

as one of the co-equal members of the Federal Union, the benefits and blessings of wise laws and good government, must attest the depth and sincerity of my thankfulness.

And now, gentlemen, requesting all the pious people of the State to join me in prayer to Almighty God that he will convert the weakness and inadequacy I so painfully feel, into strength and competency for the good of my country, and that he will, of His abundant mercy, bless our and our whole land, I bring these remarks to a close.

The Senate returned to the Senate Chamber, and on motion adjourned until to-morrow morning 10 o'clock.

THURSDAY, December 21st, 1865.

The Senate met pursuant to adjournment.

The President in the Chair.

A quorum present.

Mr. Ross gave notice that he will at an early day introduce the following bills:

A bill to be entitled An act to prevent the inhabitants from carrying fire-arms;

A bill to authorize County Work-houses; and

A bill to regulate the hire of servants and laborers.

Mr. Abercrombie gave notice that he will on some future day introduce a bill, to be entitled An act authorizing the city of Philadelphia to issue bonds.

Mr. Kenan presented the petition of Wm. Scull, asking relief.

Which was referred to the Committee on Propositions and Grievances.

Mr. Pearce presented the petition of Wm. M. Shockley;

Which was read and referred to the Committee on Propositions and Grievances.

The following communication was received from the House, and the preamble and resolutions ordered to be enrolled:

HOUSE OF REPRESENTATIVES,
December 19, 1865.

Hon. THOMAS N. WHITE,
President of the Senate *pro tem.*:

SIR: The House of Representatives has this day adopted the following resolution, viz:

Preamble and resolution asking the President of the United States to extend Executive clemency to John H. Gee, of Florida.

Very respectfully,

WM. FORSYTH BYNUM,

Clerk of the House of Representatives.

A memorial of J. H. McClellan, Senator from the 6th District, was read and referred to the Committee on Elections.

Mr. Gorrie offered the following resolution:

Resolved by the Senate, (the House concurring), that the Senate and House of Representatives meet in joint session in the Representative Hall on Saturday, the 23d day of December, 1865, at 12 o'clock M. for the purpose of electing two Senators to represent this State in the Senate of the United States;

Which was read, adopted and ordered to be certified to the House.

The Joint Committee on Rules made the following report:

JOINT RULES.

RULE 1. Messages from either House to the other shall be sent by such persons as a sense of propriety in each House may determine.

2. After a bill shall have passed both Houses, it shall be duly enrolled by the Clerk of the House of Representatives, or by the Secretary of the Senate, as the bill may have originated in one or the other House.

3. When bills shall be enrolled, they shall be examined by a Joint Committee of at least two from the Senate, and two from the House of Representatives, appointed as a Standing Committee for that purpose, who shall forthwith make report.

4. When a bill or resolution, which shall have passed in one House is rejected in the other, notice thereof shall be given to the House in which the same may have passed.

5. When a bill or resolution which has been passed in one House, shall be rejected in the other, it shall not be brought in during the same session, without notice of ten days, and leave of two-thirds of that House in which it shall be moved.

6. Each House shall transmit to the other all papers on which any bill or resolution shall be founded.

7. After each House shall have adhered to their disagreement, a bill or resolution shall be lost.

8. When elections are required to be made by joint vote of the two Houses, the time of electing shall be previously agreed upon.

9. In every Joint Committee the member first named on the part of the House first proposing such Committee, shall convene the same.

10. During the elections of officers there shall be no motion entertained, except to adjourn, to proceed to vote, to nominate or withdraw a candidate—which motions shall have precedence in the order they stand.

11. The doings throughout shall proceed without debate.

12. Communications shall be made on paper, and signed by the Secretary of each House, and transmitted by the Messengers and Doorkeeper.

13. In every case of disagreement between the Senate and the House of Representatives, either House may suggest conference, and may appoint a Committee for that purpose, and the other House shall appoint a Committee to confer at a convenient hour, to be determined by the Chairman; said Committee shall meet and confer on the subject of disagreement.

14. Whenever a public bill or resolution is ordered to be printed for the use of either House, a number shall be ordered sufficient for the use of both Houses, and it shall be the duty of the Secretary of the Senate or Clerk of the House, as the case may be, to inform the other House of such order, and to transmit to that House the requisite number of printed copies.

T. W. BREVARD,
Chairman Senate Committee

Which was received, read and the rules adopted, and fifty copies ordered to be printed.

The Committee on Rules made the following report :

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STANDING RULES OF THE SENATE.

RULE 1. The President shall take the chair every day at the hour to which the Senate shall have adjourned; shall immediately call the members to order, and on the appearance of a quorum, shall cause the Journal of the preceding day to be read, unless the reading thereof shall, by unanimous consent, be dispensed with; and in case the President should not be present to take the chair at the appoint-

ed hour, the Senate shall forthwith proceed to elect a President, who shall vacate the seat upon the return of the President.

2. He shall preserve order and decorum; may speak to any purpose; and decide questions of order, subject to an appeal to the Senate by any two members; on which appeal, no member shall speak more than once, unless by leave of the Senate.

3. He shall rise to put the question, but may state it sitting.

4. No member shall speak to another, or otherwise interrupt the business of the Senate, while the Journals or public papers are read, or pass between the President and any other member, or addressing the Senate.

5. Every member, when he speaks, shall address the Chair, sitting in his place; and when he has finished, shall sit down.

6. No member shall speak more than twice in any one debate on the same subject, without leave of the Senate.

7. When two or more members shall rise at the same time, the President shall name the person entitled to proceed.

8. When a member shall be called to order, he shall sit down until the President shall determine whether he is in order or not, and every question of order shall be decided by the President, without debate, but subject to an appeal to the Senate.

9. If any member shall be called to order for words spoken, or exceptional words shall be immediately taken down in writing, the President may be better enabled to judge of the matter.

