The Daily Review

JOSH. T. JAMES, Editor & Prop.

WILMINGTON, N. C.

SATURDAY, MARCH 27, 1880.

POOR OLD NORTH CAROLINA.

The proposed sale of the Western North Carolina R. R. has been consummated and it is reasonable to suppose that Mr. Best, Gov. Jarvis and all of the rest of them are happy at last. It has been a long agony and it is over. We have opposed the sale of this road, at first without qualification, and afterwards, seeing that a sale of some kind was predetermined, we opposed its transfer under the Best bill. That transfer has at length been made; the sale has been solemnly consummated and there is now "no going behind the returns." It has been evident to all who have watched closely this contest—and who has not—that there has been no hope from the first of saving this important public work to the State and that the sale had been predetermined before the Legislature was called into session. Let it go. We can only trust that our forebodings of evil may be groundless.

COL. MCRAE'S SPEECH.

As a matter of common justice we print to-day a report of Col. D K. McRae's speech delivered in Raleigh, in reply to Messrs Ruffin and Davis, and in opposition ta the proposed *sell out*, or give away of the State's property in the W. N. C. R R to a New York Syndicate represented by W. J. Best & Co.

Col. McRae's effort was spoken of by those who were not too blind to do justice as an admirable effort and like every thing that emanates from that distinguished gentleman, and thorough going North Carolinian, sharp, incisive, logical and forcible. Had the Raleigh papers presented Col. McRae's arguments in print as they did those of Messrs Ruffin and Davis, we should not have cared especially to report this speech But there seemed to be such a deep seated prejudice towards everybody and everything that opposed the sale of the Railroad, by those who were wedded to Mr. Best and his proposition, that in the name of justice, we have produced Col. McRae's remarks.

Col. McRae said:

Whatever the merits of this proposition might be there was everything in the time and method of its presentation to be disapproved and rebuked. The people were at rest. In a moment preceding the opening of a political campaign, one to be of unusual importance, no body of people in any county was claiming to be heard as to any grievance connected with this Western R. R. question. If the people felt any taxation they had not uttered a groan For twenty odd years the pledge had lasted that the two lines West of Asheville should be supplied to those people in consideration of their long and liberal course of action in voting for internal improvement for other sections He had participated in that pledge in 1858 under circumstances of imposing obligation, for the public sentiment in more than one county was revolutionized in his behalf by his prompt acceptance of the pledge—it is not unnatural then that like others he should be sensitive to any action that looks like its violation and it is because he conscientiously believes that this movement is a shameful abandonment of it that he so earnestly opposes it.

In this moment of tranquility the public was startled by the rumor that a proposition to sell out the State's interest in that road was being considered. Then followed in rapid succession the Governor's visit to Washington, consultations with members of Congress and what looked like a preparation to force to a speedy issue some concocted negotiation and sale. The Board of Internal Improvement being consulted on the 10th of February as to the propriety of calling an extra session of the Legislature, declined to advise it. The Directors of the Road being then appealed to likewise declined. Gov. Jarvis then called his political council, like himself office holders and candidates, and they recommended the call and proclamation went out about the 21st of February for this body to meet on 15th of March, which would have been only 21 days if this were not leap year. As yet no communication had been made to the public concerning the terms of the proposition No reference as to their standing had been furnished by Best and associates But rumor spoke of Best as one who had formerly figured in certain special tax matters of considerable notoriety and the alarm became general that the parties were adventurers and the scheme one for wrecking the road, and swindling the people. For one he was prepared to say, with due deliberation, that with regard to the scheme alarm with him has become conviction. There was a further report, that money was to be deposited to pay the Legislative expenses to go to this purpose if the bill should be passed, but to be recalled if the bill were rejected. It is true some explanation has been given concerning this deposit, but the speaker said the explanation ought not to be satisfactory to any one who was scrupulous of the State pride and dignity.

