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Good Government; Honesty in Public Office; Equal Justice to All--Special Privileges to None.

State Senator Flournoy On The Governor's Veto

He Gives Strong Argument In Defense Of His Position On The Fire Insurance Bill Which The Governor Disproved.

On the return of Senate Bill No. 10, known as the Fire Insurance Bill, with the disproval of the Governor; Senator Flournoy, of the Third, made a strong speech in favor of its passage over the veto, which was ordered spread on the Journal, and is as follows:

Mr. President:

The subject before us is the message from the Governor in which he took the opportunity to veto Senate Bill No. 10, which is a companion bill to the law of 1899, and has for its purpose the destruction of a system of imposition on the part of insurance companies over the busy, honest, unsuspecting public who are seeking indemnity against loss by fire, and not against loss by or from defective title. The reason for the bill is not only based firmly in reason and justice, but also is a public necessity, that designing agents and companies may not continue to practice such fraudulent action, which is so in effect if not in purpose and intent.

Mr. President, I take this view of the insurance measure. We will take the Senate Journal of the 21st, page 18. Listen, Sir, while I briefly analyze his veto bill. It is said on the part of the insurance company that this, should it become a law, will open the door to fraud. It is said on the part of individuals that that cannot be founded upon the analysis of the law or on facts, and I will endeavor to sustain the latter's contention.

(Reading Governor's message) "No fire insurance company doing business in this State, in the absence of fraud, misrepresentation and deceit, or either, upon the part of the party insuring, shall be allowed to set up as a defense to avoid the payment of a policy, that title to the property has changed subsequent to the insured, but shall be held to pay such policy to and as the interest of parties might be at the time of the issuing of the policy. Provided this shall not apply where the title and ownership to the property has changed subsequent to the issuing of the policy unless notice of such change of title and ownership shall be given to the company insuring, or its agent, before loss. Provided further, that this act does not prevent companies from cancelling their policies at any time before loss, upon refunding unearned premium."

Now, Mr. President, there is a provision in this proposed law that simply precludes the right of the insurance company to sit in its office quietly and serenely year after year and accept the premium of the policy from the non- individual because the latter ably that he was taking and nothing urs, some Atthe records and of a witness or a bond for title in which there conditional ownership in the party insured. Just here, I want to call your attention to the charge given by Judge White. Judge White, in charging the jury, I am told, said: "Gentlemen of the Jury, I want you to inspect this policy, you will find written near the top in these lines. I will pay you $1,000.00 in case of fire. That is written in large type, don't forget that. But, gentlemen of the Jury, I want you to notice that after that there are written in very small type, 114 lines, don't forget that, that they won't pay this defendant one cent; therefore, I want to call your attention again, gentlemen of the jury, that this too is written in large type." We see that this policy is framed in the insurance company's office, by insurance company's lawyers, and it is their privilege and duty, as construed by the court, to put in that policy what they please, and the great text writer, Mr. May, says the purpose and the whole purpose of that policy is to limit the scope and to defeat the purpose of the contract and that is exactly what is done in this contract with the insurance company. It is to defeat the purpose of the contract. What is the purpose of the contract? It ought to be of the insurance company, and they say it is, to pay the policy. The purpose I know, on the part of the insured, Mr. President is to pay a premium and to secure indemnity. Yet that purpose is defeated, when the insured asks for a policy, and the insurance company, without question and without representation on the part of the insured, issues the latter the policy, and often times it is never delivered to the insured, but is kept in the insurance agent's safe. Yet when a fire occurs, here comes the question of bond for title or a life estate at the date of the issuance of the policy. The insured says I have reserved that bond for title to avoid the expense of a foreclosure and to retain the legal title, but when the fire occurs the party finds, as it says in this fine type near the bottom, that this policy shall be for various reasons void, and one of these is upon the unconditional and sole owner- ... c- se. Now, Mr. President, I ask, in all fairness, why is that provision put in this policy? This policy shall be void for a number of reasons expressed in the 114 lines, one of which is, if the interest of the insured is not that of a "sole and unconditional owner." I say, Mr. President, that the time to investigate title to property is when the insurance is taken, when the policy is taken out. If the title to the property is not in the party at the time of the acceptance of the premium the party ought to be prevented at the time of the issuance of the policy from issuing it and from taking the premium. If the policy is void at the time of the fire because there is no title in the insured, then at the time of the issuance it was void. If the insurance company accepted that without question or without representation, as I have said, and as said by the Supreme Court of Indiana says, it is nothing more or less than a false pretense, imposing upon the insured, imposing upon his confidence, and putting a clause in there that if he is not the "sole and unconditional owner," this policy shall be void.

