

lions to construct lines of Telegraph; approved December 27th, 1856.

Very respectfully,

M. F. PAPY.

Clerk House Rep.

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

Mr. Eppes moved to waive the rules to allow him to make a report;

On which the yeas and nays were called for by Messrs. Keitt and Eppes;

Upon which the vote was :

Yeas—Mr. President, Messrs. Baker, Baldwin, Dawkins, Duncan, Eppes, Jones, Nicholson and Welch—9.

Nays—Messrs. Call, Dell, Hawes, Keitt and Lamar—5.

So said motion was lost.

A bill to be entitled an Act to incorporate the Lagoon and Perdido Canal Company ;

Was read the second time ; and,

On motion of Mr. Call was indefinitely postponed.

House bill to be entitled an Act to amend an Act entitled an Act to amend an Act to establish the ad valorem system of taxation, approved January 15th, 1859 ;

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

A bill to be entitled an Act to alter and define the line between Gadsden and Liberty counties ;

Was read the third time and placed among the orders of the day for to-morrow.

A bill to be entitled an Act declaratory of the sense of the General Assembly as to the grant of lands to aid in the construction of the different Railroads in this State ;

Was read the second time ;

Mr. Dawkins moved to amend section three by striking out the words "except by the consent of said last named Company ;"

Which amendment was adopted.

The question was then taken upon the adoption of the following amendment offered by the Committee on Internal Improvements :

SEC. 4. *Be it further enacted*, That when lands are in controversy between different Companies, that the Company on whose line of road such lands are located shall have power to sell the same and make title to the purchasers thereof, and shall account and pay over to the other Company claiming an interest therein, such proportion of the proceeds as may be legally adjudged due said Company ;

On which the yeas and nays were called for by Messrs. Call and Baker ;

Upon which the vote was :

Yeas—Mr. President, Messrs. Call, Dawkins, Dell, Duncan, Eppes, Hawes, Jones, Lamar and McQueen—10.

Nays—Messrs. Baker and Nicholson—2.

So the amendment was adopted ; and

The bill as amended ordered to be engrossed for a third reading on to-morrow.

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

—o—
WEDNESDAY, December 21st, 1859.

Senate met pursuant to adjournment.

A quorum present.

On motion of Mr. Jones, the reading of yesterday's journal was dispensed with, and the journal corrected and adopted.

Mr. Baldwin moved to withdraw the bill to be entitled an Act to incorporate the Jacksonville & St. Augustine Railroad Company, which was reported on adversely by the Committee on Corporations yesterday.

Mr. Hawes moved to amend the motion of Mr. Baldwin, by adding, also a bill to be entitled an Act to incorporate the Palatka Railroad Company ;

Which amendment was accepted, and the motion adopted.

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

EXECUTIVE CHAMBER,
TALLAHASSEE, Dec. 21, 1859. }

HON. JOHN FINLAYSON,

President of the Senate :

Sir :—I return to the Senate without the signatures of the Executive a bill which has passed the General Assembly entitled "an Act allowing two Judges of the Supreme Court to hold a Court in the absence of the third Judge." The bill is in the following words :

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Florida in General Assembly convened*, That it shall be the duty of all the Judges of the Supreme Court to attend at each term of the same, but if from providential cause any one of said Judges cannot attend a Court, such Court may be holden by two Judges ; if only one Judge shall attend a Court, it shall be his duty to open the Court and to adjourn it to a day not more than two days beyond the regular term, at which time if two Judges

do not attend, the Court shall be adjourned to the next regular term.

SEC. 2. *Be it further enacted*, That in the event the Judges should disagree upon any case where there may be but two Judges holding the Court, it shall be the duty of said Judges to continue the cause till the next term of said Court; and if at the said next term there shall be no decision by the Judges attending the same, the judgment of the Court below shall stand affirmed.

It is due to the General Assembly that I should state at least briefly, some of the considerations which have constrained me to withhold my signature.

The bill to say the least would seem to be a superfluous piece of legislation. An existing statute precisely meets the exigency whenever from any cause any "one or two Justices of the Supreme Court are disqualified or disabled from hearing any cause brought before them" by providing for calling in (as the case may be) "one" or "two" Circuit Judges. (See "Act to organize the Supreme Court of the State of Florida," approved January 11, 1851.)

Under the operation of the Act of 1851, though one Judge should dissent, parties litigant may obtain a *decision* at the first term of the Court after taking their appeal. Under the Act before me in the event of a disagreement between the "two" Judges holding the Court, the determination of the cause necessarily goes over to the ensuing term; nor is it certain that there will be a *decision* then. For should the like absence of the "third" Judge at the next term, or any other cause prevent a "decision," the appellant, after perhaps having incurred heavy charges in taking and prosecuting his appeal, will be precluded from all possible advantage of it by the provision of the bill which makes the "judgment of the Court below final and irreversible. Surely it is not too much to say that the Constitution in creating a Supreme Court promised to parties deeming themselves aggrieved by a hurried and erroneous ruling of a Circuit Judge not only a hearing, but a *decision* by the higher tribunal setting as a *Court of appeal* for the correction of errors, and in the enjoyment of the advantages of ampler libraries, fuller discussion and more protracted deliberation than were possessed by the Court below. I can not believe that less than this was contemplated by the framers of our Constitution.

The right of appeal justly reckoned invaluable by the citizens of this State, becomes little less than a mockery when the appellant is, without any fault of his own, sent out of the Supreme Court without its decision upon the merits of his cause, and told that, be it right or wrong, he must abide by the judgement of the inferior tribunal.

I have remarked that the bill presents the appearance of superfluous Legislation. This remark is based upon the hypothesis that as it contains no repealing clause, it leaves the 3rd section of the

Act of 1851 (aboved cited) still in force. In this conclusion I may be mistaken. I acknowledge the difficulty which I find in reconciling the apparently conflicting provisions of the two bills, and my uncertainty as to the full scope and effect of that now under consideration. If as a substitute for the 3rd section of the Act of 1851, it repeals that section, in my judgement the "change is not a reform"—the substitute is more objectionable than the original. If on the other hand it is *not* a repeal of that section, from their conflicting provisions I can only anticipate confusion, embarrassment and mischief. In either view I am constrained to refer the proposed law back to the General Assembly for their re-consideration of it.

Very Respectfully,

M. S. PERRY.

Mr. Dell moved to re-consider the vote taken on the passage of the bill;

On which the yeas and nays were called for by Messrs. Call and Lamar;

Upon which the vote was:

Yeas—Mr. President, Messrs. Baker, Baldwin, Dawkins, Dell, Duncan, Jones, McElvy, Nicholson, Watlington and Welch—11.

Nays—Messrs. Call, Eppes, Hawes, Keitt, Lamar and McQueen—6.

So the vote was re-considered.

On motion of McElvy, the question was then taken on the passage of the bill;

Upon which the vote was:

Yeas—Messrs. Call, Dell, Duncan, Hawes, Keitt, McQueen and Watlington—7.

Nays—Mr. President, Messrs. Baker, Baldwin, Dawkins, Eppes, Jones, Lamar, McElvy and Nicholson—9.

So the bill was lost.

Mr. McElvy introduced joint resolutions in reference to a Southern Railroad connection with the Pacific; also,

Joint resolutions calling upon our members in Congress to procure the passage of a law refunding to this State, the sum of \$241,300 advanced by this State on the payment of Florida troops;

Which were placed among the orders of the day.

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

EXECUTIVE CHAMBER, }
Dec. 21, 1859. }

Gentlemen of the Senate

and House of Representatives:

I submit herewith joint recommendation of Col. B. F. Whitner, surveyor on the part of the State of Florida, and Professor Augustus

J. Orr, surveyor on the part of Georgia, appointed by the Executives of Florida and Georgia to run correct and mark the boundary line between the two States in conformity to the resolutions adopted by the Legislatures of said States. The recommendation sets forth so fully the great importance of so modifying the resolutions of the respective Legislature as to prevent the necessity of running a second or corrected line back to the junction of the Flint and Chattahoochee (provided that the line which is now being run should strike within one-fourth of a mile of Mound B,) as to needs no comments at my hands. The area of land will not be materially affected by adopting the joint proposition of the Surveyors, and the greatest difference that may occur upon failure to strike Mound B, will be in a district of country of but little value. I learn by a letter from Col. Whitner, dated Dec. 18, 1859, that he expected to be 80 or 85 miles towards Mound B, by the 24th inst., and that the cross-measurements showed that he would not miss the mound far, perhaps a little South, but too small an amount to correct back. He remarks that, "I trust the Legislature will authorize me to mark the line back if it does not fall farther South than five chains. I do not ask more latitude than that." It is highly important that the boundary line between the two States should be established at the earliest practicable moment to prevent a recurrence of popular excitement along the border incident to a conflict of jurisdiction, and I therefore recommend such modifications of the resolutions as will conform to the joint recommendation of Col. Whitner and Professor Orr; and that the Legislature make provision for the payment of the Surveyor appointed to run the line on the part of this State.