10. No member shall absent himself from the service of the Senate, without leave of the Senate; and in case a less number than a quorum shall convene, they are hereby authorized to send the Sergeant-at-arms, or any other person or persons by them authorized for any or all absent members, as the majority of such members shall agree at the expense of such absent members respectively, and such excuse for non-attendance shall be made as the Senate, when a quorum is convened, shall judge sufficient.

11. No motion shall be debated until it be seconded.

12. That no motion necessary to go on the Journal, shall be entertained by the President until the form is reduced to writing, except motions to adjourn, and motions of course, such as to read a paper, to place among the orders of the day, to read a second time, or to engross for a third reading on to-morrow, and the introduction of every bill or resolution shall furnish a written statement containing the name of the Senator, and the fact that pursuant to previous notice he introduces said bill, naming them by their titles.

13. When a question is under debate, no motion shall be received but to adjourn, to lie on the table, to postpone indefinitely, to postpone to a day certain, to amend or to commit; which several motions shall have precedence in the order in which they stand arranged; and the motion to adjourn shall always be in order, unless

when a member shall be engaged in addressing the Senate, or when the Senate shall be engaged in taking a vote; and the motions to adjourn and to lie on the table shall be decided without debate.

14. If the question in debate shall contain several points, any member may have the same divided.

15. In filling up blanks, the largest sum and the longest time shall be first put.

16. When the reading of a paper is called for, and the same is objected to by any member, it shall be determined by vote of the Senate without debate.

17. When the yeas and nays shall be called for by two of the members present, every member within the bar of the Senate at the time the question was put by the President, shall, (unless, for special reasons, he be excused by the Senate,) declare openly and without debate his assent or dissent to the question. In taking the yeas and nays upon the call of the Senate, the names of the members shall be taken alphabetically.

18. On a motion made and seconded to shut the doors of the Senate, in the discussion of any business which may, in the opinion of any member, require secrecy, the President shall direct the gallery to be cleared; and during the discussion of such motion, the door shall remain shut; and no motion shall be deemed in order to admit any person or persons whatever.

19. The following order shall be observed in taking up the business of the Senate, to wit: First, Motions; Second, Petitions, Memorials and other papers, addressed either to the Senate, or to the President thereof; Third, Resolutions; Fourth, Reports of Standing Committees; Fifth, Reports of Select Committees; and lastly, Orders of the Day.

20. When a question has been once made and decided, it shall be in order for any member of the majority to move the reconsideration thereof; but no motion for the reconsideration of any vote shall be in order after a bill, resolution, message, report or amendment, upon which the vote was taken, shall have gone out of the possession of the Senate, announcing its decision; nor shall any motion for reconsideration be in order, unless the same shall be made within the next two days of actual session thereafter.

21. The President shall have the right to name a member of the Senate to perform the duties of the Chair; but such substitute shall not extend beyond an adjournment.

22. Before any petition, or memorial, addressed to the Senate, shall be received and read, whether the same be introduced by the President or a member, a brief statement of the contents of the petition or memorial shall verbally be made by the introducer; after which, it may be referred to a Committee.

23. One day's notice at least shall be given of an intended motion for leave to bring in a bill.

24. Every bill, resolution of a public nature, or resolution appropriating of the public money, shall receive three readings previously to its being passed; and the President shall give each, whether it be the first, second or third, which readings be on three different days, unless, in case of emergency, four the Senate may deem it expedient to dispense with the rule.

25. The first reading of a bill or resolution of a public nature for the appropriation of the public money, shall be for the information of the Senate, at which reading the introducer shall have the right to state the general principles of the bill or resolution, in case may be, and the causes for introducing it; and if opposed, the question shall be, "shall the bill or resolution be rejected?" upon which question there shall be no debate. If a proposition be made, or if the question to reject be negatived, the bill or resolution shall go to a second reading without a question.

26. No bill or resolution of a public nature, requiring the appropriation of public money, shall be committed or amended until it shall have been twice read, after which it may be committed or amended.

27. When a bill or resolution of a public nature, or for the appropriation of public money, shall have been read the second time, before both sides of the question shall have been put to the Senate upon its passage, it shall be in order for any member to move a commitment to a Committee of the whole house—that it lie on the table for its indefinite postponement—for its postponement to a certain day—for its commitment to a Standing Committee—to a Select Committee—or to amend; which motions shall have precedence in the order above stated. After a bill or resolution shall have been amended, it shall again be read as amended for the information of the Senate, before the question shall be put upon its passage.

28. Before a bill or resolution inquiring three readings shall be read the third time in the Senate, it shall be carefully engrossed (without interlineation or erasure,) under the direction of the Secretary of the Senate, and upon this reading of the bill or resolution it shall not be committed or amended without the consent of three-fourths of the Senate.

29. It shall not be in order to amend the title of a bill or resolution until it shall have passed its second reading.

30. The title of bills, and such parts thereof only as shall be affected by proposed amendments, shall be inserted in the Journals.

31. The President of the Senate shall appoint the following Standing Committees, which shall thus be denominated:

1. Committee on the Judiciary.
2. Committee on the State of the Commonwealth.
3. Committee on Corporations.
4. Committee on Schools and Colleges.
5. Committee on Propositions and Grievances.

