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PUBLISHED WEEKLY: JOHN BEARD, Jr., *Editor and Proprietor.*

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TERMS, &C.
OF
The Western Carolinian.

ISSUED WEEKLY.....BY.....JOHN BEARD, JR.

TERMS OF PUBLICATION.

1. The Western Carolinian is published every SATURDAY, at Two Dollars per annum if paid in advance, or Two Dollars and Fifty Cents if not paid before the expiration of three months.

2. No paper will be discontinued until all arrearages are paid, unless at the discretion of the Editor.

3. Subscriptions will not be received for a less time than one year; and a failure to notify the Editor of a wish to discontinue, at the end of a year, will be considered as a new engagement.

4. Any person who will procure six subscribers to the Carolinian, and take the trouble to collect and transmit their subscription-money to the Editor, shall have a paper gratis during their continuance.

5. *☞ Persons indebted to the Editor, may transmit to him through the Mail*, at his risk—*provided they get the acknowledgment of any respectable person to prove that such remittance was regularly made.*

TERMS OF ADVERTISING.

1. Advertisements will be conspicuously and correctly inserted, at 50 cents per square for the first insertion, and 33½ cents for each continuance: but, where an advertisement is ordered to go in only twice, 50 cts. will be charged for each insertion. If ordered for one insertion only, $1 will in all cases be charged.

2. Persons who desire to engage by the year, will be accommodated by a reasonable deduction from the above charges for transient custom.

TO CORRESPONDENTS.

1. To insure prompt attention to Letters addressed to the Editor, the postage should in all cases be paid.

LEGISLATIVE DEBATE.

SPEECH OF MR. GRAHAM, OF HILLSBOROUGH,
On the Resolutions to Instruct Mr. Mangum.

MR. SPEAKER: I need not express my regret that these Resolutions have been introduced; that has been already done, by my vote to lay them on the table. I trust, sir, that I entertain all proper loyalty to the Federal Constitution, that I am duly sensible of the benefits which it has conferred on this, as well as the other States, and that no one more cordially desires its perpetual duration. But one consequence of its adoption has been most unfortunate for North Carolina. I allude to the effect which it has had in withdrawing the attention of our people from our own domestic affairs, and fixing it almost solely on subjects of national concern. Like the anxious spectators at a Theatre, who submit to be crowded and "bored with elbow points," and will bear patiently any degree of local inconvenience, that they may behold the grand pageant on the stage, in which they bear no part, so we appear altogether unmindful of what immediately concerns the State, but are keenly alive to the great affairs which pertain to the General Government. Our decayed Agriculture, our shackled Commerce, the promotion of Education, the improvement of our inland transportation, even the amendment of our Constitution, if they gain a temporary consideration, must all yield to whatever relates to national politics. A Presidental election, like the rod of Aaron, swallows up all local controversies, and every plan of public benefit must be arrested until the result. And all for what! Why, sir, that we may have our due proportion of cannon-firing, huzzaing, and grog-drinking, at the close of the contest. That has generally been our share of the "spoils of victory." Whether it will be so again, may depend on the events of the ensuing campaign. This undue preference of Federal affairs over those which immediately concern the State, deeply injurious as it has been to our prosperity, has not been less so to our intellectual character, and to the fame, influence, and usefulness, of our public men. No citizen of ours has ever aspired to the Chief-magistracy of the Union. Few ever sat in any of its high places. Those bitter controversies, which have divided us and absorbed all others, have been waged for the elevation of men belonging to other members of the Confederacy, whom most of us have never seen, and who have been known here only by a general reputation of their patriotic services. These have been so magnified and exaggerated by zealous partizans, that we have been taught almost from infancy to look abroad for all the higher exhibitions of human excellence, and of course to depreciate, if not to proscribe, our own brethren. It is a melancholy truth, which all who hear me will, I think, attest, that such is the deficiency of State pride among us, that we not only neglect our own affairs to take care of those of the nation, and undervalue our own citizens, in comparison with those of the other States, but that we are too ready, under the impulses of party passion, to offer up as victims to be sacrificed the most pure, the most useful, and patriotic sons of the State, upon a mere difference of opinion on an abstract question of Federal politics, or as to the character and qualifications of a favorite candidate for the Presidency. Believing that these Resolutions have sprung from this diseased state of the body politic, and that their entertainment here would tend to aggravate it, I deprecated their appearance. It is too late, however, to indulge in unavailing regret. We are now "afloat upon a full sea," and I must take the current as it serves.

