

Chas Fisher

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CONVENTION.

GENERAL ASSEMBLY.

House of Commons, Jan. 4, 1832.

The Resolutions providing for the call of a Convention to amend the Constitution of North Carolina, were taken up in committee of the Whole, when

Mr. FISHER rose, and addressed the chair in substance as follows:

As no other gentleman seems disposed to present his views to the committee, I shall take the liberty of offering a few preliminary remarks, but shall not go into the merits of the question at present.

It seems, Sir, that there has been some difference of opinion as to the propriety of bringing this subject, at this time, before the Legislature. I am one of those who entertain the opinion that now is the proper time to bring it forward, and that no good reason exists for keeping it back. I will state why: In the first place, then, now is the proper time for bringing the question forward, and discussing it, for the reason that the people of the West expect it, and look for it. During the past twelve months they have looked to the present session of the Legislature for a movement on the subject of Convention. I will go farther and I say, that every member from the West before, and for some time after it, he came here, fully and confidently expected the introduction of this subject. Am I wrong in this opinion? If so, let me be corrected.

But there is another reason why the Convention question should now be agitated. Not only the people of the West, but likewise the people of the East, have looked for a movement on the subject at this session. I do not say that the people of the East wish it, but certainly they looked for it. I ask the members from the East, whether it has not been the general anticipation of their constituents that this subject would now be discussed?

But why is it that the question of Convention is looked for by the people of every part of the State? I will tell you: It is because this is the first session of the Legislature that has occurred since the Convention was called. During the last six or eight years the people of the West have been looking forward to the time when that census should be taken, as it would furnish the facts on which to base their claims for a Convention, and present the subject in stronger points of view than ever before. At the last session many of the members were extremely anxious to bring forward the subject, and have it discussed, but they were resisted on the ground that we were not in possession of the materials—the census of 1830 had not then been presented to the public; and on that account it was deemed best to put it off until this session.

The census of 1830 is now before us—we have all the facts and arguments necessary to sustain our cause. Why then put it off any longer?

But there is yet another reason why the public have looked to the present session for a movement on the subject of Convention. This reason grew out of the unfortunate destruction of the State House; for the mails that bore the news of this catastrophe abroad, carried with it the impression that now would be the time to urge our demand for a reform of the Constitution. How it is, or why it is, that the subject of Convention has been connected with the rebuilding of the State House, is not necessary for me to explain: Every gentleman understands it.

Since, then, it is generally expected that the question of Convention should be brought forward at this session, would we not prove recreant to the interest and wishes of the West to put it off any longer? Would it not look as if we were giving up our claims, and admitting that they are groundless? What good reason could we assign to our constituents, on returning home, for neglecting to press the call of a Convention on the attention of the Legislature?

But, Sir, there is yet another reason why this subject should be brought forward without any further delay. It is due to the people of the East themselves. The people of the East have taken up erroneous views as regards a Convention. They have been taught to believe that we want a Convention for the purpose simply of obtaining more power—that we care nothing about principle—that power is all we want. They have been taught to believe that we wish to disfranchise them—to pass laws that will oppress and ruin them. Now, Sir, I say the sooner we convince our brethren in the East that they are wrong in their opinion, the better it will be for us all, and how is this to be

done? by bringing forward the subject, I let them see what we complain, and why we complain—that it is for the purpose of opposing them that it is not a reach after power. Beyond this, we go far—that this is a many-headed monster, a Convention, is not as hideous as they have in thought believed.

Th, Sir, it is due to the people of the East that the question should be fairly presented to them, and, it is due to the people of the West to bring forward their claims, and not suppress them. For these reasons I am one of those who joined in advising the introduction of the Resolutions on the table.

