

A bill to be entitled an Act to change the name of the town of Jasper, to that of Sevilla;

A bill to be entitled an Act to change the name of Sintha Jane Burdock to Sintha Jane Willis;

An Act to authorize the Sheriff of Escambia county, to collect road tax;

Resolution to obtain the sense of the people of West Florida, in regard to annexation to the State of Alabama;

A bill to be entitled an Act regulating Constables Sales in the counties of Jackson, Washington and Holmes;

An Act in relation to the different lines of Railroad encouraged by the act, approved January 6, 1855;

House bill to be entitled an Act to change the time for holding Elections for Justices of the Peace;

House bill to be entitled an Act to amend the law as to conveyances.

Resolution requesting the establishment of one or more Land Offices in East Florida;

Was read a second time, and ordered to be engrossed for a third reading on to-morrow.

On motion, the Senate adjourned until 10 o'clock to-morrow morning.

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WEDNESDAY, January 12th, 1859.

The Senate met pursuant to adjournment.

On a call of the roll, it being found that there was not a quorum present the Sergeant-at-Arms was sent after the absent members.

The President announced that there was a quorum present.

The following message from the Governor, was received and read:

EXECUTIVE CHAMBER, }
TALLAHASSEE, Jan'y. 12, 1859. }

HON. JOHN FINLAYSON,
President of the Senate:

SIR: I respectfully recommend the following nominations for the advice and consent of the General Assembly:

For Escambia County:

Auctioneers—William Pollock, A. L. Avery, Chas. Barkley, Ira Smith, W. Bell Bunyan, Peter Gonzalez, Phillip Wellington, Jasper C. Gonzalez, C. P. Knapp, Daniel Saint and B. D. Williams.

Port Wardens—John Campbell, Jasper Gonzalez, Henry T. Ingram, Manuel Palmes and George G. Pattison.

Pilot Commissioners—John Campbell Oliver A. Jenkins, John G. Tell, Thomas White and C. P. Knapp.

For Clay County:

Notary Public—Dr. M. J. Murphy.

Auctioneer—Francis Dillaberry.

Very respectfully,

M. S. PERRY.

On motion the nominations therein recommended were concurred in.

The rules were waived, and Mr. Jones allowed to introduced without previous notice

A bill to be entitled an Act to authorize the several Judges of the Circuit Courts in this State to correct errors made by the several Solicitors of this State;

Which was placed among the orders of the day.

Mr. Call introduced a

Resolution relative to adjournment;

Which was placed among the orders.

Mr. Dell introduced a

Resolution requesting of his Excellency the Governor, the return of a bill to be entitled an Act explanatory of an Act to organize the County of Volusia, approved Dec. 29, 1854;

Which was adopted, and the Secretary ordered to transmit a copy of the same to his Excellency the Governor.

Mr. Baker introduced (the rules having been waived)

A bill to be entitled an Act to consolidate the offices of Tax Assessor and Collector and Sheriff in the County of Sumter;

Which was placed among the orders of the day.

Mr. Lamar made the following report:

The Committee to whom was referred a Resolution for the relief of E. E. Blackburn, beg leave to

REPORT:

That they have carefully considered the same and think the claim meritorious. Mr. Blackburn is the United States Marshall for the Northern District of Florida. In the year A. D. 1857 by the order of the District Judge, he remitted for the use of the Clerk of the Court the sum of seventy-five dollars. On the night before the January term of the Court of the same year, the said clerk's office was entered by burglars and valuable books and papers abstracted therefrom. By order of the Court the Marshall caused iron grates to be placed in the windows, and a good and substantial lock on the door. For

this he paid the sum of one hundred and three dollars, making for rent and repairs a sum total of one hundred and seventy-eight dollars. Mr. Blackburn paid out this money by order of the Court, and did so believing that it was perfectly competent for the Court to order such steps to be taken as was necessary for the protection and security of its records, and that his account for the same would be allowed by the Government.

It has however, been refused, though he furnished to the proper department due proof that the money was expended under the direction of the District Judge, and for the use of the Government. It appears to the Committee very strange and very reprehensible that those who have charge of these matters at Washington should refuse to allow an account so just and reasonable. It is a remarkable conclusion for a Government Official to arrive at, that a Court of the United States is of so little importance as not to require an office for the use of its clerk or for the safe keeping of its records. This however, is only one of many instances where the Federal Government have exhibited a niggardly and parsimonious spirit towards the State of Florida. The same thing has happened at the city of Apalachicola, and both at that place and Pensacola the District Court has been dependent for the last six years for an office upon the courtesy of the city authorities. This is not as it should be. The United States is in a position to be independent of the charity of town authorities and private individuals. The conduct of the Government would not be so reprehensible if the same rigid rules were applied to claims from other sections of the Union. But this is not the case. Accounts and claims from other quarters are not scrutinized so closely. They seem very just and very proper to be paid when they are accompanied with the *explanations* of a large electoral vote. Your Committee feel called upon to make those remarks because the facts justify them. They can not too strongly express their indignation at the petty and pitiful economy of the Department at Washington.

The resolution under consideration authorizes the Comptroller to issue a warrant to the Treasurer to pay to the said E. E. Blackburn the sum of one hundred and seventy-eight dollars. It also instructs our Representative and Senators in Congress to make an effort to obtain an appropriation of the amount to be refunded to the State.

The Committee recommend the passage of the resolution on the ground, that as the State is interested in the due administration of the law where expenses are incurred in connection therewith it should assume the same, the alternative being between herself and a private citizens.

