



"The powers granted under the Constitution, being derived from the People of the United States, may be resumed by them whenever perverted to their injury or oppression."—Madison.

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SPEECH OF MR. ELLIS, OF ROWAN,

In the House of Commons, on 26th Dec. 1844, on the bill to authorize the foreclosure of the Mortgage of the Raleigh and Gaston Rail Road, and in reply to Mr. Moore, of Halifax.

Mr. Speaker: It has been well remarked by all who preceded me that the present is one of the most important measures of the Session. It is one to which public attention is turned with a mixed feeling of anxiety and interest, and one that in its final result, whatever may be our action here, is destined to effect more or less all sections, all classes, all conditions of people in the State of North Carolina.

Its magnitude and importance, justify entitle the public to the expectation that their representatives will enlist an active exertion of all their faculties in the extrication of the State from the almost overwhelming embarrassment in which she has been involved by unguarded legislation.

These reasonable expectations of the public I for one have labored not to disappoint; and whatever may be the peculiarities of my views upon this subject, they have been adopted and are entertained with a sincere desire to subvert the interests of the State.

Union of sentiment too, Mr. Speaker, that is indispensable at all times to effective action, is highly desirable in the present instance, but notwithstanding the advantages resulting from such harmony, I am forced to differ—to differ materially, Sir, with your Committee who have had this subject under investigation, in many of their recommendations.

There is one conviction however, that the report of the Committee by its clear exhibit of facts and forcible reasoning, has driven home to the mind of every man—it is the conviction that the Raleigh and Gaston Rail Road Company is totally and irretrievably insolvent—insolvent far beyond the most sanguine hope of redemption. Nay, more, that it was insolvent on the 12th January, 1841, insolvent on the 9th January, 1839, the very day and very hour when the State by authority of her Legislature endorsed its bonds for the sum of eight hundred thousand dollars; and further, that the Company never has seen the day since its operations began when it was otherwise than insolvent.

This disastrous condition of the Company, we are told by the gentleman from Bertie, (Mr. Cherry) will bring ruin upon many of the Stockholders who have embarked their all in the enterprise.

For such persons, Mr. Speaker, I hope I am not wanting in sympathy. But at the same time there is a broader and more general sympathy that takes possession of my breast. It is the sympathy for the thousands of human beings in the State who are unable to bear the burden of taxation, one farthing heavier without being deprived of the actual necessities of life. This latter feeling denies me the pleasure of entertaining any thing in the nature of a practical sympathy at this time for the Stockholders in the Raleigh and Gaston Rail Road.

As to the present insolvency of the Company but one course of conduct suggests itself to my mind, that we can prudently adopt. It is to apply the same rule that is usually applied under similar circumstances to individuals. In the ordinary affairs of life when a man becomes insolvent, his creditors, or those who are bound for the payment of his debts, dispose of his assets and apply the proceeds arising therefrom as far as they will go to the payment of such debts. Here we have the case of a Rail Road Company declared by your Committee and by resolution of the present General Assembly to be insolvent, and for which Company the State is bound as security in the payment of a large amount of money.

Now in order to apply the common rule as alluded to, it is incumbent upon the present Legislature to cause to be sold, the Rail Road itself and all other property both real and personal belonging to the Company, and the proceeds of the same to be applied to the liquidation of their debts for which the State of North Carolina is ultimately bound.

This much Sir, your Committee have recommended, and with a view to carry into effect this recommendation have submitted the bill now under consideration. Thus far I cordially agree with the Committee; but to that portion of the Bill that authorizes the Governor to bid four hundred thousand Dollars for the Raleigh and Gaston Rail Road in behalf of the State I utterly dissent. By what process of reasoning, your Committee have arrived at the conclusion that the State should purchase the Road at the sum above named they do not inform us, upon what calculation, upon what principle of finance this recommendation is based, I must confess I am unable to see. Certainly it is not grounded on the report of the Committee; for nothing could be more at variance and inconsistent with that report.

There we find it stated that the receipts of the Road for the past eighteen months, only amount to seven thousand dollars, which sum is equivalent to six per cent per annum on seventy-nine thousand dollars. If then the State is to gain by any investment in this Road she should not pay more for it than seventy-nine thousand dollars, for if she goes beyond that sum then, according to the statistics contained in the report of your Committee, the dividend upon the investment will be less than six per cent, and consequently the investment an injudicious one.