As such pains have been taken out of doubt to make an impression that the present is an improper time for stirring the subject, I have thought proper to present these views to the House. I shall resume my seat, and reserve what I have to say on the merits of the question itself to some future stage of the debate. I am deterred from proceeding at this time by a severe affection of my eyes, but allow me to make one remark before I resume my seat as to the resolutions before us. I know there is a difference of opinion as to the plan of compromise proposed. Some think we are giving too much—others not enough. However this may be, the active of the gentlemen on whose advice the were introduced, must be considered as patriotic and praiseworthy. The object is to compromise a long and distracting contest between the two sections of North Carolina—to settle the broils that have year after year thrown the Legislature and the people of the State into hostile array against each other. No individual declares this state of things more than I do, and every feeling of patriotism requires that it should be done away as speedily as possible. To accomplish this great purpose, I confess that I am willing to give up something, to enter on the subject in a spirit of compromise. I confess that I would prefer taking taxation and population as a combined basis and applying it to both Houses. I should likewise prefer seeing federal numbers applied to both Houses, but the question is, shall we hold out at the risk of almost civil war for all that we ought to have, or shall we meet on the grounds of compromise, and endeavor to promote the peace, the quiet, general prosperity and welfare of North Carolina? I think no patriot, no real friend of North Carolina, will for an instant hesitate as to which course we ought to pursue.

Mr. PEARSON said, I regret that indisposition prevents the gentleman from participating in this discussion. I had counted upon his assistance in the heat and brunt of the contest. I did not expect to be thrown into the foremost ranks.

When I first looked at the resolutions, so great was my desire to settle the distracted state of the country, that I must continue until something is done; so great was my desire to remove the source of the sectional feeling that has for many years divided this body, and prevented all wholesome legislation, and to bring about a new order of things, when we shall be actuated by one common principle—a desire to benefit our common country—that I was inclined to go for them. But I found the west, at least a large majority of the west, opposed to them; and, upon examination, I discovered they concede too much. If representation by counties be unequal in one House, it must be so in the other; and if the principle by which we propose to reform the House of Commons, and reduce the number of members, be a good one, we should adopt it in toto, and reduce the number of Senators also. The interest of landholders is peculiarly represented in the Senate, and the interest of all classes in the House of Commons. Will it be consistent with this theory to leave the Senate so nearly equal in point of numbers to the House of Commons? Should it be more than half? Is it more than half in any well balanced Constitution? Again, Sir, the resolutions do not provide that the amendments agreed upon by the convention shall be submitted to the people for their ratification. I am not willing unnecessarily to repose too much power any where. I wish the people to look over what their delegates say, and to ratify their acts before they become a part of the Constitution; for these reasons I cannot vote for the resolutions as they now stand. I will trouble the committee with a few observations upon the subject, and shall then move to amend, by striking out all the articles except the 8th, which relates to the Seat of Government, and insert a provision for a general Convention, and ratification by the people. When we meet in general Convention, it will be time enough to fix upon such mutual concessions as may be necessary to "enable parties to meet." I should be willing to adopt 95 as the number in the Commons, 45 in the Senate, and to adopt federal numbers as the basis of representation in the Commons—federal numbers and taxation in the Senate. This would be a fair concession. It would secure equal representation, and preserve the relative weight of the two bodies. These are matters, however, which will no doubt be attended to by the Convention.

Does it not seem strange that the fathers of the revolution, in forming a Constitution, retained the English system of representation by counties, without regard to extent of territory, population or taxation, and the English system of borough representation, and did not act upon, or in any way recognize, in that instrument, the principle that "taxation and representation should go together"—a principle for which they were about to engage in an unequal war, and to maintain which they pledged their honor? Can this be accounted for in any other way, than by supposing that it was intended as a mere temporary arrangement?

What were the circumstances under which the Constitution was framed? The colonies had just thrown off the British yoke—had scarcely realized the idea that the people could govern themselves—were deafened by the notes of busy preparation, and all the "pomp and circumstance of war"—a war with the most formidable nation in the world, aided by a strong body of Tories in the bosom of the country! Under these circumstances, could they mature a Constitution upon the new principles and opinions for which they were about to contend? Could they make any but a temporary arrangement?

What was the condition of the country? The State extended west to the Mississippi river; it had not been laid off into counties farther west than Rowan and Mecklenburg; it contained about three hundred thousand souls. Was there the means of ascertaining the proper basis of representation? It was wise to adopt the old English system for the present emergency, and little was it expected that that temporary Constitution would be in use in 1832, after the State had become settled and improved, was divided into 64 counties, and contained 733,000 souls. Can it be thought for an instant, that it was expected the system by which every county is entitled to three members, would be kept up after the State was settled and laid off into counties as far West as the Mississippi? Was it foreseen that this Western territory would be given away to get rid of it?