Very respectfully,

M. S. PERRY.

(COPY.)

CHATTAHOOCHEE FLA. }
November 28th, 1859. }

His Excellency M. S. PERRY: .

Dear Sir:—In running the boundary line between Georgia and Florida, it is proposed to run on the arc of a great circle from the mouth of Flint River towards Mound B, the Eastern terminus agreed upon by the two States. It is believed that this line will nearly strike Mound B, but any departure, however immaterial, from that Mound, without some modification of the resolutions of the respective Legislatures, will render it necessary to run a second or connective line back to the junction of the Flint and Chattahoochee. Mound B is nothing more than a small hillock of earth with a base of some eight feet, an elevation of three or four, and was never intended by

Ellicott and Minor as the terminus of the boundary line, but simply as a pointer on the nearest dry ground, to indicate the terminus agreed upon by those Commissioners. A line starting from any other point in the immediate vicinity of Mound B, can as easily be perpetuated and identified hereafter as one terminating at the centre of that Mound.

When the American and Spanish Commissioners fixed upon the Eastern terminus, they further agreed that the line should be run from the mouth of Flint River, and if it did not depart more than half a mile from said Eastern terminus, it should be regarded and adopted as the boundary line. The Legislatures of the two States have agreed upon a different Eastern terminus namely, Mound B; but for the reason stated we recommend that the straight line run from the mouth of Flint River toward Mound B, shall be adopted as the boundary line between Florida and Georgia; provided said line does not depart more than one fourth of a mile from Mound B. But should the departure exceed that distance, we then recommend that a connected line be run from Mound B, to the mouth of Flint River.—Should this distance (one fourth of a mile, or one half of the distance agreed upon by Ellicott and Minor,) be regarded too great, then let some other limit be fixed upon by the respective Legislatures.

The adoption of this suggestion may save much time in executing the work and much expense to the two States, while the amount of Territory involved is utterly insignificant, both as to extent of surface and value, lying as it does chiefly along the Eastern portions of the line.

Respectfully yours,

BENJ. F. WHITNER, JR.,
Surveyor on the part of Florida.
GUSTAVUS J. ORR,
Surveyor on the part of Georgia.

Mr. Call introduced the following preamble and resolutions, which were read:

WHEREAS, This Senate did on Thursday, the 16th December, adopt a "resolution calling on the Governor of this State for information in regard to the appointment of Henry Wells as agent, to select lands for the different Railroads;" *And whereas*, Said resolution was originally accompanied by a preamble which declared that "it was the opinion of many members of the Senate that said lands had already been selected by agents appointed by a former Governor, which selections had been approved by the proper authorities at Washington, and lists of said lands certified to the different Railroads, under which lists the said Companies had taken possession of the said lands and were proceeding to sell the same, and that in consequence the appointment of said Henry Wells as such agent, was not only wholly unnecessary and uncalled for, but will

have a tendency to embarrass the said Companies in their land sales; to throw a cloud upon their titles and thus materially retard the final completion of said roads," which said preamble was spread at large upon the Journals of this Senate; *And whereas*, Also it was openly charged upon the floor of the Senate in support of the said preamble and resolution, that the said Governor in making the said appointment of Henry Wells, had exceeded his authority, and had been actuated only by a spirit of hostility to the whole Railroad system of the State, or by a desire to deprive the Middle and Western section of the State of the lands granted by Congress for the construction of roads through these sections in order to appropriate said lands to roads in the Eastern section of the State; *And whereas*, The said Governor has wholly failed to respond to the said resolution or to furnish to the General Assembly the information sought for; *And whereas*, This Senate is now in possession of sufficient evidence from other sources to show that the recitals in the foregoing preamble are true; *And whereas*, The truth of the same is tacitly admitted by the said Governor; Therefore,

Resolved, That in the opinion of this Senate the said appointment of Henry Wells as agent, to select lands for the different Railroads was unnecessary and uncalled for, and should be revoked.

Resolved further, That the Acts of said Henry Wells under the said appointment are illegal and without authority, and will in no wise impair the validity of the Acts of the previous agents.

Resolved further, That the failure of the Governor of this State to respond to a respectful communication from the Senate asking information on an important question of public interest, is an act of marked discourtesy, and an ungenerous response to the uniform respect with which he has ever been treated by the Senate.

The Chair decided the resolution to be out of order.

Mr. Call then moved to waived the rules to allow him to make a motion;

On which the yeas and nays were called for by Messrs. Dell and Call;

Upon which the vote was:

Yeas—Messrs. Call, Dell, Duncan, Eppes, Hawes, Keitt, McQueen and Nicholson—8.

Nays—Mr. President, Messrs. Baker, Baldwin, Dawkins, Jones, Lamar, McElvy, Watlington and Welch—9.

So the Senate refused to waive the rules.

The Chair decided that the resolutions are new resolutions and cannot be introduced under the following rule adopted by the Senate: "No new bill or resolution of a public character except the appropriation bill shall be introduced into the Senate without the unanimous consent of the Senate."

Mr. Call then appealed from the decision of the Chair that the resolution was out of order.

The question was taken on sustaining the decision of the Chair;

On which the yeas and nays were called for by Messrs. Baker and Call;

Upon which the vote was:

Yeas—Messrs. Baker, Baldwin, Dawkins, Jones, Watlington and Welch—6.

Nay—Messrs. Call, Dell, Duncan, Eppes, Hawes, Keitt, Lamar, McElvy and McQueen—9.

So the decision of the Chair was not sustained;

And the resolutions were placed among the orders of the day.

Rules being waived, Mr. McElvy introduced without previous notice,

A bill to be entitled an Act in relation to the boundary line now being run between this State and Georgia;

Which were placed among the orders of the day.

The Committee on Engrossed Bills made the following report:

MR. PRESIDENT:

Sir:—The Committee on Engrossed bills report the following bill as correctly engrossed:

A bill to be entitled an Act declaratory of the sense of the General Assembly as to the grant of lands to aid in the construction of the different Railroads of this State.

Respectfully submitted,

THOMPSON B. LAMAR,

Ch'n Com. on Engrossed Bills.

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

Mr. Eppes from the Judiciary Committee made the following report:

The Judiciary Committee to whom was referred an Act to amend an Act entitled an Act to change the times for holding the Circuit Courts of the Western Judicial Circuit, approved Jan. 5, 1859,

REPORT,

That they have examined said bill, and recommend its passage.

T. J. EPPES,

Chm'n Judiciary Committee.

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

Mr. Eppes from the Judiciary Committee made the following report:

The Judiciary Committee to whom was referred a bill to be entitled an Act to afford a rule for the construction of Deeds and Wills in certain cases,

REPORT:

They see no necessity for said bill, therefore recommend that it do not pass.

T. J. EPPES,
Chm'n Judiciary Committee.

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

Mr. Eppes from the Judiciary Committee made the following majority report:

The undersigned from the Judiciary Committee to whom was referred the bill entitled "an Act to organize the county of Perry,"

REPORT:

That unless there has been a most miraculous increase in the population of the three counties of Brevard, Manatee and Hillsborough, out of which it is proposed to form the new county, (of which increase your committee have not the slightest evidence before them,) the organization of a new county at the place and with the population proposed, is manifestly unconstitutional. By the 4th Section of the 9th Article of the Constitution of this State, it is provided that no county shall "be reduced in population by division, below the existing ratio." The present "existing ratio" is twenty-four hundred, according to what is called the Constitutional or Federal basis; if then, by the formation of this new county, the counties of either Hillsborough, Manatee or Brevard, will be reduced in population below twenty-four hundred, the passage of the bill is unconstitutional.

