

JOURNAL

OF

THE PROCEEDINGS

OF THE

SENATE OF MARYLAND

JANUARY SESSION,

ONE THOUSAND EIGHT HUNDRED AND FIFTY-EIGHT.

ANNAPOLIS:
BULL & TUTTLE.
1858.

Leave was granted Messrs. Gardner, Smith and Gaither, to introduce a supplement to the act passed March 10, 1854, entitled, "An Act to amend and modify the present primary school system of Charles county."

Mr. Smith presented the petition of Jacob Dityler, and others, praying an amendment to the act of incorporation of the Manchester Savings Institution ;

Which was read, and

Referred to the committee on Corporations.

Also, the petition of F. Diffen, and others, praying that the Manchester Independent Academy to incorporate under the name of Irving College ;

Which was read, and

Referred to the committee on Education.

On motion of Mr. McCullough,

Leave was granted Messrs. McCullough, Wilkins and Turner, to report a bill to be entitled, "An Act to make valid the acts of Hiram McCullough, as Commissioner under the act of 1828, chap. 165,

Mr. McCullough, from the select committee, reported said bill ;

Which was read the first time, and

Referred to the committee on Judicial Proceedings.

The Senate adjourned.

TUESDAY, January 12th, 1858.

On motion of Mr. Hoffman,

Leave was granted the committee on Corporations to report a bill entitled, "An Act to amend an act entitled, an act to incorporate the Canton Company of Baltimore."

Mr. Turner presented the petition of Henry M. Fitzhugh, administrator D. B. N. C. T. A. of William Fitzhugh, deceased, praying the payment of a certificate of debt therein referred to ;

Which was read and referred to the committee on Finance.

Said bill was then returned to the House of Delegates.

Mr. Wallace, from the committee on Judicial Proceedings to which was referred the bill entitled, "An Act for the amendment of the law in mandamus cases,"

Reported it without amendment,

The bill was then read the second time.

Mr. McCullough, from the committee on Finance, reported a bill entitled, "An Act for the relief of H. M. Fitzhugh, administrator de bonis non, of Col. William Fitzhugh,"

Which was read the first time.

The bill entitled, "An Act to incorporate the Hazlewood Company,"

Was read the third time, and

Passed by yeas and nays as follows :

AFFIRMATIVE.

Messrs. Bowdle,	Grahame,	Smith,
Bradley,	Kimmely,	Stone,
Brooke,	McCullough,	Turner,
Clarke,	McMasters,	Wallace,
Franklin,	Nuttle,	Wilkins—16.
Gardner,		

NEGATIVE—None.

Said bill was then returned to the House of Delegates.

The bill entitled, "An Act authorizing W. G. Nicholson, Register of Wills for Caroline county, to have rebound certain record books in his office,"

Was read the third time, and

Passed by yeas and nays as follows :

AFFIRMATIVE.

Messrs. Bowdle,	Grahame,	Smith,
Bradley,	Kimmel,	Stone,
Brooke,	McCullough,	Turner,
Clarke,	McMasters,	Wallace,
Franklin,	Nuttle,	Wilkins—16.
Gardner,		

NEGATIVE—None.

AFFIRMATIVE.

Messrs. Webster, Pt,	Grahame,	Nuttle,
Bowdle,	Hoffman,	Semmes,
Bradley,	Kimmel,	Smith,
Brooke,	McCullough,	Stone,
Clarke,	McMasters,	Turner,
Gardner,	Miles,	Wallace—18.

NEGATIVE—None.

Said bill was then returned to the House of Delegates.

Mr. Bradley, from the committee on Militia, to which was referred the resolutions requesting the Governor to furnish the students of St. Timothy's Hall with certain military arms,'

Reported them without amendment,

Said Resolutions were then read the second time.

The hour having arrived for taking up the order of the day,

The President announced the bill entitled, "An Act for the relief of A. M. Fitzhugh, administrator de bonis non, of Col. Wm. Fitzhugh.

Mr. Miles submitted the following amendment :

Sec. 1. Strike out all after the enacting clause and insert: That the Comptroller draw a warrant on the Treasurer, in favor of Henry M. Fitzhugh, administrator de bonis non, of Col. Wm. Fitzhugh, or order, for the sum of sixteen thousand one hundred and seventy-five dollars and forty-five cents, being the amount of principal and interest due the deceased under the resolution of the General Assembly, No. 10, passed in the year 1791, as ascertained by the Comptroller, in pursuance of the resolution No. 11, at the last session of the General Assembly, and that the Treasurer thereupon pay the same out of any unappropriated money in the Treasury.

Which was read.

On motion of Mr. Miles,

The Senate was called, and the doorkeeper sent to notify the absent Senators that their attendance was required in the Senate Chamber.

Who after a while returned and reported that he had notified the absent Senators that their attendance was required in the Senate Chamber.