6. Committee on Internal Improvements.
7. Committee on Elections.
8. Committee on Finance and Public Accounts.
9. Committee on Engrossed Bills.
10. Committee on Enrolled Bills.
11. Committee on Public Lands.
12. Committee on the Executive Department.
13. Committee on Military Affairs.
14. Committee on Taxation and Revenue.
15. Committee on Federal Relations.
16. Committee on Agriculture.
17. Committee on subjects connected with the colored population of the State.
18. Committee on Boundaries.
32. All confidential communications made by the Governor to the Senate, shall be by members thereof kept secret until the Senate, by their resolution, take off the injunction of secrecy.
33. All information or remarks touching or concerning the character or qualifications of any person nominated by the Governor to office shall be kept secret.
34. When acting on confidential Executive business, the Senate shall be cleared of all persons except the Secretary, Sergeant at Arms, Messenger and Door-Keeper.
35. The proceedings of the Senate when not acting in Committee of the Whole, shall be entered on the Journal as concisely as possible, care being taken to detail an accurate and true account of the proceedings.
36. Messages shall be transmitted to the House of Representatives by the Secretary; upon each of which shall previously be endorsed, by the Secretary, the final determination of the Senate thereon.
37. Messengers may be introduced in any stage of the business, except while a question is being put, or while the yeas and nays are being called.
38. The Governor of the State, former Governors of the State and Territory, and former Senators and Representatives from this State to the Congress of the United States, and also Senators and members of the United States Congress, State House officers, members of the Representative branch of the General Assembly and Judges of the Chancery and Circuit Courts of this State, shall be admitted to a seat within the bar of the Senate Chamber, and any other person upon the invitation of a member of the Senate.
39. The Secretary of the Senate, Sergeant-at-Arms, Messenger and Door-Keeper, shall be severally sworn by the President, well and faithfully to discharge their respective duties, and to keep secret the proceeding of the Senate when sitting with closed doors.
40. No member who was without the bar of the Senate when the question was put by the Chair, shall be permitted to vote on the

question then before the Senate, without the unanimous consent of the Senate.

41. No rule herein adopted for the government of the Senate shall be amended or suspended without the consent of four-fifths of the Senate, except rule No. 1, which shall only be suspended by unanimous consent of the Senate.

42. That upon the adjournment of the General Assembly the Secretary of the Senate shall be required to file in the office of the Secretary of State all papers on file with him relating to Senate business, all original papers and Journal of the Senate; and he shall be required to obtain a certificate from the Secretary of State that such has been done, and file the same with the Treasurer before receiving his compensation.

43. To give effect to these rules, the President shall command the Sergeant-at-Arms to take into custody—and if unable to do so, to summon a posse for that purpose—and confine until the Senate adjourns, any member for disorderly behavior, interruption of proceedings of the Senate, after being called to order, or for persistent refusal to obey the Chair in a legitimate order; but the member shall be entitled to an appeal to the Senate from the order of the Chair.

44. That the Senate shall meet at 10 o'clock, A. M., daily.

T. W. BREVARD
Chairman Special Committee

Which was received, read and the rules adopted, and one hundred copies ordered to be printed.

On motion of Mr. Bird, the Senate adjourned until 3 o'clock P. M.

THREE O'CLOCK, P. M.

The Senate met pursuant to adjournment.

The President in the chair.

A quorum present.

A committee from the House appeared and informed the Senate that the House had passed a resolution to go into an election for United States Senators on Friday, the 22nd inst., and asked the concurrence of the Senate in the same.

The resolution was ordered to lie on the table.

The rules being waived,

Mr. Kenan, Chairman of the Committee on Elections, made the following report:

The Committee on Elections, to whom was referred a resolution

declaring Edward Jordan Senator elect from the 15th Senatorial District, and entitled to his seat as such Senator, have had the same under consideration, and have instructed me as their chairman, respectfully to

REPORT :

That at an election held in the 15th Senatorial District on the 29th day of November, A. D. 1865, Edward Jordan was, in the opinion of your committee, duly elected, and is constitutionally qualified to represent said district. Your committee do therefore recommend that the resolution declaring Edward Jordan Senator elect from the 15th Senatorial District be adopted.

D. L. KENAN, Ch'n.

Therefore be it resolved by the Senate, That Hon. Edward Jordan is entitled to his seat, as Senator elect from the 15th Senatorial District.

Mr. Gorrie made the following report :
Which was received and read.

Minority Report of Committee on Elections.

The undersigned beg leave respectfully to disagree with the conclusions arrived at by the majority of the Committee on Elections; that in the consideration of this matter they have recurred to the fundamental principles upon which the Government is based, and that they are unable to forget or pass over the great principle "That all political power is inherent in the people." The circumstances of this case, as enquired into by the Committee, exhibit the fact that on the 29th day of November last, at an election holden at the different precincts in the 15th Senatorial District of the State of Florida, composed of the counties of Lafayette and Taylor, the people of said counties did then and there give a preference for the Hon. J. L. F. Cottrell, a non-resident of the District, for the position of Senator from said Senatorial District; and while the undersigned fully and freely admit the ineligibility of said Cottrell, by reason of his being a non-resident of said district—still they cannot allow the position that this body has under this case, any power whatever to decide as to who is Senator from the 15th District, because it is especially provided in the Constitution of the State of Florida, in Article IV., Section 5: "The Senators shall be chosen by the qualified electors for the term of two years, at the same time, in the same manner and in the same places, where they vote for members of the House of Representatives. That the people were laboring under the impression that Mr. Cottrell was qualified, and laboring under this impression they have shown a decided preference for Cottrell over Jordan, the claimant, and therefore we believe tha

it is unconstitutional and in contradistinction to the Declaration of Rights of the people of the State of Florida, which recognizes that all political power is inherent in the people. That the majority of the people of the Senatorial District have not expressed the wish to have Mr. Jordan their Senator, but to the contrary have expressed a decided opposition to him as said Senator. Therefore the undersigned respectfully submit, that the people of this District still have the right to elect a Senator, not having done so, upon the 29th day of November last, and respectfully submit the following resolution:

Be it resolved by the Senate and House of Representatives of the State of Florida in General Assembly convened, That the seat of the Senator from the 15th Senatorial District is vacant, and that the Governor be requested to order an election in said district for said Senator at as early a day as possible.

JOHN M. GORRIE,
D. L. KENAN.

Mr. Vann moved the report of the majority be concurred in.

