

# The Cape-Fear Recorder.

"In proportion as the structure of government gives force to public opinion, it is essential that public opinion should be enlightened."—WASHINGTON.

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SATURDAY EVENING, NOVEMBER 28, 1818.

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## North Carolina Legislature.

### SENATE.

MONDAY, NOVEMBER 16.

A quorum was formed. BARTLETT YANCEY, Esq. was appointed Speaker; General Williams, clerk, and B. Covington, Esq. assistant. Messrs. Hartsfield and Murphy, door keepers.

### HOUSE OF COMMONS.

A quorum was formed. Gen. JAMES TREDDELL, re-appointed Speaker; Major Pleasant Henderson, clerk, and Colonel William B. Lockhart, assistant. Messrs. Pounds and Lumsden, door keepers.

TUESDAY, NOVEMBER 17.

In the two houses a joint committee was appointed to wait on his excellency the Governor, and inform him the Legislature was organized.—The usual standing committees were proposed; and other incidental business transacted.

In the Commons, Mr. Baker introduced a bill relative to the town and academy of Smithville, in Brunswick county.

WEDNESDAY, NOVEMBER 18.

The following interesting MESSAGE from the Governor, was read to both houses:

### EXECUTIVE OFFICE, N. C.

Raleigh, November 17, 1818.

To the Honorable the General Assembly of the State of North Carolina:

GENTLEMEN.—The unparalleled prosperity of our country, in a national point of view, combined with the developments of state emergencies, which have been submitted to you by the Executive Department from year to year, and the annual conventions of the Legislature to deliberate on these emergencies, have, ostensibly, so circumscribed my limits, and of course your legislative duties, as almost to supercede the necessity of a further waste of time and treasure; and in truth, but for the increased importance of old matter which has been accumulating from session to session, I should have but little of moment to which to invite your deliberations.

However, when we reflect on the lethargy which has pervaded our state and enchaind her energies until a few months past, and the manner in which our physical resources have been suffered to lie dormant for the want of a moderate portion of energy in the Legislature to elicit and call them into action, at the same time take into consideration the extraordinary excitement of public feeling at the present time, I am persuaded that with me you will be fully sensible of the more than ordinary responsibility under which you are placed.

The impulse from public sentiment is too strong to be mistaken and requires only a proper organization and direction by the representatives of the people, to arrest the progress of emigration, and to render our state in an eminent degree prosperous, and our citizens contented and happy.

I shall therefore in a plain, brief, and I trust, a candid manner, unfold to you my views of state policy, so far as I believe them to be connected with an intelligent and correct discharge of your legislative functions.

In a government like ours, where the sovereignty resides in the people, and where all power emanates from, and at stated periods, returns to them for the purpose of being again delegated, it is of the last importance to the well-being and to the existence of Government, that the public mind should be enlightened. Our sage and patriotic ancestors who achieved the liberties of our country, and to whom we are indebted for our present benign and happy form of government, duly impressed with the magnitude of the subject, and anxiously solicitous to impart stability to our institutions, and to transmit to posterity the inestimable boon for which they fought and bled, have, as regards this subject, with more than parental caution, imposed the most solemn obligations on all those who may be called to administer the government.

Permit me, therefore, to refer you in a particular manner to this solemn injunction contained in the Constitution of the State of North Carolina, Art. 41.—"That a school or schools shall be established by the legislature for the convenient instruction of youth, with such salaries to the masters, to be paid, by the public, as may enable them to instruct at low prices, and all useful learning shall be duly encouraged and promoted in one or more Universities."

Let it be recollected that by this chart, we are bound as the servants of the people under the solemnities of an oath, to steer the vessel of state; and when we connect this imperious duty with the luminous and impressive appeals which have been so often made to the legislature for the last year or two, I apprehend that nothing that I could add would impart additional force. It surely will not be denied that it is a subject of all others, in a republican government, of the most vital importance; for it is in this way, and this alone, that our Republican institutions can be perpetuated, or that radical changes can be effected in the morals and manners of the people.

The present organization and debased condition of the Judiciary Department, is entitled to, and I have no doubt will receive, the marked attention of the Legislature. The evil has been submitted to already beyond what ought to have been expected; and it appears to me that further surceance will

indicate not only a total inattention and disregard to the best interests of society, but will be criminal in the highest degree.

For wise purposes, no doubt, the framers of our constitution have granted to you the power of regulating from time to time, as occasion might require, this co-ordinate department of our government; for seeing, from the various changes that, in all probability, would necessarily take place in society, corresponding modifications of this department would be indispensable.

