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Sketches of Debate.

HOUSE OF COMMONS, (N. C.) DECEMBER 9, 1812.

MR. L. WILLIAMS' SPEECH,

On the question of extending the charters of the Banks of Newbern and C. Fear.

Mr. WILLIAMS said—I must confess, Mr. Speaker, the great embarrassment with which I rise in opposition to the gigantic talents and matchless elocution of the gentleman from Newbern.—Nothing, Sir, but a sense of duty to my country and my conscience, could have propelled me into this discussion.—I am an enemy to banking establishments in general; and no one with whom I am connected by ties, either of affinity or consanguinity, has an interest in any of the banks of this State. It is then to be hoped, sir, this house will do me the justice to believe, that my arguments (should I have the good fortune to adduce any) flow from a source wholly disinterested. In making this avowal, I would not be understood as impeaching the purity of motives which actuate any gentleman on this floor.—I know well that our judgments and interests almost always run parallel to each other; that it would be a perfect prodigy in nature to behold one deaf to the calls of interest, or entirely regardless of the solicitations of pecuniary emolument. It is therefore no matter of surprize that gentleman should differ on this subject, and being satisfied of this, I should be both uncharitable and ungenerous to suspect any one of impure motives or improper designs. But so far as regards myself, I am free to declare, that I rise only to vindicate what I humbly conceive to be the solemn and plighted faith of the State. If this circumstance should in the opinions of gentlemen entitle my remarks to any additional weight, I am well assured they will be duly appreciated. Having premised thus much, I shall proceed, Mr. Speaker, to examine the question before us.

I have said that I was an enemy to Banks in general, because I think they are the germ of a production unfriendly to the genius and spirit of our political institutions; and at a certain period did believe they were prohibited by the 3d article of the Bill of Rights, to wit. "that no man or set of men are entitled to exclusive or seperate emoluments or privileges from the community, but in consideration of public services."—But, Sir, from information lately received, it appears that the supreme court have solemnly declared they are not thus prohibited. and, therefore, that I had laboured under an error.—To this opinion then of the supreme judicial tribunal of the country, we must all (and I hope not reluctantly) yield our assent. It does not become any one to question an opinion thus pronounced and sanctioned by the highest legal authority known to the State.—Hence my doubts and scruples have been quieted and put to rest so far as they had originated from this article in the Bill of Rights; & however discordant may be our sentiments on the subject before us, there seems to be perfect unanimity as to this point, that the third article in the bill of rights does not inhibit the establishment of Banks.