And, Sir, what is the history of that day? Many of the colonies acted under their old colonial charters until the war was over. A few, North Carolina excepted, have since remodelled their charters. All the States that formed Constitutions in 1776, North Carolina excepted, have since remodelled them—many of them more than once. Even the States that made Constitutions in 1790 have found it necessary to amend them, to meet the changes that have taken place! North Carolina alone has remained stationary, and failed to keep pace with the age. The journals of that day show that the framers of that instrument, bound together by a common danger, that pointed the energies of the State to one object, and absorbed all selfish and illiberal considerations, completed the work in less than a week, and then engaged themselves in providing the ways and means

of repelling the invading enemy. These circumstances all prove that this Constitution was a temporary arrangement. The hope that, when peace was restored, a Constitution could be formed ensuring to all equal rights and an equal participation in the blessings of government, has never been realized. As soon as the common danger was removed, and the lid of Pandora's box had been lifted, the bad passions of men flew out, sectional jealousy, party feeling, and all the distractions that interest and ambition can originate, divided the councils of the State. As early as 1787, Governor Speight, of Newbern, introduced resolutions for a Convention. Attempts have been made, time after time, but the distracted condition of the country rendered them all abortive.

Mr. Chairman, the Constitution contains no provision pointing out a formal way to make amendments. It was no doubt thought unnecessary. The people have at all times a right to alter their form of government. But, Sir, there is in the Bill of Rights a clause, by which we are solemnly admonished to make amendments to suit the change of times. "A frequent recurrence to fundamental principles, is absolutely necessary to preserve the blessings of liberty." What is meant by *recurrence to fundamental principles*? Is it that the Legislature in enacting laws, and the judges and justices of the peace in administering them, are to recur to fundamental principles? No such thing, Sir. The one is bound by a written Constitution, the other by established laws,—a tract is marked out for them, and they must keep in it. By *fundamental principles*, is meant, the original principles of social Union—the original rights of man; and the fathers of the revolution having themselves just recurred to these principles, by declaring the independence of this country, its separation from the mother country, and its determination to establish a government for itself, having in fact recurred to the sacred right of revolution—the right inherent in every people to change, modify or amend their government whenever it becomes necessary—thought it proper, in this solemn manner, to justify their course, and to admonish those who came after them, that whenever, by reason of the increased population and property of the country, or in any other way, the existing government ceased to operate equally on all, and to preserve the equal rights of all, it was right—nay, it was *absolutely necessary*, if they wished to preserve the blessings of liberty—to recur to fundamental principles, and change, modify or amend the Constitution. Truly, Sir, this was spoken in the spirit of prophecy. It could not be preserved but by a frequent recurrence to fundamental principles. We have neglected this admonition, and the blessings of liberty have not been preserved. One of the first blessings of liberty is equal rights. The right of representation is the dearest and most sacred right of man. With it, he is a free man—without it, a slave! Is the right of representation equal under the present Constitution? Has this great blessing of liberty been preserved? Cast your eye over the members of this House. Are they sent here by the same number of voters? Are any two counties equal in extent, in population or taxation? Still every county sends an equal number of members. This general view of inequality must strike the attention of every one. But particular cases will sometimes strike most forcibly. Let us advert to two counties, and institute a comparison. Rowan is not the largest, nor Washington the smallest county. Rowan contains a population of 18,138; Washington 3,740—difference 14,440. Rowan pays annually a land tax of \$704; Washington \$160—difference \$544. Rowan pays annually a tax of \$1,818; Washington \$560—difference \$1,258. Rowan and Washington send each three members, who have equal political weight. Is this equality? Is there any circumstance connected with the 300 voters in Washington which entitles them to the same political weight that the 1800 voters of Rowan have? Is their land better? In time of need will they furnish the same amount of money or of men? Why then shall one man, because he happens to live within certain marked lines called the county of Washington, be, for the purpose of representation, equal to six men in Rowan? It is caused by the operation of the unequal and absurd system of county representation, under which counties are considered equal for the purpose of representation, and unequal for every thing else. This is the strangest representation ever imposed upon a people, who believed they lived in a republican country! Sir, in the Federal Government, which is a Union between sovereign States, every district that sends a member to the House of Representatives pays the same amount of taxes. It would be thought monstrous, were all the counties compelled to pay the same amount of taxes; but it would be right, Sir. If they be equal in representation, they should be equal in taxation,—and Sir all the other States now have Constitutions in which the basis of representation is free white population or population and taxation combined. They are all wrong, or North Carolina is wrong.

