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GOVERNOR'S MESSAGE.

The Honorable the General Assembly
of North Carolina.

Since your last adjournment, various and important changes in the situation of our affairs have occurred, and many of them require legislative action at your hands.

The late act of Congress conferring power on the President of the Confederate States to impose regulations and restrictions on commerce, has given rise to such a system on the part of the Confederate authorities, as will effectually exclude this State from importing any further supplies for the army or people. The port of Wilmington is now more effectually blockaded from within than without. The terms imposed upon ship owners being such that a heavy loss is incurred by every voyage—and notwithstanding the said act provides, "That nothing in this act shall be construed to prohibit the Confederate States, or any of them, from importing any of the articles herein enumerated on their own account,"—yet this is so construed by the Government as to compel the States to submit to the same terms as are imposed on private parties; and clearances are refused and the guns of the fortifications are brought to bear upon our own vessels to compel a compliance.

Private parties importing supplies for the government, by contract, for enormous profits, are not taxed by these regulations; yet the State of North Carolina, importing almost the same articles for the same purpose is compelled to submit to them. I deem it inconsistent with the public interest to refer more particularly to our blockade running transactions and the loss which the State will suffer on both ships and supplies on hand, if these regulations continue in force. When this is considered with the further fact, as I hold it, that the general government has no right to seize one half, or any part of, the interest of a sovereign State in the vessels employed in importing her supplies (this being the terms to which we are called upon to submit) or to impose such terms as will destroy instead of regulating commerce, it becomes your province to demand a repeal or modification of the act, and I respectfully and earnestly recommend that you do so. And in case Congress should decline to repeal or modify the act, I respectfully ask for directions as to what I shall do with the ships and supplies on hand. A detailed statement of these supplies, together with an account as accurate as it can be without vouchers for expenditures abroad not yet received, is herewith submitted—together with the report of Mr. John White, our special Commissioner to Europe. In reference to this gentleman, it is due to him that I should say, that I have every reason to be pleased with the skill and fidelity with which he performed the duties of his difficult mission. A report of the operations of our other Commissioner, Col. D. C. McRae, necessarily incomplete, is also submitted, and will, I believe, be found equally satisfactory, and creditable to him as a Commissioner. In this connection, I respectfully ask for the appointment of a committee to investigate all matters appertaining to the blockade-running of the State, to be appointed at an early day, so as to report to your present session if possible. No appropriation has been made by your honorable body to pay the current expenses of the vessels engaged in running the blockade, and none will be necessary, for these expenses can be paid by selling bills drawn on our agent in England, as being incurred in Wilmington chiefly for the expenses connected with the loading and unloading vessels, compressing cotton, &c. And they can be discharged in currency. I would suggest that you authorize the Treasurer to purchase these bills out of any money in the Treasury, and thus keep the sterling exchange in the Treasury—which otherwise would have to be put on the general market and be lost to the State.

Being convinced from experience that that the legitimate business of my office, now four-fold greater than formerly, is sufficient to tax all my energies of mind and body, and that I cannot do justice to the

interest of the State in a business so complicated, as many of the transactions of which is carried on at such a distance, I respectfully recommend that a commission of one or more gentlemen, skilled in such business, be appointed to conduct the future operations of the State, in importing supplies, whether for the purpose of continuing the operations or winding up the business.

A report of the Adjutant General covering reports of his subordinates in the different departments is herewith submitted.

The impressment of property of citizens by officers and agents of the Confederate Government, harsh enough in itself, has become doubly so by the constant disregard of the provision of the law regulating seizures. In addition to this, the flagrant outrages committed, in every part of the country, by struggling soldiers, and other persons in the Confederate service, having no shadow of authority to impress property, has become a grievance almost intolerable. A recital of many instances of such, which have been brought to my knowledge, would shock the moral sense of the most heartless.