But, sir, beyond this point there is an endless diversity of thought; no two gentlemen appearing to have precisely the same sentiments.—The gentleman from Newbern has told you that unless the Legislature agree to extend the charters of the banks of Newbern and Cape Fear, they will contravene another article of the Bill of Rights in the following words, "that perpetuities and monopolies are contrary to the genius of a free State and ought not to be allowed."—Without presuming to follow the gentleman through the process of his elaborate argument, I will nevertheless attempt a reply by enquiring what is a monopoly? Here my unacquaintance with the law constrains me to follow other guides then those accessible to the votaries of a legal profession.—Ours, Sir, is a derivative language. The Greek and Latin are the great sources from whence many of our words flow, either mediately or immediately, and it very frequently happens that in order to ascertain the true and precise meaning of a term we must have recourse to the originals. In the want of ther guides, I have been compelled to this recourse, and find that the word monopoly means an exclusive privilege to sell commodities. Let me again repeat that a monopoly is an exclusive privilege to sell certain commodities. This definition, sir, will be important in our future inquiry. I beg gentlemen to remember it. Now, what is the nature of that commodity, the sale of which being exclusively granted to any man or society of men, will constitute a monopoly? Commodity has various meanings, but generally it is not susceptible of more than three distinct significations; the first of which is interest, advantage, profit; the second is convenience; and the third is goods. wares, merchandise. Which, sir, of these three significations, are we to select? Surely we are not at liberty to chuse any one we please; or one that is not answerable to the design of the Legislature. Words in the construction of a statute "are generally to be understood in their usual and most known signification." Again "terms of art or technical terms are to be taken according to the acceptation of the learned in each art, trade or science." Wherefore a monopoly being an exclusive privilege to sell certain commodities, the last signification of the word commodity, to wit, goods, wares and merchandize, must be preferred and adopted in our reasoning on this subject. For money is not such a commodity as to be monopolized. Commodities, says a learned author, "are moveables, valuable by money, the common measure." Thus for instance, a barrel of flour is a commodity; ten dollars the price, is the measure or value of that commodity, but not the commodity itself. Another writer says, "money is hired, not bought."—We, ourselves, when speaking of monied transactions, use the word exchange, but when alluding to the permutation of commodities, such as goods, wares and merchandize, we use the term barter.—Thus for instance, we exchange money, but we barter commodities.—Such, Mr. Speaker, I apprehend is the destinction always observed by those conversant in matters of this kind.—But at this stage of our enquiry the word "sell" happens to be of most important avail. because it is descriptive of that sort of monopoly inhibited by the constitution.—For instance, were I to go into any store of this city, I would ask the merchant to sell me his commodities, meaning his goods, wares, and merchandise, but when about to obtain money from him, I would say, "Sir, if you please, lend me money; or, sir, I wish to borrow money of you." The use of these terms, in the ordinary commerce and dealings of men, will warrant the destinction which has been drawn; and therefore I think it may be affirmed that it was never intended to apply the word monopoly, as expressed in the constitution, to banking establishments. Because a plain difference appears to exist between the monopolies, prohibited by that instrument, and the business of banking. The former dealing in goods, wares, merchandize; the latter confining their operations exclusively to money. These ideas are confirmed, as well by the original signification of the word monopoly, already given, as by the character and purposes of those institutions where they first appeared among the modern nations of Europe. The Dutch seem to have been the first to institute monopolies; and they resorted to them for the purpose of pushing on the India trade after they had overthrown their rivals the Portuguese. The magnitude of this trade, and the risk attending it, were insurmountable obstacles in the way of any individual merchant. Hence monopolies or commercial societies were in the beginning laudable institutions. They had for their object the management of a commerce too extensive, and too perilous to be conducted by single merchants. But, like other commercial companies, since that day they abused the privileges confided to them. These facts have been mentioned in order to shew that monopolies and banks have not only a seperate and distinct origin, but also a seperate and distinct existence. All the monopolies of which I have heard or read any account, were either mercantile societies, endowed with exclusive privileges to permute commodities, or companies instituted sometimes legally and sometimes illegally for purposes altogether foreign from the business of Banks. If, on the other hand, banks at any period of their existence have ever been identified with monopolies, the fact is unknown to me.—I am not, it is true, conversant in their history, but will hazard the opinion that banks neither in England nor the United States, have at any time been considered as monopolies. On the contrary they appear to me to be destitute of those peculiar qualities necessary to constitute a monopoly, and which cannot be more distinctly or better expressed than by saying that money is not such an article as to be monopolized.

If we refer to the history of those times when our political institutions sprang into existence, we meet with evidence which to my mind is conclusive on this head. It is well known that the people of the United States deprecated the forms of polity which existed in the European world, and therefore when they assumed the reigns of authority, they established governments as widely different from those of Europe as they possibly could do. Thus while crowned heads and potentates have all power in that quarter of the world, the people are the only sovereign in America. While offices and places are there filled by hereditary succession, here they are filled by election at short and stated periods. To pursue the contrast through all its ramifications would be a task as tedious as unprofitable. Let it therefore be sufficient to remark, that while monopolies existed there, they were inhibited here. Consequently if we do not institute societies such as were called monopolies in Europe, we satisfy the spirit if not the letter of our government. The greatest and most formidable monopoly the world ever knew is the East India Company of England. Perhaps it would not be grossly incorrect were it to be said, that the excesses and extravagances of this company caused the article respecting monopolies to be inserted in our Bill of Rights. We find that they were accessary to the design of the British ministry to tax the Americans without limitation or restraint; that the tea destroyed at the Port of Boston in 1773 belonged to them; and that in every respect they were odious to our people.*

* Hume's History of England, vol. 11th, page 138.—"The American accounts of the destruction of the tea at Boston shew the disposition of the people at that time in a very striking light, and that so far from thinking they had committed any crime, they looked upon their conduct as meritorious, not only calculated to free their country from the slavery intended for them, but even the best and tenderest method in which they could have acted towards the India company."

