

tion ever given of the constitution. Mr. S. read from the "Federalist,"

"It is a misfortune incident to republican government, though in a less degree than to other governments, that those who administer it, may forget their obligations to their constituents, and prove unfaithful to their important trust. In this point of view, a senate, as a second branch of the legislative assembly, distinct from, and dividing the power with, a first, must be in all cases a salutary check on the government. It doubles the security to the people, by requiring the concurrence of two distinct bodies in schemes of usurpation or perfidy, where the ambition or corruption of one would otherwise be sufficient. This is a precaution founded on such clear principles, and now so well understood in the United States, that it would be more than superfluous to enlarge on it. I will barely remark, that, as the improbability of sinister combinations will be in proportion to the dissimilarity in the genius of the two bodies, it must be politic to distinguish them from each other by every circumstance which will consist with a due harmony in all proper measures, and with the genuine principles of republican government.

"The necessity of a senate is not less indicated by the propensity of all single and numerous assemblies, to yield to the impulse of sudden and violent passions, and to be seduced by factious leaders into intemperate & pernicious resolutions.

"All that need be remarked is, that a body which is to correct this infirmity, ought itself to be free from it and consequently ought to be less numerous. It ought moreover to possess great firmness, and consequently ought to hold its authority by a tenure of considerable duration.

"To a people as little blinded by prejudice, or corrupted by flattery, as those whom I address, I shall not scruple to add, that such an institution may be sometimes necessary, as a defence to the people against their own temporary errors and delusions. As the cool and deliberate sense of the community ought, in all governments, and actually will, in free governments, ultimately prevail over the views of its rulers; so there are particular moments in public affairs, when the people, stimulated by some irregular passion, or some illicit advantage, or misled by the artful misrepresentations of interested men, may call for measures which they themselves will afterwards be the most ready to lament and condemn. In these critical moments, how salutary will be the interference of some temperate and respectable body of citizens, in order to check the misguided career, and to suspend the blow meditated by the people against themselves, until reason, justice, and truth, can regain their authority over the public mind? What bitter anguish would not the people of Athens have often avoided, if their government had contained so provident a safeguard, against the tyranny of their own passions? Popular liberty, might then have escaped the indelible reproach, of decreeing to the same citizens, the hemlock on one day, and statues on the next."

Mr. S. said he was supported by this authority in saying the Senate of the United States was created as an anchor to secure the constitution against temporary popular fluctuations and errors, from which no people are exempt. That it was in fact the balance-wheel of the machine of government, to regulate its motions, without which administration might become the mere instrument of popular delusion and the engine of party.

If, sir, every other branch of the government, if the legislature of a state, be permitted to direct or to control the senate, the valuable objects of the creation of that body are destroyed, its independence is gone, and instead of answering the purposes of a check and a balance to the other branches of government, it becomes subservient to them and must be driven at the mercy of every mutation of the popular will.

But it is said the General Assembly appoints the senator; they are therefore his constituents, and the constituent has a right to instruct, to control or to censure his representative. Sir, said Mr. Stanly, I hold that all power is derived from the people; they are the legitimate, the only sovereign; The people are the constituents; they may advise or censure as they please, and the representative will respect their opinions or not upon his responsibility. The General Assembly is not sovereign; it is but the agent of the sovereign, chosen for the purposes declared in our constitution, and entrusted no further. In the election of senator the General Assembly acts, not from a right inherent in it as a legislature, but as the instrument of the people. Such also is the governor, who can appoint a senator in case of vacancy happening during the recess of the assembly; and such are the electors of President and Vice-President of the United States. When the special power delegated them is performed, their office expires; and the member of assembly stands to the senator in the same relation which the elector does to the President. And who among you would not scorn as a fool the elector who should attempt to assert the right to instruct & to control the conduct of the President? Yet the right of the elector is just as well founded as that which we are now invited to usurp.—Both violate the spirit of the constitution.