But in case this Bill is adopted and the Governor purchases the road at four hundred thousand dollars, what per cent, upon this sum will the State be enabled to draw from the clear profits of the Road? A little less than one and a half per cent per annum. This result is deducible from the facts reported to this house by the Committee, for if the profits of the road for eighteen months be seven thousand dollars, the proportional profits for twelve months will be a sum equal to one and a half per cent per annum, on four hundred thousand dollars. It would be a strange principle of finance, Mr. Speaker, that could induce us to make an investment that would only pay one and a half per cent, at a time when money is well worth to us six per cent per annum.

Nor does your Committee give any probable assurance that the profits of the road in future will be increased beyond the profits for the past eighteen months. On the contrary the annual report of the Company exhibits a gradual decrease in the receipts since its operations first began. It is urged however in debate, that the recent transfer of the Southern Mail to this line will augment the receipts of the road. The facts of the case are, the conductors of the road will nominally receive ten thousand dollars,

additional 'Mail pay,' from the General Government, but in reality their clear receipts from that source will rather be diminished than otherwise. To sustain this I need but refer members to the irregularities falling under their own knowledge of the Northern Mails transported over this road. And it is at once conclusive, that if the Wilmington Company can no longer afford to transport the great Southern Mail, for the price paid by Government, the Raleigh and Gaston Rail Road with far less punctuality and expedition, will not be benefited by the transfer.

But, Mr. Speaker, there is no necessity for my resorting to isolated facts in the report before us to deduce arguments against a purchase of the road by the State, upon the terms proposed by this bill—for by reference to page 4 of the report, will be found an argument fashioned and ready shaped to my purpose, proceeding from the Committee itself, who have recommended a purchase of the road by the State. The following clause will be there found: "Your Committee report further that the receipts of the said Raleigh and Gaston Rail Road have not been sufficient, after paying current expenses, repairs of road, &c., to pay any part of the principal, and but a small portion of the interest on said bonds"—that is the bonds for \$300,000 endorsed by the State. Here Sir, we have a most remarkable paradox. In one sentence we are told that the road has failed and is now totally unable to pay but a small portion of six per cent per annum on \$300,000, and in the next sentence, that the State ought to purchase the same road at \$400,000 as a matter of pecuniary advantage. Strange inconsistency between the reasoning of the Committee and their deductions between the report and the bill. The road has been actually tried and found to be a bad investment at \$300,000; yet in the face of these incontrovertible facts, we are told that the State would do well to purchase the same at \$400,000.

Where then, Mr. Speaker, are the arguments to sustain the recommendations of the Committee, if they exist neither in the present nor conjectured profits of the road? It is urged however that the State ought to purchase the road at the sum named, in order to save herself harmless from the last bond contracted by the Company for the payment of which the State is responsible—that sum being equal to the principle and interest of the loan. But why stop at \$400,000? Why not give the full amount for which the State is liable? Sir, if the State could be saved harmless from this or other debts by the simple operation of bidding, then I would go with gentlemen in authorizing the Governor to bid on until his lungs should become weary in the employment. But bidding here is like bidding elsewhere, the creditor cannot save his debts by this means entirely, but if he goes beyond the actual value of the property, he involves himself the deeper.

Gentlemen in their zeal to save the whole of the last loan contracted by the Rail Road and endorsed by the State, seem to have overlooked an ordinary principle of economy that is universally recurred to in like circumstances by every man in the community. It is the instinctive self-teaching principle to use a common but meaning phrase, of making the best he can of a bad bargain, and in case his debtor is not able to pay the whole of his debt, then to take such part as he is able to pay. This Sir, is a principle I would have operate in the present instance, and if in the nature of things it so happens that we cannot save the entire \$400,000, then I would willingly agree to take \$300,000, or such other sums as the property of the creditor will produce. But you committee totally disregard smaller sums that other persons may give for the property of the Company, and are for authorizing the Governor at once to bid the entire amount of our claim. In doing this they say the State can lose nothing, that she will have no money to pay out for the property. Without conceding either of these positions, I would simply reply that our object should be to gain something. We have been loosing long enough on account of the Rail Roads, and it is now high time to change our policy.