Respectfully submitted,
T. B. LAMAR, Chairman Select Committee,
T. J. EPPES.

Which was read, and the accompanying resolution placed among the orders of the day.

Mr. Keitt made the following report :

The Committee on the Executive to whom was referred a bill to increase the salaries of certain officers have had the same under consideration and recommend that Senators do as they think proper.

W. J. KEITT,
Chairman.

Which was read, and the accompanying bill placed among the orders of the day.

The following message was received from the House of Representatives :

HOUSE OF REPRESENTATIVES, }
January 11, 1859. }

HON. JOHN FINLAYSON,
President of the Senate :

SIR : The House of Representatives have passed the following bills :
Senate bill to be entitled an Act to amend an Act to provide for and encourage a liberal system of Internal Improvement in this State ;

Senate bill to be entitled an Act to change the name of Mary Ellen Beers to Mary Ellen Hart ;

House bill to be entitled an Act to authorize William J. Gaines, a minor, of Santa Rosa County, to contract and be contracted with ;

House bill to be entitled an Act declaring the East prong of Cold Water Creek navigable to Wolf Creek.

Very Respectfully,
R. B. HILTON,
Clerk House Representatives.

Which was read, and the accompanying bills placed among the orders of the day

Also the following :

HOUSE OF REPRESENTATIVES, }
January 11, 1859. }

HON. JOHN FINLAYSON,
President of the Senate :

SIR : I herewith transmit to the Senate a bill to be entitled an Act amendatory of the Act of 1845, concerning roads and highways.

Very respectfully,
R. B. HILTON,
Clerk House Representatives.

Which was read, and the accompanying bill placed among the orders of the day.

ORDERS OF THE DAY.

House bill to be entitled an Act to amend an Act relative to the pay of Jurors in Justices Courts;

Was read a second time, and referred to the Judiciary Committee.

An Act to repeal an Act entitled an Act to prevent trading with free persons of color in this State;

Was read a second time, and referred to the Judiciary Committee.

House bill to be entitled an Act the better to define the boundary lines of the County of Putnam;

Was read a second time, and referred to a Select Committee, consisting of Messrs. Hawes, Keitt and Dell.

The rules were waived, and Standing Committees allowed to make reports.

Mr. Call made the following report:

The Committee of Conference on the resolution to provide for the payment of interest on scrip issued for interest due on scrip issued under an Act to provide for the payment of Capt's. Sparkman's, Parker's and other Volunteer Companies for service in the year 1849, approved January 7, 1853, recommend the adoption of the House amendment.

GEO. W. CALL,

Chairman Joint Committee of Conference.

Which was read, and the accompanying bill placed among the orders of the day.

The Committee on Enrolled Bills made the following report:

The Committee on Enrolled bills, report as correctly enrolled the following bills, viz:

An Act entitled an Act to amend the several Acts in force in this State in relation to proceedings in criminal cases;

A bill to be entitled an Act to amend the seventh section of the thirteenth article of the Constitution of this State;

A bill to be entitled an Act providing for the incorporation of the Mexican Gulf Steamship, and Inland Trading and Navigation Companies in Florida;

A bill to be entitled an Act appointing Prosecuting Attorneys in certain cases;

A bill to be entitled an Act to organize the Fifth Judicial Circuit;

A bill to be entitled an Act to amend an Act, approved Dec. 24, 1854 entitled an Act to amend an Act to provide for the payment of Jurors and State Witnesses, approved January 8, 1848;

A bill to be entitled an Act to authorize John McClamma to establish a ferry across the Suwanee river.

Respectfully submitted,

ISAAC WELCH,

Acting Chm'n Com. on Enrolled Bills.

Mr. Lamar made the following report:

From the Committee on Internal Improvement to whom was referred the bill entitled "an Act to provide for the disposal of lands granted by Congress to the State of Florida to aid in the construction of certain Railroads, the undersigned

REPORT:

That in their opinion all the legislation on this subject which is either expedient or proper, has already been had at previous sessions of the General Assembly, and the passage of the bill under consideration would only tend to produce confusion and throw doubt upon the validity of the previous grants, which validity is a judicial and not a legislative question.

By the 4th section of the Act of January 6, 1855, it is enacted "that a line of Railroad from the St. Johns river at Jacksonville and the waters of Pensacola Bay, with an extension from suitable points on said line to St. Marks river, or Crooked river, at White Bluff, on Apalachicola Bay, in Middle Florida, and to the waters of St. Andrews Bay, in West Florida; and a line from Amelia Island on the Atlantic, to the waters of Tampa Bay, in South Florida, with an extension to Cedar Key, in East Florida," "are proper improvements," &c., &c.

By the 21st section of the same act it is further provided, "that should the Government of the United States grant lands to the State of Florida for the purpose of aiding in the construction of the lines of Railroad indicated, and their extensions by general or special act, said lines of Railroad shall be entitled to all the benefits and advantages arising from said grant that the State of Florida would be entitled to by the construction of said lines of Railway and their extensions, and the Governor of this State is hereby authorized and required, should such an act be passed by the Government of the United States, to direct said Railroad companies to select said land, and after such selection, to give the Secretary of the Interior notice of such selection, and furnish him with a list of lands so selected, the number of section, fractional section or sub-division, and take such other action as may be necessary to fully secure the grant of lands to said Railroad companies, subject to all the conditions and restrictions of the act of Congress making such grant."