The yeas and nays were called for by Messrs. Vann and Kenan.

The vote was:

Yeas—Messrs. Baker, Bird, Finegan, Hendry, Morrison, Poe, Richard, Rosseau, Steele, Turner and Vann—11.

Nays—Messrs. Abercrombie, Brevard, Crawford, Evans, Gorrie, Kenan, Pearce, Roper, White and Whitehurst—10.

So the report was concurred in and the resolution adopted.

Mr. Jordan, Senator from the 15th District, presented himself at the desk and was duly sworn in by the President of the Senate.

The Committee on Elections made the following report:

The Committee on Elections, to whom was referred the application of J. H. McLellan to investigate and report whether he be entitled to represent the 6th Senatorial District, he having received the largest number of votes at an election held on the 29th day of November, 1865, in and for said district, respectfully ask leave to

REPORT:

Section 5, Art. IV of the Constitution of the State of Florida provides that "no man shall be Senator unless he shall have been an inhabitant of this State two years next preceding his election, and the last year thereof a resident of the district or county for which he shall be chosen." It appears that J. H. McLellan was not a resident of the 6th senatorial district one year next preceding his election, and is therefore, in the opinion of your committee, constitutionally disqualified from being such Senator.

D. L. KENAN, Ch'n.

Which was read and concurred in.

Mr. Abernombie gave notice that on some future day he will introduce the following bills:

Bill to be entitled An act to protect the shipping interest in State; also,

Bill to be entitled An act regulating pilotage.

Mr. Finegan gave notice that he will at some future day introduce a bill to be entitled An act to remove the county site of Nassau County from Callahan to Fernandina, in said county.

Mr. Hendry gave notice that he will at some future day introduce a bill for the relief of stock raisers in this State.

The following communication was received from His Excellency the Governor:

EXECUTIVE OFFICE,
Tallahassee, Dec. 21, 1865.

To the Hon. PRESIDENT OF THE SENATE:

SIR: The Committee appointed by the Provisional Governor, under a resolution of the Convention to "examine and report to the General Assembly for their action thereon, the changes and amendments to be made to the existing statutes, and the additions required thereto, so as to cause the same to conform to the requisitions of the amended Constitution, and with reference especially to the altered condition of the colored race," &c., have completed their work and presented it to me, with the "request that it be laid before the two Houses of the General Assembly."

I most respectfully do so.

I have the honor to be,

Very respectfully,

Your obedient servant,

D. S. WALKER.

Mr. Gorrie moved that the message of His Excellency the Governor be spread upon the Journal, the accompanying documents be referred to the committee "On all subjects connected with the Colored Population of this State," and one hundred copies thereof be printed for the use of the General Assembly;

Which was adopted.

To the General Assembly of the State of Florida:

GENTLEMEN:—The undersigned were appointed by the Provisional Governor, under a Resolution of the recent State Convention, and charged with the duty of reporting to the General Assembly, the "changes and amendments to be made to the existing statutes, and the additions required thereto, so as to cause the same to conform

to the requisitions of the amended constitution, and with reference especially to the altered condition of the colored race."

In entering upon the discharge of this duty, we are deeply impressed with the magnitude and importance of the task, and regret that the shortness of the time elapsing between the date of our appointment, and the meeting of your Honorable body has precluded the possibility of giving to the subject that thorough investigation which its importance demanded. Within the brief space allotted to us, however, we have endeavored to embody in the form of bills, upon various subjects, some suggestions, which we trust may be found useful, in directing your minds to such changes and modifications of the existing statutes, and additions thereto, as may be demanded by the recent alteration in the civil relations heretofore existing between the two races that constitute the inhabitants of the State. The constitutional provision declaring the abolition of negro slavery, suddenly removed from under the restraining and directing influence of the master, nearly one full moiety of our population, and creates the necessity of bringing them more fully under the operation of municipal law. Heretofore, there existed in each household, a tribunal peculiarly adapted to the investigation and punishment of the great majority of the minor offences, to the commission of which, this class of population was addicted. With the destruction of the institution of negro slavery, that tribunal has become extinct, and hence the necessity of erecting another in its stead, and of making such modifications in our legislation, as shall give full efficiency to our criminal code. It is to the organization of such a tribunal, as of first importance, that we now desire to invite your attention.

It must be manifest to every reflecting mind, that the "Circuit Court," as at present organized, extending as it does its jurisdiction over a large area of territory, embracing a dozen or more counties, and confined to the holding of stated terms, however efficient heretofore, in the restraining of crime, is but illy adapted to the present exigency. In view of the great increase of minor offences, which may be reasonably anticipated, from the emancipation of the former slaves, a wise forecast would seem to call imperatively for the erection of a criminal tribunal, more local in its jurisdiction, and of greater promptness in its administration of the penalties of the law. Such evidently was the design of the recent Convention, in extending the "judicial power" so as to embrace "such other courts as the General Assembly may establish." The constitutional provision granting this power to the General Assembly is as follows, to wit: "The judicial power of this State, both as to matters of law and equity, shall be vested in a Supreme Court, Courts of Chancery, Circuits Courts, and Justice of the Peace. *Provided*, the General Assembly may also vest such civil or criminal jurisdiction as may be necessary,

Corporation Courts, and such other Courts as the General Assembly may establish; but such jurisdiction shall not extend to capital cases."

With all the reflection that we have been able to bestow upon the subject, and aided by the light drawn from the legislation of other States, we have nevertheless found it extremely difficult to devise any plan of organization for the proposed Court, which is entirely free from objection. We present, however, with great deference, for your consideration and action thereon, a bill entitled "an act to establish and organize a county criminal court," which, we think, will be found upon examination, to be as free from objection and as well adapted to the exigency, growing out of the new order of things, as can well be devised.