Talk about fairness. Yesterday I voted on the railroad firm and corporation proposition. I am here for the purpose of being fair to railroad companies, to insurance companies and individuals, and as long as I am here, I expect to perform ... Yet, if there is anything worse ... than highway robbery, I term it the issuance of such policy under such conditions. I would rather, Mr. President, you would hold me up in the road, and take money away from me than to give me such a policy when I ask indemnity, which contains numerous provisions in it to defeat that purpose. Let us take an example from Jacksonville in the case of the Insurance Company of North America against the Citizens Insurance Company of Missouri 39 So. 495, and a number of others. "The following provisions in a policy of fire insurance is material valid, and binding on the parties to the contract: This entire policy, unless otherwise provided by agreement indorsed hereon or added hereto, shall be void. If the interest of the insured be other than unconditional and sole ownership. Now, Mr. President, I am not going to read this at length, but I am just going to state what this decision contains, handed down by Justice Taylor of this court. Here was a company in which $1,000.00 had been paid as part of the purchase price, and a bond for title executed. That was the condition of the title at the time of the issuance of the policy and for sometime that condition existed. The premiums were accepted by the company without any representation on the part of the insured or any questions asked on the part of the insurer; yet when a fire occurs here comes the defense written out in a long plea that, "At the time of the issuance of the policy the insured was not the sole and unconditional owner." Who of you, Mr. President, and Gentlemen of the Senate, could say that in the slightest manner the execution of that bond for title had anything to do with the risk on the part of the insurer, or who can say that that condition of the title ever entered into the consideration of the parties at the time of the issuance of the contract, and all of you lawyers and ohers, know that no contract ought to be binding unless with the consent of the parties to every provision of that contract at the time of entering into it. This is one among the many examples, where like the poor fellow in Jacksonville lost his insurance, simply because he had given his bond for title and acepted $1,000.00 of the purchase money. Every lawyer and everyone here would doubtless at first impression say that in the first instance, the proper man to issue the policy to and to let it remain is the one who holds the bond for title and not the one to whom the title is given. But the Supreme Court has held, that the party to whom that policy should be issued, is the party to whom bond for title is given. As I say, that is one of many. I will read you one decision from the Supreme Court of Indiana. That Court says, no matter what may be the construction of other courts, we will not give our consent to it. As I said the other day, the Supreme Court of Indiana is not in harmony with this court or other courts of our sister States, but the Supreme Court of Indiana is in harmony with equity, justice and good conscience, whatever and wherever may be the position of other courts. (Northeastern Reporter, 79, Page 905.) "Where a standard fire policy was issued on an oral application, without any representation on the part of the assured as to the extent of his title, insurer thereby waived a clause providing for forfeiture in case insured's interest was other than unconditional and sole ownership in fee." Now, Mr. President, explaining that, if you issued a policy and did not ask insured anything about his title, he has a reasonable cause and right to presume either that you have other advice yourself or that you care nothing about the defects in the title. "Where defendant insured certain property in which the insured had only a life estate such life estate was the only interest covered by the policy, and the value of the property destroyed by fire, when tested by such interest was the measure of the insurerer's liability." For brevity, I am going to skip this decision, except just a few pointed paragraphs. This insurance company, Mr. President, set up in this defense that the party though for years had carried the policy and paid the premium, was simply the owner of a life estate and not the owner in fee simple. Mr. President, how can anyone stand on the floor of this Senate and honestly ask this Senate to fail to pass this measure over the Governor's veto! To stand up and set up that kind of defense is at once playing the part of a thief except under the strict construction of the clause it is by some courts authorized. That the party insured was simply the owner of a life estate and was not the owner in fee simple, was not an element of the risk assumed by the insured, and nowhere is there an offer by the insured as required, in equity and good conscience, to return to the insured that money taken as premium year after year without consideration, because the condition was known only to the insurer who had imposed upon the confidence of the honest, unsuspecting insured (this is a misnomer for, he is not insured, but I will use it to refer to the one who is seeking and who thinks he is) by issuing a policy full of conditions that will limit the scope and absolutely defeat the purpose of the insured. You say it is right to prevent a railroad company from putting its clauses and condition in tickets and bills of lading to avoid liability, yet you will permit a worse thing and action by the insurance company by letting it hedge itself in by one hundred and fourteen lines of conditions which not only were not known to the insured, but which would have been waived if he had known them. Any company would have insured the building though held by life estate or when there was but one witness to the deed, as readily as for fee simple title. If it's wrong for the railroad company, it's worse for the insurance company. They knew that if he happened to read the policy they would waive the defect of title, while if he did not read it, and not one in a thousand do, in case of fire the clause—sneakingly like the thief and cunning—inserted would leave the payment of the policy to their discretion. This is at once, Mr. President, an awful condition that permits millions of money to be stolen from the people of Florida.