Other examples of this sort, are the Hamburgh Company, which was extremely oppressive in 1640, 1645, and 1661: The Eastland company considered also as an oppressive monopoly in 1672.—These, sir, are the monopolies of England, and so far as my limited reading informs me, the monopolies in other parts of Europe were similar in their origin, existence and end. It is indeed true there may be other monopolies, besides those formed for the purpose of carrying on foreign trade. England has had others. America some few, but they still retain the same character, unlike to and different from Banks. Should the Legislature grant to the merchants of Wilmington the exclusive enjoyment of the West India trade, or to the merchants of Newbern the sole right of dealing at the Liverpool market; or lastly to the distillers of the western part of our state the exclusive privilege of making and vending whiskey, these would be monopolies repugnant to the letter and spirit of the constitution, because they are of the same nature as the monopolies of the old world, which I have already surmised were in the view of those who formed the constitution. But the idea I entertain of such grants of privileges, is essentially variant from the nature of banking establishments. These are the reasons which induce me to believe that the constitutional inhibition of monopolies cannot be applied to Banks, and that the Legislature is perfectly free as to any impediment of that sort, either to establish no bank at all, or one bank to the exclusion of any number of applicants.

But the gentleman from Newbern says banks do come within the range of that article in the bill of rights, and therefore if we, in favour of the State Bank, should refuse to extend the charters of the banks of Newbern and Cape Fear, we institute such a monopoly as is prohibited by the constitution. If this be correct doctrine I am unable to perceive it. It will however be generally admitted, that the correctness of any principle may be tested by its consequences. Therefore if it be a monopoly to establish one bank to the exclusion of the other two; then it would be equally so to establish three banks to the exclusion of a fourth, or four banks to the exclusion of a fifth, and so on even to infinity. The consequence then is just this that we must grant this privilege to every applicant, for if we reject one we establish a monopoly. This consequence necessarily results from the gentleman's premises, and is evidently dangerous and ought to be guarded against. For in a short time bank money would inundate the country; and those numberless evils which follow in the train of a depreciated currency be entailed upon Society. Suppose that the state bank was the only one now in being, and that the Newbern and Cape Fear banks never had existed. Would gentlemen on an application for charters, urge that we must create two other new banks to avoid the establishment of a monopoly? I presume not. If then the argument that the State Bank was a monopoly, could not with propriety be offered before the other banks were in existence, with what additional propriety, I would ask, can it be offered now that they are in existence. If (as I imagine) while only the State Bank existed, it would not have been a monopoly to refuse to create new banks; it is not now a monopoly to refuse to extend the charters of the Newbern and Cape Fear Banks. The principle is precisely the same in both cases. The charters of those banks will not have been abridged in their existence by the establishment of the State Bank. They will survive as long as it was ordained they should live, and no longer. Again, if one bank to the exclusion of two be a monopoly, how let me ask is the character of the measure altered by permitting those other two to exist? I would think in this case that we established three monopolies instead of one, and that we consequently augmented the evil. Yes, sir, this must be so. If banks be monopolies, they are equally so whether you have one or one hundred. Such consequences, I humbly apprehend, should make gentlemen modify their reasonings, and cause them to be more guarded in their explanations of the term monopoly. As was before said, it appears to me the constitution has no bearing on this subject, and therefore as to any constitutional impediment, the Legislature is at liberty to act as may seem meet to their judgment and discretion. If no other obstacle were in the way, I should hesitate much which side of the question to espouse; but believing the faith of the state is pledged not to grant the prayer of the memorialists, I must not, I cannot remain silent when that faith is, as I conceive, about to be infringed.

The words of the law on this subject are as follows, "Be it further enacted by the authority aforesaid, that no other bank shall be established by any future law of this state during the continuance of the corporation hereby created, for which the faith of this state is hereby pledged."