Your committee have no information as to the population of the three counties more recent than the census of 1855. But from that census they are forced to the conclusion that should the present bill become a law, there will not remain twenty-four hundred of constitutional population in any one of the three counties named, and that consequently the Constitution would be disregarded in three distinct instances. A very slight glance at the Constitution of our State is sufficient to show that this question of the organization of new counties and its consequences received the most careful attention from the framers of the Constitution, and that they intended to throw such checks and safe-guards around it as would prevent hasty and inconsiderate legislation, such as is now proposed. The positive prohibition against reducing the old counties below the representa-

tive ratio, is, if faithfully observed, sufficient in most instances (as in this) to prevent the premature formation of new counties. But to that prohibition is added by the Constitution an argument of policy which addresses itself to the representatives from the more populous parts of the State, and which forces them in simple justice to their own constituents to oppose the organization of any new county, until the territory embraced within its limits shall have the requisite constitutional population for a Representative. We allude to the clause of the 1st Section of the 9th Article of the Constitution, which is in these words: "Giving however, one Representative to every county," and which has uniformly been construed to entitle every county, no matter how sparse its population, to a representative on the floor of the General Assembly at the first new apportionment of representatives after the organization of said county. We are aware that the zealous advocates for this bill contend that this construction of the Constitution is erroneous, and that a subsequent declaration contained in Sec. 4, of Art. 9, of the Const., which says that "no new county shall be entitled to separate representation until its population equal the ratio of representation then existing," qualifies the clause in Section 1, of Article 9, giving one Representative to every county. But we cannot agree with this view of the case, (which is an entirely novel one to us,) for the simple reason that the two sections are treating about entirely different matters and entirely different times. Section 1, is precisely to the General Assembly the rule of apportionment to be observed every ten years, urging them at those intervals to cause a census to be taken and re-apportion the representation according to that census "giving, however, one representative to every county." The section is complete in itself; makes no discrimination between new and old counties, and the clause we have quoted, cannot be qualified in any manner without wholly striking it from the section.

Section 4 as we have said, treats of a different matter and a different time, to-wit: the organization of a new county at any session of the General Assembly, and the restriction upon the separate representation can only be fairly construed to last until the next census, when as we have seen, the Constitution imperatively enjoins a separate representative to every county. But even if there were a doubt originally about the correctness of our construction of the Constitution, the question has been disposed of by the General Assembly in the year 1845, and again in 1855, and to adopt a different construction now, would be to declare vacant the seats of nine members of the lower house, to-wit: the members from the counties of Holmes, Putnam, Volusia, Orange, Brevard, Sumpter, Levy, Hernando and Manatee, all of whom hold their seats only by virtue of the construction which we have placed upon the Constitution, a result so absurd that it is only necessary to mention it, in order to settle the true construc-

tion of the Constitution. Our conclusion then is that this new county will at the next census be entitled to a separate representative, even should that representative be the only voter resident within her territorial limits; and that, though this alone would not absolutely render the bill unconstitutional, yet it is a violation of the plain spirit of the Constitution which requires that representation should be equally apportioned according to population, and devolves upon the General Assembly the necessity of still greater vigilance in seeing that the letter also of that instrument is not violated by reducing the old counties below the proper standard, as is done in this case.

An ingenious argument has been made that this county was only for Judicial purposes, and therefore is not a county within the meaning of the Constitution. It is perhaps a sufficient answer to all this to say that, if this be true, all counties are only for Judicial purposes, and this one only differs from the county of Leon, or any other county in the State, in the single matter of Representation in the General Assembly, a difference (as we have been shown which can only last until the next census,) but the new county has the same officers, Judge of Probates, County Commissioners, Sheriff, Tax-collector, Clerk, &c., with the same powers as the other counties, many of which officers have nothing whatever to do with Judicial matters, so that it is untrue in point of fact that this county is only for Judicial purposes.

A strong appeal has been made in behalf of this bill, on the ground of the inconvenience to which the inhabitants of that section are subjected in attending Court. Those who make this appeal seem to forget that the inhabitants of a sparsely settled district, most of them new settlers from other States, will, as a general rule have but little occasion to attend Court; so that the evil is one of trifling magnitude, and sinks into insignificance when compared with the expense necessarily attendant on the organization of a new county and the erection of county buildings; but your committee rejoice that even that slight inconvenience may be avoided without in any way violating the Constitution of the State, or giving to the citizens of the District in question, an undue preponderance in the Legislative Halls. There are two ways of doing this: one by exempting them from jury duty and authorizing their testimony to be taken by commission, the other by requiring the Judge of the Circuit Court to hold two terms in the County of Hillsborough at two different places in the County; the first plan has been we believe successfully tried in this State, the second is not at all unusual in some of the Northern States. Either will in a strictly Constitutional manner, obviate the evils which this bill seeks to correct by a palpable violation of the Constitution.

The undersigned cannot refrain from commenting upon the exceedingly improper division which is made of the county of Hillsborough by this bill, that county being almost if not completely severed into

two parts by the new county. Were there no other objections to the bill, the mode of division alone would be sufficient in their opinions to require its reference to a committee charged with the proper adjustment of its boundaries. In conclusion, in view of all the circumstances of the cost, the undersigned give it as their opinion, that the present bill is unconstitutional and recommend that it do not pass, but in lieu thereof they recommend the adoption of the substitute for the same, which is now pending before the Senate, providing for taking the census of the counties to be divided. When that census is returned to the next General Assembly, it will be time enough to determine whether to organize a new County or to adopt one or the other methods indicated in this report for relieving the population of the District concerned from what is said to be an enormous Tax upon them.

T. J. EPPES,
Chm'n. Jud. Com
GEO. W. CALL.

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

Mr. McElvy from the Committee on Enrolled Bills made the following report:

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

A bill to be entitled an Act in relation to Courts of Probate in this State;

A bill to be entitled an Act to incorporate the Apalachicola and Columbia Steamboat Company;

A bill to be entitled an Act concerning Sheriffs and Coroners;
All of which are respectfully submitted,

L. G. McELVY, Chairman.

Which was received and read.

Mr. Dell moved that the Senate take a recess until half-past 3 o'clock;

The President decided that a motion to adjourn is out of order when a member is making a report;

Mr. Call appealed from the decision of the Chair;

The question being taken on sustaining the decision of the Chair; The yeas and nays were called for by Messrs. Dell and Keitt;

Upon which the vote was.

Yeas—Messrs. Baker, Baldwin, Eppes, Lamar, McElvy, Nicholson, Watlington and Welch—8.

Nays—Messrs. Call, Dell, Duncan, Hawes, Keitt and McQueen—6.
So the decision of the President was sustained.

The President announced a message from his Excellency the Governor;

Which, on motion of Mr. Call, was laid on the table until after the recess.

The Senate then took a recess until half-past three o'clock.

HALF-PAST THREE O'CLOCK, P. M.

The Senate resumed its session.

A quorum present.

The following message from his Excellency the Goavernor, was received and read, and on motion of Mr. Call, was laid on the table :

EXECUTIVE CHAMBER, }
Tallahassee, Dec. 21st, 1859. }

Gentlemen of the Senate and House of Representatives :

I have received the Resolution of the Senate adopted on the 16th instant, requesting me to communicate to the Legislature what steps had been taken prior to the 7th September last, by my predecessor or myself, in reference to the selection of lands for the different Railroads, in lieu of lands disposed of by the United States previous to the passage of the act of Congress, approved May 17th, 1856, granting lands to aid in the construction of said Railroads; and also that I communicate to the Legislature copies of correspondence between my predecessor or myself and the authorities at Washington, in reference to said selections, and the particulars of the contract, if any, with Henry Wells, and the amount of compensation to be allowed him for his services in selecting. If any agent or agents were appointed by my predecessor to select said lands, according to the provisions of the first section of the act of Congress, approved May 17, 1856, no record of such appointment was placed in the Executive office, other than that appointing W. H. Chase agent to select the lands donated by Congress to the Florida and Alabama Railroad Company, and certain letters in the book of correspondence, copies of which are herewith transmitted; and if any such appointment was made, and the record or evidence thereof was inadvertently omitted, such appointment has not been brought to my knowledge.

No compensation has been agreed upon for the services of Mr. Wells, as will appear by reference to the commission appointing him agent on the part of the State to select the lands. I preferred that the Legislature should fix the rate of compensation after the completion of the work, when a more just estimate could be made of the value of the service rendered the State.

