

DEBATE

Mr. Wellborn's Resolution, and Mr. Wilson's Amendment—Continued.

IN SENATE

Tuesday, Dec. 9th, 1828.

Mr. Brown expressed himself in opposition to the passage of the resolution then under consideration; proposing that the Legislature should instruct our Senators to request our Representatives in Congress, to endeavor to obtain a part of the surplus funds in the Treasury of the United States—to be applied to works of internal improvement in this State. He understood the gentlemen from Wilkes and Stokes, to disclaim the power of the General Government to make roads & canals through the territory of the several States; and to advocate its adoption, on the grounds, that the question as to the constitutional authority to make roads and canals, had been settled, by repeated decisions of Congress in favor of that power; and that their authority to appropriate the public funds to be applied by the State Governments, to purposes of that kind, was liable to no such objection.

[Mr. Wellborn explained.] Mr. B. said, that the explanation of the gentleman, was not materially variant from the view of his remarks which he had presented to the committee; and in confirmation, observed—if this great question had been settled by Congress, he rejoiced that the political heresy, which in his opinion it involved, had never been assented to by the Legislature of this State, and that North-Carolina, who was devotedly attached to the Union, had in no wise been accessory to what he deemed an unwarrantable infraction of the principles of the federal compact.

But, he asked, had it come to this, that living as we do under a written constitution, the limits of which were marked out and defined by that instrument, that it was to be superseded by precedents? And were we to look to the decisions of Congress, as affording the only proper interpretation of the meaning of that instrument, instead of looking to its own provisions? He protested against an argument, which if traced to its consequences, would make the will of Congress paramount to the Constitution, and would make us dependent on their will for the preservation of our liberties, rather than on the great charter by which they were secured to us.

Mr. B. said, believing as he did, that the assumption of what he deemed wrongful and unconstitutional powers by Congress, could not confer a rightful title to exercise them, he did not consider the claim to these powers as deriving any force from the decisions of Congress in their favor, or to be so conclusively established, as to forbid their being questioned. He would, therefore, proceed to examine that clause of the constitution from whence gentlemen tell us the authority to appropriate the national funds to purposes of this kind, is derived, and which is in these words: "The Congress shall have power, to lay and collect taxes, duties, imposts, and excises, to pay the debts and provide for the common defence and general welfare of the United States." In the first place, he would remark, that the enumeration of the powers, conferred on Congress, by the constitution, and which immediately follows the clause just recited, explained the meaning, of the words "General welfare" and limited its legislative powers, to such objects, as were expressly granted thereby, and to the enacting such laws as were necessary and proper to carry into effect the powers expressly given. Such was the construction placed upon that clause of the constitution by the Authors of the "Federalist," a work affording, confessedly the ablest exposition, of the views and intentions, of the framers of that instrument, which had been written.

If the construction which gentlemen place upon this clause of the constitution was correct, and Congress possessed the power, to appropriate the funds of the nation as they contend, to any purposes which they may deem promotive of "the General welfare," then there would be no limitation to the exercise of this power, they would possess uncontrolled authority over the public purse, and could apply the public funds indefinitely to objects, other than those enumerated in the constitution. Such a construction appeared to him, utterly at variance with our notions of a government, whose powers were delegated for specific purposes.

Mr. B. said, as the federal government possessed only limited powers, he would not believe, nor did any part of the constitution authorize the inference, that its framers intended that the public funds should be applied in any other way, but to execute some of the powers confided to it: He thought it incumbent, therefore, on those who support this application to Congress, for a proportion of the public funds; to show that they have authority to make roads and canals in the several States; as it is an absurdity to say that they can appropriate the means—and that they are forbidden to accomplish the end which those means are designed to effect. When therefore, the advocates of the resolution, conceded that the general government had no rightful authority to construct roads and canals, he conceived that they yielded, in effect, the principle on which the resolution was based; as the non-existence of the said power, seemed to him, irresistibly conclusive of the want of the other.

But would it not, asked Mr. B. if appropriations of this kind were granted, in pursuance of a principle which should be held sacred by every free government, that those who vote away the public money, should be accountable to the people for its faithful application to the objects which it was designed to effect? Congress would be irresponsible to the people for its application, by the States, to the purposes of internal improvement; as it would be beyond their control when exercised by the States—and

it would be at the discretion of the States to apply it to the purposes of internal improvement, or to such other purpose as they might choose; and in this way large sums of public money might be annually voted away, without any adequate security for its profitable or faithful application.

