NORTH CAROLINA SENTINEL.

UNION OUR WATCHWORD....TRUTH OUR GUIDE.

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General Assembly.

SPEECH OF MR. GASTON
ON THE BANK QUESTION.

Mr. Chairman:—When the Speaker of this House did me the honor to name me as one of the members of the Committee of Investigation, I requested to be excused from that service, and the House had the goodness to grant my request. I had recently been called, at a critical moment, and under circumstances which made it my duty not to decline the invitation, to preside over the affairs of one of the Banks of the State. As enquiries were to be made, which, in their result *might* implicate that Institution, obvious considerations of delicacy forbade me from desiring to be one of the inquest. That examination has been made—the evidence is before us—and we are now called upon to act. It is my bounden duty as one of the members of this body, to decide upon the course which ought to be pursued. I should be a traitor to the dearest interests of those by whose unsolicited suffrage I stand here, I should desert my country at the moment of her need, if I did not now perform the part which my conscience and judgment pronounce to be right.

On a subject so important as that before the Committee, it is necessary that we should discard all prepossession and prejudice, examine calmly and judge without passion. Would that the enquiry had been thus conducted! Much would have been saved of legislative dignity and State character. Many unfounded charges would have been instantly dismissed—many misrepresentations of facts—much absurdity of reasoning—and not a little of unbecoming invective would have been spared. As far as depends on me, the evil already too great shall not be increased. I shall anxiously avoid that angry tone of discussion which is so unfavorable to the discernment of truth.

At the head of the list of accusations subscribed by seven gentlemen of the Committee, stands the charge against the Banks of Cape Fear and Newbern, of not having required gold and silver from the subscribers of the additional stock authorised by the act of 1814. These Banks are accused of having manufactured this stock—of having thrown out millions of additional notes upon a fictitious increase of capital—and of having thus robbed the people of 200,000 dollars annually, under the pretext of law. What are the grounds on which this accusation stands? These Banks had been created in 1804, and there is not a pretence that their *original* capitals were not paid in gold and silver as the law required. At this time the money of the country consisted of gold and silver, and also of the paper currency emitted by the State in the years 1783 and 1785, which was by law a tender in payment of all debts. In the year 1810 the State chartered the State Bank, and pledged its faith that during the continuance of that charter no new Bank should be established. By the fundamental provisions of that charter the paper currency was not to be a tender in payment of debts due to or from that corporation. During the war all the Banks south of New England suspended specie payments, and this disregard of legal obligation was acquiesced in universally. The Banks of Cape Fear and Newbern committed no breach of law in declining specie payments. They had possession of most of the paper currency. They had by law a right to use it, and they did use it as a shield for their specie. The period was approaching when their charters were to expire. The stockholders wished for an extension of the time, and the State could not establish a new Bank. The capitals of the Banks of Cape Fear and Newbern were together but $500,000, while the capital of the State Bank alone was a million six hundred thousand. To have some counterbalance to this dreaded monopoly was deemed by the Legislature all important to the community. The Legislature also influenced by the cries of the people, who were importunate for money, more money, was anxiously desirous to increase the Banking capital. When therefore the Cape Fear and Newbern Banks applied for a prolongation of their Charters, the State refused the request, unless these Banks would agree to an enlargement of their capitals! Increase, said they, your capital stocks to 600,000 dollars each, so that together you may form a check to the State Bank, admit us largely into the company, and we will extend your charters to the day when the charter of the State Bank shall expire, and when we shall be at liberty to establish as many new Banks as we please. The terms were hard. The stockholders knew full well that a small efficient capital yielded a higher *proportionate* profit than a large one equally efficient. They knew too that this increase would add nothing to their *efficient* capital. There was no specie in the State but what the Banks held and the Banks held no specie. But they must either accept the boon on these terms or decline it altogether—and they did accept. In *all* the preceding charters of the Banks of the State, the shares subscribed for stock were required to be paid "in gold or silver," but in the extended and enlarged charters of 1814, *these* words are *purposely omitted*. In these last, the State had allotted to her one hundred thousand dollars of the new stock in each of the Banks—and how was this addition to its capital to be made? For 18,000 dollars the State was to pay—*nothing*; for $41,000 it was to pay in certain Treasury notes thereafter to be issued, which had no mark, character or semblance of value, but that they were receivable at the Public Treasury in payment of public dues; and for the remaining $41,000 the State was to pay at any time before the expiration of the charter. The shares to be subscribed by individuals were to be paid one-tenth down, and the remainder in deferred payments of $10 each, every sixty days thereafter; and by express enactment it was declared that after the year 1816 the old paper currency should *cease to be a tender to or from the Banks*.