Having noticed a paragraph in the newspapers to the effect that certified lists had been issued by the Commissioner of the General

Land Office, for the lands lying along the line of the Florida Atlantic and Gulf Central Railroad, I addressed a letter to the Commissioner, dated Nov. 3d, 1858, upon the subject, a copy of which is herewith annexed.

It will be seen by reference to said letter, that I did not recognize the right of that Department to certify lists to third parties, to whom no assignment had been made, and requested that lists of lands enuring to this State, under the Congressional act of May 17th, 1856, should be made out in the name of the State, and forwarded to me, that I might lay the matter before the proper body for disposition, as provided for by the third section of the act of Congress of May 17th, 1856, making the grant.

The Commissioner, in reply, (dated Nov. 17, 1858, I believe,) stated that the Department had resolved to pursue a different course from that suggested by me, in which my predecessor had acquiesced. I regret that the letter of the Commissioner is not at hand, that I might give it in full. I have given the substance, however, and will procure the letter at the earliest opportunity.

Believing that the course adopted by the Commissioner of the General Land Office would work manifest injury to the several Companies and to the State, I appointed an agent to select the lands, in accordance with the provisions of the act of Congress making the grant.

The title to the lands is derived from Congress—the act of Congress must determine what is to be done with a view to the perfection of the grant. By reference to the 1st section of the act of Congress, entitled, "An act granting public lands in alternate sections, to the States of Florida and Alabama, to aid in the construction of certain Railroads in said States," will be found the terms of the grant. The language used is, "that there be, and is hereby, granted to the State of Florida, for the purpose of aiding in the construction of Railroads from St. John's river, at Jacksonville, to the waters of Escambia Bay, at or near Pensacola; and from Amelia Island, on the Atlantic, to the waters of Tampa Bay, with a branch to Cedar Key, on the Gulf of Mexico; and also a Railroad from Pensacola to the State line of Alabama, in the direction of Montgomery, every alternate section of land designated by odd numbers, for six sections in width on each side of each of said roads and branch."

The State of Florida is the grantee in the act named. The title deed, therefore, whatever it may be, must come from the grantor to the grantee. So, when there is anything to be done to render the grant certain, the party to whom the grant is made is properly charged with the power and duty of aiding in the act. In the 1st section of the act, it is further provided how and in what manner the grant is to be made to apply specifically to the lands intended to be granted.

The words used are as follows: "But in case it shall appear that the United States have, when the lines or routes of said roads and branch are definitely fixed, sold any sections, or any parts thereof, granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of said State, to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid, which lands (thus selected in lieu of those sold and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid and appropriated as aforesaid) shall be held by the State of Florida for the use and purpose aforesaid: *Provided*, That the land to be so located shall in no case be further than fifteen miles from the lines of said roads and branch and selected for and on account of each of said roads and branch: *Provided further*, That the lands hereby granted for and on account of said roads and branch severally shall be exclusively applied in the construction of that road or branch for and on account of which such lands are hereby granted, and shall be disposed of only as the work progresses, and the same shall be applied to no other purpose whatsoever."

Here it is seen that the power and duty of selection of the lands is given to the grantee, the State, and the Governor of the State is empowered to appoint an agent to select. Such being my duty under the act of Congress and the law of the State, I appointed Henry Wells, Esq., agent, to do what the act aforesaid rendered necessary to be done to vest the title to the land in the State so far as it could be done by making such selection.

The law of the State, which grants to the several corporations assuming to build the railroads provided to be aided in the act of Congress the lands granted to the State in trust for the construction of such works, does not make the several corporations at once the grantee of the lands and entitle them to receive conveyances thereof from the United States. The conveyances are, according to all law and usage, to be made first from the United States, the first grantor and grantee, second from the State to the corporations, the second grantees. The law of the State accepts the grants in these words: "upon the terms, conditions and restrictions imposed," and the law granting the land by the State to the corporations, grants it, of course, as the State had accepted it, subject to the limitations and restrictions in the act of Congress making the grant. The Legislature could not do otherwise. Whatever, then, the law of Congress

requires to be done to complete the grant, must be performed as a condition precedent to the vesting of the grant.

When the act of Congress referred to was communicated by my predecessor to the Legislature at its eighth session, he recommended legislation to meet the object. The Legislature acted upon this recommendation, and passed an act granting a part of the lands authorized by Congress to be selected to the Florida and Alabama Railroad Company. The Legislature thereby evinced its sense of the proper construction of the act of Congress, and I have acted in conformity to the views expressed. The enurement of title, by act of Congress provided to be given as evidence of the grant and confirmatory of the rights of the grantee, is a list of the land certified by the Secretary of interior; the lands to be listed are to be selected by an agent appointed by the State. So says the act, and the Secretary cannot legally certify any selection not made under the authority of the State.

The importance of keeping the selection of the lands under the control of the State is apparent. It was this policy which is manifested in the law of Congress, where the grant is made to the State and not to the corporations.

The State was expected to see that the lands were applied to their proper use, and that the roads constructed should conform to the intention of the law under which the grant was made. At this time a question has arisen which shows how proper it is that the control of the lands should remain with the State, and be disposed of by authority of the laws of the State.

It has been made known to me that the Gulf Central and Atlantic Company, after the selections of the lands have been made to which said Company would be entitled when it has fully complied with the law, will not find, on the line of its road, the quantum of land to which it is entitled by nearly 200,000 acres. The Pensacola and Georgia Railroad also estimate that they will fall short in the line of road now built and that under actual construction a very large number of acres. A conflict of claims has arisen between these two Companies as to how and where they shall make up the deficiencies as provided in the first section of the act of Congress of May 17, 1856. Each Company claims the right to make up such deficiency out of the lands lying adjacent to the place where the roads of the two Companies meet—such lands being of great value and likely to meet with ready sale. Without taking it upon myself to decide which Company is right, it is very apparent that the United States and the people of Florida have a deep interest in the question at issue. It is certainly not in the power of either Company to determine the question, nor could the Commissioner of the Land Office of the United States settle it by certifying lists of se-

lections which either Company might make. Congress granted the lands as a whole—for a single purpose, to-wit: a railroad, which road was to begin at Jacksonville and run to the Escambia, and the grant must be so administered as to secure the performance of the whole work. No one would pretend that if any large part of the road is left unfinished, that the conditions of the grant will be complied with. If the Pensacola and Georgia Railroad Company becomes either unable or unwilling to build the road further West than the Chattahoochee river, and should the Legislature by law, give authority to any other Company to finish the work, another difficulty would arise; the Company so empowered would find that the lands through which the road would run, would be for the most part valueless for agricultural purposes, and that as to any deficiencies occurring within the six mile limit, the Pensacola and Georgia and Gulf Central roads had absorbed all the good lands along the lines of their respective routes. The effect of such a condition of things, and such course of action of the roads, would, if permitted to remain undisturbed, deter, perhaps, any persons from undertaking the construction of the road from the Chattahoochee to the Escambia.

Now, it is not only the duty but the interest of the State to comply with the terms of the grant made by Congress, and the State has by law decided to carry out the object of the grant and faithfully to apply the lands in execution of the great work which they were given to aid. The State then has an interest in retaining such control of the lands as will enable it to secure the whole work to be done, and to prevent its failure.

If the Gulf Central and Atlantic Company is not to come this side of its western terminus to make up its deficiencies, there will be a loss of about one hundred thousand acres of land to that Company, and indirectly to the State; and as any diminution of the means of any of the Companies will effect the Internal Improvement Fund, a consequent injury will result to it. So, if the Pensacola and Georgia Railroad Company should not construct their road beyond the Chattahoochee (which I do not mean to intimate an opinion about,) there would be a loss to that Company of a very large number of acres under the construction of the law which limits each Company in its selections to their respective line of road.

There is no doubt but that if the whole road is built, under the authority of the State, that the State could select the lands to make up the deficiencies any where along the tiers of sections within fifteen miles of the road, where vacant lands could be found. This fact should have an important bearing upon the question which I have felt called on to discuss, in order to reply to your inquiries. We ought, if possible, so to construe the law as to avoid conflict of rights and to prevent any loss of any portion of the grant to the

State, and by continuing to regard the State as the only party to the grant made by Congress, we may secure such desirable ends.

I cannot but regard the roads as entire works, the execution of the whole of which is to be secured, and shall always endeavor to secure the grant of lands so that, no matter how many various corporations the State may empower to do the work, all shall participate according to the length of their road in the benefits to be derived from the lands granted by Congress.