The questions involved in the Resolutions are chiefly questions of Constitutional Law. Before I proceed to their discussion, permit me to notice one or two remarks of the gentleman from Edgecombe (Mr. Potts) by whom they were introduced. That gentleman, towards the close of his Address, unfurled the banner of party, and called on all those who had voted with him in the late Senatorial election, to stand by him in support of the Resolutions. Appeals such as this, upon questions like these, are not only unfair in argument, but highly unfavorable to correct conclusions. Having sworn to support the Constitution, we must do it at the peril of our oaths, and are not at liberty to give to it any interpretation which may happen to accord with the designs or prescriptions of a party which claims it as its property. The same gentleman informed us, with an air of triumph, that New-York, on which he pronounced a high panegyric, and New Jersey also, had condemned the decision of the Senate of the United States; and he expressed his confident belief that N. Carolina would follow their lead. Sir, it is a rule of order in the Parliament of Great Britain, that neither the opinion of the King nor of the other House shall be alluded to in the debates of either the Lords or Commons. It is also provided, in all the Legislative Assemblies of this country, so far as my knowledge extends, that the proceedings of one House of the Legislature shall not be noticed in the discussions of the other. This salutary regulation of the wisdom of our ancestors, designed to secure deliberative assemblies from any other influences than those of patriotism, justice, and truth, must cease to be of any avail here, if we are to be swayed in our action by information such as this. Sir there was a time when North-Carolina could act for herself. When the men of that classic land (Mecklenburg) from which you come, met together to deliberate on the independence of America, did they wait to ascertain what had been done, or was about to be done, elsewhere! or did they only inquire what it became freemen to do in such a crisis? They took counsel from their own strong heads and their own stout hearts.—Though the whole continent was uttering professions and making overtures for reconciliation—though N. York (whose example is now presented for imitation) tamely kept her allegiance, was exempted from the restraining acts of Parliament, and enjoyed all the privileges of a free port, they resolved that the cause of their suffering brethren at Boston was the cause of the whole country, and that the injuries which they had endured demanded an immediate severance of the empire. When again, in the Provincial Congress at Halifax, in April 1776, our Delegates in the Continental Congress were instructed to vote for absolute and immediate independence, even before Massachusetts and Virginia had ventured to that desperate extremity, the spirit of the primary assemblies was embodied in the Representative council, and our illustrious ancestors gave proof to the world that they were quite as well qualified to *lead* as to *follow*. But we petty men, in these degenerate days, to aid us in our determination, must needs be told of the "actings and doings" of other States, and calculate the chances of being in a majority. Sir, the matter before us rises in high pre-eminence above mere temporary party considerations. It is not a petty controversy, only for the vacation of a place to be filled by some of ourselves, or some of our friends, or to influence the result of the next Presidential Election. The decision which we are about to pronounce is not only seriously to affect an able and an honorable man, who is not here to be heard in his defence, but its correctness, under the ligh which we possess, deeply concerns our consciences, and may, in future, vitally affect our liberties.