Where then is to be found the pretext for the assertion that the new subscribers were bound to pay in *gold and silver*? If a subscriber owed an instalment of $100 on his subscription, and at the time prescribed for payment, tendered to the Bank its own notes for that sum, could the Bank have refused the tender? If it had dared to refuse, would not the law have compelled it to accept? If it had said, you, Sir, must pay in *money* the lawful tender of the country and not in these notes; his answer was irresistible, then pay me these same notes in money the lawful tender of the country, and I am ready to return the same money to you. Need more be said to shew that this charge is beneath notice? But these same virulent accusers of the Banks add that a few *favoured* individuals paid in their own notes. Sir, straws show which way the wind blows. How do these gentlemen learn that *these* were "favoured" individuals? The Bank was in full operation. Its main business was the discounting of good paper—and with the application of the proceeds it had no concern, and over them it had no controul. If the borrower chose to apply the proceeds to the paying of the deferred instalments on his shares, he had a right to do so, and the Bank was precisely in the same state as it would have been in had the stockholder actually paid for his stock, and the Bank had lent to a stranger. Gentlemen seem to suppose that it is a very easy matter to put a note into the Bank and thus pay for stock. It is, sir, easy to put a note *in*, but the mischief is how to get it *out*. Thence you do not come until you have paid the uttermost farthing. If, then, there was any manufacture of stock, it was such as the State ordered to be manufactured, and its materials, texture, workmanship and fashion were precisely such as the Legislature had willed.

But, Sir, the part of this accusation which next follows, is of a more grave character. These investigators, who had an unlimited authority to send for persons and papers, *assume*, that on this fabricated capital, the Banks of Cape Fear and Newbern "must have put in circulation between three and four millions of notes"; and thence conclude, that by a "foul and illegal extortion," they have drawn from the people, by way of interest, something like $200,000 annually"!! I cannot believe that any one of the individuals who advance this charge would be base enough to assert it knowing it to be untrue. But yet, sir, it is untrue. It is asserted without a particle of evidence to support it. It is asserted without pains having been taken to ascertain how the fact was. It is asserted in direct contradiction to evidence which they have themselves reported, but which I must presume their zeal for condemnation would not permit them to notice. It will be seen, Sir, that the President of the Bank of Cape Fear informed the Committee (see his answer to the 2d interrogatory) that the largest amount of paper which that Bank *ever* had in circulation was in the year 1819, and that it a little exceeded $700,000—was not *equal* in amount by $100,000 to its capital stock—instead of being, as these gentlemen rashly assume, three times that amount. In the answers which I gave to the written questions propounded to me with respect to the Bank of Newbern, I proffered to procure for the Committee any detailed information which they might desire, and had the least intimation been given me, that information was needed on this point, it should have been procured. Here I have it not, except that on recurrence to the Journals of the Legislature for 1819, I find it stated by the Committee of Investigation, that the notes in circulation of the Bank of Cape Fear a little exceed $700,000, and those of the Bank of Newbern are not quite $600,000. What ought to be the anguish—the self-reproach of every honorable man whose name is subscribed to that accusation, for having thus *rashly* and untruly charged with "foul and illegal extortion," men, who for fair character, for uprightness and honor, will not shrink from a comparison with an equal number chosen from this body or any other?