The question upon the adoption of the amendment, was Determined in the negative by yeas and nays as follows :

AFFIRMATIVE.

Messrs. Bowdle, Brooke, Franklin,	Miles, Smith,	Stone, Turner—7.
---	------------------	---------------------

NEGATIVE.

Messrs. Webster, Pt. Bradley, Clarke, Daniel, Gardner,	Grahame, Hoffman, Kimmel, McCullough, McMasters,	Nuttle, Semmes, Wallace, Wilkins—14.
--	--	---

Mr. Miles submitted the following amendment :

An Act for the relief of Henry M. Fitzhugh, administrator de bonis non, of Col. William Fitzhugh,

Whereas, the Comptroller in accordance with the requirements of the resolution No. 11, of 1856, has reported, that the sum of \$16,175.45, was due to Col. William Fitzhugh, deceased, as principal and interest, under the resolution No. 10, of November session 1791 ; And whereas it is suggested that the said claim may have been paid by the State, and it is right and proper in view of all the circumstances, that an issue be directed for trial by a jury, to enquire into the merits of the claim—Therefore

Sec. 1. Be it enacted by the General Assembly of Maryland That the administrator, de bonis non, of said William Fitzhugh, be and he is hereby authorised to file his petition in the Circuit Court for Anne Arundel county, claiming as against the State, that the amount of \$16,175.45, is due to him as such administrator, by the said State, under the aforesaid resolutions, and upon the filing of said petition, the Clerk of said Court, shall enter the plea of general issue, and docket the said case on the trial docket of said Court, and the same shall stand for trial at the next term of said Court, unless legal cause for the continuance is shown to the Court, when the same shall be continued and tried as other cases for trial in said Court.

Sec. 2. And be it further enacted, That on the trial of the issue joined on said petition, it shall be the duty of the State's Attorney, for Anne Arundel county, to appear and defend said suit as the counsel of the State, and upon such trial, all the papers now on file in either branch of the Legislature, or among the archives of the State, touching said claim, shall be considered and taken as legal evidence before the jury, together with such other evidence as may be adduced by either party and admitted by the Court, touching the matter in issue.

Sec. 3. And be it further enacted, That if upon the whole matter in evidence before them, the jury shall find that said claim was paid to the said William Fitzhugh, or his administrator, or that the same ought not to be paid, then the said petition shall be dismissed by the Court with costs, adjudged to the State as against the petitioner, but if the jury shall find the issue joined in favor of the petitioner; then the Court shall enter judgment in favor of the petitioner against the State, for the said sum of \$16,175.45, and the legal costs of suit.

Sec. 4. And be it further enacted, That upon presenting to the Comptroller a short copy under seal, of the judgment, aforesaid, in case it shall be in favor of the petitioner, the Comptroller shall draw his warrant on the Treasurer in favor of such administrator, de donis non, of William Fitzhugh, or his order, for the said amount of \$16,175.45; And thereupon, the Treasurer is hereby directed and authorised, to pay the said amount.

Sec. 5. And be it further enacted, That this act shall take effect from its passage.

Which was read,

The question upon their adoption,

Was determined in the negative.

Mr. Miles submitted the following amendment:

Strike out all after the "enacting clause, and insert,

Sec. 1. Be it enacted by the General Assembly of Maryland, That His Excellency Thomas Holliday Hicks, the Hon. William H. Purnell, Comptroller of the State, and the Hon. William H. Tuck, associate Judge of the Court of Appeals, be and they are hereby appointed Commissioners to investigate and determine by their final arbitrament and award, reduced to writing, the merits and justice of the claim of Henry

1858.]

OF THE SENATE.

M. Fitzhugh, administrator de bonis non, of William Fitzhugh, deceased, as based on resolution No. 10, of November session 1791.

Sec. 2. And be it further enacted, That in case the said award shall be in favor of the claim aforesaid, not exceeding the amount of \$16,175.45, reported by the Comptroller in his report of the 9th day of February 1858, the Comptroller is hereby directed and authorised upon the exhibition of said within award of said Commissioners, or a majority of them, then to draw his warrant on the Treasurer, for the amount of sixteen thousand one hundred and seventy-five dollars and forty-five cents, or such less amount, as may be awarded in favor of Henry M. Fitzhugh, administrator of William Fitzhugh, or his order, and the same shall be paid by the Treasurer out of any money in the Treasury, not otherwise appropriated.

Sec. 3. And be it enacted, That this act shall take effect from the day of its passage.

Which was read,

The question upon its adoption,

Was determined in the negative,

The bill was then read the second time, and

Ordered to be engrossed for a third reading.

The President announced the second order of the day,

On motion of Mr. Miles,

The order of the day was postponed.