II. The next subject that claimed the attention of the commission was, the present state of our criminal laws, as applicable to the two different races that constitute the population of the State. By reference to the statute book, it will be found that in most of the minor offences, and a few of the more aggravated, a marked distinction is made between white persons and free negroes and slaves, with regard to the commission of these offences. After the maturest reflection upon the subject, we have come to the conclusion, that a wise policy would dictate, that with a very few exceptional cases, this discrimination be abolished, as far as it may be done without impairing the efficiency of the prescribed penalties, and that both races be subjected to the same code.

In making this recommendation, the undersigned would not be understood as favoring the idea, that there exists, either in the Federal Constitution or in that of the State, any inhibition to control the authority of the General Assembly in making such discrimination, whenever the welfare of society, or the safety of the community may demand it. This authority, however, is not to be exercised beyond the granting or restricting of what is usually denominated mere "privileges," in contradistinction to the absolute "rights" of individuals. The enjoyment of the rights of person and property, together with the means of redress, is, by our amended Constitution, guaranteed to all the inhabitants of the State without distinction of color, and may not be invaded by the legislation of the General Assembly. With this limitation, the power to discriminate between the two races, has always been exercised without stint, by the respective States of the Union, not even excepting those of New England. Their statute books are replete with enactments confirmatory of the truth of this statement, nor is there any lack of judicial evidence on the point.

In 1833, Connecticut passed a law, which made it a penal offence to set up or establish any school in that State for the instruction of persons of the African race not being inhabitants of the State, or to

instruct or teach in any school or institution, or board of that purpose any such person, without the previous consent of the civil authority of the town in which such school or institution might be located. A case arose under this law, one of the points raised in the defense was, that the law was in violation of the Constitution of the United States, which guarantees the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." The case was argued before Chief Justice Daggett, and he held that persons of the African race were not citizens of a State, within the meaning of the word "citizens" as used in the Constitution of the United States, and therefore not entitled to the privileges and immunities of citizens of the other States. (Vide *Crandell vs. the State*—10 Con. Rep. 371.)

In Kentucky, the point has been repeatedly decided in the same way, nor are we aware that its correctness has ever been seriously questioned in any State of the Union. Chancellor Kent, with accuracy and research no one will question, states emphatically in no part of the country except Maine, did the African race, as a point of fact, participate equally with the whites in the exercise of civil and political rights. (2 Kent, Conn. 258, note b.)

But the right to exercise the power of discrimination rests alone upon the action of the States—it has been, time and again, sanctioned by every department of the Federal Government. In the legislation for the District of Columbia, the Congress has never failed to recognize the difference that exists between the two races, both as it regards their social and political status. Such has been universally the action of the Executive Department, backed by the official opinions of such men as William Wirt and Calhoun, and indorsed by that giant of constitutional law, Daniel Webster, while acting as Secretary of State. Upon application for letters of protection to visit Europe, he refused to grant them upon the distinctly stated ground, that the applicants were not "citizens," in the meaning of the word as used in the Constitution.

But if there ever did exist any doubt upon this subject, it is forever to be put at rest by the authoritative decision in the great case of *Dred Scott vs. Sandford*, reported in 19 Howard's S. C. 413, 393. In the opinion delivered in that case, undoubtedly the greatest intellectual effort of the late Chief Justice Taney, it is expressly held, that "a free negro of the African race, whose ancestors were brought to this country and sold as slaves, is not a 'Citizen' within the meaning of the Constitution of the United States," and it is strongly stated in the same opinion, that it is not within the constitutional power of Congress to make him such.

In commenting upon the legislation of Congress with reference to this race, the C. J. very forcibly and significantly remarks—The law, like the laws of the States, shows, that this class of persons

governed by *special legislation* directed exclusively to them, and always connected with provisions for the government of slaves, and not with those for the government of white citizens. And after such a uniform course of legislation as we have stated, by the Colonies; by the States and by Congress, running through a period of more than a century, it would seem, that to call persons thus marked and stigmatized, "Citizens" of the United States—"fellow-citizens," a constituent part of the sovereignty, would be an abuse of terms, and not calculated to exalt the character of an American citizen in the eyes of other nations."

This adjudication was rendered just four years prior to the commencement of the late revolution, and it may not be inappropriate to enquire whether any of the results of that revolution can be justly invoked to impair its authority as a just and enlightened exposition of the Constitution. It is true, that one of the results was the abolition of African slavery, but it will hardly be seriously argued, that the simple act of emancipation of itself, worked any change in the social, legal or political status of such of the African race as were already free. Nor will it be insisted, we presume, that the emancipated slave, technically denominated a "Freedman," occupies a higher position in the scale of rights and privileges than did the "Free negro." If these inferences be correct, then it results as a logical conclusion, that all the arguments going to sustain the authority of the General Assembly to discriminate in the case of "Free negroes," equally apply to that of "Freedmen" or emancipated slaves.

But it is insisted by a certain class of radical theorists, that the act of emancipation did not stop in its effect, in merely severing the relation of Master and Slave, but that it extended farther, and so operated as to exalt the entire race and place them upon terms of perfect equality with the white man. These fanatics may be very sincere and honest in their convictions, but the result of the recent elections in Connecticut and Wisconsin, shows very conclusively that such is not the sentiment of a majority of the so-called free States.

While we thus strenuously assert the authority of the General Assembly, to exercise the power of discrimination within the limits before indicated, we would earnestly, but respectfully recommend that it be exercised only in exceptional cases, and so far as may be necessary to promote the welfare of society, and to insure the peace, good order and quiet of the entire community. Impressed with these views, and in furtherance of this end, we have prepared a Bill to accompany this Report, entitled "An Act prescribing additional penalties for the commission of offences against the State and for other purposes."