The next charge respects the mode in which the capital stock of the State Bank was paid for. The charter for this institution directed that its capital stock should consist of $1,600,000, divided into shares of $100 each—that three-fourths of the amount of each share subscribed should be paid in gold and silver, and the remaining fourth either in gold or silver or the paper currency emitted in 1783 and 1785; that one-fourth of the amount of each share should be paid at the time of subscription, the second fourth within sixty days *after the Bank should go into operation*, the third instalment within one hundred and twenty days, and the last fourth within twelve months thereafter. The act further required that as soon as twelve thousand five hundred dollars should be actually paid in at each of the places named, the stockholders should proceed to choose Directors and *forthwith* commence the operation of a Bank in each of the enumerated towns. It was also enacted (with some exceptions not necessary now to be considered) that the paper currency before mentioned should not be a tender to or from the said Bank. The evidence establishes that the two first instalments were all paid in gold or silver, and that the third and fourth instalments, or a part of them, were paid in the notes of the Bank. This receipt by the Bank, of its own notes, in payment of the instalments which became due after it went into operation, is said to be illegal. There is, to my mind, such an obvious absurdity in this charge, that I scarcely know how to make it more evident by any explanations. The Bank was compelled to go into operation, and at seven different towns in the State, before it could call for any deferred instalment. The operation alluded to, was the making of loans and the discounting of bills and notes. It could make no loans nor discounts without throwing into circulation its own paper. This paper, it was bound by law to redeem with gold and silver; and the offence charged is, in substance, that it did so redeem its paper. For when the stockholder came forward with the notes of the Bank and offered them in payment of a deferred instalment—that is to say, of a debt for which the Bank could claim gold or silver, if the Bank refused, it would have been to all intents and purposes, a refusal to pay specie for its notes on demand. It was the duty of the Bank to give specie for them—and it was the duty of the receiver to return the money in payment for his instalment: and because the idle ceremony of first paying the money for the notes, and then taking it back, was not complied with, the omission of a nugatory form is alleged as a breach of charter.

As to the charge of a flagrant violation of charter, by opening books in the year 1818 to receive subscriptions for the 4240 shares of stock not subscribed for in the first instance, it is at least equally destitute of foundation as that which I have last considered. By the act of 1811, ch. 806, sect. 3, the Legislature directed that the State Bank should at such time as might be convenient to the Directors, open books to receive subscriptions for this stock—and if they did not do so before the first of January, 1820, the Legislature commanded that it should then be done forthwith. The session of 1817 arrived, and the books had not yet been opened. The Legislature then passed a resolution expressing their desire that it should no longer be delayed—and in compliance with this resolution, the Directors opened the books accordingly. Now what is the complaint? That they opened the books to receive such subscription? They had unquestionable authority to do so, and the Legislature requested them to use the authority. That their own notes and the notes of the Banks of the State were received in payment? The Banks *then* all payed specie, the notes all represented specie, and were to the State Bank, to all intents, specie. Something is said, by those who criminate this proceeding, about a "scribbling process," which I find a difficulty in understanding. These gentlemen surely mistake the meaning of Mr. Seawell's testimony. It is perfectly perspicuous, however. This gentleman tells you, that the Bank was aware that it would acquire by this additional subscription no increase of ability to issue more paper, and that it had no desire to issue more. The only benefit to be obtained from the subscription, and thus letting new partners into a share of the profits of the institution, would be a retirement (as it is termed) of a part of the notes of the Bank and a consequent diminution of its debt.

An idea seems to have been taken up, that by the charter of the State Bank, there is a limitation on the issues of *each* branch—and that each constituent part of the corporation was to have no more paper in circulation than bore a defined proportion—say three for one, to the part of the capital stock assigned to and subscribed at it. This is a clear mistake. The only limitation on the issues of the Bank is to be found in the clause prescribing that "the *total* amount of the *debt* which the *said corporation* shall at any time owe shall not exceed $4,800,000." This has no application to the relative issues of the Parent Bank and its several Branches. It is true, that in prescribing the duties of the Directors of the Parent or Principal Bank, the law directs that in the orders which they shall give to the Branches in the making of discounts, they shall pay "*due* regard to the amount of capital *actually possessed* by the several establishments." It is not a little difficult to define precisely what is meant by these words—but no meaning can be assigned which should preclude the Directors of the institution from giving such orders to those of the subordinate branches as might make their respective issues correspond with their ability to meet them.