The instruction proposed to be given is, that our Senator shall vote to expunge from the Journals of the Senate, a Resolution of the last Session of Congress, in which it was declared that the President, in certain Executive proceedings in relation to the public Revenue, had assumed upon himself authority and power not conferred by the Constitution and Laws, but in derogation of both. These Resolutions then, assume that that of the Senate was false, and in substance affirm that the conduct of the President, in the transactions referred to, was authorized by the Constitution and Laws, and was in derogation of neither. It therefore becomes important to ascertain what had the President of the United States done? What were those Executive proceedings in relation to the revenue, complained of in the Resolution of the Senate? The facts may be briefly stated. Congress, by an Act of the year 1816, had directed the Public Revenue when collected to be paid into the Bank of the United States. The Bank became bound, by the same statute, not only to keep the revenue safely, but to transmit it to any point where it might be wanted for the disbursements of the Government, and over and above to pay one million and a half of dollars to the public for the privilege of keeping and using their funds from the time of collection until the time of disbursement; and this disposition of the public moneys, by depositing them in Bank, was to continue as long as the charter lasted, unless, "the Secretary of the Treasury should at any time otherwise order and direct," in which event, his reasons were to be certified to Congress on the first opportunity. The arrangements provided by this Act soon took effect, and for more than sixteen years, the Public Treasure was administered by these means. In the autumn of 1833, the President of the United States, of his own mere motion, suspended the payment of the public moneys into the Bank of the United States, removed that portion which it already held to the custody of other Banks chartered by the different States, and employed an agent to inspect and superintend the newly selected Banks, at a salary to be paid by them as one of the equivalents for the boon of using the Public money. I say the President did these acts. It is true the orders for their immediate execution are all signed by a Secretary of the Treasury, but his predecessor had been displaced for refusing to do them, and he was brought into office for that purpose alone, and was the mere instrument of the President's will. To leave no doubt on this subject, I quote the words of the President himself, in which he avows the removal of the deposites as his own act, and relieves all others from responsibility. In his Manifesto, read to this Cabinet on the 18th of Sept. 1833, after enumerating the offences of the Bank, "the President again repeats that he begs his Cabinet to consider the proposed measure as his own, in the support of which he shall require no one of them to make a sacrifice of opinion or principle. Its responsibility has been assumed, after the most mature deliberation and reflection, as necessary to preserve the morals of the people, the freedom of the press and the purity of the elective franchise," &c.; and proceeds "to name the 1st of October next as a period proper for the change of the deposites, or sooner, provided the necessary arrangements with the State Banks can be made." Now, by the oaths which we have taken in regard to the Constitution, were these acts of the President authorised by the Constitution and Laws! Those who support these resolutions maintain that they were. I deny it. All here will concede that the Government of the United States is a Government of limited powers—that neither all its departments together, nor any one of them singly, possess any authorities or powers but such as are given expressly, or arise from a reasonable implication. Is the power of the President to remove the Public Revenue derived from the Constitution? If it be, I have a right to demand of those who affirm it, what clause of the Constitution, either by strict or loose construction, confers such a power? It surely is no where expressed; from what can it be inferred? The gentleman from Halifax, (Mr. Daniel) has pointed us to three provision of the Constitution; 1st, that which vests the Executive power in the President; 2d, that which imposes on him the duty to see that the Laws are faithfully executed; 3d, that one (merely implied) which allows him to remove incumbents from office. A power which claims as many parents, can hardly be legitimate to any of them; and he will scarcely ask to be called a strict interpreter, who can deduce it from any or all of these provisions. I shall speak of the last of them first, as it was by its exercise that the removal of the public moneys was accomplished. And here it may be premised, that it is somewhat remarkable, that whilst the Constitution was under consideration previously to its adoption, the power "to displace officers" as well as to appoint them, was represented as belonging to the President and Senate, (*Federalist No.* 77.) And yet, that the first Congress conceded it to the President alone—this construction has been acquiesced in ever since, and it is not necessary for the purposes of this argument that I should deny its truth. Like all the other powers of Government, however, it is a trust power, and can be legally exercised only with reference to the purposes for which it was granted. I speak of *power* in contra-distinction to *right*. By a dubious implication, the President has power to remove from office. This power is not given expressly, and is implied from the duties which are imposed on that officer. If, for the performance of any of these duties, the removal of an inferior officer becomes necessary, it may be legally made; but if not so rendered necessary, it cannot be made without a violation of constitutional duty. So that, although the President has power to remove from office *ad libitum*, he has no right to do so except in the instance before stated. The fact that there is no authority provided to control him in the exercise of his official powers, does not license him to use them capriciously or wickedly. As he would grossly violate his duty by the