Very respectfully,
M. S. PERRY.

[COPY.]

In the name and by the authority of the State of Florida.
To all to whom these presents may come greeting:

WHEREAS, by the Act of Congress, approved May 17, 1856, entitled an Act granting Public Lands in alternate sections to the States of Florida and Alabama to aid in the construction of certain Railroads in said States, it was enacted, that there be and is hereby granted to the State of Florida, for the purpose of aiding 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 on the Atlantic to the waters of Tampa Bay, with a branch to Cedar Key on the Gulf of Mexico, and also a Railroad from Pensacola to the State line of Alabama in the direction of Montgomery, every alternate section of land designated by odd numbers for six sections in width, on each side of said Roads and branch, but in case it shall appear that the United States, have, when the lines or routes of said Roads and branch are definitely fixed, sold any sections or any parts thereof granted as aforesaid, or that the right of pre-emption has attached to the same, then it shall be lawful for any agent or agents to be appointed by the Governor of said State to select, subject to the approval of the Secretary of the Interior, from the lands of the United States nearest to the tiers of sections above specified, so much land in alternate sections or parts of sections as shall be equal to such lands as the United States have sold, or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid; which lands (thus selected in lieu of those sold and to which pre-emption rights have attached as aforesaid, together with the sections and parts of sections designated by odd numbers as aforesaid, and appropriated as aforesaid,) shall be held by the State of Florida, for the use and purpose aforesaid.

Now therefore, I, Madison S. Perry, Governor of the State of Florida, for the purpose of carrying out the provisions of the Act aforesaid, do hereby appoint Henry Wells, of Florida, the agent for

and on behalf of the State of Florida, to select, subject to the approval of the Secretary of the Interior, from the lands of the United State, nearest to the tiers of sections in said Act specified, so much land in alternate sections or parts of sections, as shall be equal to such lands as the United States have sold or otherwise appropriated, or to which the rights of pre-emption have attached as aforesaid, "and to have, hold and exercise the said agency and all the powers appertaining thereto, and to fulfil the duties thereof, in reference to all lands granted by said Act of Congress, for the purpose of aiding in the construction of the Roads and branch aforesaid, and generally to do and perform any and all things that are necessary and proper to be done as the agent of the Governor of the State of Florida, to carry out the purposes and intention of said Act of Congress, and to secure to the State of Florida the full benefit of the lands granted as aforesaid, for the purposes in said Act specified, until this appointment shall be revoked by the Governor of the State of Florida."

In testimony whereof, I, Madison S. Perry, Governor of said State, have signed the appointment and caused the great seal of the State to be affixed hereto at the Capitol in Tallahassee, this 7th day of September, A. D., 1859, and of the Independence of the United States, the 84th year and of the Independence of Florida the 15th year.

M. S. PERRY,
Governor of Florida.

By the Governor—Attest:

F. L. VILLEPIGUE,
Sec'y of State.

[COPY.]

EXECUTIVE CHAMBER,
TALLAHASSEE, November 3d, 1859. }

MOB. THOMAS A. HENDRICKS,
Commissioner of General Land Office,
Washington City, D. C.:

SIR: I have noticed a paragraph going the rounds of the papers to the effect that certified lists have been issued by your Department for the lands lying along the line of the Florida Atlantic and Gulf Central Railroad, being a portion of the land enuring to this State conditionally under the Congressional act of May 17th, 1856. Mr. Wells, the Land Agent for the State and Agent for the Florida Atlantic and Gulf Central and Alabama and Florida Railroad Companies, informs me that he has only received the certified lists for lands to which the Alabama and Florida Railroad Company are

entitled by virtue of the Congressional act of May 17th, 1856, and the act of the State Legislature of December 27th, 1856; that when he left Washington he understood it to be the opinion of your Department that the certified lists could not issue to the Companies direct for lands to which they may be entitled, for the obvious reason that the grant being a grant in entirety to the State of Florida, "subject to the disposal of the Legislature thereof for the purposes aforesaid," your Department could not recognize third parties to whom no assignment had been made by the State. In this view he concurred, and did not ask for certified lists from your office for lands which the Florida Atlantic and Gulf Central Railroad will be entitled to receive from the State. By act of the Legislature, dated December 27th, 1856, (which I herewith enclose,) the State of Florida accepted the lands granted to her upon the terms, conditions and restrictions imposed in the Congressional act of May 17, 1856, and by the second section of the same act, disposed of that portion of it to which the Alabama and Florida Railroad Company are entitled and have received.

The Legislature has as yet made no further disposition of the lands enuring to this State under the Congressional act of May 17, 1856. That body will again be in session within the present month, when they will undoubtedly make such disposition of these lands as in their wisdom they deem proper. In the mean time, I request that the adjustment of the grant to the State may be brought to as speedy a conclusion as the labors of your Department will permit, and that lists of the lands be made out in the name of the State and forwarded to me, that I may lay the matter before the proper body for disposition, as provided for by the third section of the act of Congress of May 17th, 1856, making the grant.

Very respectfully, your ob't serv't,

M. S. PERRY.

[COPY.]

EXECUTIVE CHAMBER,
Tallahassee, December 18th, 1856. }

DR. A. S. BALDWIN,
President of Atlantic and Gulf Central Railroad Co.:

SIR: Yours of the 18th was handed to me this morning by Mr. Wells. You have embraced in the same appointment two matters, one of which pertains to my office and the other to the Trustees of the Internal Improvement Fund. You will please simply make out an appointment for Mr. Wells as your Selecting Agent for the lands granted by act of Congress to your road, forward this to me and I will approve and fix the seal to it. Thus approved, under the

zeal of the State, it goes to the Commissioner of the General Land Office, whose approval is necessary to give it effect. You will, in like manner, make out his appointment as Selecting Agent for the Swamp and Overflowed and Internal Improvement Lands donated to your Company by the State, and forward for the action of the Trustees.

Very respectfully, yours, &c.,
JAMES E. BROOME.

EXECUTIVE CHAMBER,
TALLAHASSEE, Aug. 2, 1856. }

Maj. W. H. CHASE, *Pensacola, Fla.:*

SIR: Your communication, dated 7th (supposed 27th) July, covering map of location of your road, was received this morning. The map has been certified, sealed and transmitted to the Commissioner of the General Land Office. I have received no communication from the Commissioner charging me with any duties under the law making this grant of land to our Railroad, and have therefore served no notice upon the Companies. Your communication of June, asking the appointment of Col. Ingram as Selecting Agent, was received and the appointment delayed only because I desired to arrange some general plan of action which would apply to all the roads. The other Companies had not, however, moved yet, and I therefore suggest that you will cause to proceed with the business at any time, but, before the Commission issues, send me a copy of your profile and that I may refer to it for his government.

Wishing you every success in your important enterprise, I am,
Sir,

Your ob't serv't,
JAMES E. BROOME.

[COPY.]

EXECUTIVE CHAMBER,
TALLAHASSEE, Nov. 27, 1856. }

WHEREAS, the Alabama and Florida Railroad Company of Florida have, by resolution, requested the appointment of Wm. H. Chase, as Agent to select the lands on the line of said Road donated to that Company by an act of Congress, so far as said lands are located with in the jurisdiction of the State; Now know ye, that the said Wm. H. Chase has been, and is by these presents appointed such Agent, and his actions and doings in the premises, so far as they

conform to the laws of this State and of the United States, are and will be entitled to full faith and credit.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the State at the
[L. s.] Capitol on the day and year above written.

JAMES E. BROOME, Governor of Florida.
By the Governor—Attest:
F. L. VILLEPIGUE, Secretary of State.

[COPY.]

To the Hon. JACOB THOMPSON,
Secretary of the Interior:

I, Madison S. Perry, Governor of Florida, hereby, in compliance with the requirements of the 4th section of the Act of Congress, approved May 17th, 1856, entitled an act granting public lands in alternate sections to the States of Alabama and Florida to aid in the construction of certain Railroads in said State, do certify to the Hon. Jacob Thompson, Secretary of the Interior, that on or before the 10th day of February, 1858, twenty continuous miles of the Pensacola and Georgia Railroad, beginning at the Tallahassee Depot, in Section one, Township one, Range one, South and West, and running eastward, were completed.