This usurpation of power violates not only the spirit but the letter of the Constitution.—By the first article of the Constitution, it is declared, "all legislative power herein granted shall be vested in a congress of the United States, which shall consist of a senate and house of representatives." The "power" cannot rest in the senate if the senator votes not according to his own judgment, but in obedience to instructions from the General Assembly; the legislative power is then transferred from the senate to the General Assembly, and the Constitution violated. Let the principle contended for be tested in another way. The right of command and the duty of obedience are relative terms; if the legislature have a right to instruct, the senator is bound to obey, and con-

sequently the act done by the senator in disobedience of his instructions is void. Yet we see that in fact the votes of senators, directly in opposition to the instructions of legislatures, are valid and operative to every purpose, and the assertion that the acts of the senate within its constitutional powers are void, if contrary to instructions of the legislature of a state, is too absurd ever to have been advanced. Mr. S. said he would repeat, the legislature of the state and the senators of the United States are but the representatives of the people, and this whole matter is but a struggle by one set of representatives to govern another. It is perfectly orthodox and sound republican doctrine, that the representative has no powers but those expressly granted by the Constitution. Neither the Federal nor State Constitution give us any right to control the Senate of the United States; the present attempt therefore is an act of usurpation. Mr. S. said, if there was no constitutional ground of objection to this project, it appeared to him highly exceptionable upon considerations of expediency. A senator when elected becomes a senator of the United States; he is not the representative of the single state which elected him; his votes affect the whole and it becomes his duty; with the eagle eye of a statesman, to view the bearing of every measure upon the interests of the whole and to act for the good of all. Settle it as the sound construction of the Constitution, that the Senator is the mere tool of a single state, bound to obey its wishes and consult its interests alone, you fetter his integrity, cramp his understanding and destroy all that is valuable in the constitution of the Senate; its liberality, its independence, and its wisdom.—You take from the people of the United States their excellent republican constitution, and lead them into that state which tyrants have found most favorable to their schemes of oppression, "the form without the spirit of a free government."

These, Mr. Stanly said, were some of the reasons which governed his mind in the opinion, that it was neither constitutional nor expedient to adopt the resolutions offered by the gentleman from Halifax. Although, said Mr. S. I have purposely avoided saying any thing of the merits of the charges alleged against Mr. Stone, as irrelevant upon the present question, yet he said he could not but notice one expression, that "Mr. Stone had disappointed the expectations of those who elected him." This expression he wished explained. Did the friends of Mr. Stone in the last General Assembly who elected him, did they know that James Madison would nominate Gallatin minister to Russia, that he would recommend an embargo and direct taxes; and did they extort his promise to support these measures? or did they, in the true spirit of party, expect his concurrence in all projects of the President, just or unjust, beneficial or ruinous? If such was his promise, he is accountable for its breach to those to whom it was made: Very few of those are here; the majority are at home, better employed than we now are. Let them assemble and censure him. If this expectation is founded on the ground of party obligation, let me be permitted to say, that universal as it may be to feel zeal for our party, (and zeal in a good cause is commendable) yet the present is an occasion on which zeal for the Constitution will be most valuable and honorable.

Mr. S. said he heard with pleasure the quotations of the gentleman (Mr. Drew) from the Holy Scriptures, and his reference to the laws of John, king of England. The Scriptures Mr. S. revered as a rich treasury of sublime thoughts, of truth and of wisdom; the knowledge of the history of other nations might lead us from their errors, yet he could not see the force either of holy writ or of the history of king John in expounding the Constitution of the United States, nor any support which the resolutions of the gentleman derived from their high authorities. He felt himself bound to vote for the indefinite postponement.

Mr. Drew spoke in reply to Mr. Stanly, and said that the extracts he read from the Federalist were the production of Alex. Hamilton, who had wanted to introduce a provision for making the senate hereditary. He said that gentleman had wished to introduce a race of nobles into the country; like it was in England, where they were every thing and the people nothing; but here, thank God, the people were every thing, and public officers were their servants. He protested against the doctrine that the people were their own worst enemies, and said that the man who first broached it had been permitted to retire to obscurity.