In the determination whether—I am quoting from page 906, 79 Northeastern: "In determining whether there has been such a waiver, a court should not overlook the fact that insurance policies are prepared by the company for general use, without reference to particular cases, and contain divers and sundry provisions and stipulations concerning different subjects. The contract is not like ordinary contracts between individuals wherein every clause and stipulation is considered and agreed upon by the parties before the agreement is executed. A policy of insurance is prepared in the office of the company, and becomes binding on the insured because it is delivered to, and accepted by him. In accepting it he has a right to assume that the company does not intend to insist upon the printed clause therein relating to incumbrances on the property if it makes no inquiry of him concerning the matter and he has made no statement in reference thereto, and has not been advised that the question was at all material." Again I say, Mr. President, that the proposed law says, "In the absence of fraud, misrepresentation or deceit." I will not ask any Senator on this floor to protect any one, whether individual or corporation, in any action in which he desires to perpetrate fraud, misrepresentation or deceit, still at the same time I am anxious and I want to protect and be impartial to everybody, I want to fix it so that that imposition can not be placed upon the people of this State by the insurance company, who desire to and have for their purpose the securing of indemnity in the proper manner from the insurance company. "The preparation and issuance of the policy is the act of the company, and if, in pursuance of a previous agreement, it issues and delivers a policy purporting to cover loss or damage by fire, and accepts and receives the money of the insured, without making any inquiry of the party as to the incumbrances, or without advising him of its effect on his contract of insurance, it is receiving and acepting his money under circumstances precisely like false pretenses; if the contract is void from the beginning and never, in fact, had any force or validity, because of a provision inserted therein by it without the knowledge of the assured, rendering it void if the property is encumbered. In such a case the company would not only wrongfully receive and accept the money of the insured, but would mislead him into the belief that his property was insured, when, in fact, it was not; thus deceiving a party honestly seeking and paying for insurance. Wood, in the section of his work above mentioned, states the rules as follows: "When a policy is issued upon a verbal application, without any representation in reference thereto, all information relative to the risk, except such as is usual and extraordinary, is waived, and the policy is valid, even though it contains a clause or stipulation that 'the insured covenants that the representations given in the application for ....s insurance contain a just, full and true exposition of all facts and circumstances in respect to the condition, situation, value and risk of the property insured, and although the policy professes to be made on the faith or representations made by the insured, yet it is valid, when no representations whatever were made in reference to the risk, and the lack thereof is not a matter of defense. The insurer cannot charge the assured with laches, induced by its own conduct. In 3 Cooley's Briefs on Law of Insurance, pages 2630 and 2631, the author says: "If an insurance company issue a policy of insurance without any application, or without representations in regard to certain facts, the company is presumed to have written the policy on its own knowledge and cannot complain after loss that such facts were not correctly stated in the policy or disclosed by the insured. Analogous to the rule stated is another one to the effect that though the policy, by its terms, requires the disclosure of all material facts, yet if the insurer issues it on an oral request or application, and makes no inquiry in regard to matters covered by certain conditions in the policy, as, for instance, title or encumbrances, it will be assumed that the insurer waives knowledge as to such facts."

Mr. President, there are a number of like cases, without reading from the books, I desire to refer to a case handed down by the Supreme Court of New York, which was a question between partners. Insurance was issued to a partnership, one partner sold to the other and moved his stock across the street, and the privilege of moving was endorsed on the policy. So far as the parties were concerned they had as soon endorse the policy for one as for the other. Yet, Mr. President, when the fire occurred they said, notwithstanding, eir consent to the moving after the sale, in setting up their defense, in thaat case, not that he had moved the stock, but that he was not the sole and unconditional owner of the property at the time the policy was issued. What could be more unjust or more reprehensible and vicious? I might continue to cite these references, but I believe it to be unnecessary. I believe in the mind of every Senator on this floor the question has been sufficiently delineated and explained. As is said in substance by Justice Field, of the Supreme Court of the United States, that the party who is seeking indemnity, and who has for his purpose the securing of honest indemnity, ought not to be defeated.

(Continued on 6th page.)

REPORT OF THE CONDITION
OF
The First National Bank,
OF TALLAHASSEE, FLA.

In the State of Florida, at the close of business June 22, 1909.