In testimony whereof, I have hereunto set my hand and caused to be affixed the great Seal of the State of Florida. Done at the Capitol, in the City of Tallahassee, this 3d day of December, A. D., 1858.

M. S. PERRY, Governor of Florida.
By the Governor—Attest:
F. L. VILLEPIGUE, Secretary of State.

Mr. Eppes asked that the rules be waived to permit him to make a motion;
On which the yeas and nays were called for by Messrs. Eppes and Lamar;

Upon which the vote was:
Yeas—Messrs. Baker, Baldwin, Dawkins, Dell, Duncan, Eppes, Hawes, Jones, Keitt, Lamar, McElvy, McQueen, Nicholson, Watlington and Welch—15.

Nay—Mr. Call—1.

So said motion was adopted.

Mr. Eppes moved that the Senator from Sumpter be permitted to read his report as one of the members of the Judiciary Committee, on the bill "to organize the county of Perry," the reading of which was interrupted this morning;

Which motion was adopted.

Mr. Baker from the Committee on Judiciary made the following minority report:

The undersigned from the Judiciary Committee of the Senate to whom was referred a "a bill to be entitled an Act to organize the county of Perry" and the amendment thereto, respectfully ask leave to submit the following

REPORT:

They have thoroughly investigated the bill submitted to them under the following three positions:

1. As to its constitutionality and legality.
2. As to precedent or the previous course of the Legislature of this State as to similar bills and petitions.
3. As to the necessity and practicability of said bill.

Before proceeding to the consideration of the above propositions, your Committee will in the first instance, premise that this bill comes supported by four several petitions from the district proposed in said bill to be established as a county; that said district is proposed in said bill to be taken from two several counties, viz: The counties of Manatee and Hillsborough, and from what has been commonly supposed to be a part of Brevard county; but which latter county (Brevard,) as your Committee are fully convinced after due examination of the maps in connection with the law designating the boundary of said county of Brevard, and the counties contiguous thereto, has no western boundary, and that a part of the area or district intended to be embraced in said county proposed to be established, is in fact at present embraced in no county, and is within no Judicial District of this State. Your Committee further premise that said petitions are signed by about (250) two hundred and fifty citizens of the immediate district proposed to be created into a county for Judicial purposes, and is thus entitled to the consideration and attention of this Legislature.

Again your Committee would say that the immediate Representatives of the citizens of Hillsborough, Manatee and Brevard counties are desirous of having said county so established; and moreover, that the Senators representing the two districts in which said district or area is situated in part or in whole, are also in favor and desirous of the establishment of said county for Judicial purposes. The bill is thus presented to the attention of your Committee:

1. By the petition of about 250 citizens of the State;
2. By the absence of any Judicial Tribunal in part of the proposed county;
3. By the concurrent request and wishes of the immediate Representatives of three counties;
4. By the concurrent wish of the two Senators from the two districts:

The bill thus assuming an importance before this Legislature, which your Committee will proceed to consider as proposed:

1. As to its Constitutionality and legality.

The legal objections attempted to be urged against this bill are:

1. That it would reduce other counties below the present "Constitution basis," Thompson Digest chap. 3, sec. 1, page 101, "on a uniform ratio of population." (Consult art. 9 sec. 1.)
2. That said proposed county has now the ratio of population prescribed by the 9th art., of the Constitution and by the "Act to apportion the Representatives of the State of Florida, approved Dec., 15th 1855, Acts 1855, chap 716 no., 107."
3. Hence, said county should not be established, as if established it could at the next census (1865) claim a Representative, which would be unconstitutional and illegal. Such we think is a fair statement of the gist of the argument advanced as to this point. In reply your committee deem it amply sufficient, simply to define the views they entertain as to the terms and requirements of the Constitution of this State as to the admission of new counties;

1. The Constitution recognizes in the 1st sec. of 9th article by which the first apportionment of Representatives and Senators was made a Constitutional "basis" which in said article is termed the "foregoing basis." Now let us enquire, what is that "basis" and how it is established? After stating in the foregoing portion of the said section how said "enumeration" shall be made, it makes this "basis" to consist of three parts, viz:

1. "According to such enumeration."
2. "On a uniform ratio."
3. "Equally among the different counties."

Be it rembered however that this was the first, and was the "Constitutional" apportionment made in the very inception and formation of our State Government. It is plain, however, that the term in said sec. 1 of Art. 9, wherein it is said "giving however one Representative to every county" was present and intended to be and become then operative, and subsequently the "giving however to every new county one Representative," was to be "according to such enumeration" thereafter to be had, and that the number of Representatives should be increased "on a uniform ratio."

To sustain this view of the matter we have but to refer:

1. To art. 4th, sec. 18 of the Constitution which it will be noticed, precedes the 9th Art. and in which it is said "the number of members of the House of Representatives shall never exceed sixty." Now is it not apparent to every candid mind, that, if the framers of the Constitution in the said 4th art. define and fix the ultimate, definite and final number of Representatives, that they in framing the succeeding 9th art. intended to defer the mode and manner by which that final number should be reached? and we ask is it not an equitable and

just, as well as legal construction for the whole State that such approximation should be upon a "basis" prescribed in the Constitution itself, and "according to such an enumeration," "on a uniform ratio," "equally among the different counties?" 2. But to substantiate this interpretation and view, we quote sec. 4 of art. 9 of the Constitution, viz: "No new County shall be entitled to separate Representation until its population equal the ratio of Representation then existing; nor shall any county be reduced in population by division below the existing ratio." We would here call attention to the indicative fact that this is still subsequent, cumulative and confirmatory. This 4th sec. of art. 9 follows, and is placed after the sec. 1 of art. 9 in which a "uniform ratio" is fixed. The wording of this 4th art. exhibits and confirms this. The words used are "the ratio," "then existing" and the "existing ratio." Is it not clearly apparent that an "existing ratio" at this point in framing our State Constitution was conceived and intended by its framers already to exist? But further, the said 4th sec. of art. 9 is inhibitory; it says "no new county shall be entitled to separate Representation, &c." Again we ask, does not this very inhibition demonstrate and clearly convey that if new counties shall not be entitled to Representation, they may be organized for Judicial and other purposes, without Representation? It is a plain, legal, direct and logical deduction, that such was intended, else no limit would have been placed to the number of Representatives, no "ratio" or "basis" would have been prescribed, and no inhibition as to "separate Representation" have been made.

3. But to make this question, if may be, still more apparent, we call attention to the 6th sec. of the Act of Congress, approved March 3rd, 1845, admitting Florida into the Union. That section was as follows:

"SEC. 6. And be it further enacted, That until the next census and apportionment shall be made, each of said States of Iowa and Florida shall be entitled to one Representative in the House of Representatives of the United States." We desire here to call attention to the term "census and apportionment," and at the same time to the inhibitory clause that until such "census and apportionment" is had the State "shall be entitled to one Representative;" now this was approved 3rd of March, 1845. Subsequently at the first Session of the first Legislature of the State of Florida, the following Act was passed:

"The ratio of population upon which shall be made the apportionment of Representation, shall be fourteen hundred and fifty, according to the Constitutional basis, see Thompson's Digest, page 101, ch. 3, and Acts 1845, ch. 37, sec. 1, pamp. 76. But the same Act goes on still further, and on page 102, Thompson's Digest, same Act, it is expressly put upon the same "enumeration" "uniform ratio" and "apportionment." This also is inhibitory, and to

be more express is placed as a proviso, viz: *Provided, nevertheless,* That if any county from which the census returns have not been received shall be entitled upon said returns to an additional member upon the ratio herein established, such county shall have such additional member allowed. Again we call attention to the immense cumulation of Constitutional intendments:

1st. The Constitution of the State was framed before the State was admitted into the Union on the 11th day of January, 1839. This fixes and defines as we have seen, a uniform ratio, a basis and an enumeration, then 2d. comes in the Act of Congress of March 3rd, 1845, admitting the State, which also recognises a "census and apportionment," and but one member until the "apportionment" justifies it. Hence Florida gained no new Representative by the U. S. census of 1850, as her "uniform ratio" under the "apportionment" did not entitle her to two.

3d. Next we have the Act of the very first Session of our Legislature after the adoption of our State Constitution and admission to the Union, (Acts 1845,) still reiterating and repeating, and establishing the "apportionment" at 1450, "according to the Constitutional basis;" and,

4th. The same Act going still further and establishing the views advanced and making "additional members" of our Legislature dependent upon the "returns" and the "ratio herein established."