The first section of the Bill provides, "that whenever in the criminal laws of this State, heretofore enacted, the punishment of the

offence is limited to fine and imprisonment, or to fine or imprisonment, there shall be superadded as an alternative, the punishment of standing in the pillory for one hour, or whipping not exceeding thirty-nine stripes, on the bare back, or both, at the discretion of the jury." By an examination of the respective codes, as applicable to the two classes of population—white and black—it will be found that they differ but little as to the nature of the offences designated in each. The great mark of difference is to be found in the character of the punishments. There seems always to have existed in the minds of our Legislators a repugnance to the infliction of corporal punishment upon the white man, and hence the resort to fine and imprisonment, for the punishment of offences committed by the white man, while that mode of punishment is almost the only one applicable to the colored man, for the commission of any of the minor offences. This discrimination, we think, is founded upon the soundest principles of State policy, growing out of the difference that exists in the social and political status of the two races. To degrade a man by punishment, is to make a bad member of society and a dangerous political agent. To fine and imprison a colored man, in the present pecuniary condition, is to punish the State instead of the individual. The provision contained in the first section of the proposed bill is not designed to interfere with the discrimination above referred to, but only to give a wider range to the discretion of the jury, in applying the punishment to the offence.

The second section of the bill is deemed important to remedy a defect growing out of the extreme technicality of the common law, with reference to the subject indicated. By the principles of the law, if the "severance" from the freehold, and the "felonious taking and carrying away" be one and the same continued act, it will amount only to a "trespass," for which the injured party was restricted to his action for damages on the civil side of the Court, but in which the perpetrator of the act could not be criminally punished. In view of the present condition of things, we think that this rule of the common law ought to be altered as is proposed to be done by the second section of the bill.

The other sections, with the exception of the 12th, are sufficiently indicative of their purpose, not to require any special comment. They have been carefully and critically compared with the statute law as it now stands, and their adoption is deemed necessary to remedy existing defects, and to provide for the punishment of new offences, which are likely to occur under the changed conditions of society.

The 12th section restricts the privilege of the use of fire-arms by colored persons, to such only as are of an "orderly and peaceable character." The authority of the General Assembly to impose this restriction is beyond doubt. Neither the second article of the

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amendments to the Federal Constitution, nor the first section of the sixteenth article of the State Constitution, nor anything contained in either of said instruments, can by any far interpretation, be deemed to oppose any obstacle to the exercise of this authority. A reference to the legislation of Northwestern States will show that they recognize the right to impose suitable restrictions upon this class of their population, and the section now under consideration is almost a literal transcript of the law of Indiana upon that subject. If the restriction is deemed important to the welfare of a community, in which not one in a thousand is affected by it, how much more important with us, where nearly one full moiety of the population is of that class. The interest of the well disposed and peaceable colored man, whose right it is to enjoy the fruits of his honest industry, as well as the safety of the entire community—both white and black—imperatively demands, that the privilege of bearing arms should be accorded only to such of the colored population as can be recommended for their orderly and peaceable character. It is needless to attempt to satisfy the exactions of the fanatical theorist—we have a duty to perform—the protection of our wives and children from threatened danger, and the prevention of scenes which may cost the extinction of an entire race.

III. The next subject that engaged the attention of the Commission was that of vagrancy, and as the result of their reflections, they respectfully present for your consideration "A bill to be entitled an act to punish vagrants and vagabonds." Without materially altering the law as it now stands, it is the purpose of the proposed bill, while adding such penalties as are most likely to deter from the commission of the offence, so to provide that their infliction shall, by no possibility, impose a pecuniary charge upon the public. Undoubtedly, in the absence of a State penitentiary, the most effectual measure to accomplish this purpose, would be the establishment of local work-houses, in which the offender could be employed in some productive labor, which would inure to the defraying of the charge of his maintenance, while undergoing the penalty of his offence. This, however, is deemed impracticable in the present pecuniary condition of the country, and we have endeavored in the proposed bill to approximate as nearly as may be to the desired object. The provisions of the bill are made applicable to all vagrants, without distinction of color.

IV. The law as it now stands, very properly prohibits the intermarriage of white and colored persons, declaring all marriages of the kind to be utterly null and void, and the issue of the same to be bastards, and incapable of inheriting any property. It also makes it a penal offence for a white man to attempt to intermarry, or to live in a state of adultery or fornication with a negro, mulatto, quarteroon or other colored female, but omits to make it penal for

a white female to live in a state of adultery or fornication with a colored male, or for a colored male to live in a state of fornication with a white female. This we have deemed an important omission in the law, and to remedy the defect we have fully present for your consideration a bill to be entitled "An act in addition to the act entitled an act to amend the act entitled 'An act concerning marriage licenses, approved January 23d, A. D. 1862.' It might be thought that the general act against fornication and adultery is sufficiently comprehensive to embrace these cases, but it is very evident, from the terms in which it is couched, that it is designed to apply only to white persons, for it provides that no person shall at any time be in the power of the parties to prevent the prosecution, by marriage legally solemnized." (Thomp Dig., p. p. 499, 500, §7.)

V. Deeply impressed with a sense of the obligation that rests upon the white race as the governing class, to do all that may be in their power, to improve the moral condition of the race, and to emancipated slaves, the undersigned most respectfully presents for your consideration a bill to be entitled "An act to establish and enforce the marriage relation between persons of color." Herein it is shown from the very necessity of the case, this matter was left to be regulated by the moral sense of the master and the slave, and may truth be said, to have been the only inherent evil of the institution of slavery, as it existed in the Southern States. Now, the obstacle of compulsory separation is removed, and as a Christian people should embrace the earliest opportunity to impress upon this portion of our population, and if need be, to enforce by appropriate penalties, the obligation to observe this first law of civilization and morality, chastity and the sanctity of the marriage relation. With these views, we have prepared the bill, and respectfully invoke your favorable consideration.