Then came the letters of the governor's associates, and within this short period—with indecent haste—with no afforded opportunity of public discussion, this Legislature, which was never elected to consider this question—whose members have had no instructions from their constituents—are called upon amid the turmoil and confusion of a short and limited session, surrounded by jobbers and lobbyists, to assume the high responsibility of, selling? no, of *giving* away this, the most valuable property now left to this already fleeced State. The "Best proposition" proper was announced in the shape of a bill prepared cut and dried for this body to pass. But when that got fairly before the public there was an almost universal revolt, and it became necessary either to abandon the project, or find some method of hiding away the deformities under some cover. Accordingly his two friends were summoned as they have explained, and they have assumed to say that *they* have made a new bill, and that this is the Davis-Ruffin, instead of the Best bill. But he did not admit this assumption. In its scarcely altered shape, the child has suffered no change. It may have the hand of Esau, but there is still the voice of Jacob, and his two learned friends should not, if he could help to extricate them, charge themselves with a responsibility which will bring no honor, if it does not entail a future of regret and penitence. He said he would now proceed to offer his objections to the bill as it stands, very concisely, as he had already twice criticised it in published letters, and there had scarce been a material modification in a single feature. Of the general scope of the proceeding he would say, there were all the indices of a railroad wrecking operation—a New York syndicate—the presence of certain instruments of questionable respectability, the evident eager, hot, anxious solicitude of well known political manipulations to push to rapid and unseemly conclusions, the subserviency of the Legislature, over which the lash seems to have been cracked with consummate effect, the support of a press manifestly hired for the occasion, a lobby with condiments, all these betoken along with "grantees and assigns," construction bonds and mortgages, failure and no penalty, but certain profits, all bespeak the inevitable doom of the State's interest, and one can almost shake hands with the partners who will divide the spoils.

But look at the sections. The second conveys, by way of escrow, to Best and associates, the instrument to be placed with the Union Trust Co., of N. Y., to await the performance of the conditions upon which it is to be delivered to the grantees. Not like the first deed—which passed the title of the State—her interest and rights—this passes no present title. All there is of that remains in the State, except that the "grantees" obtain an inchoate right on performance of the condition to convert the escrow into a deed, for as yet there is no contract between the parties executed by delivery. Now, in connection with this the first grave and unanswerable objection, that by section 8, while this escrow remains unconverted into a deed by delivery, the State authorizes the grantees named in it to reorganize the *corporation* under the style and name of the W. N. C. R. R. Co., on a basis of a capital professed stock of $4,000,000. Now mark, this corporation is not Best and associates, but an altogether different entity. It is not either the *grantees* in section 2d. This distinction must be borne in mind.

By section 9, this *corporation* may execute and deliver *mortgage deeds with power of sale* to trustees, conveying all the property and franchises mentioned in the escrow to secure the payment of certain bonds to the amount of $15,000 a mile which this corporation is authorized to issue for the construction of the road.

Now what follows?—

1st. The State having still the title gives to this corporation the power to mortgage the whole property with power of sale. It is a statutory power of attorney by the State to mortgage this, her property. The first snake in the grass is found right here, for as against this corporation there is no forfeiture. Mr. Best has imposed upon the two learned but simple-minded gentlemen the belief that if Best & Co. don't perform their contract, these mortgage powers will be forfeited.

Never were two enlightened lawyers more completely taken in Can any one doubt the power of the State to authorize this mortgage? Can any one doubt that this power is not given to the *grantees* in the *escrow* Best & Co., but to the reorganized corporation? Look at Sect 9

Now who is it that makes the contract to finish the road, and pay the interest on the now outstanding $850,000 bond? Look at Section 5, and you will see that it is Best and Co. who makes the contract, and not the reorganized corporation, who are authorized to execute the mortgage.

Now what is *forfeited*, and who forfeit if the *contract* is broken?

Why the parties who forfeit are the parties who make the contract, and that is Best & Co. Forfeit what? why only the grants mentioned in the escrow.

It is all found in Section 16, in these words, 'That in case the said *grantees* and their assigns shall fail to carry out and perform their said contract, all the grants intended to be *made to them* shall become null and void. Now what is forfeited? Why only the grants intended to be conveyed to Best & Co. But is there any provision for dissolving the reorganized corporation? None. Is there any revocation of its power to mortgage? None Where stands the legal title on the forfeiture by Best & Co. of the grant to them? Does any lawyer say it will not remain those trustees, named in the mortgage which the reorganized corporation will already have executed. There can be no doubt that such will be the status of the title and it follows that any purchaser of these construction bonds may call on the trustee to sell under the power and if the trustees do sell the buyers at that sale will get the legal title. He repeated, there is no provision any where in the bill, any where, to revoke that power to mortgage. On the contrary the State estops herself by that section from disputing the title of the purchaser.