Another objection of peculiar weight, presented itself to him, against the adoption of the resolution. Might not the bounty of the General Government be most dispensed to those States, which stood highest in favor? And might not, the amount of money given to each State, depend upon its acquiescence in claims to power, which a profligate and ambitious adobe to be governed by such a one? It may be replied, that this is an improbable supposition: He would say that history instructed us to guard against the ambition and corruption of public rulers, and that so mighty an influence, in the hands of designing men, could be wielded with more effect, to destroy the reserved rights of the States, than any other plan which could be devised.

But, said Mr. B. it had been asked, if it was not desirable, to see facilities given to the industry and commerce of North-Carolina, by improving her rivers & roads. As a citizen of the State, he would hail the completion of those great works of Internal Improvement, which she had long projected, with the highest satisfaction; but, that however highly he might value them, he valued the Constitution of his Country more; and that he was not prepared, for a mere pecuniary benefit, which he believed was not likely to be gained by the adoption of the resolution, to encourage a sacrifice of its best principles.

He would now proceed briefly to assign his reasons, for preferring the resolutions offered by the gentleman from Edgecombe as an amendment, to that offered by the gentleman from Wilkes, denying the constitutional power of Congress, to make roads and canals in the several States; or that it was sanctioned by sound policy.—This question had been so often, and so ably discussed elsewhere, that he presumed, the views on both sides, were familiar to the committee: He would therefore not detain them by any comments, on the different clauses of the Constitution, from which, the advocates of this power, pretend to derive it, by implication, but would confine himself, to stating a few reasons which to him, were conclusive against the right to exercise it.

At an early period after the Federal Government went into operation, our Country was divided into two great political parties, who differed in opinion as to the extent of its powers. At the head of the party, who were favorable, to a wide latitude of construction, was Mr. Hamilton, then Secretary of the Treasury, and having been called on by Gen. Washington, then President, for his opinion as to the authority of Congress, to incorporate a National Bank, in his report on that subject, while he strongly supports that power, he admits "that a special power to incorporate, for the purpose of opening canals, would have been necessary, except with regard to the Western Territory, there being nothing in any part of the Constitution, respecting the regulation of canals." It seems very evident therefore, that Mr. Hamilton, who was a distinguished member of the Convention, which framed the Constitution; and whose opinions were known to be heightened, as to its powers, did not consider the power in question, as belonging to the government; which opinion is greatly strengthened by the Convention, as has been generally understood, having rejected a resolution, proposing to give that power to the Federal Government.

In examining the proceedings of the Convention, which framed the Federal Constitution, their great jealousy and caution, to preserve a large share of sovereignty to the States, is strikingly evinced.—Would then, the members of that body have been silent, if they had intended to grant a power, which is so important, from the great expenditure of money required to execute it, and from the great extent of jurisdiction which it would give over the soil of the several States? The precision, which they had used, in the terms, granting other powers, of far less importance, was, to his mind, satisfactory proof that they would not.

In addition to the reasons, already urged, said Mr. B. in support of the principles contained in the amendment, was the authority of Mr. Madison, late President of the United States. When the bill, proposing to set apart, and pledge certain funds, for Internal Improvements, was presented to him, for his approval as President, he returned it, with his objections, to Congress, and remarks, in his Message on that subject, that "it does not appear, that the power proposed to be exercised by the bill, is among the enumerated powers, or that it falls, by any just interpretation, within the power to make laws necessary and proper for carrying into execution, those, or other powers, vested by the Constitution, in the Government of the United States." Such were the opinions of an individual, who was himself a member of the Convention, and who contributed, as much, or more than any other person to the formation of the Constitution; whose great abilities, as a Statesman, were generally acknowledged, and whose fame, was brightening with time.

Mr. B. remarked in conclusion, that he thought he perceived in different portions of the Union, indications of a desire, to bring back the General Government, to that course of policy, which had rendered so justly popular, one of its early Administrations, and he hoped we should not, by adopting the original resolution, surrender principles, which, there was some prospect might again prevail.

Mr. Wellborn said, he was glad to find that the gentlemen from Caswell and himself perfectly agreed in respect to the usurped power of the General Government, in relation to Internal Improvements, and he

hoped, when the question came to be taken, that he should have the gentleman's vote in favor of his proposition, as it was the only way which occurred to him of preventing Congress from exercising this power in future. If he could believe there was any thing contrary to the constitution, in his Resolution, he would not certainly have brought it forward. As to begging any thing of Congress, he had no idea of that kind. He would demand what he asked for, as our right. We had as good a right to our share of the surplus fund, as any other State.