Your Committee will here parenthetically remark, that we presume it will not possibly be contended by any one conversant in the least degree with our Constitution and form of Government that counties stand to the State as the States do to the Union or the Confederacy. The States are sovereign and only delegate powers to the Federal Government. Counties are only subordinate and convenient divisions of a sovereignty for primarily judicial and administrative purposes, and secondarily for classification as to Representation, &c. The relation of the States is Confederative and Constitutional, that of the counties to the States is municipal.

4th. In the fourth place your Committee will briefly say that as a still further confirmation of their opinions and views as to the Constitutionality of the Act under consideration they have but to refer to the "Act to apportion the Representation of the State of Florida," approved Dec. 15th, 1855, in which it is declared in perfect keeping with all of the antecedents we have quoted: "That the ratio of population upon which shall be made the apportionment of Representatives shall be twenty-four hundred, (2400) according to the Constitutional basis;" thus increasing the "ratio" but leaving the "basis" the same, that an addition to the number of counties should by an increased ratio of population be kept nearer the ultimate limit fixed in the 18th Sec. of Art. 18, viz: sixty Representatives.

5th. Another Constitutional provision which your Committee deem

imperative, and which they do not feel permitted to pass over is this: In comparing the boundary lines of the county proposed in the bill with the law as found in Thompson Digest, pages 10 to 20 inclusive, and with subsequent Acts we find a part of this district proposed to be embraced in this county are without any Judicial remedy in suits at law or equity, not being embraced within any defined county lines; that thus they are debarred from most of the guaranties and privileges secured them in the bill of rights contained in the 1st Article of the Constitution, and "excepted out of the general powers of Government by the the 27th Section of Art. 1. More especially do your Committee call attention to the 9th Section of Art. 1st, guaranteeing "Courts" and remedy by due course of law "without sale, denial or delay." This bill is simply to remedy this defect among other grievances. And here in the last and sixth place as to this point, viz: the Constitutionality and legality of the Act, we will say, this Act is specific, it is for Judicial purposes and for Judicial purposes alone.

In the opinion of your Committee, the county will not by any rational and logical interpretation of the Constitution or the law be entitled to an additional Representative except it shall be upon an "enumeration" upon "the Constitutional basis," and according to "a uniform ratio" as prescribed by every principal, both of law, equity, equality and the Constitution.

Having thus as briefly as compatible with the importance of the question involved stated our views as to the "Constitutionality and legality" of the bill, we will succinctly present the other propositions, (as the principles being established,) we presume the practice will necessarily follow. The point then arises:

II. As to precedent or the previous course of the Legislature of this State as to similar bills and petitions:

We deem it unnecessary to go back for precedents beyond the session of the Legislature immediately preceding the "Act to apportion the representation of the State of Florida, approved Dec. 15, 1855," and which now fixes the ratio of representation at 2400 and which must constitutionally continue also to be fixed until the census and returns of 1865. On page 166, Senate Journals, 7 session, 1854, we find as follows:

"House bill to be entitled an act to organize the county of Volusia;

"Was read the third time, and upon the question of its passage the vote was:

"Yeas—13. Nay—1."

Messrs. EPPES and NICHOLSON, the only then members of the Senate, now members, voting in the affirmative.

In the Senate journals 1855, adjourned session, page 128, we find

the very apportionment bill referred to under consideration and insert the following from the journals:

"House bill to be entitled an Act to apportion the representation of the State of Florida, was read the first time, and on motion, the rule waived, and read a second time. Mr. Long moved to amend said bill by striking out the word "Volusia," in the 7th and 8th lines; upon which question the yeas and nays were called for by Messrs. Long and Tracy, and were: yeas 2, nays 16. Among the nays were Messrs. Duncan, Nicholson, Eppes and Perry.

The rules were waived, and the bill put upon its passage; upon which the vote was: yeas 15, nays 3. Among the yeas, Duncan, Nicholson and Perry. Among the nays, Mr. Eppes. It will be noted Mr. Eppes voted for the bill establishing the county of Volusia, and against the motion to strike out, and against the increased ratio of 2400.

We see also an Act was passed Dec. 16th, 1856, and approved Dec. 23, 1856, to organize the counties of Lafayette and Taylor, Senate journals, 1858, page 139, upon which the vote was: yeas 14, of whom Messrs. Duncan, Eubanks, Hawes, Keitt, Lamar, McElvy and Welch, present members, voted in the affirmative. Nays 2, of whom Mr. Eppes was one.

We now come down to the precedents of the last session of this Legislature and we find on the 27th of December, 1858, a bill was passed by the Senate "to divide the county of Duval and organize a new county to be called Clay," approved December 1st, 1858.—See acts 1858, pages 21-22. Upon reference to the journals of last session, pages 217-218, we find, "a bill to be entitled" as above "was read a third time and put upon its passage; the vote was:

Yeas—Mr. President, Messrs. Baker, Call, Duncan, Eppes, Eubanks, Hawes, Keitt, Lamar, McCall, Nicholson and Welch—13.—Nays—None.

The 10th section of this bill recognises both a "basis" and a "ratio" by providing that Clay county shall be entitled to one of the two representatives "which the county of Duval has at present constituted. Thus neither increasing or diminishing the representation, and at the same time maintaining both the "basis" and the "ratio." An Act to create and organize the counties of New River and Suwannee passed the Senate of this State, Dec. 2, 1858.—See acts, pages 37-40. In the 13th Section of said act it is expressly, "Provided, That by an enumeration to be taken in each of said counties, ordered by the Judge of Probate thereof, it being ascertained that the number of inhabitants in each of said counties respectively, shall be equal to the ratio of representation now established by law, and entitle until the said counties respectively shall have the requisite number of inhabitants, they, or the one that shall not have the requisite number shall still remain a part of the representative district of Columbia county."

By referring to the Senate Journals of 1858-9, page 76, it will be seen the vote as to said bill and amendments was thus:

Yeas—Messrs. Baker, Broward, Call, Duncan, Eubanks, Jones, Lamar, McCall, McElvy, McQueen, Nicholson, Walker and Welch—14.

Nays—Mr. President and Mr. Dell—2.

It will be seen the 13th Sec. of said bill but perpetuates and reiterates the construction given by your committee in the first part of this report as to the constitutionality and legality of the present bill. The terms are the same and have unmistakably the same intentment, viz.: "enumeration," "equal the ratio of representation, and "requisite number of inhabitants"—all tend to sustain the view we have taken of this as a legal and constitutional question.

We have but one more precedent to cite and we have done.

By reference to Senate Journals of last session, page 168, Dec. 20th, 1858, it will be seen that Mr. Call gave notice of a "bill to be entitled an Act to organize the county of Amelia;" and on page 197 of same journals, that "Mr. Call presented a petition from a number of citizens of Nassau county, asking for a division of said county."

Your committee must of consequence be satisfied that the learned and energetic Senator from the said county must himself have been satisfied that said county in the proposed division would in every way be in compliance with the intentments and conditions contained in the 13th Section of the Act "to organize the counties of Suwannee and New River," and that said proposed county of Amelia was then and at that time, prepared to comply in its division with the "existing ratio" and "enumeration" as provided for in the Constitution and the laws of this State, on the same terms with the counties of Suwannee and New River. Hence your committee derive from,

- 1st. The Constitution of the State;
- 2d. From the Act admitting the State into the Union;
- 3d. From subsequent acts of the Legislature;
- 4th. From precedents of previous Legislatures;

the following deductions:

1. New counties may be admitted for other purposes than representation;
2. New counties may be created for judicial and other purposes;
3. Before they can be constitutionally and legally entitled to representation, new counties must, according to a constitutional basis, have "a uniform ratio" founded upon an "apportionment" or enumeration, and this "ratio" must be "equal among the different counties," and must, as the present apportionment is established by law, be at least 2400. Act Dec. 15th, 1855.

III. In the consideration of the third proposition, your committee would call the attention of the Senate to the vast extent of territory lying from East to West in the counties of Hillsborough and Man-

let, that the citizens of that portion of the counties which is now proposed to be struck off into Perry county reside far to the East and a large distance from their respective places of holding Court, that the number of inhabitants, as your committee have been informed, amount to about thirteen hundred, and that number almost daily increasing; that they are separated from the Western portion of their counties by a district of barren country lying between them, which makes it inconvenient for them to attend the Courts, as well as an extra expense on the State, and the large petition which has been sent up by these people asking that they be permitted to organize themselves into a county for judicial purposes, they being willing to bear the expense of such organization, are sufficient to induce your committee to believe that it is but just to grant their request, and upon the foregoing grounds your committee, therefore, recommend that said bill as amended do pass.