The tenure by which the Judges hold their offices, being during good behaviour, it remains only for the Legislature, in the arrangement of the court system, to prescribe their duties, limited and restrained as by the constitution.

Where, however, power is bestowed, there is a correspondent accountability; wherefore, although the legislature can, consistently with their delegated powers, alter the court system and increase the duties of the then or present incumbents, I think I shall not hazard a contradiction, when I assert that they are morally bound in the same ratio in which their duties are increased, to increase their compensation also; this, it appears to me, is a self evident proposition, and I am fully persuaded that the liberal and dispassionate mind will unhesitatingly admit its truth.

When the present salaries were fixed, what were the duties of the judges? Not half as burthen-some, I venture to say as at this day. Session after session have duties been prescribed, and burthens imposed, without a correspondent augmentation of salary.

Independent of this there is another view of the subject, which appears to me to be equally conclusive, and that is, the extraordinary advance in the market price of every necessary and convenience of life, owing either to a depreciation in the intrinsic value of the circulating medium of the country, or to some other cause; which in either case the Legislature is, in accordance with the plainest principles of equity and justice, bound to take cognizance of.

Let us not, however, in the indulgence of our sensibility for the Judges, lose sight of the important and paramount obligations which we are under to the people generally; for I am persuaded that an increase of salary alone, without a radical change in our Judiciary System, would be productive of very little good—and indeed, would rather have a tendency to perpetuate the present organization.—I would prefer a diminution of their labors, which would be virtually an increase of their salaries; connected with a moderate advance, the Judges would then be enabled to dispense justice as justice should be dispensed, after mature research and profound investigation. The present hurried manner in which our business is but too often done, meets with an apology in the breast of every man, for it is evident to all conversant in business, that the present Judges are unable to discharge systematically and correctly the duties required of them, unless they were endowed with supernatural faculties both of body and mind.

There are various ways by which their burthens may be lightened, and justice more correctly administered. I will take the liberty of recommending that three additional Judges be appointed to preside in our Supreme Court; with sufficient salaries attached to the offices to command the first legal talents of the state; and further, that the whole state be divided into small districts of two or three counties, thereby restoring something of the old District System; guarding, at the same time, against the inconveniences to which many parts of the State were subjected in consequence of the extent of territory comprised in a single district. Under such a system as this, we might confidently rely on the intelligence, integrity and independence of Juries. Men, whose minds would disdain a subserviency to the arbitrary encroachments of the Bench or Bar, would then be the legitimate protectors and guardians of our lives, liberties and property. I should rejoice for my native State, to see so inestimable a system once more restored, amended and modified, so as to obviate the principal objections that existed against the old District plan.

As to our Chancery System it appears to me from my own observation that all must admit the indispensable necessity of either a renovation of the manner in which equitable justice is administered in this state, or a total abandonment of it altogether. The delays to which equitable claimants are subjected, amount substantially to a denial of justice; for indeed the prosecution of a suit of this description is a mere farce from the beginning to the end. The Judge professes to know but little of this branch of Jurisprudence; the clerks and masters to whom the business is ultimately turned over, evidently know less, and hence, in this unpleasant dilemma, it is better, nine times out of ten, to abandon the claim altogether. And yet rights of this description are often otherwise vested in the feeble and defenceless widow and orphan; who, under all the disadvantages above enumerated, and many others, have to contend with the deep laid devices and schemes of the artful and designing veteran.

The spirit for internal improvement which has so extensively pervaded our state, will, I have no doubt, as it ought, receive the fostering patronage of the Legislature. Accompanying this is a communication from the Secretary of the Treasury of the United States covering a resolution of Congress, soliciting information as to the progress of public improvement in this state, for the purpose therein expressed of co-operating with us, on certain contingencies, in such undertakings as may seem to require National aid.

The companies which have been incorporated by the Legislature for the improvement of the navigation of the Roanoke, Neuse and Cape Fear rivers, appear to have at command, the means, and so far as I can learn, are vigorously employed in the application of them for the attainment of the important objects which they have in view. But there remains much to be done in other sections of the state; where individual capital and enterprise seem not as yet to be excited into action, either from a conscious-

ness of a deficiency in native strength and energy, or from some other cause equally worthy of consideration.

This certainly is the time when the national arm is about to be extended, that we should put our shoulders to the wheel; having hitherto received but little aid from that quarter, we have a right to expect much. The opening a communication between the Albemarle sound and the Atlantic ocean, if practicable, is in my opinion, fraught with more important consequences to the state of North Carolina, and is more intimately connected with its future prosperity and growth, than any measure of a similar nature that has been brought to the view of the Legislature for years past.

