objectionable feature of this law. The change I would suggest is, that the bond in such cases should be made to conform to that which is required in the case of an injunction granted to stay proceedings at law *before* verdict or inquest of damages—that is to say, it should be a bond conditioned to pay the plaintiff all damages, losses, expenses and charges which he really may have sustained by reason of the issuing of the injunction.

There is no law in this State regulating or providing for the confinement and custody of the insane; and in discharge of the duty which the law imposes upon me, "to make such suggestions as in my opinion the public interest may demand," I respectfully ask that the attention of the Legislature may be called to the necessity, and indeed the humanity, of making suitable provision for the custody and care of such persons. In many of the States hospitals have been created for the reception, cure and care of those who are mentally diseased, and who, by reason of their terrible affliction, are incapable of taking care of themselves. But the class of insane persons to which I particularly refer, and for whose custody, care and support some provision should be made by law, is that class which, in the language of the statutes of some of the States, is composed of those who are described as "persons furiously mad and dangerous to be at large." These are authorized and required by their statutes to be committed by a magistrate to some place of confinement. But I would suggest, that it would be, perhaps, far better if this class, as well as other indigent insane persons, who, though not dangerous, have no friends to support them, could be sent to a hospital in some State of the Union, where they could not only be taken care of in a more appropriate manner than they could be in the common jails of the County and at less expense, but where they would receive that treatment which humanity dictates and which might result in the effectual cure of their malady. It is believed that persons of this description are received in the hospitals of other States, and for a less sum than would be required to be paid for their support in the jails of the country; and that, in addition to this, they are provided in such institutions with everything necessary for their comfort, and receive every attention which their unfortunate condition requires. Should it, however, be deemed more advisable to provide for the restraint

and confinement of such insane persons as are dangerous to the community in the common jails, then it will be necessary to authorize their commitment by magistrates, and to make provision for a suitable compensation to those officers whose duty it may be made to take the responsibility of their care and custody. I will only add, upon this subject, that a recent case in this community, which rendered the confinement of the person absolutely necessary for the safety of the citizens, has given rise to the suggestions here made.

By the Constitution, Art. 5, Sec. 4, the powers of the Supreme Court are vested in, and the duties thereof are to be performed by, the Judges of the several Circuit Courts for the term of five years from the election of the Judges of the Circuit Court, and *thereafter* until the General Assembly shall otherwise provide. This term of five years has elapsed, and it now devolves upon the Legislature to decide whether the system thus provided for shall continue, or a Supreme Court, composed of other Judges, shall be organized.

There are many who advocate the creation *now* of a Supreme Court, to consist of a separate and distinct set of Judges, who have had nothing to do with the causes tried in the Circuit Court, and who, it is contended, are for this reason, and on other accounts, more competent to sit in the Appellate Court. Without examining into the reasons or combatting the arguments which are urged in favor of this measure, all of which are doubtless of great weight, and worthy of the attentive consideration of the Legislature, I would suggest the propriety and expediency of continuing the system with which we commenced. Both systems, as I have been informed, have been tried in other States of the Union, and the preference has been given to that organization which constitutes the Judges of the Circuits, Judges also in the Appellate Court. I would suggest, however, that another Judicial Circuit be created by law and a fifth Judge placed upon the Bench. "No Judge of the Supreme Court shall sit as Judge or take part in the Appellate Court on the trial or hearing of any case which shall have been decided by him in the Court below"—Const. Art. 5, Sec. 18. And by a law of the State, which I think it is advisable to retain, no Judge can sit on the trial or hearing of a cause in which he may, at any time, have been engaged as Counsel. The Supreme Court being at present composed of four Judges, there being only four Circuits, it may and will frequently happen that one Judge in the Supreme Court will be incompetent, by reason of his having decided the case in the Court below, and another from the fact of his having been of Counsel. In such an event there will, consequently, be no Court to try the appeal or writ of error. If the number of Judges is increased to five, this difficulty will be less likely to occur. Indeed, for other reasons, not necessary to be enumerated or noticed, it is far better to have a Bench consisting of five Judges than of four. Should the Legislature establish another Judicial Circuit, though there might even then, upon questions coming up to the Supreme Court for adjudication, be an equally divided Court, yet this difficul-

ty would be less likely to occur then than with the Court as it is now constituted; and, indeed, if the additional Circuit is created, there would necessarily be in every case a preponderance of judicial authority on one side or the other, taking into consideration the opinion of the Judge below from whose decision an appeal has been taken.

I have the honor to be,
Very respectfully,
Yr. ob't. serv't.,
D. P. HOGUE.

REPORT OF REGISTER OF PUBLIC LANDS.

OFFICE OF REGISTER OF PUBLIC LANDS,
TALLAHASSEE, NOV. 9TH. 1850.

To His Excellency, Governor BROWN,

SIR: I have the honor to transmit to you, herewith, my annual report.

I am, Sir, very respectfully,
Your ob't. serv't.,
JOHN BEARD,
Register of Public Lands and State Superindent of Schools.

Annual Report of Register of Public Lands, and State Superintendent of Schools.

The amount for which I was accountable to the State at the end of the fiscal year, Oct. 31st., 1849, $21,578 32

Of which, $16,534 31 belonged to the Seminary fund, and $5,044 01 to the Common School fund.

The Seminary Fund.

1849.		
Oct. 31.	Balance due the fund,	$16,534 31
	To receipts since for land,	10,749 46
	To premium on State Certificates,	242 77
		$27,526 54
	By disbursements,	430 25
	Balance in cash and certificates,	$27,096 29
	Due by bonds of individuals,	6,800 83
	" " Int'l. Impr't. fund,	13,057 32
	Total,	$46,954 44