The Speaker said, If there be any idea by Mesrs Davis and Ruffin that the mortgage can be avoided, they must find it in some implication. They certainly cannot claim that it is expressed. Then, if Mr. Best is the fair minded honestly purposed negotiator his admiring friend, Mr. Davis, considers him, a character which it is not for a moment to be supposed he heard with any surprise nor is it to be supposed that he at all laughs in his sleeve at the artless confiding nature which understood him so promptly. If Mr. Best be so will he not readily suffer this amendment in order to make this matter plain? To wit: 'All the grants to said grantees shall become null, and power to mortgage now in said corporation shall cease, and said corporation shall be dissolved and the old corporation shall be revived." This would be explicit, but if this amendment were proposed and adopted it would shoot Mr. Best to New York by lightning express because it would kill the snake in the grass. Mr. Ruffin is understood to say, 'There is nothing in all this, because by Section 10 and elsewhere it is provided that this mortgage cannot be *foreclosed* until the road is finished to Paint Rock and Murphy,' at which there is great applause. Mr. McRae: Ah, Let us see what says Section 9. 'Said company may execute mortgage deeds *with power of sale*. Provided no sale thereunder shall be made by foreclosure *or any power of sale* without 90 days notice. Does the gentleman fail to see that there are two methods of sale by foreclosure *or power* of sale? Now the sale by foreclosure is guarded against in Section 10, but will the gentleman point out where is the clause guarding against a sale by the trustees under the power. Nowhere—nowhere. Now if Mr. Best means to let the State have this guard why not say so in Section 10? why not say 'and that the mortgage cannot be foreclosed until said road shall have been completed to Paint Rock and Murphy?' *Nor shall* the trustees named there in sell under any power therein given. This was said in Section 9 when fixing the 90 days notice, why is this omission? why simply because it is intended to sell out under this mortgage and leave the state in the lurch.

It is plain that in 30 days these bonds may issue, the mortgage be executed, the bonds sold, Best and Co. pocket the proceeds, throw up the contract and then the holders of this bond may demand of the trustees to sell the State's interest—indeed the whole interest of the re-organized corporation, and there is no power in this bill to prevent it. How soon all this will come to pass depends somewhat on the nomination for Governor—that sooner or later it will some, is as sure as that similar rings all over the land have wrecked railroads in a similar position, and it is only a question of time when Messrs. Davis and Ruffin will wake up some morning to look upon this work of their hands.

Look, now, at 4th Section.

With reference to the now outstanding bonds known as the 1st mortgage $850,000 bonds, it is said, "nothing in this act shall be construed" to prevent said grantees or their assigns from settling and discharging of record, said mortgage deed and the bonds issued thereon, for a sum less than the face or par value thereof and any sum saved in the settlement or compromise shall enure to the benefit of said grantees or assigns."

Here is snake No. 2. In order to find him you must look carefully into the foliage:

1st. You must note here again this power to settle is given to Best and assigns.

2d. This mortgage and bonds are those of the original corporation when the State held three-fourths of the stock. It is for the coupons on these bonds, that the State is liable.

3d. It is the re-organized company whose obligations these bonds and mortgages will have become. Now what is the operation of this 4th Section? Why this.

Mr Best may go go to Swepson or McAden or any other holder and if they will sell, buy for 50 cents on the dollar and may then turn the bond over to the corporation, exacting its face value, by which the State enables Mr. Best to depress her credit as to these bonds and after purchasing them at a reduced price, still hold the State's property, liable for their face value. In other words, she relinquishes her right to make these compromises, so that Mr Best & Co., may after doing so break their contract, and still hold her property liable through the first mortgage. By this process, Best & Co. may realize a half million of dollars which the State might save.