Our criminal law is doubtless susceptible of amelioration and improvement; but whether it is practicable so to modify and amend its objectionable features, as to reconcile it with the policy and well known humanity of our institutions, without resorting at this time to the erection of a penitentiary, I cannot undertake to decide, and will therefore beg leave respectfully to submit the subject to your better judgment.

I have, I must confess, however, been favorably impressed towards the system; because I believe that it has originated from the noblest efforts of the human heart, and is founded on the immutable principles of justice; but my opinion further is, that we are bound by as sacred obligations in point of morality; and by the additional injunctions of our constitution, to endeavor, by all practicable means, to enlighten the minds of the people; not only by a liberal endowment of our University, but by the erection of academies, schools, &c. in different parts of the state. Hence, with me, the amelioration of the penal code, by the erection of a penitentiary, is a secondary consideration. The advantages to be derived from the first, connected with an energetic and enlightened system of internal improvement, are indisputable and obvious to the most ordinary capacity—from the last, somewhat problematical even with a considerable portion of our most useful and intelligent statesmen. It is certainly sound policy for us, first to apply our resources to the attainment of objects which are manifestly fraught with salutary results, before we enter into the wide field of speculation.

The long pending controversy between this state and the state of Tennessee, relative to perfecting titles to lands lying in that state, has, at the last Supreme Court of the United States, holden in the city of Washington, met with a partial hearing and decision; and much do I regret to inform you, that that decision has been unfavorable to the rights of this state; but recognizing, at the same time, the justice and equity of our cause.

The respect due to the national government, and to the state with which we have been unfortunately conflicting, will suppress, on this occasion, the expression of those feelings and sentiments which the injury inflicted on a highly meritorious part of our citizens is so well calculated to inspire; but one is manifest, that substantial injustice has been done to the state of North Carolina. The merits of this unpleasant controversy have been so often discussed, and the just claims of our state so ably sustained, that I deem it unnecessary at this time to enter further into the subject.

The act of the General Assembly, passed in 1816, relative to the militia, directs, among other things, that the grades of our militia officers shall be conformed to those of the United States, and in pursuance of that act my predecessor proceeded to commission the respective officers throughout the state; and at the last session, as usual, various recommendations were made to supply vacancies occasioned either by resignation or otherwise. On examination, however, I find that in many counties of the state, where there are nominally two or three regiments, they are entitled by the aforesaid act but to one set of officers in consequence of a deficiency of numbers. It would be well, I think, therefore, to provide some efficient means to enforce a rigid adherence to the act above alluded to.—I have no doubt but that many officers were commissioned at the last Assembly, in direct opposition to the act of 1816, but in obedience, however, to the recommendations of both houses.

In the file marked B you will find sundry resolutions which have been received from the Executives of the different states, relative to certain amendments which have been proposed to the constitution of the United States; a part of them are entitled to your particular attention.

It will be seen by a reference to the newspapers published in this place, that books of subscription are to be opened on the fourth Monday of the present month, for the unsubscribed stock in the State Bank of North Carolina. I feel it to be my duty in a particular manner to draw your attention to this subject. For why should not the public derive her due proportion of the advantages of this institution, designed originally for her benefit? By a vestment of our surplus funds in stock of this description, we might rationally calculate on lightening the burthens of the farmers, inasmuch as in a short time we might anticipate a handsome revenue to the state therefrom. With respect to the terms, the books are to be opened, as above mentioned, and the money paid in as follows, viz:—One-fourth at the time of subscribing; one-fourth in three months thereafter; one-fourth in six months, and the remainder in twelve months. In June, 1821, two years and a half from the time the first instalment is paid, the new stock will be entitled to draw a dividend. But what becomes of the profits on this stock in the mean time, which I suppose might be something very considerable, say from one hundred to one hundred and fifty thousand dollars? Why, if I am not misinformed, they are to be put into the pockets of the old stockholders.

I would ask if this is a chartered right, or what equivalent do they propose to give the state therefor? I should like to know, for I must confess I have examined their charter in vain for satisfaction on this head.

I will readily admit, that the new stock should be subjected to its proper proportion of the expenditures that have been incurred in stationary, &c.

before it is let into an equal participation of its profits; and indeed, but for information derived from a source entitled to the highest respect, I should have thought that the sums expended in erecting buildings ought also to have been included; but I learn that the buildings are considered as a part of the permanent and original stock, and that the same issues and profits are made thereon, as on any part of the capital.

