

12/18/22
Executive Department,

December 18th 1822.

Gentlemen of the Senate, and
of the House of Representatives,

The act of Congress passed at the last Session providing for the payment to this State of three per cent of the net proceeds of sales of lands made since the first day of September 1819, directs that such payment shall be made by the Secretary of the Treasury from time to time and whenever the quarterly accounts of the several Land offices in the State shall be settled, to such person or persons as may or shall be authorized by the Legislature of the State to receive the same.

To meet the provisions of the act of Congress, it will become necessary for the General Assembly to pass a law authorizing some person, or persons to receive this fund. I submit whether the State Treasurer may not be a suitable agent to be designated to that trust: being required to set

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it apart in the Treasury subject only, to special appropriations, and those applicable only to the objects for which this fund was designed.

The payment of this sum is subjected, by the act authorizing it, to a limitation which possibly may suspend it for some time: Concerning the situation of which I hoped before this to have been able to lay before you the Statement of the Treasury Department.

The fund in question being applicable only to the making of public roads and improving internal navigation, a portion of it cannot be too early realized; at no period can it be more needed than at the present. Several highly necessary leading roads were directed by the acts of last session, and the same policy of improving our land communications is observable at the present session also. It may likewise be remarked that a portion of an appropriation payable out of this fund by the act of the 13th December 1819

not remains unexpended: this had been applicable to the examination of certain rivers and of Communications by land between them.

By the reports of the Commissioners who have laid out certain ^{state} roads conformably to the law of last session, some appropriations will be necessary to open certain sections of those roads lying out of the reach of settlements; a comparatively small sum may answer this purpose, being prudently employed in the hire of working hands by the month, under one or more judicious overseers.

Connected with this subject, I would suggest, that it might very materially aid in the improvement of our roads and navigation, if such provisions were made by law, whereby slaves illegally imported or otherwise introduced, should be employed in this species of service, under suitable agents, until otherwise disposed of according to law.

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Your most Obedt

Israel Pickens

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Ordered to lie on
the table.

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(I wish this paper
to be returned)



1116/24
Executive Department, Nov. 16, 1824

Gentlemen of the Senate,

and of the House of Representatives:

Assembled to consult for the public welfare, our first attention is appropriately invited to the contemplation of our public blessings. Among these is that prevalence of health which it has pleased Providence to dispense during the current year, and which claims, in return, our grateful devotion. Our labour if not rewarded with profusion, has at least been attended with plenty. We are also surrounded by the most gratifying evidence of improvement in the social and individual condition of our people. A favourable change is moreover in progress, in regard to our pecuniary difficulties; among which may be classed the ^Tgrievous debt which lately held under an almost irredeemable mortgage, so great a portion of our lands, and kept in check so much useful improvement. By the repeated beneficence of our national government it is now in the power of every man to obtain an advantageous release from this debt. The proffered boon should be embraced by all, as an act of general enfranchisement.

While we contemplate our national prosperity, and the valuable privileges dispensed under our happy system, the example of which is now operating with such imposing influence in other and remote countries, an occasion is presented, to which none similar has ever happened, and probably never may, in which are associated the most interesting recollections of our revolutionary history; and on which you will indulge me in offering you my congratulations. It is the honour and felicity which this nation enjoys in embracing within its hospitable bosom that illustrious veteran stranger, whose early and constant friendship for American, and for general liberty, and whose seasonable aid entitled him to our veneration as one of the founders of the republic. The demonstrations of grateful respect elicited by the reappearance of La Fayette on the early theatre of his dangers and triumphs, do not less truly represent the feelings of the people of this junior state. And although our remote situation may deny us, in common with some of our sister states, the honour and gratification of a particular visit from this generous benefactor of our country; yet we may observe with the most confident assurance, that the same sentiments of affection animate every community, however new and remote, which is encircled by that empire of liberty which was one of the dearest objects of his toils, and will ever be one of the brightest ensigns of his glory.

In recalling our reflections from the enlarged scale of national sentiment, to the more limited sphere of our own legislative powers, we find there a sufficient field of operation, for the most profound statesman and the purest patriot. Our state institutions are now receiving their first impulses. It is important that these should be directed by a correct and liberal policy; their early errors and virtues become alike familiarized by habit, or tolerated from reasons of necessity.

The concerns of the State University will be fully detailed to you in the report of the Trustees, at their approaching session. The perfecting and the investments of the endowments of the institution, are the principal ~~interest~~ objects that can be effected until the location of its site shall have been determined. This last is a matter purely within the discretion of the legislature. I will only remark that the weighty subjects set apart by the constitution ^{for} the next session, seem to require this to be acted upon before, or postponed until after that period; to avoid the evil effects of blending together questions that ought to be weighed distinctly on their several merits. The titles to the lands conferred by Congress have been perfected by grant in the name of the Corporation.