By an act approved May 17, 1856, the Government of the United States did grant lands to aid in the construction of the lines of road indicated by the Legislature of Florida, and also, to aid in the construction of the Pensacola and Alabama Railroad, and there upon the General Assembly of Florida, (having already disposed of all the lands that were granted to aid in the construction of the Railroads

from Jacksonville to Pensacola, and from Fernandina to Tampa, with their extensions,) and having nothing to dispose of but the lands granted to aid in the construction of the road from Pensacola to the Alabama line, disposed of these last mentioned lands to the Alabama and Florida Railroad Company.

The Legislature, it appears to the undersigned, fully covers the entire ground and disposes of every acre of land which the State has or can obtain by the grant from Congress aforesaid, and renders all further legislation wholly unnecessary.

A question might have been raised by the United States officials who were charged by Congress with the duty of setting apart these lands to the State, whether the act of the State passed prior to the grant by Congress, was a valid grant to the several companies indicated by the State law, but the undersigned are informed that no such question was raised, but on the contrary, the General Land Office at Washington has placed upon this legislation by the State of Florida the same construction that the undersigned do, and have recognized the selections of lands made by the different Railroad companies as is provided in the 21st section of the Act approved January 6, 1855, above quoted.

The bill now under consideration wholly ignores *all* the previous legislation of the State except the grant to the Florida & Alabama Railroad. Should it become a law it would give to that company, so far as the Legislature of Florida has power to give it, all the lands within fifteen miles of the Road to the total exclusion of whatever company may undertake the construction of the line from Pensacola Eastward.

It would, so far as land is concerned, consolidate the Pensacola and Georgia Railroad Company, and the Florida, Atlantic & Gulf Central Railroad Company into one company, and have the proceeds of the lands "divided between them." It precludes any other company from building the Railroad through West Florida, except the Pensacola & Georgia Railroad Company, (or one claiming under it,) and authorizes this last company without having built one foot of Railroad in West Florida, so soon as it reaches the banks of the Apalachicola river, to take possession of and sell over seventy-five thousand acres of the land in West Florida, which should belong to whatever company builds the road in West Florida, a boon, which however great in itself, is hardly an equivalent for the loss which that Company would sustain by being deprived of the entire title to all the lands granted by Congress to aid in the construction of the road which they actually do build, which as your committee understand it, are the lands on each side of the Road actually built. A principle recognized by this very bill in the case of the Florida Railroad, and the Florida & Peninsula Railroad but ignored for some reason not appearing on the face of the bill in the case of the Pen-

sacola & Georgia Railroad, and the Florida, Atlantic & Gulf Central Road.

There are other objectionable features in the bill which it is not necessary for the undersigned to particularize, as they are of opinion that the whole subject matter has already been fully provided for by the previous legislation of the State; that everything which this bill seeks to do that is in itself right and proper, has already been done; that the equal distribution of the lands at the point of junction or intersection of any two roads, is a right which any company in that situation now possesses by law, and can if necessary, enforce in the Courts of the State where the chance of an equal distribution of the lands is at least as great as is provided for in this bill; while the remaining provisions would be an act of gross injustice, especially to the stockholders in the Pensacola & Georgia Railroad, who have very naturally supposed that they were or would become the sole owners of those lands on either side of the Road which they actually built, and which are enhanced in value by the building of the Road, an injustice which is not lessened by giving to that Company an interest in an equal number of acres of land in the Western part of the State, where a road may or may not be built, and which land indeed should be sacredly reserved for the building of that particular Road.

The undersigned will further state that in their opinion the bill under consideration if passed, will if it becomes a valid law, have the effect to repeal the 21st section of the Internal Improvement Act. It was upon the expectation that the lands which might thereafter be granted by the United States Government to aid in the construction of Railroads would be distributed according to the principles adopted in that section, that Middle and West Florida consented to relinquish the good prospect they then had of becoming connected with the Georgia Atlantic ports. To build up the State and consolidate her people, they agreed to shackle and restrict themselves in their Railroad movements and become tributary to East Florida. If this arrangement as then made is to be disregarded, the undersigned think that it would be just that the restrictions placed upon West and Middle Florida should also be removed.

This bill has been introduced at so late a period of the session, that the undersigned have not been able to give it that careful and mature consideration which the whole subject demands before any further legislation is had thereon; they therefore report the bill back without substitute or amendment and recommend that it do not pass, but in lieu thereof they submit the following resolution:

Resolved, That the Attorney General be requested to inform the Senate whether any further legislation by the State of Florida is necessary to secure to the different companies building Railroads in this State, the lands granted by Congress to aid in the construction

of such Roads, as to secure an equitable distribution of such lands, where the same should be divided between any two companies, and that if in his opinion such legislation is necessary, that he do draft a bill providing for the same, and return it to this House with his opinion.

Respectfully submitted,

T. B. LAMAR,
T. J. EPPES.

Which was read, and the accompanying resolution adopted.

Mr. Baldwin made the following minority report :

The undersigned, members of the committee to whom was referred a bill to be entitled an Act to provide for the disposal of lands granted by Congress to the State of Florida to aid in the construction of certain Railroads, dissent from the majority report upon the grounds hereinafter stated.

We think said bill ought to pass because it provides for the carrying out of the Act of Congress by which said lands were donated.— It does not undertake to construe the Act of Congress, but simply re-enacts its provisions and specifies the manner in which the contemplated aid shall be given to the several Railroad Companies.— The objection which is offered by those opposing the bill is that these lands have been already disposed of in the Act of Florida, approved January 6, 1855, entitled “an Act to provide for and encourage a liberal system of Internal Improvements in this State.” We think this objection is not sound, and that by said Act these lands have not been disposed of according to the provisions and requirements of the Act of Congress.