But it may be said, this is a sectional question, a question between East and West. Will that alter the inequality? Take the line laid down by a conspicuous man of the East, Mr. Stanly, in a former debate upon this question: Draw a line from the corner of Granville south through the State, and you have 25 Western and 35 Eastern counties. Numbers in one House, and federal numbers and land taxation, which is the correct rule; for if negroes be included in federal numbers, it is not right to include them again in taxation. Or to avoid disputes, take federal numbers and taxation generally in the other, and how does the calculation stand?

25 Western counties contain in federal numbers \$37,392
35 Eastern counties \$24,272

In favor of West \$53,664
25 Western counties pay a land tax of \$18,223
35 Eastern counties 15,447

In favor of East 33,670
25 Western counties pay in taxes \$22,693
35 Eastern counties 36,958

In favor of East 3,994

Upon the basis of federal numbers, if the number of members remain the same, the 25 Western counties would be entitled to 104 members, the 35 Eastern to 84, giving the West a majority of 20. Combining federal numbers and land taxation, the West would be entitled to a majority of about 18 members; and combining federal numbers and the whole taxation, the West would be entitled to a majority of about 15. Under the present Constitution, the East has a majority of 24; so that on the first principle there ought to be a difference of 44, on the second of 42, and on the third of 40. And this, 100 after conceding the basis of white population entirely. Is this fair? Is it equal? I appeal to the gentlemen of the East, and ask them if it is right to exclude the West from an equal participation of political power? I appeal to them as citizens of the same State, members of the same family, and ask if they can lay their hands upon their hearts and say, they will hold power to which they have no right, and which accidental circumstances alone placed in their possession? Will they reply in the language of a King of England, when questioned as to his right to the crown? "My father wore it, and gave it me, and by this right I'll wear it."

Sir, there is another grievance under the present Constitution, one that very materially affects the growing prosperity of a portion of our State. I allude to the difficulty, almost impossibility, of dividing the large counties in the West. Your citizens have a right to expect that their convenience in attending courts and other public meetings will be consulted by the erection of counties of a reasonable size. The size of counties should be regulated by convenience on one hand—restrained by county expenses on the other. Under the action of these balancing principles, counties will neither be too large nor too small. But, Sir, when a memorial is presented to this body, respectfully praying the erection of a new county, the subject, instead of being decided by these principles alone, is influenced wholly by the consideration of political power. It is not asked, are the complaints well founded—will the extent of territory, the population and the taxation of the proposed new county, justify its erection? It is gravely asked, how will the addition of three members affect the power of the East? And the answer governs the decision. Memorials upon memorials have been presented, and have been rejected upon the consideration of political power alone. And, Sir, they will always be rejected until the system of county representation is abolished! Some new counties, it is true, have been erected. Most of them were obtained by striking off a new county in the East, as an equivalent. All were forced from a reluctant hand. Look at your mountain country! without public patronage, without the encouragement of a liberal and correct policy, it has grown and become populous and wealthy in spite of your neglect. How much more improved would that country now have been, had you pursued towards it the policy observed in every other State towards their unsettled territory—had you supported and helped it on by the fostering arm of government—had you even offered a proper measure of convenience to those who are inclined to settle it? The county of Ashe is an instance in point. That is mountain country, but the county is of convenient size, and the county of Ashe has increased more in the last ten years than any county in the State. But the misfortune is, that as the difference in political power becomes definite and certain, as you approach the point of equality, the chance of a new county, it has really always been a chance, is lessened; and, my word for it, Sir, reform the House of Commons; let the Senate remain as is proposed in the original resolutions, let eight in the Senate be the eastern majority, and you never will see another new county. Is not the settling and improvement of our western country a strong consideration for calling a Convention, when experience makes it clear that under the present Constitution collaterally it is true, but no

less certainly, insurmountable obstacles are opposed to the adoption of liberal policy?