It is deemed unnecessary at present to suggest anything in relation to the farther investment of the college funds: the provision already made by law will suffice for such portion of the proceeds of the lands as will probably be realized within the present and succeeding years.

Pursuant to the 2d section of the act establishing the State Bank and according to an ordinance of the Board of Trustees conformably thereto, the sum of \$39,667. 31, being the unexpended proceeds of these lands received into the Treasury, is now ready, and may be considered as virtually converted into State stock bearing an interest of six per cent per annum, payable half yearly to the corporation for the support of the institution. This justly appreciated fund is liable to no casualties short of the dissolution of the government. Its improvement-its permanent security - and its faithful application to the purposes of the grant, are all enjoined by the express letter of the constitution of the state, as well as the terms of the act of investment. This stipulation has for its guarantees the faith and credit of the state, and the whole of its productive resources, and also the conscience of every succeeding legislature, that shall act under oath to respect the constitution. To question these securities would be a reflection on the honour and good faith of our own government and

people - reflection which the wary capitalists of a remote sister state have in a recent similar negotiation shown themselves unwilling to make against us. Although at a former session (in the year 1821) when the present facilities were not fully anticipated, I submitted the idea of a different alternative, (and the only other feasible one which has been presented to view since that period,) of converting these funds into a similar stock of the national government; yet the comparative disadvantage of that plan will be obvious, when we consider the loss by exchange, both in the money and stock-markets, - the expense and risk of transmission, and the shortness of the periods of redemption of all the United States stocks: to say nothing of the drain of our monied capital, and other effects on our circulating medium.

The three percent. fund so far as the state was entitled, up to the last settlement thereof at the Treasury of the United States amounting to \$31,711.01, has been obtained. This sum, together with the unexpected proceeds of the Cahawba lots and University lands, amount to \$109, 213.81³/₄. These funds being applicable as capital of the State Bank; and more than one hundred thousand dollars thereof being ascertained on the 11th day of June last to be in the Treasury, it became the duty of the Governor, in obedience of the 20th section of the act incorporating the institution, to convene the President and Directors for the purpose of carrying the act into effect. They were accordingly called together, at this place on the second day of July last. I hope to be able within a few days to lay before you a report of the proceedings of that body.

Pursuant to the authority given to the Governor and Commissioners, by the 8th section of the same act, a loan of one hundred thousand dollars has been obtained on behalf of the state; for which certificates of State-Stock have been issued at par, bearing the interest of six percent per annum, payable half yearly at the Phoenix Bank in the city of New York -- The principal to be paid at the expiration of ten years at the Bank of the State of Alabama. This loan has been received in specie of the United States coin.

The particulars of this negotiation, with such provisions as may be deemed necessary for its punctual observance, will be the subject of a future communication.

The monies applicable as capital of the Bank of the State, derived from the sources mentioned amount to \$209,213.81 $\frac{3}{4}$, subject to some deduction for expense. The other materials necessary having also been procured by the Corporation through their President, it may be expected to commence its operations within a few days. This small commencing capital may be progressively enlarged from the same and other public sources, without interfering with the current demands of the state, during the present or any subsequent year.

In giving useful effect to this Institution, and in regarding with scrupulous good faith the engagements connected with the funds composing its capital, much is expected from the Representatives of a just and enlightened people, who are its guardians. Profit to the revenues of the State should ever be estimated as only a secondary object of its creation. The more important purposes of maintaining a sound and wholesome currency, and of furnishing a safe and regularly productive depository of such public funds as are entrusted to the State, to be applied with fidelity to their destined objects, for the benefit of our present and future population. These should ever be regarded as the cardinal ends of its being.

An instrument has been received and placed on the files of this Department, executed by the President and Directors of the Planters' and Merchants' Bank of Huntsville, and by a majority of the Stock-holders, according to the form prescribed by the fifth section of an act of last session for amending the Charter of that Bank, and for the speedy resumption of specie payments thereby; which instrument gives assent to the four preceding sections of the act, as a part of the Charter. By these sections it was required that specie payments be resumed and continued from the first day of August, in default whereof (to appear by the protest of one of its notes by a Notary Public) the Governor is authorized to issue his Proclamation dissolving the Charter. The fact of the execution of this instrument, together with the receipt of an expose of the condition of the Bank accompanying the same was made known by Proclamation. And the writ of Quo Warranto has been dismissed at the cost of the Corporation, agreeably to the requirements of the said fifth section. It is well understood that only a partial resumption of specie payments has taken place, and the Proclamation annulling the Charter, only awaits the document required by the act.

The law of last session relating to Escheats has gone but partially into operation. The Judges of the County Courts to whom the act had offered the appointment of Escheator, have with very few exceptions declined that additional office. Not being possessed of satisfactory information of suitable persons disposed to accept Executive appointments to fill the vacancies, most of them remain unsupplied. The principal reasons assigned for this general reluctance, is the unwillingness to enter with security into the official bond required, in a large sum without the prospect of certain emolument. Several of the Judges express a disposition to resign their existing offices as troublesome without sufficient compensation.