By the Act of Congress of May 17, 1856, certain lands were granted to this State to aid in the construction of Railroads from St. Johns river, at Jacksonville, to the waters of Escambia Bay, at or near Pensacola, and from Amelia Island to Tampa Bay, with a branch to Cedar Key. By the 4th Section of said Act it is enacted, that the lands granted shall be disposed of by said State *only in the manner prescribed in said fourth section.* By said 4th Section the manner of disposal of said lands is as follows : “A quantity of land not exceeding one hundred and twenty sections for each of said Roads and Branch and included within a continuous length of twenty miles of each of said Roads and Branch may be sold; and when the Governor of the State shall certify to the Secretary of the Interior that any twenty continuous miles of any or either of said Roads or Branch is completed, then another quantity of land thereby granted, not to exceed one hundred and twenty sections for each of said Roads and Branch having twenty miles completed as aforesaid, and included within a continuous length of twenty miles of each of said Roads and Branch may be sold; and so, from time to time, until the said Roads and Branch are completed.” By the 21st Section

of the Act to provide for and encourage a liberal system of Internal Improvements in this State, the only section of said Act which can be construed as conveying these lands to the several Railroad Companies, it is enacted, “That should the Government of the United States grant land to the State of Florida for the purpose of aiding in the construction of the lines of Railroad indicated, and their extensions, by general or special Act, said lines of Railroad shall be entitled to all the benefits and advantages arising from said grant that the State of Florida would be entitled to by the construction of said lines of Railway and their extensions; and the Governor of the State is hereby authorized and required, should such an Act be passed by the Government of the United States, to direct said Railroad Companies to select said land, and, after such selection, to give the Secretary of the Interior notice of such selection, and furnish him with a list of lands so selected, the number of each section, fractional section, or sub-division, and take such other action as may be necessary to fully secure the grant of lands to said Railroad Companies, subject to all the conditions and restrictions of the Act of Congress making such grant.”

The Internal Improvement Act was passed prior to the Act of Congress, and of course the former could not be framed with direct reference to the provisions of the latter. It is not strange therefore, that there should not be exact conformity between said Acts in reference to the manner of disposing of said lands. It cannot amount to a *grant* of the lands for the plain reason that at the time of the passage of the Act there were no lands to grant. A grant by an individual under such circumstances would not be held binding, and although it may be contended that precisely the same rules of construction do not apply to the law making power in a case like this, it is nevertheless true that such a construction ought to be placed upon an Act of the Legislature as will prevent it from conflicting with public policy. It is certainly not good policy and is a wrong precedent for a Legislature to assign the interest of the State over property that the State may hereafter possess. When an estate has been acquired by the State it is well for the Legislatures which may assemble after such acquisition to provide for the disposal thereof.— The future Legislatures have the grant with all its provisions and conditions before them and are the best judges as to the manner in which the same should be applied to its legitimate purposes—and their hands should not be bound and their action restrained by premature legislation taken by legislative bodies composed of men whose functions ceased to exist before the grant came into existence. If the powers of the Legislature are to be construed and regulated by uniform principles, and you establish the principle in one case that the Legislature may by prospective grant dispose of property that

may, one, two or three years thereafter become the property of the State, the same must be true in reference to grants made ten, fifty, or a hundred years in futurity, and until the end of time. We think therefore that such a construction should be placed upon the Internal Improvement Act as should not render it inconsistent with public policy, and should relieve the General Assembly which passed the Act from any suspicion of intention to infringe upon the rights of future Legislatures.

But it may be contended that although one Legislature cannot pass any Act restricting the action of future Legislatures, nevertheless should they pass any Act which might have that effect the same is good and valid so long as it is acquiesced in, and until the same is repealed; and that the remedy in such cases is by repeal—and that the prerogative of repeal cannot be exercised where rights are vested under the previous Act. We contend in the first place that this is not correct. If the Legislature had no right to grant, the grantees take no rights under the Act. In other words we maintain that the grantor has no right to grant that in which he has no estate, and that the grantee takes under the grant no more than the grantor was authorized to convey.

But if it still be insisted that the law is good so far as concerns any *vested rights*, let us inquire whether any rights have vested and what those vested rights are. If any companies have vested rights, they hold them not under the Act of Congress (for the grant is to the State) but under the Act of Florida. Under the Internal Improvement Act such rights can only vest in the manner provided by the Act of Congress. And taking both Acts together it will be seen that the lands are to be sold for the benefit of the Railroad Companies only as the several Roads progress. The Companies, most of them, were chartered prior to the Internal Improvement law and the Congressional grant, and accepted the provisions of the Internal Improvement law before Congress offered any aid. They have not been induced to organize or take any steps by reason of said grant, and were the said lands to be withheld or appropriated for the benefit of different companies, or were the State to undertake to build said lines of Road herself out of the proceeds of such lands, it would perhaps be in many respects objectionable and impolitic, but no Railroad Company could say that they would suffer any loss thereby. The fact that the State has given to said Railroad Companies alternate sections within six miles of the several Roads for 600 or 700 miles of Road, and has pledged the proceeds of over 12,000,000 of acres of land to pay the interest on their bonds, may afford good reason to suppose that she will not withhold from said Railroad Companies any aid that she can supply, and that she will faithfully and liberally extend the assistance which is placed in her power to favor the great scheme of Internal Improvement, but it is not sound reasoning to

claim that because she has given much that she is *compelled* to give all. We are not bound to do so great injustice to the Seventh General Assembly as to suppose that the object of the Internal Improvement Act was to favor or enrich any particular Railroad Company or association of individuals. Rather let us suppose that the Act was intended "to provide for and encourage a liberal system of Internal Improvements in this State.