appointment of a fool or a knave to a responsible trust, so he would be equally delinquent in dismissing a public servant except for unfaithfulness or incompetency. A giant has power to take the life of a man—a trustee has power to convey away the legal estate, and defeat the intention of those who confided in him—a jury has power to return a verdict against law and evidence—yet, to enforce these, would be flagrant violations of their respective duties. When, therefore, the power of displacing subordinate officers is admitted to the President, the right to employ it, save only with the qualifications before stated, is by no means conceded. But the power of displacing officers is not a substantive power to which others are incident, but is itself merely incidental to the authority conferred on the President in order to enable him to discharge the duties of his station. It draws after it no other powers; and cannot, therefore, in the matter under consideration, give to the President any control over the revenue of the Government. Nor can the power to remove from office be construed into a power to control the officer in the performance of his duties. All officers of the United States, below those of President and Vice President, are created and have their duties prescribed by the laws of Congress, and although liable to removal by the President, are the servants of Congress in the performance of these duties. If a specific act be required of an inferior officer, his superior cannot execute it, neithr can the latter usurp what has been entrusted to the discretion of the former. Neither the Constitution nor Laws will justify the exercise of a legal power for the accomplishment of an illegal end; the President cannot therefore legitimately employ the power of displacing from office, to compel an officer to violate the law. We have seen, in the Act of Congress before recited, that the Public moneys were to be deposited in the Bank of the United States, unless the Secretary of the Treasury should, at any time, otherwise order and direct. This power of suspending the payments in Bank, is in the nature of a judicial discretion, which is incapable of being delegated either to a superior or inferior. To justify a removal of the Secretary from office, for failing to order the moneys to be placed elsewhere, is to give to the President, through the purely incidental right of displacing, a power not merely to suspend all law, but to dictate the action of Government in every instance. My honourable friend from Bertie, (Mr. Outlaw,) illustrated this, by stating the case of an individual who had obtained a judgment in one of the Courts of the United States, and has sued out execution. The President informs the Marshal that he shall not do execution—the Marshal remonstrates, that he is bound by heavy penalties to perform the command of the Court; the President declares that it shall not be done—the Marshal proceeds in his duty, and is removed forthwith. All our civil laws are made to operate upon the insubordinate and delinquent through the judgment of the Courts, yet the President, by this construction of his authorities, is invested with a right of pardon to all debtors and trespassers—yea more, a power to prevent the enforcement of any law, no matter how long established, and to compel the officers of Government, under pretence of executing laws, to perform his arbitrary will. Allow me to add another example by way of illustration: The territorial Judges of the United States hold their offices for four years, and, I believe, are subject to removal by the President. Suppose that by Statute a criminal offence, counterfeiting the coin for instance, is punishable by fine or imprisonment or death, at the discretion of the Court—that an offender has been convicted under this act, and the judgment is about to be rendered—the President informs the Judge that the culprit must be cut off; the Judge, believing that the case is not of high aggravation, certifies his opinion to that effect, and is about to punish by fine; the President dismisses him instantly, and selects from the herd of minions, who throng the gates of power and patronage every where, an assassin who will do the deed of death. Let me not be misunderstood to impute such a disposition to the present incumbent of the Presidential office. But to such a tremendous extremity is it found necessary to extend his constitutional powers, to vindicate his "proceedings in relation to the Public Revenue." Again, if the Act of Congress before mentioned, instead of allowing the Secretary to countermand the payment of the revenues into Bank, had directed them to be deposited there absolutely, the President's power of removing him would have existed in as full force then, as it does under the present provisions of the Act; yet none will be found hardy enough to assert that, in that event, the President could have been excused in turning out the Secretary for refusing to issue such an order at his command. The right to remove from office surely cannot be interpreted into a power of arresting all laws, and substituting the President's will as the rule of conduct for all officers. Nor can he derive any power over the Public Treasure from his duty "to take care that the laws be faithfully executed." In this province of his office he acts merely as the servant of the Congress which made those laws, and must obey the rules which they have prescribed. The law had directed, as we have before seen, that the Public money should be kept in the Bank, unless the Secretary should deem a different place expedient; that law as undergoing execution in the regular course pursued for fifteen years, no complaint was made from any quarter that the money was unsafe, that the Bank had failed in its duties in paying it wherever and whenever required, nor that the Secretary was not executing the intention of Congress to its very letter. Such was the state of things when the President interposed and suspended the execution of the law relative to the custody of the public funds, and loaned them to other Banks. To me it is passing strange, that, from the duty of seeing that the laws are faithfully executed, the President should be supposed to be clothed with power to prevent their execution altogether.