If, Mr. Speaker, we assume the data contained in the report before us, there is no clearer proposition than that the State would do just as well to permit the road to be sold to other hands for \$79,000, and lose the remainder of her debt as to own it herself at \$400,000, or any other sum, for the aggregate amount of money that would be derived from bonds of purchasers for \$79,000 at 6 per cent, would be precisely the same as would be derived from the road itself or the investment of \$400,000. If this be true, as most assuredly it is if the statements of the report be true, then it follows as an unavoidable consequence that the State would do well to permit the road to be sold at \$100,000, or any sum over \$79,000, as that would yield more than the road could at any price. But gentlemen will think it unblushing sophistry when I argue that the Raleigh and Gaston Rail Road is of so little value. I assure all here that I am in earnest, and if they differ with me, nothing would give me more pleasure than to hear their arguments. They may point to the opinion of the public, the general estimate that is placed upon the road; but general estimates are too vague to serve the purposes of an argument. Two or three years ago the general estimate valued this road at 1,500,000 dollars, and within that short time one million at least has been deducted from its value. If the road is worth more, where are the facts that lead to that result? Here again some of the earlier reports of the Company may be referred to as showing a net annual profit of from \$20,000 to \$30,000. To this I reply, what almost admit, that the same reports should have well gone on and said: "all of which would with great propriety have been expended in repairs upon the road."

The facts contained in the report of the Committee are the proper data to be used by us in the valuation of this road, for the Committee was raised with the express view of furnishing facts upon which the proceedings of the House might be based.

While Mr. Speaker, I would regret to see this road sold at a sacrifice, yet I would not have the State to own it under any circumstances. And although I have illustrated that it would be worth something to the State should she purchase, yet in that argument I regarded the State as an individual and attached to it the enterprize and industry of individuals in the management of their private affairs. But in reality the fact is far otherwise, for although

the enterprize of individual might cause the road to yield a profit upon a small investment, it would be an absolute incumbrance to the State, even though she could purchase it at one dollar. It needs but ordinary experience to teach us the history of a connexion between this and the State. To see it entire, let us imagine ourselves for a moment propelled into the future. Suppose that the Legislature of 1846 is in session, and that this road has been sold and purchased by the State. A report comes in from the officers of the road who are constituted by this bill, stating the profits of the road, and containing a clause to this effect—"all of which has been expended in repairs upon the road except a small balance of some three thousand dollars which it is thought to keep on hand to pay officers &c. This Legislature adjourns, and that of 1848 is in session. Another report comes from the officers of the State's rail road as follows; receipts of road so much—all of which has been expended in repairs upon the road, payment of officers, &c., and there is a small debt still due by the State on account of certain services done upon the road or in connexion therewith." This Legislature too adjourns ad that of 1850 is in session—in comes the report as usual from the officers of the road stating that the receipts have all been expended and that there is still considerable debt due by the State; and this same report goes on to represent that the road need re-laying with new iron and to impute the Legislature by every argument the wit of man can devise to make an appropriation of some hundred or two thousand dollars for that purpose. The road is represented as near the period when its operations will cease—and for sooth the salaries of the officers too, unless the State makes such appropriation.

Such, Mr. Speaker, will be the history of any connexion between the State of North Carolina and the Raleigh and Gaston Rail Road. Establish such connexion and you at once create bountiful annuities for a few additional office holders and attach a drain upon your public Treasury. I must confess, that it is with some emotion, that I look upon this contemplated alliance, and there is one portion of this House at least to whom I would respectfully suggest the propriety of being cautious in claspings to their embrace the wreck of a corporation. It is an unnatural bid for democracy, and one that will prove unworthy, pitiless, false.