VI. Next to the enactment of laws for the prevention of crime and the enforcement of the domestic relations, there is no subject so intimately connected with the permanent welfare and prosperity of a people, as that of a well regulated labor system. Such a system we recently enjoyed under the influence of the benign, but much abused and greatly misunderstood institution of slavery. That has been swept away in the storm of revolution, and we are now remitted to the operation of an untried experiment. Whether we shall be successful in devising a plan to make the labor of the emancipated slave available, is a problem of doubtful solution, and one in which he is vastly more interested than is his former master.

This unfortunate class of our population, but recently constituting the happiest and best provided for laboring population in the world, by no act of theirs, or voluntary concurrence of ours, will

prior training to prepare them for their new responsibilities, have suddenly deprived of the fostering care and protection of their masters, and are now to be seen like so many children gamboling upon the brink of the yawning precipice—careless of the future, and intent only on revelling in the present unrestricted enjoyment of the newly found bauble of "freedom." Their condition is truly pitiable and appeals to every generous bosom for aid and succor, and we have greatly mistaken the character of the Southern people, if that appeal shall be made in vain. We are not responsible for this pitiable condition of the race, but we will nevertheless exert ourselves to save them from the ruin which inevitably awaits them, if left to the "tender mercy" of that canting hypocrisy and mawkish sentimentality, which has precipitated them to the realization of their present condition.

War has done but little to curtail the area of cultivable lands in the South—the broad acres still present their inviting surface to the labor of the husbandman, and if the effort to make the emancipated slave an efficient laborer shall fail, then, as a *last alternative*, resort must be had to the teeming population of over-crowded Europe. But let not this fearful alternative, pregnant as it is with the ruin and destruction of a helpless race, be adopted, until we shall have given them a fair and patient trial. As the superior and governing class, we are bound to this by every principle of right and prompting of humanity, yea, by the obligation of gratitude. For where in all the records of the past, does history present such an instance of steadfast devotion, unwavering attachment and constancy, as was exhibited by the slaves of the South throughout the fearful contest that has just ended? The country invaded, homes desolated—the master absent in the army, or forced to seek safety in flight, and to leave the mistress and her helpless infants unprotected—with every incitement to insubordination and instigation to murder and rapine, no instance of insurrection, and scarcely one of voluntary desertion, has been recorded. This constancy and faithfulness on the part of the late slaves, while it has astonished Europe and stamped with falsehood the ravings of the heartless abolitionist, will forever commend them to the kindness and forbearance of their former masters. They will do all in their power to promote his welfare, and to encourage and secure his moral and mental improvement. While they confine him to his appropriate sphere of social and political inferiority, they will endeavor to stimulate him to all legitimate efforts at advancement, and by the exercise of kindness and justice towards him, teach him to value and appreciate the new condition in which he is placed.

If after all, their honest efforts shall prove unavailing, and this four millions of the human family, but recently dragged up from

barbarism, and through the influence of Southern masters, elevated to the status of Christian men and women, shall be doomed by the scrutible behest of a mysterious Providence, to follow in the footsteps of the fast fading aborigines of this Continent—when the last man of the race shall be standing upon the crumbling brink of a people's grave, it will be some compensation to the descendants of the Southern master, to catch the grateful and benignant recognition of this representative man, as he points his withered finger to the author of his ruin and exclaim, "thou didst it!"

We have prepared a bill entitled "An act in relation to the contracts of persons of color," which we trust will be found to be in accordance with the foregoing views, and respectfully ask for it your favorable consideration."

VII. We also present for your consideration a bill to be entitled "an act in relation to apprentices;" which is made applicable to both races, without distinction of color; and is designed to remedy the defects and supply the omissions occurring in the law as it now stands.

VIII. The subject of keeping up the cultivation of plantations belonging to minors, and upon the proceeds of which they are exclusively dependent for their support and maintenance, has been brought to our attention, and we deem it of sufficient importance to demand the special legislation of your honorable body. It is not to be expected of executors, administrators and guardians, that they will consent to incur a personal responsibility for the benefit of the estates of their wards, and yet the working of them may be the only means of rendering them productive. Unless special authority be given to the representatives of these Estates so to do, but few will assume the responsibility of working them with hired labor, and they must consequently remain unavailable for the support and maintenance of minor children and an incubus upon their hands. Impressed with the importance of the subject, we present for your consideration a bill entitled "An Act authorizing Executors, Administrators and Guardians to contract for the hire of laborers, and confirming contracts heretofore made."

IX. By a rule of the common law, no person having the remotest pecuniary interest in a suit at law, is permitted to testify upon the trial of the same. We have always adhered strictly to this ancient canon, and such now is the rule governing the practice in our Courts. In England, and in some of the States of the Union, this rule has been so much relaxed, as to permit the parties to testify in their own behalf, and to compel them, when required to do so, to testify in behalf of the opposite party; leaving the *credibility* of the person so testifying to be judged of by the jury. So far as we have been able to learn, no injury has resulted from this relaxation, but on the contrary, it is said to have greatly facilitated the ascertainment of the truth.

ment of truth wherever it has been adopted. But be this as may, we are decidedly of the opinion, that the provision in our amended Constitution giving to persons of color the right to testify in court, imperatively demands that the rule be so altered as to conform to the change above indicated. With this end in view, we respectfully commend to your favorable consideration, the bill entitled "An Act concerning testimony."

X. In accordance with the spirit of the recently amended Constitution which declares that "all the inhabitants of the State, without distinction of color, are free, and shall enjoy the rights of person and property, without the distinction of color," we respectfully present for your consideration, "An Act" to extend to all the inhabitants of the State the benefits of the courts and the processes thereof. The purpose of the act is to give to the colored population the same standing in the several tribunals of justice, that are accorded to the white population, and thus place them upon terms of perfect equality *under the law*. The provision of the Constitution according to them the rights of person and property, would be but an idle declaration and a deception, unless they were afforded the means of prosecuting and defending these rights. We believe that the Convention intended to act in good faith in granting this great immunity to this inferior and dependant class of our population, and that the adoption of the proposed measure, while it will consummate that intention, will also serve to demonstrate to them, that as the superior and governing class, we intend to render to them equal and exact justice.