Mr. STEELE said—As it is always with reluctance that I occupy the time, or attempt to attract the attention of the house, it will not be expected that I have risen at this late hour of the day to make any remarks on Mr. Stone or his character. His conduct and position, before and since his election to a seat in the Senate of the United States, I leave to others who place him in that situation: I cannot, however, consent to join in a legislative hue and cry against him, or any other individual, for the purpose of abating the griefs and disappointments of those who but a few months previous were his most zealous friends. In my view, personal considerations are so entirely abstracted from the question, that I would not have mentioned that senator's name but for the purpose of having it distinctly understood that standing here, a member of the Legislature, I am to be considered neither his advocate nor his accuser. Justice he is entitled to, and justice I presume he will ultimately have, not at the bar of this house, for we have no power over him, but from the public, the only tribunal before which his conduct is properly cognizable. A tribunal which is always just, when it can have the aid of time and truth to form its decisions; and to that tribunal the subject matter of these charges shall be referred.

It is a very common error, the source of many of our evils, that the members of our legislature, when convened in their respective houses, identify themselves with the people, and imagine that, in their representative character, they are authorized to do whatever the good people of the state might, or probably would do, in their collective or aggregate capacity. Nothing can be more fallacious.—The people are unlimited in their powers: if they choose to exercise them they may amend or abolish their constitutions; while their representatives are bound to act according to the strict rules of delegated authority.—The members of this legislature are as much and as

properly restrained by constitutional limits and restrictions, as the members of the senate of the United States. They both derive their powers from constitutions which emanated from the people; they are alike restricted to spheres of action prescribed by the people, and are equally accountable to them for their conduct.—By the 18th section of our bill of rights, the freedom of North Carolina have expressly reserved to themselves "a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the legislature for redress of grievances." This is the only provision which can be quoted, from either the state or federal constitutions, on the subject of instructions. The word "representatives," used therein, may be fairly construed to extend further than to the members of the state legislature. It is comprehensive enough to include, as I shall presently show, the members of the congress of the United States.—There was a congress in existence, though not formed and constituted as at present, at the time this article of the bill of rights was adopted, and the people having reserved the power to instruct, without any manner of exception, must have intended it to apply to all persons acting in a representative character, either directly or indirectly under their authority. If this be correct, it must then follow, that the people could not and did not reserve to themselves the power to instruct, and transfer it to the state legislature at the same time.—The 1st section of the state constitution declares "that the legislative authority shall be vested in two distinct branches, both dependent on the people, (to wit,) a senate and house of commons." Sec. 4. "The senate and house of commons assembled for the purpose of legislation shall be denominated the General Assembly." The first of these sections shows that these two branches when convened are not to be regarded as the people. They form a distinct body in the state, "dependent on the people," and accountable to them.—It cannot be inferred from the other (4th) section, that assembling "for the purpose of legislation" necessarily invests the two houses with a power to instruct senators. Yet this inference must be presumed, in opposition to the express terms of the 18th section of the bill of rights, or no such power can be constitutionally exercised by the legislature.