But gentlemen tell us there is no danger in a purchase of this Road by the State; that we will have no money to pay out for such purchase, and that inasmuch as we are surety for the Road, to the amount of the proposed bid, we will stand in the same position that a creditor would at the sale of an insolvent. But, Mr. Speaker, I propose to show that there is danger, and imminent danger in making the bid proposed by the bill before us. The report of the committee shows that there are two mortgages upon the Raleigh and Gaston Rail Road. The first one given to the State to secure the payment of \$500,000, a debt contracted by the company for which the State is responsible falling due in 1860, and for which sum indemnifying bonds have been given by individuals to the State recoverable when the proceeds arising from sale of the Road have been exhausted; and the other for a similar debt of \$300,000 given at a subsequent day. Your Committee State that it is contended by the stockholders that the first debt of \$500,000 must be satisfied first, from sale of the Road under mortgage. Suppose that this is the case as many able lawyers think, and that we purchase the road at \$400,000; what then will be our situation? The obligors in the bond alluded to file their bill in equity, praying that the purchase money may be paid into Court, and set aside to discharge the \$300,000 debt when it falls due in 1860. If the Court makes such a construction of the two mortgages, it will order the purchase money to be paid over and put at interest, to discharge said debt of \$500,000 in 1860. And although the interest will be ordered by the Court to be paid in liquidation of the interest on the loan of \$300,000 as the proceeds of the Road itself were applied, yet we will be compelled to pay the purchase money in the same manner as a private purchaser. In this event, Mr. Speaker, the public Treasury will be in a state of literal bankruptcy. This bill makes no provision for such an emergency, while at the same time it does not seek to avoid it. Should the Governor or Treasurer be called upon to pay the sum of \$400,000, as purchase money for the Road, during the recess of the Legislature—as it would be—it would be utterly out of his power to do so even though nothing else could avoid repudiation.

It will be seen then, Mr. Speaker, that something may be lost by a purchase of this Road at the sum proposed in the bill, and that the State does not stand precisely in the situation of a creditor bidding at the sale of an insolvent debtor. But Mr. Speaker, all other arguments that I could offer in opposition to any further connexion between this Road and the State, were weak when compared with the great argument that may be deduced from the past history of the "financial connexion of the Raleigh and Gaston Rail Road Company, with the State of North Carolina." This history, Sir, should not be an unregarded lesson to us in all similar legislation. And in glancing at the history of that connexion, I will take occasion to answer the question propounded by the gentleman from Halifax, (Mr. B. F. Moore) in the forenoon, as to whether any gentleman has ciphered out the precise responsibility of the State on account of this Road?

The act of Assembly of 9th Jan., 1839, authorized the Raleigh and Gaston Rail Road Company, to borrow the sum of \$500,000, to fall due in 1860, at 6 per cent interest, payable semi-annually, and pledged the State as security for this loan. The lien that the State took upon property to secure herself in case she should have this debt to pay was a mortgage upon the Road, and a final pledge of the private property of the stockholders. This was to secure the principal money of \$500,000, but for the payment of the interest which was then the larger sum, being more than \$600,000, up to 1860, no security was taken. And this perhaps is the most remarkable feature of that remarkable law. While the Legislature took, or attempted to take security for the smaller sum, it refused or neglected to take security for the larger sum. It is true, that it provided for the payment of the interest out of the receipts of the Road, but that body had no authority for drawing so heavy a drift upon those receipts,

for no evidence existed that they would be large enough to pay the heavy interest on the debt contracted. Nor was even this a permanent security, insufficient as it was, for so soon as the mortgage should be closed and the Road sold, these receipts would be cut off—as will inevitably be the case under the provisions of the Bill before us.

The act of 12th Jan., 1841, authorized the Rail Road Company to contract an additional loan of \$300,000, at 6 per cent, per annum, payable in ten annual instalments, the first falling due on the first Jan. 1845, and pledged the State as surety for the payment of principal and interest. This was done, however, upon condition precedent that the Stockholders should give a second mortgage upon the Road for the payment of the principal money, and that individuals, Stockholders and others, should give their personal indemnifying bonds for \$500,000, to secure the State against any loss on the principal money of the first loan, recoverable upon in 1860, after the proceeds of the Road have been found insufficient for that purpose. No lien was taken by the State, upon any property to secure the payment of the interest on this latter loan, falling due every six months, other than a pledge of the receipts of the Road already insufficient to discharge the interest of the first loan. The effect of this act was to create a new obligation amounting principal and interest together to the sum of \$400,000, or more, while the only additional security taken were the indemnifying bonds alluded to, which no gentleman will contend are worth now more than \$400,000, and which in 1860, when a recovery can be had upon them, will not at an extravagant estimate be worth more than \$300,000. And yet we are told by the title of the bill, that this act was passed to secure the State against any and every liability incurred on account of the Raleigh and Gaston Rail Road Company.