But suppose it is claimed that rights have vested under the Internal Improvement law—what are those rights? Certainly no other than to sell the lands granted according to the provisions of the 4th section of the Act of Congress, to carry out which is the object of the bill we have under consideration.

The grant by Congress was not given in aid of any particular Railroad Company. It was a grant to the State to aid in the construction of Railroads between certain points; *to be disposed of by the State*. The 21st Section of the Internal Improvement law was not framed in reference to any particular Railroad, but had reference solely to the lines of Railroad indicated in said Internal Improvement law. Which are the lines of Railroad indicated? They are "a line of Railroad from the St. Johns river, at Jacksonvill, and the waters of Escambia Bay, with an extension from suitable points on said line to St. Marks river, or Crooked river, at White Bluff on Apalachicola Bay, in Middle Florida, and to the waters of St. Andrews Bay, in West Florida, and a line from Amelia Island, on the Atlantic, to the waters of Tampa Bay, in South Florida, with an extension to Cedar Key, in East Florida," &c. So no Railroad Companies are specially enumerated in the 4th Section of the Internal Improvement law. If therefore we construe the said 4th Section of the Internal Improvement law, and the 21st Section by which it is contended these lands are conveyed, without reference to the conditions prescribed in the other parts of said Internal Improvement law, we will find the law of the State is not more special in its application of said lands than the Act of Congress itself. The Act of Congress grants a certain quantity of lands to aid in the construction of Railroads between certain points. The Internal Improvement Act says that said lines of Railroad shall be entitled to all the benefits and advantages arising from said grant. So far, therefore the Legislature does nothing but agree that the lands shall be applied for the purposes for which they were granted.

Furthermore, if it still be contended that the 21st Section of the Internal Improvement law is a specific grant to certain Railroad Companies, then we insist that the Act is not sufficient for the purpose because it does not meet "the conditions and restrictions of the Act of Congress making such grant," and so far falls short of disposing of said lands in accordance therewith that it is necessary that some Act should be passed to relieve all doubt and difficulty that

may arise to prevent the several Railroad Companies from receiving the benefit contemplated by said Act of Congress.

Now, the first question which will probably arise under the Internal Improvement law is, which of the Railroad Companies are entitled to the benefits of the 21st Section thereof? As they are not named in the Congressional Act nor in the Internal Improvement Act, we must look to the whole of the last named Act to find out which they are.

By the 5th Section we find that the several Railroads then organized or chartered, or that might thereafter be chartered, "any portion of whose routes as authorized by their different charters, and amendments thereto, shall be within the line or routes laid down in section four (4,) shall have the right and privilege of constructing that part of the line embraced by their charter, on giving notice to the Trustees of the Internal Improvement Fund of their full acceptance of the provisions of this Act, specifying the part of the route they propose to construct." In the 6th section it is enacted "that before any Railroad Company shall be entitled to the provisions of this Act" certain acts shall be done by said Railroad Company. Now, one of the provisions of said Act to which any Railroad Company shall be entitled upon complying with certain conditions is the 21st section thereof. In other words, the grant under the Internal Improvement law was a conditional grant made to those companies only who should accept and comply with the provisions of the Internal Improvement law. The result which follows is this, the Congressional grant to the State is absolute. The State grant is conditional. Now, let us follow the working of the law under this state of things—and take for illustration the grant of land to aid in the construction of a Railroad from St. Johns river to Escambia Bay. First, by the Act of Congress before any portion of the road is built "a quantity of land not exceeding one hundred and twenty sections" for said road "and included within a continuous length of twenty miles" of said road may be sold. At this time, the only provision of the Internal Improvement law that could be complied with is the acceptance of the provisions thereof. Now, the Pensacola & Georgia Railroad Company accepts the provisions of said Act for so much of their route as is embraced in the line specified, and the Florida, Atlantic & Gulf Central Railroad Company accept the entire route. A portion of the routes of these Railroads conflict. There arises the first difficulty which is not provided for in the Internal Improvement law, for according to the terms of the Act of Congress only one hundred and twenty sections are to be sold for the benefit of this line, and no preference is given to any Railroad Company. Then follows a provision for the selling of another like quantity of land. Now, we will suppose that the Florida, Atlantic & Gulf Central Railroad Company accepted the provisions of the Internal Improvement law, that the

Governor certified the same to the Secretary of the Interior, that they received the benefit of the sale of the first one hundred and twenty sections of land, and then built their road for twenty miles with a gauge of five feet three inches. Would that company then be entitled to the additional one hundred and twenty sections? Under the Internal Improvement law, most assuredly not. But under the Act of Congress, should the Governor certify to the Secretary of the Interior that said twenty miles were completed, the lands would be certified to them, unless the Department of the Interior also should accept the provisions of the Internal Improvement law and take upon itself the responsibility of examining into the fact whether each Railroad company had complied with the terms prescribed before issuing the lists. The result therefore must be that to receive the benefit of the Act of Congress each of the Railroad companies must furnish the Department of the Interior with evidence that they have complied with all the specifications and requirements of the laws of the State of Florida. And a further result might be that one company might receive the benefit of the first one hundred and twenty sections and failing in the further requirements of the law, any other Railroad company may receive the benefit of the remainder. The fact that any agreement has been entered into between the several Railroad companies, or between said companies and the Board will not give validity to that which had none before.