Before the existence of the Constitution of the United States a compact was entered into by the state legislatures, commonly called the articles of confederation. This compact formed the basis of that Union which bound the states together as a confederacy, and had no other sanction for its existence or for its continuation than the assent of the several state legislatures from which it emanated. By this compact the state legislatures reserved to themselves the power to direct the manner of appointing the delegates, to fix their compensation, to recall the whole or any of them at pleasure, and to send others in their stead.—Possessing these powers, it resulted, as a necessary consequence, that the delegates from the state were as dependent upon the will of the legislature as if the power to instruct had been expressly granted by the people. Under the articles of confederation a power in the state legislature to instruct the delegates may be implied, not from the power of appointment as is contended in the present case, but from the power to recall them, and suspend their compensation at pleasure. A power thus derived is essentially different from the pretension now set up, that the power belongs inherently to the legislative body.—An inherent power is incompatible with the unquestionable right of the people, as reserved by the 18th section of the bill of rights, which has been already noticed. If, then, it is apparent that the people, by the state constitution, have made no such grant to the legislature in express terms, and if it do not independently appertain to that body in virtue of its powers of legislation, the grant must either be found among the powers delegated to the state legislatures by the federal constitution, or it remains among those residuary rights which were reserved by the people.—This is the point of my argument: the state legislatures possess no inherent powers in relation to senators in the congress of the United States.—Their powers, whatever they be, are derived from the people through the medium of the constitution of the United States, and from that source only.—At the adoption of that constitution a new era commenced. It was an act of the people in their sovereign and unlimited capacity, altogether independent of legislative sanction or control—and the power granted by it to the state legislatures are to be construed in the same manner as powers granted to congress, to the president, or to any other department of the government. They are to be construed strictly with this rule in view, that the powers not delegated by the constitution are reserved. The question then is, have the people by the constitution vested this legislature with power to instruct senators? If the constitution contain any provision upon which an affirmative answer can be founded, the advocates of the resolutions are entreated to point it out. The 3d section of the 1st article is in these words: "The senate of the United States shall be composed of two senators from each state, chosen by the legislature thereof, for six years, and a senator shall have one vote." This is a simple, abstract grant of power to appoint senators, and nothing more. There are other provisions in the constitution which are intended to organize the senate as a distinct branch of the general legislature, to secure its independence on the one hand, and a due regard of responsibility to the public on the other. Some of these merit notice. Art 1st, sec. 5. "Each house shall be the judge of the elections, returns, and qualifications of its own members."

"Each house may determine the rules of its proceedings, punish its members for disorderly behaviour, and with the concurrence of two thirds expel a member."

"Each house shall keep a journal of its proceedings, &c."

Sec. 6th. "The senators and representatives shall receive a compensation for their services, to be ascertained by law and paid out of the treasury of the United States. They shall in all cases, except treason, felony, and breach of the peace, be privileged from arrest, during their attendance at the session of their respective houses, and in going to and returning from the same, and for any speech or debate in either house, they shall not be questioned in any other place."

These parts of the constitution have been noticed for the purpose of showing, that those who prepared the constitution regarded the independence of the senate with the same anxious solicitude as they did that of the house of representatives. All the provisions to this end apply equally to both; they are to be paid in the same manner; they are alike privileged from arrest, and "for any speech or debate, in either house, they shall not be questioned in any other place." No, sir, they cannot be questioned even in this house.

On what foundation then does the power to instruct our senators rest? In vain do we search for it in the constitution: that instrument is silent and conveys no such power to the legislature. If it had been the intention of the people to divest themselves of this right, it is not to be presumed that they would have left it to inference or implication. They would have classed it among the powers expressly granted by the constitution; they would have done more; they would have detailed the manner in which such instructions should be prepared, and be the consequence of disobedience. When it is considered how dependent the delegates in congress under the articles of confederation were upon the state legislatures; the absence of all those provisions from the federal constitution by which that dependence was induced, must lead the mind of every reflecting man to this conclusion: That evils had resulted from it, which the convention who formed the constitution intended to guard a-

gainst in future, by securing as effectually as possible the independence of the senators. With this view the agency of the state legislatures is confined, and very properly confined, like that of the electoral assemblies, to the mere power of appointment. They may deliberate as to the qualifications of candidates, and make their elections; but when this is done, their power in relation to senators in the one case, and to the President in the other, ceases until new occasions occur as provided by the constitution, to bring them again into action. They are in both cases the mere organs of appointment for the people.—The senators though elected by the state legislature are intended to represent the state at large without regard to sections or districts, in the same manner as the President represents the nation, though chosen by small bodies of men in each state called electoral assemblies.

What would be thought, sir, of the Electors of any state in the Union, if twelve months after having given their votes for a President, they would have the presumption and the temerity, to convene again with the avowed purpose to instruct, to control, and to discipline the President. Such conduct would excite sentiments of contempt and indignation every where; it would, indeed, be highly reprehensible; but not more so than the conduct of this Legislature, if it could be so lost to a sense of its own dignity as to adopt resolutions now under consideration. It has been urged, that as the Legislature "creates" or appoints the Senators, the power to instruct results as a consequence. It is said the one grows out of, or is incident to the other. This reasoning is plausible and captivating; but when analyzed, it will be found to rest upon the imaginary and fallacious supposition, that the members of the Legislature are the State. The Senators are chosen "from the State" and ought to represent it. The State consists of the body of freemen who inhabit the soil of North Carolina, who elect annually the members of the Legislature, with powers to act in a certain sphere, and there only. The members of this Legislature should be careful not to trespass on forbidden ground; their powers are sufficiently ample without usurping those which were never delegated by the constitution, and which from the want of correct information they are incompetent to exercise.