XI. The subject of making suitable provision for the support of such of the colored population as are superannuated, or rendered unable to work, by disease, has occasioned the commission much anxious thought; but after the maturest reflection, we have been unable to devise a system which would be an improvement upon the law as it now stands. The whole subject is under the control of the Board of County Commissioners of the respective Counties, and they will doubtless make such wholesome provision in regard to the matter as the exigency of the case may demand. From the tone of public sentiment on the subject, we anticipate but little suffering on the part of this class of the colored population. The late owners almost universally express a deep sympathy for the condition of such of their former slaves as are superannuated, or too infirm to gain a livelihood by work, and with few exceptions, they will be allowed to remain upon the plantations and be cared for as formerly. It is only the idle, lazy and insolent, who will probably suffer.

XII. Nor has the commission been unmindful of the important subject of providing facilities for the mental improvement of the colored race; but they have come to the conclusion that in the present condition of this population, it would be premature to at-

tempt to organize any general system of education. Their migratory and unsettled condition is such at present, as to afford but little promise that any system, however well devised, would be successful. The first lesson to be taught them is, that their new-found *liberty* is not *license*, and that labor is ordained of God, and a necessity of their condition. For the next year or two, the important struggle with them will be, to provide sustenance for the physical man. That lesson properly inculcated and impressed, it will be time enough then to attend to the culture of the intellect. When that time shall arrive, the South will need no prompting to duty, from any quarter whatsoever.

XIII. The several subjects brought to the view of the General Assembly in this Report, are such as were deemed to come strictly within the purview of the Resolution of the Convention, authorizing the appointment of the commission; and we have not felt ourselves at liberty to travel beyond the limits therein indicated. The time allotted to us for the task, and the pressure of prior engagements, cause us to fear that the work is not as perfect and complete as might have been desired. We trust, however, that whatever omissions may have occurred, will be supplied by the wisdom of your honorable body.

C. H. DUPONT.
A. J. PEELER.

To the General Assembly of the State of Florida :

The undersigned, one of the Committee appointed under the resolution of the Convention, to report to the General Assembly the changes and amendments to be made to the existing statutes, believing that their report should be confined to a simple explanation of the provisions of the bills they submit for the consideration and action of the General Assembly, and differing from the majority of the committee as to the extent to which the views to be embodied in their report should be carried, has declined to sign the report submitted. In making this separate report for himself, the undersigned desires to express his concurrence in the bills proposed for the adoption of the General Assembly, and to unite in the declaration of the majority of the committee, that they are the result of the most anxious deliberation and examination of the various subjects to which they refer. That they may not be found to be in some degree imperfect and liable to some objections, is not assumed; for in the conflict of opinions now existing in regard to the new problems to be solved, and the new relations which the different classes of the population sustain to each other, very few minds would be

likely to work out a perfect result. Whatever defects may be found to exist, and whatever errors may have been committed, either in the details of the bills or in the reasons and principles on which they are founded, will, it is confidently hoped, be corrected by the wisdom of the General Assembly.

Respectfully,

M. D. PAPY.

The following communications from His Excellency the Governor, were received, read and the nominations therein made concurred in:

EXECUTIVE OFFICE,
Tallahassee, Dec. 21, 1865. }

To the Hon. PRESIDENT OF THE SENATE:

SIR: I hereby respectfully nominate for Inspectors of Timber and Lumber for the port of Pensacola: H. H. Brown and Wm. Fields.

For Port Wardens, Port of Pensacola: John Campbell, J. R. Trimble and C. P. Knapp.

For Inspector of Produce and Wood for the County of Escambia: P. Gonzalez.

For Auctioneers for Escambia County: Desiderio Quino, James Gonzalez and Wm. Mc. R. Jordan.

For Notaries Public for Escambia County: M. P. De-Riobo, W. T. Armstrong and D. C. Anderson.

I have the honor to be,

Very respectfully,

Your obedient servant,

D. S. WALKER.

EXECUTIVE OFFICE,
Tallahassee, December 21, 1865. }

To the Hon. PRESIDENT OF THE SENATE:

SIR:—I hereby respectfully nominate Reuben H. Charles and William M. Dukes as auctioneers for the county of Columbia.

I have the honor to be,

Most respectfully,

Your obedient servant,

DAVID S. WALKER.

EXECUTIVE OFFICE,
Tallahassee, December 21, 1865.

To the Hon. PRESIDENT OF THE SENATE :

Sir:—I hereby respectfully nominate Robert Wilson and David J. Taylor as auctioneers for the county of Nassau.

I have the honor to be,
Most respectfully,

Your obedient servant,

DAVID S. WALKER.

EXECUTIVE OFFICE,
Tallahassee, Dec. 21, 1865.

To the Hon. PRESIDENT OF THE SENATE :

Sir: I hereby respectfully nominate as commissioners of pilotage for the Port of Fernandina—
Henry Timanus, Geo. S. Roux, L. Dozier, Sr. Wm. M. Johnston
and S. N. Freeman.

I have the honor to be,

Most respectfully,

Your ob't serv't

D. S. WALKER.

EXECUTIVE OFFICE,
Tallahassee, Dec. 21, 1865.

To the Hon. PRESIDENT OF THE SENATE :

Sir:—I hereby respectfully nominate J. C. Hemming and Reuben Cowart to be auctioneers for the County of Duval.

I have the honor to be,

Most respectfully,

Your obedient servant,

D. S. WALKER.

Mr. Vann asked that the rules be waived to offer a motion to reconsider the resolution passed to go into an election for United States Senators.

The Senate refused to waive the rules.

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