Will it be said that the old stockholders are entitled to the profits of the new stock, for a year or two, to reimburse them for their inconceivable moderate gains, while the bank was getting into operation? Surely it cannot seriously be pretended, for have they not already received ample remuneration in the way, and the only way, in which they or the legislature contemplated, viz:—In a dividend since, of from 12 to 16 per cent. per annum, including the bonus. If such sophistry as this deserves notice, the legislature some six or eight years hence, will be under the necessity of creating new stock, and vesting the proceeds for a few years in the new stockholders to gratify their cupidity. So far as gentlemen have subscribed and paid they are entitled, no further. With much more propriety might the man who explores the forest and tests the fertility of the soil and salubrity of the climate, by hazarding his all, contend, that all others locating themselves on the unappropriated soil of the country lying contiguous, should become tributary to him. For whose benefit were books directed to be opened? For the benefit of the public and not for the exclusive advantage of the old Stockholders.

Again it will be seen by a further reference to the advertisements above alluded to, that proxies, the old, faithful, and well tried friends of Bankers, are discarded and forbidden to enter even the threshold of the Bank. But if I am not very much mistaken, you will find them ushered in at the back door, and cordially greeted with all the warmth naturally excited by a grateful recollection of past favors.

The high character which this Bank has so deservedly sustained, and the private worth and honorable deportment of the gentlemen who control and direct its operations, has I must confess made me enter reluctantly into the subject. But as an executive officer, and as a centinel upon the wall, I have felt it to be my imperious duty to sound the tocsin of alarm, when I see such gross attempts made by an institution already sufficiently formidable to trespass upon the rights of the people, and to gull the credulous and unsuspecting part of the community.

Some few days after the rise of the last General Assembly, it was made known to me that a vacancy existed on the bench in consequence of the demise of the Honorable Samuel Lowrie, that he died on the twenty third of December last, the day before the rise of the Assembly, at his late residence in the county of Mecklenburg, which lies at a remote distance from the seat of Government. I therefore proceeded to convene the Council of state, for the purpose of consulting with them, as to the propriety of filling the vacancy, by making a temporary appointment. After the most deliberate consideration of the subject, that we were capable of bestowing on it, it was our unanimous opinion, that we were constitutionally bound to do so; and accordingly in the first instance appointed Bartlett Yancey, Esq. of the county of Caswell, who for cogent and substantial reasons contained in his communication, declined to accept. The Council was a second time convened, and Robert H. Burton, Esq. of Lincoln county, was selected—who from patriotic motives no doubt, accepted, and rode the Spring Circuit—but for reasons assigned in his letter of resignation, resigned.

Prior to the Fall Circuit, viz: in the month of August the Council was a third time convened and concurred unanimously in recommending that a commission be tendered to Blake Baker, Esq. of the county of Warren; which was accordingly done and on his part accepted: and so far as I can learn, he discharged with fidelity and ability the arduous duties which thereby devolved upon him.

The melancholy catastrophe that closed his Circuit and his existence nearly at the same time, I apprehend you are already apprised of. On you will devolve the more important duty of making a permanent appointment.

The constitutional question involved in the above appointments, was in North Carolina, one of new impression, and hence it was that our difficulties were considerably augmented; but on reference to the construction put on similar phraseology, in the Constitution of the United States, by the Sages of several successive Administrations, we were confirmed in the correctness of the course which we ultimately pursued. However to "make assurance doubly sure," and to guard against the possibility of mischief resulting to the community from the reversal by the Supreme Court of the Judicial decisions of the person appointed, on the ground of his not being a constitutional officer, I solicited, and informally obtained the opinions of the present Judges, a majority of whom decidedly concurred with the Council in the above opinion. It was therefore evident that no immediate bad consequences could ensue, because we were supported by the Judiciary, and as much good in all probability would be done by filling the vacancy, we proceeded to act as I have before mentioned.

It will be recollected that this is the season for an election of a Senator to represent this state in the Congress of the United States.

In the file marked (A) you will find sundry resolutions of Justices of the peace and field officers, which have been received at this office during the recess.

That a kind and beneficent Providence may illumine your counsels and conduct them to the happiest results, is my most ardent desire.

With the highest respect and consideration, I have the honor to be,

Your obedient servant,

JOHN BRANCH.

[In our next, we will endeavor to give a more particular detail of the legislative proceedings.]