But, sir, were it even admitted that this power might be constitutionally exercised by the Legislature, is it expedient to do so on the present occasion?

The Senate of the United States is a small body of men, intrusted with most important duties. To enable them to perform these duties with dignity to themselves and advantage to the nation, they must be independent. The interests and safety of the American people are deeply concerned in securing to the Senate a just sense of its own independence. The time may come, perhaps that time is not remote, when we may be compelled to look to the virtuous firmness of this body, for the restoration of blessings which are now banished from our country for the preservation of all that is precious to freemen in society. The members of the Senate hold their appointments by a durable tenure. The duties and powers confided to them require that they should be placed beyond the influence of passions which in their nature are temporary and fugitive. Every friend to the constitution should guard their privileges against encroachments, with a vigilance proportioned to the magnitude of the trust, and the interest which we feel that it should be faithfully performed. The Senate is the highest judicial tribunal in the United States. It possesses the sole power to try impeachments. The President, the judges and all other civil officers under the government of the United States are subject to the jurisdiction of this tribunal, and yet it is contended that the members composing it should be instructed by, and owe obedience to us. It cannot be so. The idea is too absurd and ridiculous to bear a moment's examination. The constitution of the United States is not perhaps faultless. Whether the organization of the Senate be its best part or not, it is a necessary part, and the members of this house are bound by the most solemn obligation to support it. We cannot support it, if we set an example to other state legislatures, which being followed by them, must in time destroy its independence and usefulness.—It was originally intended that the senate should form one of those great pillars which support the constitution. Remove this pillar, or in any manner impair its strength, and the whole edifice must tumble into ruin. Mr. Steele said he had now finished the observations which he intended to make in opposition to the resolutions, and trusted it would be the sense of the House to postpone them indefinitely.

RALEIGH:

FRIDAY, DECEMBER 10, 1813.

State Bank.—A meeting of the Stockholders took place on Monday last. On that evening, all the former directors were rechosen, except Gen. Joseph H. Bryan, who declined again serving. Thos. Henderson, esq. was elected in his room.

Legislative Proceedings. The journal of proceedings for this week, which is in type, is omitted, for want of room, until our next. The most important subject which has been under consideration, is the petition of the Banks of Cape Fear & Newbern for an extension of their charters and an increase of their capitals, and the adverse memorial of the State Bank. Mr. Stanly yesterday delivered an eloquent speech in favor of the petitions, and was very ably replied to by Mr. Lewis Williams (of Surry.)

Foreign.—The news from the armies is to the 20th September, at which time Bonaparte remained at Dresden. No battle of consequence had been recently fought. Thielman, a Saxon General, had gone over to the allies, with a considerable body of troops.

Obituary.

SPRUCE M. OSBORNE.

This young gentleman, who was one of those massacred by the Indians at Fort Mims, on the Tensaw, was a native of North Carolina, and had been educated at the University. Whilst at College he gave the highest proofs of genius, and a finely cultivated Belles Lettres taste.—His composition in prose and poetry, indicated a mind that might have acquired distinction in the walks of literature. After he left the University, he devoted himself to the profession of medicine, and had gone to the Mississippi for the purpose of commencing the practice of physic. The Indians breaking out in that country, he was chosen a Lieutenant in a Volunteer Corps, the most of whom perished in gallantly defending their Fort. Although his death must be regretted by his friends, yet they will find a considerable alleviation of their grief, in the brave manner in which he died. It is to be lamented that so heroic a spirit could not have been longer preserved to his own fame, and the glory of his country.