By making a calculation of interest, Mr. Speaker, and by reference to the Treasurer's Report before us, it will be seen for what sum of money the State of North Carolina is responsible on account of the Raleigh and Gaston Rail Road Company at the present time. The result of that calculation is as follows:

Item 1st, Principal money of the first loan, \$500,000.
" 2nd, Interest on the same up to the time of falling due in 1860, 480,000
" 3rd, Principal money of 2d loan, 300,000
" 4th, Interest on the same up to the respective times of each instalment falling due, commencing Jan. 1st, 1845, and ending Jan. 1st, 1855, 90,000
" 5th, Amount already paid (See Treasurer's Report,) 90,374.

Total Sum, \$1,460,374.
This is the entire sum due to creditors from the Raleigh and Gaston Rail Road Company, for the payment of which the State is surety—One million four hundred and sixty thousand three hundred and seventy four dollars.

The assets of the Company for the payment of this debt consists in the Road itself, with the Engines, Cars and waggons belonging to the same. From all the evidences before us it would be an extravagant calculation to estimate the value of this property at \$400,000. No gentleman in the House can go beyond, and although I will put it down at this sum, yet I do not look upon it as worth more than \$100,000. The remainder of the Company's assets consists in the indemnifying bonds of individuals amounting to \$500,000. I have unquestionable evidence, that at least \$100,000 of these bonds are now worthless; the obligors being insolvent, and from information contained in a certain document communicated to the House by the Public Treasurer, I apprehend that this fact is placed beyond dispute. And it is but fair to infer that at least \$100,000 more of the same bonds, will be worthless in 1860, when a recovery can be had upon them. It must be admitted, Sir, by all, after the exhibits that have been made to the House, that it would be a liberal calculation, to say that the State will eventually realize \$300,000, from these bonds of indemnity.

The sum total of the assets of the company according to the foregoing estimate is as follows:
Item 1st, Purchase money of the Road \$400,000
" 2nd, Interest on the same at six per cent, up to the time of the payment of the first loan in 1860, 360,000
" 3rd, Recovery on the indemnifying bonds of \$500,000, 300,000
Total, 1,060,000
This sum deducted from the entire debt owed by the Company, will leave the certain loss of the State, and is as follows:
1st, Entire debt, \$1,460,374
2nd, Amount of assets, 1,060,000
Certain loss, 400,374.

Thus, Mr. Speaker, it will be seen that the undoubted loss of the State of North Carolina, in consequence of endorsing the bonds of the Raleigh and Gaston Rail Road Company, will be more than four hundred thousand dollars. But in reality the highest degree of probability exists, that it will be much larger.

For if our Courts decide that the first mortgage must be first satisfied, as many distinguished lawyers think will be the case, then we are informed by the report of the Committee before us that the State will be without any security for the last loan of \$300,000, and the interest. And in addition to this, if the Road sells for less than \$400,000, the sum at which I have rated it, as I have not the slightest doubt will be the case, then the losses of the State will be swelled to near one million of dollars.

All this responsibility has been incurred by the two acts referred to, passed by the Legislatures of 1839, and 1840. I have characterised those acts, Mr. Speaker, as unguarded legislation, and I think I will be justified in the expression, when it is recollected that the Raleigh and Gaston Rail Road Company was totally insolvent at the very time of their passage. This fact I have promised to show from the report of the Committee, upon which we are now acting. That report states the original cost of the Raleigh and Gaston Rail Road, to be fifteen hundred thousand dollars, and that six hundred and fifty thousand dollars of this sum was paid

in by the Stockholders, "leaving a debt (to use the language of the Committee) of \$950,000, hanging over the Company," and this too at the very time they began operations.

This debt it is reasonable to infer, has been drawing since that time an interest of six per cent per annum, which would amount to an aggregate amount of interest of \$57,000, annually.

By reference to the report of the Company it will be seen, that their clear profits never have exceeded \$32,000 for any one year. Deduct this sum from the interest on their debt, and we have left a deficit of \$25,000.