And, permit me to say, sir, for I find many crude notions prevailing on the subject of Banks, that this ability does not depend on observing a given ratio between the cash subscribed, or the cash in bank, and the notes issued. It depends principally on the proportion between the demand and the supply. If a bank issues more paper than is required for the advantageous transaction of business, the redundant issues will be returned, and the specie must be drawn out. If it never issues more than is needed for this purpose, a small amount of specie is sufficient to meet all the calls upon it. In a community where half a million is required for the purposes of circulation, a solvent bank with a hundred thousand dollars in its vaults, can more safely discount five times the amount of this efficient capital, than one with a million of dollars in actual gold and silver, can issue twice that sum. The only mode by which it is practicable to ascertain what issues are needed, and how to apportion the supply to the demand, is to be found in the redemption of paper whenever it is presented for payment. Unfortunately soon after the amount of notes in North Carolina was suddenly and extensively increased by the establishment of the State Bank, the war came on, and during the war this test was not applied. No Banks south of the Hudson paid specie. Such was the excessive demand for money, as it was termed, that the bank notes of this State were called for more rapidly than they could be supplied, and were most extensively diffused over the southern and south-western States. Yet no depreciation ensued. The supply did not exceed—did not equal, the then unnatural demand. And for two years after the war, a state of extravagant mercantile enterprise, of unbounded speculation, of what was falsely supposed, unprecedented prosperity, succeeded—a state quite as unnatural and as unfavorable to fair banking experiments, as the state of war. The issues of the Banks were by no means disproportionate to the specie in their vaults. They had collected and treasured up large sums—and perhaps there were few banks in the Union which had as much specie, compared with their notes in circulation, as the banks of North Carolina. But their issues exceeded what the business of the country required—what its circulation could absorb and employ. The whole paper money which can fairly circulate in a country never can much exceed the gold and silver of which it supplies the place, and which, but for that paper, would probably be there found in circulation. If more be thrown out, what is not needed for effecting the necessary exchanges, will be returned for redemption. If redeemed, the Banks are drained of specie—if not redeemed, the paper must depreciate.—The year 1818, brought back upon the Banks their redundant issues. They were punctually and faithfully redeemed, until the money in their vaults was almost exhausted. Still the drain continued, and it was perfectly evident that unless it could be stopped, or the reservoir replenished by timely supplies, the last dollar would be drawn out. There is little doubt now what is the course which ought to have been pursued. The Banks ought to have called upon their debtors for payment of considerable instalments. This would have checked the current, as well as furnished the supply. But, sir, let none of us blame too harshly those who adopted a different policy. It is easy to judge after the event is over. To have demanded large payments from the debtors to the Banks at that time—at the moment when collapse had succeeded to excitement—when a most distressing depression in the price of property, produce and labor, had taken place of an extravagant and unnatural rise—would have spread dismay through the State. The public sentiment—the public feeling would not have endured it. The debtors had vested their loans in unproductive capital. Payment was not to be made, but at the most ruinous sacrifices. And who were the debtors? They were the stockholders—the directors—their friends—their neighbors—their fellow-citizens. It required more than stoic fortitude to send out against them the edict which was to cover the land with mourning. Consider the alarm—the indignation—expressed now, at the recent resolution of the State Bank, to collect by ten instalments at ninety days. Had it been attempted then, I hazard nothing by the assertion, that the influence which the State has in these institutions, would have been exerted, in union with the force of public opinion, to put down the attempt. Can there be a doubt of the correctness of this assertion, when we recollect that the annunciation of the resolution adopted by the Banks in 1819, to refuse specie to Brokers, was received throughout the community with acclamations—and that both branches of the Legislature, in the succeeding winter, adopted the Report of the Committee indirectly, if not expressly, sanctioning the act? I was individually consulted on this subject before the resolution was adopted, and expressed my decided opposition to it. You can have no excuse for refusing specie, was my opinion, while you have a dollar to pay with. But men whose views were at least as pure as mine, and whose practical wisdom was entitled to higher respect than I could presume to claim, decided otherwise. "Let the Brokers refuse our notes. They will circulate in the State, and answer there all the purposes of money. We shall be spared the odium—and our country the mischiefs—of a pressure upon the debtors. The specie which we have shall be kept to answer the occasional exigencies of our citizens, and not be bestowed to reward those who depreciate our paper for the purposes of a gainful and wicked speculation." Unfortunately, the Brokers would not refuse our notes. They knew that the Banks were solvent, and that the laws compelled them to pay. The business was profitable, and the Courts of Justice secured its gains. The delay in the receipt of these gains was compensated by interest on their amount. The brokers continued, therefore, to drain the specie—if not in a steady stream, yet quite as effectually as before. The Banks were less liable to meet the calls of their regular customers, and the depreciation increased, which at once embarrassed the community, and enriched the speculators. The objects of the resolution were entirely frustrated.