Mr. Speight (the Speaker) moved that the Committee rise, and have leave to sit again. He had a wish, to express his opinion on this subject; but felt too much imposed to do so at present.

The Committee rose, reported progress, and obtained leave to sit again on Thursday.

Thursday Dec. 11.

The Senate having again resolved itself into a Committee of the whole, Mr. Lovz in the Chair.

Mr. Speight (the Speaker) said, that however sensible he might be of the difficulties under which he should labour, in discussing the several propositions now before the Committee, he could not shrink from the performance of a duty, which, as the representative (in part) of a respectable portion of the freemen of this State, he felt bound to perform. He not only considered the subject matter of the several propositions now under consideration, as deeply involving the vital interest of the State, but as deriving great importance on account of no solemn decision having ever been made in this State on the great constitutional question—'Has Congress the power to make appropriations for Internal Improvement?' In the few remarks he felt it his duty to make on this occasion, he would promise the gentleman from Wilkes that he would not follow him into all the minute ramifications into which he had been pleased to go, and more particularly into that part which relates to the late Presidential Election.—He would, however, take occasion to observe to the gentleman, it would be time enough to judge the new Administration when he saw its measures. Gen. Jackson might advocate the doctrine for which the gentleman contends, or he might not. One consideration, however, consoled him, that whatever that much abused and proscribed patriot might believe to be the ultimate and substantial interest of the country, that policy, and no other, he would adopt.

Mr. S. said, in his humble judgment, he thought the whole tenor of the gentleman's arguments, as well as his resolution, was calculated to mislead the unthinking part of the Senate. Now, Sir, I would ask the gentleman, what are we to understand by the surplus fund that he told us of? Are we to understand, that all the objects to which the revenue of the General Government should be directed, are completed? I ask, sir, is the national debt discharged?—and if it is not, I would ask if it is not an object to which this surplus of funds might as judiciously be applied as any other? He held it to be the interest of the United States, as well as individuals, to be out of debt. Mr. S. said, he would not detain the committee by going into an arithmetical calculation, to show, that according to the present prospect of things, it would by no means be either vain or imaginary to suppose, that the revenue of this country must, in the course of this and the succeeding year, be greatly diminished, and if the gentleman's resolution should pass, and Congress should, without regard to economy, continue to make large and unlimited appropriations for objects of Internal Improvement, direct taxation must be the inevitable result; and next to that, universal bankruptcy must follow. Sir, I consider our country on the verge of bankruptcy. A large national debt to the amount of \$50,000,000 hanging over us—a tariff on one hand, and universal pecuniary embarrassment on the other—little else but final destruction awaits us. He contended, that after meeting the ordinary and extraordinary expenses of Government, the national debt should, as speedily as possible, be diminished: then, if a surplus fund should remain, it would be time enough for the gentleman to urge his resolution. He admitted that Congress had repeatedly decided, that they had the power to carry on Internal Improvements; but this should form no reason why this Legislature should swerve from the line of duty. I propose, sir, for a few moments, to go into an examination of the powers granted to Congress. Mr. S. said, he presumed it would be admitted by all hands, that the Federal Government was one of delegated and limited powers. Its powers were sufficiently and distinctly marked out, and the decision of this momentous question will not meet with any difficulties on the score of unlimited powers granted to the Congress of the United States, because those powers were sufficiently defined; but they would be found to arise from a difference of opinion as to the proper meaning to be attached to that clause in the Constitution, which authorizes Congress to provide for the general welfare, &c. The first part of the 8th section of article 2d, is in the following words: "The Congress shall have power—1. To lay and collect taxes, duties, imposts, and excises; to pay the debts, and provide for the common defence and general welfare of the United States; but all duties, imposts, and excises, shall be uniform throughout the U. States." Here is a general substantive power given, to provide for the common defence and general welfare; and the great question is, how is this general welfare to be provided for? Sir, in my mind, there

is no difficulty in defining the means it to be done by—the means immediately afterwards pointed out. The general grant of power to provide for the common defence and general welfare, is particularized in the following manner:

[Mr. S. here read the section to which he referred.]