I have urged in vain upon the authorities of the Confederacy to check this evil, and have made every possible effort to do so myself. But it seems to grow worse, and as the supplies of our people become more scant they feel more sensibly this unjust deprivation of their property, which reduces them almost to the verge of starvation. It must be stopped, if possible, and I earnestly recommend such action on your part as you may think best calculated to aid me in remedying the evil. My correspondence with the War Department on this subject is submitted for your consideration. I desire to call your attention specially to certain enactments of the last Congress of the Confederate States. Among them is one extending the age of conscription from 18 to 17, and from 45 to 50 years, which force is to be organized as a State reserve—their company officers to be elected, and the field officers appointed by the President, and all to be under his command.

In addition to the great injury to be apprehended to the agricultural interest of the country, should these men be ordered into actual service, I have to remind you that it will absorb the entire militia force of the State, and would leave the Executive with no force whatever except State officers—a condition dangerous at once to the peace and order of the State, and to its sovereignty and dignity. There can scarcely be a doubt of the inexpediency of this act as to this State; since the same men, with the exception of boys from 17 to 18, are now very thoroughly organized as Home Guards under State authority, and have been heretofore and would be again promptly turned out in cases of great public danger. Grave doubts are also entertained as to its constitutionality; the forces raised under it being to all intents and purposes militia, the control of which cannot be legally taken from the Executive of the State Government—at least so far as the appointment and commissioning of officers is concerned. Should you, however, in the absence of a judicial decision as to the constitutionality of the act, decline to take the responsibility of refusing assent to it, there will be an indispensable necessity of your constituting some militia for the preservation of law and order in the State—by extending the age of service in the militia, and by some new organization of the remnants of the Militia and Home Guard organizations; otherwise I shall have on my hands the officers of two distinct organizations, powerless for the want of men. In this connection I would mention that the same act of Congress has again conferred upon me, without reference to the Legislature, the power to claim exemption of such State officers as I may deem necessary for the due administration of the laws. Not wishing to take so important a responsibility upon my shoulders without consulting the Representatives of the people, I have so far claimed the exemption of all civil and military officers of the State, together with the indispensable employees of the

different departments of the State Government, as enumerated by your body at its late extra session. And I now respectfully ask that you indicate to me by resolution, what persons you regard as proper subjects for exemption.

I have taken the ground that exemption of State officers from conscription into the Confederate service is not by favor of Congress, but is a matter of right inherent in a sovereign State, and that for the same reason the State has an indisputable right to the services of laborers and other persons who are necessarily in her employ, though they be not officers within the meaning of the act of Congress. Should you again agree with me in this opinion, I would be happy to be sustained by a resolution to that effect.

Should you conclude to combine the Home Guard and Militia organizations, I recommend that the latter be preserved. I should regret exceedingly to see the militia abolished, and its organization destroyed. It is the ancient and time-honored military institution of the State, her main dependence, in ordinary times, for the suppression of rebellion and repelling of invasion, and though shorn of its strength by the raising of great armies, and despite its many short-comings, it has been of great service both to the State and Confederacy during this war.

Among the acts of Congress referred to that which has suspended the privilege of *habeas corpus* has most thoroughly aroused public attention. Neither the losses incurred by the radical and sudden changes in the currency, nor the conscription of the principles of substitutes, nor the extension of it to such an age, and upon such terms as to place the industrial pursuits of the country at the feet of the President, nor the heavy burthens of taxation—none of these, not all of them together, have so awakened the public feeling as the withdrawal of this time-honored and blood-bought guard of personal freedom from the people in times when it is most needed for their protection. It is true that our forefathers assumed, and this generation has conceded, that in cases of rebellion and invasion, the public safety may sometimes require its suspension; and, therefore, we have conferred on Congress the power of suspension in such cases, when the public safety may require it. Nor can it be doubted that the power authorized to suspend is the sole power entitled to judge of the necessity for the act, and if the late statute had merely prohibited out and out the use of the writ for the time specified, there could be no complaint against its constitutionality, however ill-timed and unnecessary may have been the exercise of a rigor so great. But I have been, as unable to see, in the times, any necessity for denying the writ, as I am to recognize in the law the constitutional exercise of the favor that is granted. Concurring in the doctrine that the protection against the abuse of the Constitution of the Confederate States, either by usurpation of powers or oppressive use of such as are granted, is to be found in the responsibility of Congress to the people, ensured by their short tenure of office, and the reserved right of each State, to resume the powers delegated to the Confederate government, whenever in her judgment they are perverted to the injury or oppression of the people, I deem it a duty devolved on the State, through her proper organs, to make known to that government her complaints and to insist upon a redress of her grievances. Under this idea of duty, and in a spirit of regard for the government of our adoption, I deem it incumbent to present my objections against the late act.