It remains to inquire, whether this power can be derived from the clause which vests in the President "the Executive power." This deserves to be particularly considered, as it has been not only insisted on here, but is the chief ground relied upon, in support of the claim, in the Protest to the Senate. These words are found in the beginning of the second article of the Constitution, and so far from conferring the power in question, really confer no power at all. They are a mere label on the door of the Presidential office, the duties and powers of which are in no manner described by it, but are left to be defined in that and the remaining sections of the same article. They mean no more than the phrase "there shall be a President of the United States." His power and responsibilities are to be looked for in the other parts of that instrument. If it be true that, by these vague terms, he is clothed with all powers which can possibly be denominated Executive, then it was highly improper to have allowed him any share in Legislation. And yet no act or resolution of Congress can be passed in the first instance without his assent.—The first article of the Constitution as expressly gives all Legislative powers to Congress, consisting of a Senate and House of Representatives, as the second confers the Executive on the President; but it never was conceived that by this they were authorised to legislate without his assent. This broad interpretation of general words would even exclude the Senate from any share in the conclusion of Treaties with Foreign powers, and in the appointment of officers, both of which are admitted to be Executive powers, and are expressly granted. The Constitution of the United States not only consists of various articles, relating to different subjects, but of numerous sections in relation to the same subject matter. And as the whole Constitution is to be looked to, in determining the powers of that Government in all its departments combined, so all that relates to any particular department must be reviewed in determining its limits. The President's powers, we have already seen, are in part Legislative. Those of the Senate are in part Executive; and, under a written Constitution which defines the spheres of each of the governing powers by its own positive injunctions, we are not allowed to give to the Executive Department a power, because in our speculations on the subject we deem it to be Executive.