All these powers expressly given, are for the purpose of providing for the common defence and welfare. They are general in their operations and bearings—they do not apply to one part and not to another. Sir, gentlemen tell us, the partial appropriation of a few thousand dollars here, and a few thousand there, is providing for the common defence and general welfare: but this is not the case; for to provide for the common defence and general welfare, must be to provide for all, and not for a part.

Mr. S. said, he would lay it down to be one of the surest maxims in the world, whereby to judge of the true meaning of a dubious statute, first to take into consideration the necessity there was for the enactment of the law, and 2d, the meaning there was attached to it immediately after its passage: for, sir, you may depend on it, the foundation of laws, human and divine, is upon the presumption that something has taken place that ought not, and that the enactment of the contemplated law will prevent the recurrence of the evil. Now, sir, what was the situation of the Colonies, before the adoption of the Federal Constitution? In prosecuting the war of Independence with G. Britain, we had become in debt; the Colonial Congress had no power to pay the same, without the consent of the States; and, in fact, the Colonial Government had scarcely any but limited and confined powers, almost all the acts to be performed by that body, requiring a ratification by at least two-thirds of the States. In consequence of which many and innumerable evils and difficulties arose—the public credit sunk—destruction and ruin threatened us—and in this state of things was the Federal Government established, with rather more extended powers than the other, for, although its powers are definitely marked out, yet it was clothed with a power of enacting all laws competent for preserving the general welfare, without requiring the sanction of the States. Thus it was supposed that by the formation of the present Federal Government, and the powers given to it, that a similar train of difficulties with those under the old Congress, would never again be experienced. Now, sir, I ask of what materials was this Government formed? Was it not formed of a delegation of power from the State sovereignties?—and from the power thus delegated has a Constitution been formed, with the powers of the General Government definitely marked out—thus far shalt thou go and no farther. And I lay it down as a truth incontestable, that the very moment you surrender to the General Government this power, you surrender to it one of the most powerful engines of tyranny and oppression. Sir, it is not my purpose to impeach the motives of any man; it is not my purpose to indulge in a train of abusive epithets against those in power. But I cannot help remarking, that I think a sufficient lesson has been taught us during the last two years, to warn us against the pernicious effects of an assumption of power, by the General Government, wholly unknown to the Constitution. What have we seen? Have we, I ask you, sir, seen the General Government, in the exercise of this assumed power, impartially distributing its patronage where the exigencies of the country demanded? No, sir, I fear when gentlemen portray its history, they will find quite the reverse. They will rather find that its object has been to dispense its patronage in those sections of country where the people were not so far gone as to be entirely despaired of—not so far despaired of but what hopes were entertained that the patronage of the Government might coax them into good humor. What, sir, is the fact in regard to North-Carolina? Has it escaped the recollection of gentlemen, how the offer made us last year, by the Secretary of War, was urged on us, under the mask of a pretended desire to improve the internal condition of the State by the establishment of Railroads? Why, sir, I would ask, is there not the same necessity now existing for Railroads? And why do we not hear from the loving Secretary of War? Judge ye. But, sir, my purpose is not to indulge in remarks of this nature. I contend, sir, every power not expressly given to the Federal Government, is retained to the States. This is the language of the Constitution; and where, I ask gentlemen, is the power they claim? Where is it expressly given? I would ask gentlemen to reflect, and look back to the construction put on this instrument immediately after its adoption. Do we hear of any of the framers of this instrument contending for this power? Do we hear of it during the Administration of Gen. Washington? Do we hear of it during the administration of the elder Adams? And, sir, down through the successive administrations of Jefferson, Madison and Monroe, it was claimed by none. We find all three of them denying Congress this power. Whilst, sir, I would at all times yield to the General Government a power sufficiently extensive to answer all the purposes for which it was created, I would, with equal pertinacity, cautiously abstain from conceding a power which saps the very foundation of the State Governments. For what, under Heaven, was your State Government established? Was it for the mere purpose of being silent lookers on? No, sir, it was for the purpose of watching the immediate rights of the people, by preventing the General Government from usurping powers not

delegated to them. The duties of the General Government are to watch over the state of the Union, protect us from foreign invasion, regulate commerce, &c. whilst the duty of the State Governments are to regulate the internal police of the State, and to improve the moral and physical condition thereof. These latter objects are rights exclusively belonging to the State Governments, and, sir, when we come to portray the powers of the General Government, what a wonderful contrast do we find between them and the State Governments? Whilst the former can do nothing but what is expressly delegated, the latter can do every thing not forbidden—and why is this contrast? The General Government being formed of a delegation of power from the State sovereignties, they have, in the formation of it, delineated its powers—it is one of compromise, and all the powers not given expressly, they have retained for their own preservation. Internal Improvement, sir, is an object of primary importance; but, I ask, is it necessary for its completion, that the General Government should have control over it? Is it, I ask, necessary to apply to the General Government for our proportion of the funds to carry on the work? I think not. My opinion is, sir, that the funds of the State, combined with individual enterprise, will, at all times be found sufficient to effect any object of Internal Improvement which N. Carolina should presume to engage in.