Mr. Davis says this is not so, and that this feature of the bill is but surplusage. Now Mr. Davis, although not the best draftsman in the State, is perhaps, as good as any other at all events; he is lawyer enough to know that no legal document, especially no legislative act is well drawn which holds surplusage, and nothing is so easy to be gotten rid of. It is simply to strike it out. Will he and Judge Ruffin state "the serious objection to this surplusage and see if Mr. Best will reply, "gentlemen we strike it out' *Hardly ever*. If just this little sentence "shall enure to the benefit of *said grantees* or their assigns," were simply stricken out or changed to read "to the benefit of said reorganized corporation. Mr. Best would "gentlemen, strike out' for New York immediately and the pay of the legislature would become doubtful again.

The guarantee to furnish 500 convicts and if need be to manufacture them by judicial process is another feature in this bill bad enough in itself, but also with a snake in it that adds to its badness. It is that the State is made to guarantee that $125 shall "include all their expenses,' and the result will be that grantees or assigns—*and assigns* would be better—nearer truth—will before they break, have an offset for expenses over $125 that will take back the whole $125 and then they will get the labor of these convicts for nothing.

The speaker said he had heretofore shown up the provisions to freeze out the original private stockholders, by giving them only $212,500 of new stock in a capital of four million, whereas they now have $212,500 in a capital of which $850,000 is the other three-fourths. Unquestionably to vote for this section as it stands is to disregard the federal constitution, but there is reason to believe that these private stockholders—if not in the ring—are at least close by—and no worry need be felt about them. It should, however, be worthy of consideration, whether you can vote for an act conscientiously knowing that it violates the constitution.

One or two words upon this failure and forfeiture matter. By Section 16 if the grantees or assigns fail to perform their contract, the grants become null, and the escrow is to be returned, but no damages are to be recovered.

In this state of the case the Governor comes to the front, notifies the grantees to go on and perform and if they then fail, what next? Why the Governor is then to appoint six directors—and do what? dissolve the reorganized corporation and revive the old on? no, but to join in with six directors, 3 to be appointed by the private stockholders and 3 by the grantees, to go on and complete the road as by law may be directed. This is the capped climax of this scheme of fraud—for by this section, instead of taking back the property when the contract fails the State lets in the violators to a partnership with her on equal terms, except that she is to do the work and they get the profits. But Mr Davis says this means that the State is to have full charge of the matter and may or may not in its discretion complete the work

Then the road to Murphy is no part of the project at last and the pledge of the State ends with this sale. Surely Mr. Davis is not a party to so silly an operation. But this explanation is fatally defective. Suppose there should be no further legislation is, the completion not already provided by this very bill and will Mr. Davis pretend that "as by law may be directed" does not apply to directions of law already in force—or that after agreeing to join with the six directors and to operate and complete the work as by law may be directed, that in the a sence of provisions already existing, she will be under no obligation to pass some law in order to its completion.

If Mr. Davis means this, then the short association with Mr. Best has already done its work upon him to the extent at least that he has imbibed a curious idea of statutory construction. The position is an absurd one, and as the act stands, the State will be bound to complete the work or forfeit all the liens she has on it and all the property in it, besides cheating the transmontane people who will be astonished to hear that according to the opinion of Messrs. Davis and Ruffin she has already made provision for this deception.

But, said the speaker, the hour is late; he had not intended to speak this evening. He admonished the Legislature that it was treading on dangerous ground; the tempter is at hand in his usual and specious guise. This pledge, long ago made and oft repeated, stands registered; its violation is the snare that is set. Let the young men of this body beware, the forbidden fruit, for "in the day that ye eat thereof ye shall surely die"

N. B.—In the light of the refusal to pass the amendments guarding against unfriendly discriminations, what do Mr. Davis and the Chamber of Commerce think of the chances of Wilmington? This was in substance the amendment offered: "That like rates shall be enjoyed on traffic to or from or through seaports within the State (which means Wilmington and Newbern) as will be enjoyed by like seaports in adjacent States. This was voted down, and it simply means that they don't intend that North Carolina shall have the honor to protect her own marts of commerce by giving them equal advantage with Virginia and South Carolina. If the people of Wilmington don't see their future destiny crop out of this refusal, they are no blinder than other towns have been, but they are nevertheless blind.