And if any company having the first grant of one hundred and twenty sections as aforesaid, and having completed twenty continuous miles more, though not in conformity with the Internal Improvement law, should apply for the second one hundred and twenty sections and be refused, would not said Company have as good a right to raise the cry of "vested rights" as any other company now existing?

In addition to all this, the latter clause of the 21st section of the Internal Improvement law is too vague and general to convey any valid title where conflicting rights are involved. And moreover, it is ambiguous in its terms. Under said section the Governor is "authorized and required, should such an Act be passed by the Government of the United States, to direct said companies to select said land, and, after such selection, to give the Secretary of the Interior notice of such selection, and furnish him with a list of the lands so selected, the number of each section, fractional section, or subdivision, and take such other action as may be necessary to fully secure the grant of lands to said Railroad companies, subject to all the conditions and restrictions of the Act of Congress making such grant." Now, according to said law, it is the duty of the Governor to direct said companies to select said lands. After the selection has been made, whose duty is it "to give the Secretary of the Interior notice," &c.? It evidently has been the opinion of the Railroad compa-

nies that upon them devolved the duty of giving notice, &c., and of taking the action necessary to secure said grant. But the language of said section is just as fairly construed to mean that such notice shall be given and such action taken *by the Governor*. If it had been so framed intentionally it could not better have expressed the idea so as to mean that either one or the other, the Governor or the Railroad company, should perform the Acts specified. But if we construe said Act in connection with the Act of Congress making the grant we will find that the only rational construction of said section is to place the duties therein prescribed upon the *Governor of this State*. The only person recognized by said Act is the Governor of the State or an agent appointed by him. That this construction is different from the one usually contended for by the Railroad companies and that it is reasonable and fairly deducible from the words of the Act, are sufficient reasons to call for the enactment of a law which will remove all doubt, and relieve the action of all connected with the settlement of this grant from embarrassment.

But we do not wish to be understood as contending that the 21st section of the Internal Improvement Act should have no force or authority. We only contend that it does not convey the lands—nor do we think from the language of said 21st section that it thereby contemplated making an absolute grant without any further action on the part of the Legislature. It certainly did intend to give the weight and influence of the General Assembly by whom it was enacted in favor of such Railroad companies as should accept the provisions of the Internal Improvement Act. It was desired to encourage a liberal system of Internal Improvements by giving to all Railroad companies who would build upon certain specified lines all the aid that the State could furnish. It was not then known what Railroad companies would receive the contemplated aid, but such as could and would accept the provisions of said Act and comply with its conditions were to receive a certain quantity of land and a certain amount of guaranty, and in addition thereto it was enacted that should the United States grant land to the State to aid in the construction of the lines of Railroad indicated, said lines of Railroad should be entitled to the benefits and advantages arising from said grant. This promise or assurance (if it may so be called) was made in January, 1855, and although it may not be a promise legally binding, and may have originated in an unnecessary amount of zeal to favor untried schemes of Internal Improvement, yet we doubt not it was inserted in good faith and with the view of benefiting our general system of Internal Improvements, and we therefore urge upon this General Assembly the passage of an Act which will meet the provisions and requirements of the Act of Congress and carry out the purposes intended in the 21st section of the Internal Improvement law. It is due to the Railroad companies, to the Internal Im-

provement system, and to the people whom we represent that a fair and equitable disposition of these lands should be made at as early a day as practicable. Our sessions are biennial, and unless some Act providing for the disposal of these lands be passed at the present session, the Railroad companies interested therein must wait until two more years have passed. This we think is unjust and unnecessary delay.

Having given our views generally upon this question we now propose to examine into the details of the bill before us, to see if it be such an Act as ought to be passed to provide for the existing emergency.

The first Section simply divides the grant between the Railroad companies whose routes or portions thereof are upon the lines specified in said Act of Congress. This we suppose is not objectionable. It is not against the Congressional Act and carries out the Internal Improvement law.

The second Section provides for the disposal of the lands in exact compliance with the Act of Congress, and in almost the very words with the Congressional Act. There can therefore be no objection to their manner of disposal, for any such objection would not apply to this bill but to the Act of Congress itself. The bill does not construe the Act of Congress but simply embodies its provisions leaving to the parties interested the question of ascertaining what rights were secured to them under the law of Congress.

The 3rd Section provides that no company in selecting its "indemnity" for lands sold, pre-empted, &c., shall make such selections within six miles of the Railroad with which it connects. This section is simply a recognition of the mode prescribed by Act of Congress.

The 4th Section provides for an equal division of the lands embraced within the interfering limits of two Roads. This is surely fair and just.

The 6th Section only carries into effect the amendatory charters of certain Railroad companies so as to give them the full benefit of the grant of lands.

It will be thus seen that this bill is fair and just in its provisions—that it but carries out the requirements of the Act of Congress—and that it is not inconsistent with, but gives force and validity to the Internal Improvement law. It will also be seen that there are serious doubts as to the validity of the 21st section of the Internal Improvement law, and very great if not insurmountable obstacles in the way of its being carried into effect. Nay, we may say that there is the strongest reason to suppose that there is no such law if to make a law is required the constitutional power to an Act. But under the most favorable view that can be given to those who are opposed to this bill, there are at least great doubts. The bill before us seeks to remove

these doubts without at all interfering with anything that may have been heretofore undertaken by any previous Legislature.