All of which is respectfully submitted,

J. McROBERT BAKER,
Of Judiciary Committee.

I concur with Mr. Baker in the conclusion as to the constitutional question involved in the foregoing report.

L. G. McELVY.

Mr. Baker moved that in consequence of the motion to permit the Senator from Sumpter as one of the Judiciary Committee to proceed with the reading of the report of the other members of the Judiciary Committee, that said report as a protest, may be withdrawn by permission of the Senate;

Which was adopted.

Mr. Lamar from the Committee of Conference made the following report:

The joint Committee of Conference who were appointed to take into consideration the House amendment to the bill entitled "an Act to amend an Act to permit free persons of African descent to choose their own masters," in which amendment the Senate refused to concur, and to which the House adheres,

REPORT:

That they have agreed upon a substitute for said amendment, the passage of which they recommend.

T. B. LAMAR,
Chm'n Senate Committee.
F. C. BARRETT,
Chm'n House Committee.

Which was read.

Mr. Call moved that a Committee of three be appointed to inform the House that the Senate had adopted the following section of an

Act to amend an Act to permit free persons of African descent to select their own masters and become slaves:

SEC. 8. *Be it further enacted,* That whenever any free person of African descent, who shall be subject to the provisions of this Act, shall notify the Judge of the Circuit Court of the county in which he or she shall reside, that it is his or her desire to leave the State rather than to be sold into slavery for life, but that said free person of African descent is destitute of sufficient means to pay his or her necessary expenses, then, in that event, it shall be the duty of the Judge of said Circuit Court to issue an order directed to the Sheriff of the county where said free person of African descent shall reside, commanding him to hire out said free persons of African descent to the highest bidder, for not more than two years, and not less than one, the proceeds of which hiring shall be paid into the hands of the Clerk of the Circuit Court, to be by him retained until the expiration of said term of hiring; and then, under the direction of the county, to be expended in removing said free person of African descent from the State of Florida.

Which was read, and the amendment reported by the Committee adopted.

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

EXECUTIVE CHAMBER, }
Tallahassee, December 20th, 1859. }

HON. JOHN FINLAYSON,
President of the Senate:

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

Escambia County:

Auctioneers—James N. Morino, D. Quina, A. R. Baker, Geo. W. Hutton, Joseph Mitchell, Wm. Pollock and A. W. Nicholson.

Santa Rosa:

Auctioneer—Wm. McKain.

Levy County:

Auctioneer—Simon A. Edwards.

Duval County:

Auctioneer—John V. Barbee.

Monroe County:

Auctioneers—Charles Antonio and Wm. H. Pfister.

Gadsden County:

Auctioneer—David Gee.

Very respectfully,
M. S. PERRY.

On motion of Mr. Dell, the nominations were concurred in.

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

EXECUTIVE CHAMBER, }
Tallahassee, Dec. 21st, 1859. }

HON. JOHN FINLAYSON,
President of the Senate:

Sir:—I respectfully recommend the following nominations for the advice and consent of the Senate:

S. M. G. Garey, Jno. M. McIntosh and O. P. Tommey, a Board of education for the Seminary at Ocala.

Very respectfully,
M. S. PERRY.

On motion of Mr. Call the nominations were concurred in.

A bill to be entitled an Act making appropriations for the expenses of the State Government for the fiscal year 1859-60, and for other purposes;

Was read.

Mr. Dell moved to strike out \$100 opposite Mr. Pitman's name and insert \$125.

Mr. Baker moved to amend by adding, the other officers of the Senate shall also receive the same pro rata pay;

On which the yeas and nays were called for by Messrs. Baker and Welch;

The vote was:

Yeas—Messrs. Baker, Dawkins, McElvy and Welch—4.

Nays—Messrs. Baldwin, Call, Dell, Duncan, Eppes, Hawes, Jones, Lamar, McQueen and Nicholson—10.

So the amendment was lost.

Mr. Call moved to strike out all the first Section of the Act, after the enacting clause, down to the words F. A. Branch, and insert, "that the members of the General Assembly shall receive three dollars per diem for their services, and ten cents for each mile of travel in going to and returning from home, to be audited by the Comptroller, and the Clerks, Sergeant-at-Arms, and Door-keeper and Messenger of the two Houses shall receive five dollars per diem for their services, to be in like manner audited by the Comptroller; *Provided, however,* that the per diem of the Secretary of the Senate, and Chief Clerk of the House, shall be continued until the 31st day of December inclusive;" also, to insert before the words "F. A. Branch, Chaplain;" the words "Dr. DuBose, Chaplain, \$50;"

On which the yeas and nays were called for by Messrs. Call and Lamar;

Upon which the vote was:

Yeas—Messrs. Baker, Call, Dawkins, Duncan, Eppes, Hawes, Jones, Lamar and McElvy—9.

Nays—Messrs. Baldwin, Dell, McQueen, Nicholson and Welch—

5.

So the amendment was adopted.

Mr. Baker offered the following amendment:

And that no member of this adjourned Session of the General Assembly is entitled to or shall receive any pay from the State of Florida;

On which the yeas and nays were called for by Messrs. Call and Eppes;

Upon which the vote was:

Yeas—Messrs. Baker, Call, Duncan, Eppes, Hawes and Jones—6.

Nays—Mr. President, Messrs. Baldwin, Dawkins, Lamar, McElvy, McQueen, Nicholson, Watlington and Welch—0.

So the amendment was lost.

Mr. Dawkins moved to insert the word "necessary" between the words "mile" and "travel;"

Which motion was adopted.

On motion, the Senate adjourned until to-morrow morning, 9 o'clock.

—o—
THURSDAY, December 22, 1859.

Senate met pursuant to adjournment.

A quorum present.

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

Mr. Baldwin moved to strike out of the journal of yesterday, the resolutions introduced by Mr. Call, leaving on the journal simply the announcement that Mr. Call introduced a series of resolutions.

Mr. Call moved a call of the House;

Which motion was seconded by Mr. Lamar.

On calling the roll the following members answered to their names: Messrs. Baker, Baldwin, Call, Dawkins, Dell, Duncan, Eppes, Hawes, Jones, Keitt, Lamar, McElvy, McQueen, Nicholson, Watlington and Welch.

The question was then taken on the motion of Mr. Baldwin to strike out;

On which motion the yeas and nays were called for by Messrs. Call and Lamar;

Upon which the vote was:

Yeas—Messrs. Baker, Baldwin, Dawkins, Keitt, Nicholson, Watlington and Welch—7.

Nays—Messrs. Call, Dell, Duncan, Eppes, Hawes, Lamar, McElvy and McQueen—8.

So the Senate refused to strike out.

Mr. Eppes moved that the vote had yesterday on the General Appropriation bill be re-considered, and said bill placed first among the orders of the day;

Which motion was adopted.

Mr. Eppes moved that the Act making appropriations for the expenses of the State Government for the fiscal years 1859 and 1860, be immediately taken up and considered;

Which motion was adopted.

Mr. Eppes moved that the amendments made to said bill be struck out;

Which motion was adopted.

The bill as engrossed was then on motion read a third time by its title and put upon its passage;

Upon which the vote was:

Yeas—Messrs. Baldwin, Dell, Eppes, Hawes, Jones, Keitt Lamar, McElvy, McQueen, Nicholson, Watlington and Welch—12.

Nays—Messrs. Baker, Call, Dawkins and Duncan—4.

So said bill passed—title as stated.

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

Mr. Dawkins moved that the rules be waived, and that the joint resolution with regard to certain persons who have circulated or aided in circulating an incendiary publication, be now taken up and acted upon;

Which was adopted;

The resolutions read the second time, rules waived, read a third time by its title, and put upon its passage;

Upon which the vote was:

Yeas—Mr. President, Messrs. Baker, Baldwin, Dawkins, Dell, Duncan, Eppes, Hawes, Jones Keitt, Lamar, McElvy, McQueen, Nicholson, Watlington and Welch—16.

Nay—Mr. Call—1.

So said resolutions passed—titled as stated.

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

The following message was received from the House of Representatives;