It is declared in the preamble that "the President has asked for the suspension, and informed Congress of conditions of public danger which render a suspension of the writ a measure proper for the public defence against invasion and insurrection." Therefore it is exacted that the writ shall be suspended as to "the cases of persons arrested or detained by order of the President, Secretary of War, or the General Officer commanding the Trans-Mississippi military department."

The statute proceeds to classify under thirteen heads a very great number of acts, of which, if a man be accused, he shall be deprived of the benefit of the writ; and among them the act of attempting to "avoid military service." To prevent the outrage which may be perpetrated on an innocent man not subject to military service for merely attempting "to avoid military service," unlawfully demanded, it is provided that "in case of palpable wrong and oppression by any subordinate officer upon any party who does not legally owe military service, his superior shall grant prompt relief to the oppressed party," and "the subordinate shall be dismissed from office."

And as a general protection of the citizens against abuses, under the act, it is provided, that "the President shall cause proper officers to investigate the cases of all persons so arrested or detained, in order that they may be discharged if improperly detained, unless they can be speedily tried in due course of law."

And, finally, it is enacted that "no military or other officer shall be compelled to answer to any writ of *habeas corpus* to appear in person or to return the body of any person detained by the authority of the President, Secretary of War, &c.; "but upon the certificate, under oath, of the officer having charge of any one so detained that such person is detained by him for any of the causes specified in the act under said authority, further proceedings under the writ shall immediately cease."

In order to ascertain whether the enactment is within the powers delegated, it is proper to keep in mind what are the privileges of the writ of *habeas corpus*, and we shall be sure to know what can be affected constitutionally, by a suspension of it. This writ is the offspring of the love of liberty, and has been in use for ages by our ancestors and ourselves, as the handmaid of freedom. Its use is to have equity made according to the rules of law of the causes why persons are restrained of their civil freedom. If upon inquiry by the proper authority, there be no cause for detention, the person is set at liberty. If there be cause he is remanded for further detention or allowed to go at large upon bail. Now, these are all the privileges of the writ of *habeas corpus*. The writ finds no place for action until after the person is arrested. So that if there be any privileges or securities to the person attending the mode of arrest, these are not the privileges of the writ of *habeas corpus*, but exist independently of them. And it is therefore clear that a power to suspend the privileges of the writ is not a power to suspend the privileges secured in forms attending the mode of arrest. They are too distinct to be confounded by any species of sophistry; and this distinction is plainly and notably observed in the bill to suspend the writ, passed through the Senate in January, 1807, which suspended it only when the persons may have been "charged on oath," and arrested by virtue of a "warrant." The writ was as effectually suspended by that bill as by this act, and the Constitutional securities attending the mode of arrest, were left untouched and unimpaired. It may then be regarded as settled truth, that the suspension of the writ is no suspension of the Constitutional forms prescribed for arrest, and that Congress has no power, express or implied, to suspend any other guarantee of civil liberty provided in the Constitution besides those secured by the writ alone. Notwithstanding this, the late act has strode over some of the most important guards of civil liberty, as if an express power had been conferred on Congress to suspend them likewise. Thus, while by paragraph 3, sec. 9, it is allowed Congress to suspend the privileges of the writ of *habeas corpus* in the emergencies mentioned, it is by the same section, paragraph 15, in the most emphatic terms, declared that "No warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the person to be seized." And by paragraph 16, that "no person shall be deprived of his liberty without due process of law"—that is, "law in its regular course