On motion of Mr. Miles,

Three-fourths of all the Senators concurring,

The bill entitled, "An Act for the relief of H. M. Fitzhugh, administrator de bonis non, of Col. William Fitzhugh,"

Was read the third time, and

Passed by yeas and nays as follows :

AFFIRMATIVE.

Messrs. Webster, Pt.	Gardner,	Miles,
Bowdle,	Grahame,	Nuttle,
Bradley,	Hoffman,	Smith,
Brooke,	Kimmel,	Stone,

Clarke,
Daniel,
Franklin,

McCullough,
McMasters,

Turner,
Wallace—19.

NEGATIVE.

Mr. Semmes—1.

Said bill was then sent to the House of Delegates.

On motion of Mr. Wallace,

The consideration of the order of the day was postponed,

On motion of Mr. Wallace,

Messrs. Wallace, Bradley and Brooke, were appointed on the part of the Senate, a committee of conference to consult with the committee on the part of the House, in relation to the business of the session.

The Senate then proceeded to consider the second order of the day, being the bill entitled, "An Act to provide for the taking the sense of the people upon the expediency of calling a Convention to frame a new Constitution and form of Government for this State, and to provide for the election of Delegates to such Convention."

Mr. Daniel submitted the following amendments.

Strike out all between the word "the," in the fourth line, and the word "and," in the fifth line, of Sec. 1, and insert "first Wednesday of November, in the year 1859, and on the same day, that the election is held for members of the House of Delegates, and for other officers;"

After the word "counted," in the twelfth line, of Sec. 1, insert the following:

"Which said ballots shall be kept in a separate box from that in which the ballots for members of the House of Delegates and other officers are kept, and"

Strike out all between the word "State," in the second line, of Sec. 2, and the words "to receive," in the third line.

In Sec. 3, ninth line, strike out the words "fifty-eight," and insert the word "sixty;"

In Sec. 5, strike out all between the word "Wednesday," in the second line, and the word "and," in the third line, and insert "of November in the year 1860;"

Said bill was then returned to the House of Delegates.

The bill entitled, "An Act to authorise the trustees of the Methodist E. Church in the town of Sharpsburg, in Washington county, to sell a certain lot of ground in said town,"

Was read the third time, and

Passed by yeas and nays as follows :

AFFIRMATIVE.

Messrs. Bradley,	Hoffman,	Smith,
Daniel,	Kimmel,	Stone,
Franklin,	McMasters,	Wallace,
Gardner,	Nuttle,	Wilkins—13.
Grahame,		

NEGATIVE—None.

Said bill was then returned to the House of Delegates.

The bill entitled, "An Act relating to the vestry of Saint Peter's Church, of the city of Baltimore,"

Was read the third time, and

Passed by yeas and nays as follows :

AFFIRMATIVE.

Messrs. Bradley.	Grahame,	Nuttle,
Clarke,	Hoffman,	Smith,
Daniel,	McCullough,	Stone,
Franklin,	McMasters,	Wilkins—13.
Gardner,		

NEGATIVE—None.

Said bill was then returned to the House of Delegates.

The Clerk of the House of Delegates returned the following bills :

A bill entitled, "An Act for the relief of Henry M. Fitzhugh, administrator de bonis non of Col. Wm. Fitzhugh."

Also, a bill entitled, "An Act for the benefit of Josiah W. Pennel, of Somerset county," severally

Endorsed, "passed by yeas and nays."

Also delivered the bill entitled, "An Act making appro-

EXECUTIVE—

Order presented, That the joint resolutions transmitted to the Senate, from the House of Delegates, condemning the proceedings of Governor Ligon, for the suppression of lawlessness in the city of Baltimore, and adopted by the Senate, be expunged, &c., 209.

EXECUTORS AND ADMINISTRATORS—Leave to bring in a bill entitled, an act explanatory of an act imposing a tax on Commissions allowed executors and administrators, to aid in paying the debts of the State, passed at December session, 1844, chap. 184, 150; bill reported, 153; referred, *ib.*; unfavorable report, and bill ordered not to be engrossed, 225.

F.

FISHERIES—A bill from the House entitled, an act to preserve the fisheries in the Isle of Wright Bay, 548.

FITZHUGH, HENRY M.—Petition of administrator D. B. N. C. T. A. of William Fitzhugh, deceased, praying the payment of a certificate of debt therein referred to, referred 16; bill reported, 412; proceedings on bill, 522, 3, 4, 5; bill passed and sent to the House of Delegates, 525, 6, returned passed by the House, 615.

FRANCIS, ELIZA ANN AND ELIZA JANE—A bill from the House entitled, an act to enable, to inherit the real and personal estate of Corbin Francis, 537; bill passed and returned to the House, 545.

FREDERICK COUNTY—A bill from the House entitled, an act for the benefit of the heirs of Frederick Steir, late of, deceased, 33; bill rejected, 278; reconsidered, 279; bill rejected and returned to the House, 380, 1.