One of the blessings of liberty is the enjoyment of a good government and good laws, with as little expense to the people as the nature of things will admit. Is not the Legislature unnecessarily large? Would not half the number make as good laws, in a much shorter time? Is there a necessity that the Legislature should meet every year? It appears to me, Sir, that if the Legislature met biennially, the policy of the State would be more permanent—the laws less fluctuating. The practical operation of laws would be seen before they were repealed; your people would find out what laws you had passed before they were altered; and, Sir, all this would be attended with a saving of at least \$25,000 a year. Is this nothing, Sir? I believe I need not press this consideration upon gentlemen who know so well the value of money, and who are so little inclined to tax the people.

But, Sir, there is another and a weighty reason for calling a Convention. The State is torn and distracted by sectional feeling; all wholesome legislation is marred; the Legislature meets not to provide for the general good, but to witness the struggles of factions. This has been the case, and will be the case until these differences are settled in Convention. Do gentlemen wish to see this state of things continue? Will they refuse to join in a measure that will unite us as a band of brothers? We were told a few days ago in the discussion of the appropriation bill, by the gentlemen who took part in the debate, that, however much they were incited amicably to settle these differences, if the appropriation was refused, they could not go with us, as it would have the semblance of acting under compulsion. They said they would not move a step with a rod over them. Will those gentlemen pardon me for reminding them that this proposition has been made time after time, and had been as often spurned by them; and that it appears to us that they refuse it now for the reasons they refused it before. It seems to us, Sir, that the excitement upon the State House question proves clearly the unhappy distraction of the country, and demonstrates the necessity of Convention; and, being unable to appreciate the feeling by which the refusal of the appropriation is made an imaginary rod held over their backs, we are forced to think it is a mere excuse for their illiberality, a mere cloak to conceal a reluctance to resign power to which they are conscious they have no right. From this remark I must be permitted to make one exception. One of those gentlemen has always been a liberal voter. When a question was proposed, he stood not to ask, did it come from the East or the West? It was sufficient for him to know it was right. And although we lament, as the most unfortunate consequence of the appropriation question; that we now see him in the adverse ranks, ready to lend his powerful arm to crush right and uphold wrong! We believe, in the moment of excitement, when he permitted his feelings to be too highly wrought up, in the discussion of a favorite question, and in the moment of disappointment, when he reminded us of his former friendship and found he was not able to sway us, he permitted himself to be carried away by the feelings of "those among whom his lot is cast." We still respect his virtues and admire his talents. We consider him an ornament to this House, an ornament to his native State, and we have regretted, and do now regret that, cramped and kept down by the illiberality of party feeling, his talents have not been able to display themselves upon a theatre where they would be an ornament to the nation. Are these the sentiments alone of the individual who now addresses you? The looks of all around me proclaim that the feeling is universal. We meet, in the world, with so much illiberality, so much prejudice and bad policy, that it is a relief to find a man whom we can love & venerate; it is sunshine to the soul. We are sorry it has been darkened by a passing cloud.

Mr. Chairman, permit me to make one or two remarks upon the appropriation. We were told, the obligation of a solemn oath bound us to vote the appropriation. The oath was pressed upon us as frequently, and with as much art as an experienced advocate presses it upon an ignorant jury that he does not respect, with the hope of acquitting a client whom he knows to be guilty! We were told the pledged faith of the State bound us to vote the appropriation! We could not think so. We admit Raleigh is to be the seat of government until, under an express provision of the ordinance, it is removed by a Convention; but, we believe, to have voted the appropriation this session, would have been to forestall public opinion; and, by a hasty exercise of the brief power with which we are invested, to prevent the exercise of a power reserved in the ordinance itself. I will put a case, Sir. You own a plantation in a distant county; your buildings are burnt down; and the overseer, having good reason to believe that you wish to