But why shall I labor to prove that the words last quoted convey to the President no power over the public moneys, whilst the affirmative of the proposition is with the other side; or whilst, by express terms, all such powers are given to Congress. This is clear, not merely from their power "to lay and collect taxes," to pay the debts of the United States, "to borrow money," "to coin money," &c. but they have also "power to dispose of, and make all needful rules and regulations respecting the territory or *other property* belonging to the United States." No people ever better understood the maxim that "money is power," than the Anglo-American race, or more fully knew the dangers to be apprehended to liberty, from entrusting the public purse, either for the purpose of collection, custody, or expenditure, to any other than the immediate representatives of the people. By means of this important power, their European ancestors had in a series of ages extorted from the grasp of Executive usurpation the native liberties of man, and bequeathed them to them, as a glorious heritage. Yet with the light of all this experience, and with the positive declarations of the Constitution staring them in the face, there are those who insist on the syllogism "all executive power is in the President—to keep the public money is an Executive power—therefore the custody of the public money belongs to the President." Yes sir, the President himself has been induced to sign a Protest, in which, after stating that the custody of the public property has always been considered an appropriate function of the Executive department, in this and all other governments, it is declared that "Public money is but a species of public property. It cannot be raised by taxation or customs, nor brought into the Treasury in any other way except by law but, wherever or however obtained, its custody always has been, and always must be, unless the Constitution be changed, entrusted to the Executive Department. No officer can be created by Congress for the purpose of taking charge of it, whose appointment would not at once devolve on the President, and who would not be responsible to him for the faithful performance of his duties. * * * Were the Congress to assume, with or without a Legislative Act, the power of appointing officers independently of the President, to take charge and custody of the public property contained in the military and naval arsenals, magazines, and storehouses it is believed that such an Act would be regarded as a palpable usurpation of Executive power, subversive of the form as well as the fundamental principles of our government. But where is the difference in principle, whether the public property be in the form of arms, munitions of war and supplies, or gold and silver or bank notes. None can be perceived—none is believed to exist. Congress cannot therefore take out of the hands of the Executive Department the custody of the public property or money, without an assumption of Executive power, and a subversion of the first principles of the Constitution." Sir, if these things be true, the awful prediction of Patrick Henry has been fulfilled, and your President, your Republican President, is "but a monarch in disguise." In disguise, did I say?—the diadem and the purple are only wanting to constitute all the attributes of royalty.—What bold usurpation is there in the assertion "that Congress cannot take out of the hands of the Executive department the custody of the public property, or money, without an assumption of Executive power, and a subversion of the first principles of the Constitution!" Where were the eyes of the writer of that Protest, that he failed to see the provisions of the Constitution before stated? That not only is no power over the public funds given to the President, but that to Congress is expressly granted every thing relating to the money as well as the "power to dispose of and make all needful rules and regulations respecting the territory and other property belonging to the United States!"—Can any one doubt, for a moment, but that Congress may dispense altogether with the Treasury Department as a branch of the Executive, and direct the public money to be kept in a strong box under the chair of the Speaker of the House of Representatives, and that drafts may be made upon it only by his warrant! or that they may direct the revenues collected in each State to be paid to the Governor thereof, to be by him kept until disbursed by Acts of Congress. These officers surely could not be removed by the President's Executive power, in any way contended by him. Sir, the Constitution of the United States places on the shoulders of the President no such Atlantean weight—it exacts from him no such responsibility—it confers upon him no such power. The Executive department in every Government of laws, is merely ministerial to the Legislative, and is but the executor of its will. This is particularly observed in the Constitution of the United States, which, by its first article, vests "*all* Legislative powers herein granted in a Congress, which shall consist of a Senate and House of Representatives." —the second article declares that "the Executive power shall be vested in a President of the United States." The question arises, what Executive power? Why, clearly, upon the supposition that this clause grants any power, only that which is necessary to the due execution of the Legislative powers before granted. Until laws are enacted, there are none to be executed; and although our President has a share of Legislative power, as we have before seen, he has no Executive powers, properly so called, which are not dependent on the Legislature for their exercise. He is Commander in Chief of the Army and Navy, but until the Legislature has passed the Laws creating these, he holds but "a barren sceptre in his gripe." He may make treaties with the concurrence of two thirds of the Senate, and with their consent also appoint Ambassadors, Ministers, Consuls, Judges, and others; but all these powers require a previous action of the Legislature to enable him to fulfil them. Courts, whether supreme or inferior, must be regulated by Law, before Judges are appointed. The officers, other than those connected with our Foreign Relations, must be first created by Act of Congress, before the President can appoint the officers.—And an appropriation of money for their salaries, and the expense of treaties, will always be needed, before officers of the latter class can be brought into efficient action. He may give to Congress "information of the State of the Union"—recommend measures for their consideration—on extraordinary occasions he may convene, and in a case of disagreement between the two Houses, as to adjournment, adjourn them. But except so far as a Congress wills, he has no military force, either land or naval, to command, no culprits to pardon, no treaties which he can fulfil, no officers to commission, and of course, none to remove, no laws "to *faithfully execute*," no money to deposite or remove, not even a salary of a single dollar, to purchase his food or habitation. Such are the humble powers of the President of the United