RESOURCES.

Loans and discounts		$212,277 33
Overdrafts, secured and unsecured		1,109 86
U. S. Bonds to secure circulation		50,000 00
Bonds, Securities, etc		49,944 19
Banking house, furniture and fixtures		5,615 00
Due from National Banks, not reserve agents		32,744 72
Due from State and Bankers		10,966 52
Due from approved reserve agents		47,312 73
Checks and other cash items		3,564 98
Notes of other National Banks		6,000 00
Fractional paper currency, nickels and cents		248 17
Lawful Money Reserve in Bank, viz:		
Specie	$16,092 20	
Legal-tender notes	20,000 00	36,092 20
Redemption fund with U. S. Treasurer 5 per cent of circulation		2,500 00
Total		$469,025 70

LIABILITIES.

Capital stock paid in	$ 50,000 00
Surplus fund	10,000 00
Undivided profits, less expenses and taxes paid	2,218 23
National Bank notes outstanding	50 000 00
Due to other National Banks	3,054 46
Due to State and Bankers	2,306 85
Due to Trust Companies and Savings Banks	861 98
Individual deposits subject to check	311,473 85
Time Certificates of Deposit	27,534 71
Certified checks	253 62
Cashier's checks outstanding	300 00
Total	$469,025 70

STATE OF FLORIDA, County of Leon. } ss.

I, Wm. C. Lewis, Cashier of the above-named bank, do solemnly swear that the above statement is true to the best of my knowledge and belief.

W. C. LEWIS, Cashier.

CORRECT—Attest:
Geo. Lewis,
G. E. Lewis,
E. B. Lewis,
Directors.

Subscribed and sworn to before me this 29th day of June, 1909. F. C. WHITFIELD, Notary Public.
(Seal.)

RAILROAD ASSESSMENTS.

Additional Revenue Will Be Obtained From This Source of Wealth.

The yearly assessment of railroad property is ordinarily made by the State Comptroller alone, though he has the privilege of calling together a board, composed of himself, as chairman, the State Treasurer and the Attorney General. Mr. Croom availed himself of this privilege a few days ago when he gave a hearing to the representatives of the several State and inter-State railroads on the subject of returns of railroad property values submitted for taxation.

Mr. Croom had previously prepared a schedule of assessments as a basis upon which to work, and in every case the assessment made by him was from 90 to 100 per cent in excess of the valuation of the property as submitted by the individul company. This, however, seemed to be expected by the representatives, at any rate they seemed to take it as a matter of course, and in most cases expressed themselves as satisfied with the assessments made.

Several demurs were made, the principal one being by J. L. Stanley, of Portsmouth, Va., who made quite a speech before the board, in which he endeavored to show that the assessment made by the Seaboard Air Line was far in excess of the real value of the property owned in Florida by that road. The other members of the board, however, upheld Mr. Croom, and the assessment remained as previously fixed. In making these estimates, the physical properties only, of the roads are assessed, there being no law in Florida whereby taxes can be levied upon the franchises held by the railroad companies.

J. E. L'Engle, of Jacksonville, also demurred at the assessment made for the Jacksonville Terminal, but the board in that case also refused to lower their figures. In the Oak, Perry & Gu... Florida Central ... was reache... these roads next week on a tour of inspection, and will then definitely fix the rate of taxation.

A hearing has been granted J. E. Ingraham, of the East Coast Railroad for next week, on account of his inability to be present at the meeting.

The general returns showed a slight average increase of railroad values, and the assessments also, were slightly in excess of last year, so that the aggregate amount of revenue accruing from these assessments will be somewhat in advance of the revenue collected last year.

Yesterday, To-Day and To-Morrow.

"Those of us doing business today, tagged with all the frills and flounces that our modern methods require," says The Ocala Banner, "are puzzled to know how our fathers managed to do business at all.

"They had no stem or fountain pens. They had to take time to make their own pens from goose quills. They had no blotters. After writing a letter they had to give time for the ink to dry. Then they had no envelopes. They folded the letter and used sealing wax instead. Their stationery was unprinted. They had no printed letter heads nor note heads, nor bill heads, and did not resort to the monthly statement. They had no typewriters no stenographers. They had no postage stamps, and paid so many cents a letter according to the distance it traveled. There were no such things as delivery wagons nor messenger boys, and every man lugged his purchases home. There were no bicycles, no autos, no express companies, no railroads, no telephones, no electric lights, no daily newspapers, and very few, if any, weekly ones.