A. S. BALDWIN,
JOHN EUBANKS.

Which was received and read.

House bill to be entitled an Act to equitably divide the taxes collected in Duval and Clay Counties for County purposes;

Was read a second time, and referred to a Select Committee, consisting of Messrs. Baldwin, Hawes, and Eppes.

House bill to be entitled an Act for the relief of Josiah Gates and other persons therein named, citizens of Manatee County;

Was read a second time, and referred to the Committee on Claims and Accounts;

Resolution for the relief of E. E. Blackburn;

Was read a second time, and ordered to be engrossed for a third reading on to-morrow.

Mr. Baker offered a substitute for the resolution requesting of the Governor the return of a bill entitled an Act to organize the county of Volusia, approved Dec. 29, 1854;

Which was adopted, and a copy of the same ordered to be transmitted to the Governor.

The rules were waived, and Mr. Welch allowed to make the following report:

The Committee on Enrolled Bills, report the following bills as correctly enrolled:

An Act to change the name of Mary Ellen Beers to Mary Ellen Hart;

A bill to be entitled an Act to amend an Act to provide for and encourage a liberal system of Internal Improvement in this State, approved January 6th, 1855.

Respectfully submitted,

ISAAC WELCH,

Acting Chair'n Com. on Enrolled Bills.

Which was received and read.

Mr. Baker introduced (the rule having been waived,) a resolution relative to the further reception of messages from the House of Representatives;

Which was adopted.

The following bills were read a second time, and ordered to be engrossed for a third reading on to-morrow:

An Act more fully defining the duties of Executors, Administrators, Guardians and Judges of Probate;

A bill to be entitled an Act to change the name of Sintha Jane Burdock to Sintha Jane Willis;

A bill to be entitled an Act to change the name of the town of Jasper to that of Sevilla.

An Act in relation to the different lines of Railroad encouraged by the Act approved January 6, 1855;

Was read a second time, and 80 copies ordered to be printed, and the same referred to the Committee on Internal Improvements; House bill to be entitled an Act to amend the law as to conveyances;

Was read a second time, and referred to the Judiciary Committee.

An Act to authorize the Sheriff of Escambia County to collect road tax;

Was read a third time and put upon its passage, upon which the vote was:

Yeas—Mr President, Messrs. Baldwin, Call, Dell, Fisher, Hawes, Jones, Keitt, Lamar, McQueen, Nicholson and Welch—12.

Nays—none.

So said bill passed—title as stated.

Ordered that the same be certified to the House of Representatives.

The rules being waived, Mr. Baldwin introduced

A resolution relating to payment of the Territorial debt;

Which was adopted.

A bill to be entitled an Act regulating Constables' sales in the counties of Jackson, Washington and Holmes;

Was read a second time, and ordered to be engrossed as amended, for a third reading on to-morrow.

A bill to be entitled an Act to increase the salaries of Secretary of State, State Treasurer and Comptroller's Clerk;

Was indefinitely postponed.

House bill to be entitled an Act to authorize William J. Gaines, a minor, of Santa Rosa county, to contract and be contracted with;

Was read a third time and put upon its passage, upon which the vote was:

Yeas—Mr. President, Messrs. Call Dawkins, Eppes, Fisher, Hawes, Jones, Keitt, Lamar, McQueen and Welch—11.

Nays—none.

So said bill passed—title as stated.

Ordered that the same be certified to the House of Representatives.

A bill to be entitled an Act to authorize Silas Jernigan to establish a Ferry across Black Water river, at the town of Milton in Santa Rosa county;

Was indefinitely postponed.

The rules were waived, and reports of standing committees allowed to be in order.

Mr. Lamar made the following report:

The Select Committee to whom was referred a bill to be entitled an Act for the relief of Otis Fairbanks, beg leave to

REPORT:

That they have examined the same and find it to be based upon a meritorious claim. The work for which he claims pay was actually performed and by the direction of a proper officer. They therefore recommend its passage.

Respectfully submitted,
T. B. LAMAR, Chm'n,
T. J. EPPES,
PHIL. DELL.

Which was read, and the accompanying bill placed among the orders of the day.

Mr. Dawkins made the following report:

The Committee on Propositions and Grievances to whom was referred the joint resolution allowing the claims of the persons therein named, asks leave to

REPORT:

That in the opinion of your committee, the service rendered by Capt. Hughey and his command, was meritorious, and the claim just and legitimate; your committee therefore recommend the passage of the joint resolution.

D. C. DAWKINS,
Chairman.

Which was read, and the accompanying bill placed among the orders of the day.

House bill to be entitled an Act for the relief of James M. Smith, Sheriff of Gadsden county;

Was read a second time, and referred to the Committee on Claims and Accounts;

Resolution to obtain the sense of the people of West Florida in regard to annexation to the State of Alabama;

Was read the second time, and ordered to be engrossed for a third reading on to-morrow.

Resolution relative to adjournment;

Was read the first time, and ordered for a second reading on to-morrow.

A bill to be entitled an Act to consolidate the offices of Tax Assessor and Collector and Sheriff, in the county of Sumter;

Was read the first time, and ordered for a second reading on to-morrow.

House bill to be entitled an Act to compel Railroad Companies

to pay for all cattle, or other live stock, killed upon their respective Roads;

Was read the second time, and referred to a select committee consisting of Messrs. Call, Baldwin and Eppes.