To give the act its desired effect, a change in regard to the office of Escheator will be necessary. This change may be effected by annexing the duties of Escheator to those of the Judges of the County Courts, ex-officio, and under the same official sanctions. The Solicitors may also be made to render useful service within their Circuits in ascertaining and prosecuting claims under the laws of Escheat and forfeiture.

In some Counties there appear not to be sufficient inducements connected with the office of Judge of the County Court to elicit the services of persons well qualified. In other Counties the compensation appears sufficiently inviting. Some important duties are entrusted to this class of officers, particularly in regard to the Estates of deceased persons and the rights of Orphans, which require the office to be placed on such footing as will ensure a constant as well as faithful discharge of duty. Connected with this subject is the extraordinary latitude which our law allows to Executors and Administrators; their exemption from liability on their pleadings, the ex-parte manner of their settlements, and the facility of declaring Estates in their hands insolvent, with the consequences of this to Creditors. There are features in our law deserving revision.

When a vacancy occurs in the office of Sheriff, no person is qualified under our existing laws to perform the duties, however great the emergency, until a commission is received from the Executive, filling the vacancy. This has been productive of inconvenience and it is not difficult to imagine cases in which much mischief may ensue in remote Counties from the Seat of Government. This may be remedied by requiring the Coroner or some other officer to perform the duties until the vacancy is supplied.

The responsibilities of Sheriffs appear not to be sufficient to insure the punctual holding and returning of elections. Instances have occurred wherein Sheriffs under Executive appointments, have failed to hold the election for a successor, at the "next general election" after their appointments, and to return such election after holding the same, subjecting the public to the delay and inconvenience necessary to the correction of the omission. It also may, and often does happen in these elections of a Sheriff to fill a vacancy, that the officer holding the election is himself a Candidate for the office. An impartial exercise of this duty would be better secured, by entrusting it in other hands.

Both in the case of Sheriffs and Clerks, it is believed, that instances of irregularity have occurred, by the incumbent appointed by the Executive in the one case, and by the Judge in the other, holding his office over the succeeding General Election. These may require a statute, legalizing the acts performed without the period prescribed by the Constitution. There is also another class of cases where similar irregularities have happened, and which may deserve like notice. In the Counties established since the adoption of the Constitution, the first election of their County officers took place at special periods different from the time of any General Election, and from necessity their constitutional terms of service expired a fraction of a year before or after the time of the General Election. In some of these Counties the officers thus elected, continued their duties during the fraction of time after, and in others they ceased so much short of the termination of their periods.

The next session of the legislature being designated in the constitution as a period when our judiciary may be farther improved, it may now be a seasonable time to provide for obtaining the best assistance in digesting and preparing such amendments in the system as may be deemed advisable, to be reported to the legislature at the next session. This task might be ably executed by the Judges of the Supreme Court or by such other qualified committee as the legislature may in their wisdom select. In either case it would be necessary to provide a suitable compensation for this service.

Among the matters which may be considered proper subjects for reference and amendment, are those obvious defects in our judicial practice, which tend so materially to impede the administration of justice. The course of proceeding in our courts should be regulated with no other view than to the correct and speedy attainment of justice,—everything unnecessary to this should be lopped from the

system. However sacred the English judicial and political code had been rendered by the sanction of long experience, and by the bountiful encomiums upon it, which the student meets with all over the elementary treatises on law and government, we all unite in appreciating the advantages effected by our political change; and some improvements in the system of jurisprudence also, while we retain a servile adherence to many errors in the judicial practice of England. It is unnecessary to notice the gradual process by which this practice had grown up in that country, and with it other appendages which render a change there, impracticable. The mere formality of pleading requires a distinct class of legal professors. By this division of study and labour, and these continued long and intensely, something like perfection is attained. The multiplication and the support of these professors accords with the policy of that government, as does the encouragement of many other branches, in order to furnish employment for industry and talents. In all these respects a different policy prevails here, and necessarily a different capacity exists. For it will be no reflection on our ablest barristers to say that they are not, nor can they be perfectly versed in the complicated system of English pleading. Indeed, to say they were so, would be a much greater reflection, implying a neglect of other studies of infinitely more value. But we need not only advert to the numerous instances in which causes are thrown out of Court by reason of imperfections in the pleading. Even in our highest appellate Court, established through great caution to protect the rights of our citizens from the possible errors of a single judge in the hurry of the circuit—a tribunal where we should expect great legal and constitutional principles to be investigated and settled—even here, we find a vast proportion of the cases depending, and ultimately determined, not on their merits, but on technical questions of form. Much of the valuable time of this enlightened bench is required, not to do justice between the parties, but to determine which has the most skilled advocate in special pleading.