This clause is to my judgment an absolute interdiction to the prayer of the memorialists. But we are told by gentlemen that the Legislature only promised not to create any new bank, and therefore may consistently renew the charters of the banks of Newbern and Cape Fear. This to me has more the appearance of ingenuity than solidity. To renew is to renovate, to restore to the former state.—Now, sir, it may be answered with all the truth of an axiom, that nothing can be restored to the former state unless it shall have fallen from that former state. Before one could be restored to life, he must have been dead. In like manner before the charters of these banks can be renewed they must have expired. The smallest possible point of time, intervening between the expiration and renewal is a sufficient basis for my argument. That such a point of time must intervene, will be evident to all both from the nature of things and the force of the terms expiration and renewal. If you renew the charters by a law at this session, that law will have no effect, no operation whatsoever, till the original charters expire, some half dozen years hence. If the stockholders in those banks surrender their charters, still there will be a lapse of time, and however small it matters not, between the surrender or extinction of the old charters and the commencement of the new. View it therefore in any shape, it is the same as creating them anew, and therefore forbidden by a pledge of the state.

Again, the renewal of their charters is equivalent to their entirely new creation, on the following account.—The motives and effects of actions are the only points of comparison in which their moral quality can differ.—Now, Sir, what motive actuated the Legislature in giving this pledge to the State Bank?—It was this: that the State Bank might be unrivalled, and from that circumstance be enabled to go on safely and rapidly in the redemption of the paper money.—But renew the charters and you conflict with the motive as well as counteract the effects of that law.—You create rivalship, when it was intended by the Legislature that none should exist; you curtail the ability of the State Bank to redeem the paper money, when the Legislature designed it should be all—sufficient for that purpose. But again; the extension of their Charters is even worse than the establishment of them anew, on this other account. Let it be supposed for example and illustration, that the Newbern Bank had originally a capital of no more than $ 500,000, and that it was located and confined to the town of Newbern.—Extend its charter and increase its capital, and you bring into existence a Bank of Newbern with $ 800,000 capital, not located and confined to the town of Newbern, but with several branches.—Here then instead of putting down rivalship you increase it more than three-fold; instead of furthering the ability of the State Bank, to redeem the paper money, you endanger the success of the whole plan.—Admitting for the sake of argument, the Legislature of 1811 reserved a right to renew their charters, it cannot be supposed, that the right to encrease capital was also reserved; because the exercise of this right directly competes with every possible design the Legislature could have in establishing a State Bank.

It has been further argued by the gentleman from Newbern, that this Legislature being in its own nature, and within constitutional limits, a sovereign power, ought not and cannot be controlled by any act of a predecessor.—I am pleased Mr. Speaker to hear it admitted that this Legislature is sovereign even within any limits.—On the other day we were told that the Legislature, being only the agents of the people, had no right to pass censure on the conduct of their Senator in Congress.—I heartily coincur with the gentleman as to the sovereignty of the Legislature within constitutional limits; but beg leave to enter my protest against the inference deduced.—Shall it be said, sir, that because a power is sovereign it cannot be bound by a moral obligation. No, Sir: far otherwise is the case. We read that even the Supreme Ruler of the Universe is restrained by those laws which he himself had formed for the moral government of the world.—How, then, can it be argued that this Legislature, being sovereign, is not bound by the compact or agreement of any former Legislature?—It has been said, and I admit not without much semblance of reason, that this Legislature is not composed of the same persons who were engaged in making the law of 1811, and therefore cannot be tied down by their stipulations, if not agreeable to them.—To this argument I must reply as was done on a former occasion, to wit, that the Legislature is indivisible and always existing; that as a corporate body, it is one, entire and indissoluble.—I grant you that one Session of a Legislature cannot bind another, but a palpable distinction obtains between a session of the Legislature and the Legislature itself; the former being durable as the government, the latter only transitory.—If therefore a compact be entered into by the Legislature at any particular session, and be not intended to bind the Legislature at all subsequent sessions during the existence of that compact, some conditionary terms ought to be inserted, such as "if the present members should be honored by their constituents with a return to their seats, this compact shall be binding," &c. &c. But when the faith of the State has been pledged as in the section of the act above recited, that pledge is ipso-facto binding on all subsequent Sessions of the Legislature, because the legislature is spoken of in its durable and not transitory being, in its permanent and not ephemeral nature.—But if the words of a statute are of doubtful meaning, the construction it is said must be in favour of the sovereign power.—Let us again repeat the words; they are as follows: "Be it further enacted by the authority aforesaid, that no other bank shall be establish-