House bill to be entitled an Act to change the time of holding elections for Justices of the Peace;

Was read the second time, and ordered for a third reading on to-morrow.

A bill to be entitled an Act to authorize the several Judges of the Circuit Courts in this State to correct errors made by the several Solicitors in this State;

Was read a first time, and ordered for a second reading on to-morrow.

House bill to be entitled an act making an appropriation to supply the deficiency in the appropriation for the payment of Jurors and State Witnesses;

Was read the second time, and ordered for a third reading on to-morrow.

House bill to be entitled an Act to repeal an Act entitled an Act to amend an Act for the protection of fisheries on the coast of Florida, approved Dec. 31st, 1850;

Was read the second time, and ordered for a third reading on to-morrow.

House bill to be entitled an Act declaring the East prong of Cold Water Creek navigable to the mouth of Wolf Creek;

Was read the first time, and ordered for a second reading on to-morrow.

Joint Resolution allowing claims of the persons named;

Was read the second time, and ordered to be engrossed for a third reading on to-morrow.

Joint Resolution allowing claim of Captain Hughey;

Was read the second time, and ordered to be engrossed for a third reading on to-morrow.

The rules were waived, and the Committee on Enrolled bills allowed to make a report.

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

Resolution to provide for the payment of interest on certificate issued for interest due on scrip issued under an Act to provide for the payment of Capt. Sparkman's, Parker's and other volunteer companies for service in the the year 1849, approved January 7, 1853.

ISAAC WELCH,

Acting Chairman Committee on Enrolled Bills.

House bill to be entitled an Act to authorize persons residing on lands within the exclusive jurisdiction of the United States to vote;

Was read the second time, and on motion, passed over informally.

House bill to be entitled an Act amendatory of the Act of 1845, concerning roads and highways ;

Was read a third time and put upon its passage, upon which the vote was :

Yeas—Mr. President, Messrs. Baldwin, Call, Dawkins, Fisher, Hawes, Jones, Keitt, Lamar, McQueen and Welch—11.

Nay—Mr. Dell—1.

So the bill passed—title as stated.

Ordered that the same be certified to the House of Representatives.

House bill to be entitled an Act for the relief of Otis Fairbanks ;

Was read a third time and put upon its passage ;

Upon which the vote was :

Yeas—Mr. President, Messrs. Call, Dawkins, Dell, Hawes, Keitt, Lamar, McQueen and Welch—9.

Nays—Messrs. Baldwin, Fisher and Jones—3.

So said bill passed—title as stated.

Ordered that the same be certified to the House of Representatives.

The rules were waived, and Mr. Baldwin allowed to introduce a motion to re-consider the vote on the

House bill to be entitled an Act to provide for the consolidation of the statutes and the compilation of a code of laws of this State ;

Upon which motion the yeas and nays were called for by Messrs. Dawkins and Fisher ;

The vote was :

Yeas—Mr. President, Messrs. Baldwin, Dawkins, Fisher, Nicholson and Welch—6.

Nays—Messrs. Call, Dell, Hawes, Jones, Keitt, Lamar and McQueen—7.

So the motion was lost.

On motion, the Senate adjourned until to-morrow morning, 10 o'clock.

—o—
THRSUDAY, January 13, 1859.

Senate met pursuant to adjournment.

On a call of the roll, a quorum being found not present the Sergeant-at-Arms and Door-keeper were sent after the absent members.

On motion, the reading of yesterday's journal was dispensed with.

The President announced that there was a quorum present.

A committee from the House appeared and requested the return of a bill to be entitled an Act granting to the Alabama and Florida Railroad Company alternate sections of the Swamp and overflowed lands.

On motion of Mr. Dell, the resolution relative to the farther reception of bills from the House, passed by the Senate upon yesterday, was rescinded.

On motion of Mr. Dell, the Senate joint resolution relative to adjournment, was taken from the table and placed first among the orders of the day.

The following message from the Governor was received and read :

EXECUTIVE CHAMBER, }
Tallahassee January 12, 1859. }

HON. JOHN FINLAYSON,

President of the Senate :

Sir : I herewith return in compliance with the resolution of the Senate, an Act explanatory of an Act to organize the county of Volusia, approved Dec. 29, 1854 ; and I also return an Act to amend an Act entitled an Act to amend an Act entitled an Act to incorporate the City of Apalachicola, approved Feb. 2, 1838, and for other purposes—the same having been transmitted to me without the signatures of the President of the Senate, and Speaker of the House of Representatives.

Very Respectfully,

M. S. PERRY.

On motion of Mr. Dell, the accompanying Act explanatory of an Act to organize the county of Volusia, approved Dec. 29, 1854 ;

Was placed back upon its second reading.

The following message with the accompanying documents was received from the Governor :

EXECUTIVE DEPARTMENT, }
Tallahassee, January 13, 1859. }

HON JOHN FINLAYSON,

President of the Senate :

Sir : I have the honor to submit to you a communication from Hon. G. T. YELVERTON, Commissioner of the State of Alabama, and also a copy of the joint resolutions of said State requesting the State of Florida to cede to the State of Alabama that portion of the State of Florida, west of the Apalachicola and Chattahoochee rivers.

Mr. YELVERTON has presented in due form, his credentials to me, and is here awaiting such action as the Legislature may take in the premises.

I feel that courtesy to our sister State, requires that I should submit the communication and resolutions to the General Assembly for