Here then is a Company with all its property in as full, active and successful operation as could ever be expected, falling short by one half, of paying the interest on its debt. Is not this, Sir, a clear case of insolvency? In no event, and at no time could that property, that failed to pay the interest on their debt, be converted into a sum of money equal to the debt. If therefore, it had been possible at any time for the Sheriff to have sold the Road, and other property of the Company under execution, the Company would have been found to be insolvent.

This Sir, was not the condition of the Company at one particular time or upon a single occasion; but from the first day that a locomotive passed over the track of the present. At no time have its assets been equal to its debts.

What great emergency—what overruling necessity, Mr. Speaker, impelled the Legislatures of '39 and '40, to endorse the bonds of a Company totally insolvent for the enormous sum already named? Did the general interest of the State require it? Did this enterprise appeal to our patriotism as a great work of internal improvement calculated to extend conveniences to large portions of the people of North Carolina? No, Sir, it is far otherwise. The work is almost exclusively local. The people of the Mountains, and East of the Mountains, have never felt its influence. The energies of trade have never been awakened there by the startling noise of its locomotive. The people of the East and the Seaports have never experienced the advantages of this channel of trade. On the contrary, it has proved a tributary by means of which produce is hastened in a few hours to a bordering State.

Why then this enormous gratuity? For it may be termed a gift, since the Company was insolvent, and could never repay. There is no justice, no equality in squandering millions in one small corner of the State, without ever manifesting the slightest disposition to confer similar benefits upon the community at large.

But, Mr. Speaker, after taking a view of the nature and extent of our public involvement, in consequence of the acts extending aid to the Raleigh and Gaston Rail Road Company, the question that naturally suggests itself, and the question that will be asked by the public, is with whom rest, the responsibility of this legislation? I mean not Sir, with what particular individual, but what party. For in these days we approach the people as parties; they elect us as parties; we legislate as parties; and as parties will they hold us responsible for such legislation. And although gentlemen may deprecate any allusions to the political parties of the country in the present discussion, as the gentleman from Halifax (Mr. B. F. Moore) has done, yet such allusions are natural and cannot be resisted. And, Sir, I hold them to be entirely proper at this time, for if there is one subject touching our government in which the people have a deeper interest than any other, it is the subject of public economy. All parties when asking for power profess to be the particular champions of a strict economy in administering the affairs of government, and it is but right, that the people should see their acts to enable them to determine what party carries its professions more effectually into practice.

It has already been stated in debate, by the gentleman from Wake (Mr. Wilder) that the Whig party had the ascendancy in both branches of the Legislature, when the acts authorising the Public Treasurer to endorse the bonds of the Raleigh and Gaston Rail Road Company were passed, and that the Journals will show the fact, that the Whigs as a party, voted for, and the Democrats as a party voted against their passage. There being individual exceptions among both parties, this position has not nor cannot be controverted. But it has been replied to by the gentleman from Halifax (Mr. Moore), who (although he deprecated any allusions to party by the gentleman from Wake (Mr. Wilder)) nevertheless took occasion to make an out and out political speech himself,) by calling the attention of the House to certain proceedings of Internal Improvement Conventions, held in the years 1833, '36, '38, in which prominent men of both parties took part. The gentleman fixed the names of distinguished democrats to address to the people in favour of works of Internal Improvement, and to memorials to the Legislature, recommending certain projected works to their favorable consideration. The gentleman by his ancient learning and antiquated documents, has most certainly established one fact, viz: that both parties were once in favor of a system of Internal Improvements; and this, Sir, is what every democrat will without hesitation admit, and would have done so before the gentleman's argument began. Aye, Mr. Speaker, and if I understand the democrats of North Carolina, they are now and will continue to be in favor of a system of Improvements throughout the whole extent of the State, limited only by our wants and our means. The gentleman established nothing more, then, by reference to these old documents than every person is perfectly willing to admit.

But how this fact justifies the Whig party in making extravagant donations to an almost exclusively local work, and to the entire neglect of the rest of the State, he has not thought proper to inform the House. If these documents be regarded as authority, coming as they do from great and patriotic men, then with his own mouth does the gentleman from Halifax condemn those acts of the Whig party in the Legislatures of 1839 and 1840 that he would defend. No harsher strictures upon those acts could have been offered to the House, than the papers which the gentleman has read to defend them. If, Sir, I recollect aright, he read from the addresses and memorials of Internal Improvement Conventions, recommendations for the construction of a Rail