Sir, the State Bank, and the Bank of Newbern, are charged in the most aggravated terms, with foul Usury, in granting accommodations to those who exchanged, or promised to exchange, specie or northern funds for their paper. It would have shewn a spirit of discrimination and of calm enquiry, had the accusers stated, as was unquestionably proved by the testimony of Mr. Sherwood Haywood, that no rule requiring such exchanges had ever been imposed by the Directors of the Bank of Newbern—that the practice existed but to a small extent, for a short time, and at one only of its agencies—that there the exchange was never made the condition on which the accommodation was granted—and that a failure to make the promised exchange never subjected the borrower to any other terms of renewal than those most indulgent terms accorded to all others.

It is a matter not very important in the present discussion, whether the charge of Usury can be truly predicated on these practices. For if Usury has been committed by the Banks, the punishment, as well as the means of redress, are precisely the same as if it had been committed by individuals. The debt tainted with Usury cannot be enforced at law. Twice the amount of the moneys usuriously lent are forfeited; and the Courts of Equity will protect every debtor from paying—and cause to be returned to every debtor who has paid—more than the principal and interest of his loan. The Banks are no more privileged to commit Usury than individuals. Neither are they subjected to any other penal enactments for the act. But it is always right, if possible, that things should be designated by their appropriate names. That the practice alluded to has been oppressive to the borrowers, and in my humble judgement, injurious to the Institutions, is abundantly plain. In a community where there prevailed a rage for borrowing, such a practice enabled the applicant to gratify a fatal propensity, on most ruinous terms. The Banks themselves derived no benefit from the transaction.

The very paper given out in exchange for specie, added to that advanced on the loan, was immediately returned upon them—increased the drain—and, from the difficulty of supplying it, increased also the depreciation. I have never hesitated to condemn the practice as at once foolish and pernicious. But, Sir, I know not how it can be stigmatised as Usury. If, indeed, the design of the contract was to obtain a greater premium on the loan than the legal rate of interest, and the exchange was resorted to as a cover for that design, a Court of Justice would strip the transaction of the cover, and pronounce upon the act according to the intent of the parties. The law will not be cheated by an evasion, eluded by a shift, nor defeated by a contrivance. An exchange of notes for paper, may be resorted to as a stratagem to conceal a bargain for a usurious loan. If it be, of course it is to be regarded as a stratagem.—But apart from such an intent, there is not—there cannot be—any usury in promising to pay a debt in the legal currency of the country; or in giving money for a valid engagement to return the same on demand. I am not hazarding my own crude speculations on the subject, but am completely borne out by an adjudication in the Supreme Court of Massachusetts, in the case of *Portland Bank* vs. *Storer*. (*7 Massachusetts Reports*. 433.) And the professional part of this Committee know and feel the respect which is due to the decision of a Tribunal, of which Theophilus Parsons was the presiding Magistrate.

It appears from the Report, that the State Bank has purchased Cotton in order to furnish itself with specie or Northern funds to meet its engagements, and that this Bank and the Bank of Cape Fear with the same motives and for the same purposes purchased stock in the Bank of the United States. Sir, I can have no hesitation in saying that if the first mentioned act should be established in a Court of Justice, and brought home to the Directors of that Institution, it is a clear violation of the charter; and I incline to the belief that the purchase of stock is also a trading in prohibited articles, and may be pronounced a violation of charter. There is no doubt, if reliance can be placed on human testimony, that the views of the managers of these institutions in making these purchases were pure, and as little doubt that the acts considered in themselves were injurious to no one. But no honesty