"And yet there was a happiness in living then, more so, perhaps, than there is today. There were no very rich and yet no very poor. No man felt isolated and alone because of his poverty. Every man knew his next door neighbor and every neighbor was a friend.

"The woods were full of game, and fish were in abundance in every stream and lake, and there were no laws regulating fishing, hunting nor trapping. The spinning wheel and loom were a part of every home and every man was more or less independent. He lived at home and the tariff laws bore upon him most lightly. Under this system there was built up a rugged and robust race of people, and for true happiness the era just before the invention of steam and electricity and so many labor saving inventions has never been excelled in any age, though it must be admitted that it is a wonderful thing to be surrounded with all the comforts and luxuries our modern civilization makes possible if one's pocketbook is large enough to afford them. As luxurious and rapid as we think this century is the next one will look upon us a bit poky and will marvel how we managed to exist without aeroplanes and other machines with which to navigate the air Ous posterity will flit about from place to place like the birds of the air and wings will be a part of one' everyday equipment.

Across the State With Ship Canal

Leading Financial Paper of The Country Says The Project Is Altogether Practicable.

The New York Commercial says: "If anybody who hasn't already done so at sometime or other will take a map of Florida, note the enormous coast line of the State, both on the Atlantic and Gulf sides, and then imagine a ship canal cut across the northern portion of the peninsula, it will at once be seen what a great saving in time and expense and the risks of the sea would come to shipping if only such an artificial waterway were to be constructed. The project has been launched many times in the past, generally as a private enterprise with perhaps prospective government aid, but never successfully. Now, for the first time, however, the government is taking a serious interest in the subject, and the board of officers of the corps of United States army engineers appointed by the Ways Department to report on the advisability of making trial surveys for a proposed continuous inland waterway from Beaufort to Key West and also for a ship canal across Florida has been recommended to the department that preliminary surveys ... made.

"Five different ... peninsula will be co... ties in this connecti... partment adopts the board's recommendation; none of them contemplates a canal cut all the way from ocean to gulf, the idea being in each instance to utilize in part existing natural waterways, such as portions of the St. Johns and other rivers, lakes, creeks, and so forth, of which the number available is ... channels ... miles across ... the upper peninsula, each trial survey will probably have to cover something like two hundred miles, as auxiliary streams and branches would have to be considered; perhaps fully one thousand miles of surface would have to be gone over by the engineers.

"In many respects, according to a report of the proceedings at the recent meeting of the board of engineer officers at Savannah, the surveys contemplated are of greater magnitude than were those incident to the construction of the Panama canal, which route is only forty miles long. While the amount of excavation necessary can be materially reduced by utilizing streams some deep cuts will be required, and the enterprise is a huge undertaking. Its promoters, however, maintain that the vast benefits to be accrued by gulf ports and Central American coast points through the construction of a canal by which a much shorter route to the north can be secured would amply repay the government appropriation that would be required. Not even an approximate estimate of the cost of the canal can be given until the surveys are ... ted, of course.

"The scheme is unque... oughly feasible and prac... value to commerce would ... calculable. But before private capitalists and the United States government embark in it an adequate American merchant marine ought to be provided for utilizing this Florida ship canal as its chief patron. Let it not be said later of this project—as it now is truthfully of the Panama canal—that we Americans are spending our American money for promoting the interests of our foreign ocean carrying trade competitors."

REPORT OF THE CONDITION
OF
The State Savings Bank
AT TALLAHASSEE.

In the State of Florida, at the close of business on the 23d day of June, 1909.

RESOURCES.

Loans on Real Estate	$258,653 27
Loans on Collateral Security	35,000 00
All other Loans and Discounts	6,106 00
State, County and Municipal Bonds	42,000 00
Railroad Bonds	7,000 00
Other Real Estate	7,619 54
Due from Incorporated Banks	931 98
Currency on hand	30,000 00
Total Resources	$388,791 79

LIABILITIES.

Capital Stock paid in	$200,000 00
Surplus Fund	10,000 00
Undivided Profits	5,791 79
Savings Deposits	163,000 00
Accrued Interest due to depositors	10,000 00
Total	$388,791 79

I, B. C. Whitfield, Cashier of the State Savings Bank of Tallahassee, Florida, do solemnly swear that the above statement of the condition of said bank at the close of business on the 23d day of June, 1909, is true to the best of my knowledge and belief. B. C. WHITFIELD, Cashier.

Correct—Attest:
Geo. Lewis,
W. C. Lewis,
G. E. Lewis,
Directors.

Sworn to and subscribed before me this 25th day of June, 1909. W. S. QUARTERMAN, Notary Public.
(Seal.)