To correct this grievance no innovation is wished, nor is any necessary in the principles, nor in the essential forms. We have to do little more than to imitate the example of several of our respectable neighboring states, in which questions of form never reach beyond the threshold of a controversy. There, certainly they should end. Actions and pleas may retain their present denominations and uses, but with such precision of form only as will fully apprize the adverse party of the matters alledged, and form a bar to subsequent claims grounded on the same cause. These are the only rational purposes of pleading.

The sufficiency of any of the pleadings to answer these purposes, may safely be left to the conclusive determination of the Court, on motion. The proper amendments being made instanter, or at such times and on such terms as may be deemed reasonable. When a cause has reached a final judgment, (both parties appearing) all objections, both to form and substance not being previously made matter of special objection, should be waived. This is practically the course observed, as is understood, in North and South Carolina, and to a great extent in the state of Pennsylvania;--probably other examples might be added to the list. This will at least excuse the suggestion I have felt it my duty to make, from the charge of aiming at innovation.

The frequent escapes of criminals, require a more rigid system of accountability for officers charged with their custody. A very efficacious remedy has elsewhere been found in requiring a prosecution to be instituted against the officer in every case of escape, compelling him to show his grounds of exculpation. In the cases of African slaves lately pending in the Supreme Court of the United States, the two vessels, Marino and Louisa, have been condemned, and the slaves taken on board the same (originally twenty-five in number) have been finally decreed to remain subject to the laws of this state for their disposition. Application has been made to the judge of the Federal District Court, in behalf of the state for possession of these slaves under the decree, to be delivered to the agent of the state, for disposition according to law. This application may be expected as a matter of course to be granted at the approaching session of that Court.

In the remaining case of the schooner Constitution, that vessel has also been condemned; but a sufficient evidence not-having been adduced, proving the American ownership of the slaves taken on board, (originally eighty-four in number) they were decreed to be restored to the importers. Being since apprized that evidence can be obtained, proving this fact, and being also advised from respected legal sources, that the state not being a party of record in the cause, was not precluded by the decision, from filing an original libel, and having the slaves, seized thereon; provided this were effected before the actual restoration under the decree has placed them without our jurisdiction.

With this information and advice, I instructed the Attorney General to cause a libel to be filed in the District Federal Court, and to obtain, as of course the Judge's order of seizure. The libel has been accordingly filed, and a quasi order of seizure granted, under which the property now remains.

Having proceeded thus far in attending to their cases, without any express authority from the legislature; having also employed counsel, to aid the prosecuting attorney of the United States, so far as concerned the interest of this state; I now refer it to your discretion, to determine whether the claim of the state to these remaining slaves, (of the Constitution) shall be further prosecuted or not. I submit to you the report of Mr. Kelly, for whose services as an attorney in the cases, while pending in the Federal Supreme Court, the state is much indebted. By a communication from the Governor of the state of Georgia, the running of the divisional line between the two states has been urged. No provision having been made on the part of this state for the appointment of commissioners to attend to that work, it has been deferred until the legislature shall have acted on the subject.

Another executive communication from the same state has been received, accompanied by a resolution for amending the constitution of the United States. There is herewith laid before you, together with a resolution of the legislature of the state of Maine disapproving this proposed amendment.

I also lay before you an executive communication from the state of Ohio, accompanying resolutions of the legislature of that state, proposing to the consideration of the several states a plan for gradual emancipation and colonization of slaves, on terms not infringing the rights of individuals.

A full return of the census, is expected very soon to be ready for your attention; the present being one of those sessions at which the apportionment of senators and representatives is required by the constitution to be made.

The following appointments have been made to fill vacancies, occurring since the last session, and now to be filled by the legislature.

Edward Kennedy, to be Judge of the County Court of Clarke, in lieu, of R. Lee, resigned.

G. W. Brame, to be Judge of the County Court of Perry, in lieu of George C. King, resigned.

Joseph W. Fields, to be Judge of the County Court of Montgomery, in lieu of Peter Williamson, resigned.

Joseph B. Eason, to be Judge of the County Court of Decatur, in lieu of James B. Robinson, resigned.

James Saffold, to be Judge of the County Court of Dallas, in lieu of Nathan Sargent, removed from the state.

Resignations have been received from the Judge of Autauga, Montgomery, Jackson and Butler counties so recently that it has not been deemed necessary to fill the vacancies until the legislature should convene.

Having now presented to view the several matters which appeared to me to deserve your attention; I have only to add the hope that a temper of mutual good feeling may continue to sooth the mutual labors of those concerned in the duties of our session, and that these labors may be blessed with the fruits which characterize good works.

ISRAEL PICKENS.

(Senate Journal, 1824. pp. 5-12)

(House Journal, 1824. pp. 6-13)