Mr. Chairman, whilst I am led to admire the wonderful ingenuity with which gentlemen have supported their doctrine, I must confess I am horribly shocked at one principle they have advanced. It is this—inasmuch as Congress have decided they have the right to appropriate monies to objects of Internal Improvement, there is no necessity of arguing the constitutional question; but let us ask and receive. Sir, I ask gentlemen to pause, and suddenly pause: reflect. I beseech them on the enormity of this doctrine. Shall this House—nay, shall this Legislature, and finally the People of North-Carolina—give sanction to this monstrous doctrine? Shall we, sir, acting here under the most solemn oath that we can possibly take, sanction a principle so monstrous? Shall this Legislature, because Congress have assumed a power wholly unknown to the Constitution, give up the contest, and make our Constitution one of precedent? God forbid! Never, Mr. Chairman, so long as I have the honor of a seat on this floor, will I concede this power. And, sir, I this day, on behalf of those I represent, enter my solemn protest against the power of Congress either to apply money to objects of Internal Improvement, or to raise a fund for that purpose, to be placed under the control of the State Legislatures. Sir, for those with whom I differ in opinion, I have the utmost respect. Gentlemen may pass the resolution—they may proclaim to the regions round about, that the General Government have this power—nay, sir, they may hoist it on liberty poles, and carry it triumphantly through the land—but I pray God it may not prove a triumph over the Liberty of this Country!

MIDWAY ACADEMY, FRANKLIN COUNTY, N. C.

The Exercises of this Institution will be again renewed on the first Monday in January next, under the immediate instruction of the Subscriber, assisted by his son DANIEL S. HILL. The course of Studies will be conformable to the plan of Education as adopted at our University. As the Subscriber is preparing his buildings for a permanent establishment, and will devote himself entirely to the duties of his School, parents may rest assured that every exertion shall be made to advance his pupils both in moral and intellectual improvement. Board will be \$40, and tuition \$10 per session, payable in advance.

Midway is situated two miles below the main Stage Road, ten miles from Louisburg, sixteen from Warrenton & four from the Shocco Springs. For health, it is exceeded by no situation in the State: for 4 years, there were from forty to sixty Students, and not a case of fever occurred.—Should, however, medical aid be required, the attention of Dr. John Brodie, whose skill as a Physician is inferior to none in the State, will be at hand, as he resides within two miles of Midway. The Students will be barred from exposure to extravagance and dissipation, as there is not a store or gill-shop within five miles of the Academy.

In the government of Midway Academy, the Principal will pursue that course which he would wish his own children. He will advise and admonish; where these fail, the rod will be resorted to, but with parental prudence. When any pupil shall be deemed incorrigible in disorderly conduct, or habitually inattentive to his studies, his parent or guardian will be immediately informed thereof.

CHARLES A. HILL, A. M. 19-cm8t

Wake Forest School.

HEREBY inform my friends, and others desirous of educating their children and wards, that the School near my residence will recommence on the first Monday of the ensuing year. Both sexes will be instructed in the various branches usually taught at Academies, by an experienced and competent teacher. Board can be procured in respectable families at a reasonable price; and the terms of tuition will be moderate. Wake Forest has always been considered as healthy as any place this side the mountains.

Those who may come from abroad, and be treated with kindness and attention; and every endeavor will be made to advance them in their studies. CALVIN JONES, 28 St. Dec. 1, 1828.

State of North-Carolina, WASHINGTON COUNTY.

In Equity—Fall Term, A. D. 1828. Erley Jones vs. William Jones, Thomas Jones, Jane Jones, The said Erley Jones, Nancy his wife, Charles Jones, by Lew Fagan, her Guardian, and Erley Jones, by Wm. Fagan, Sen. his Guardian. Appearing to the satisfaction of the court, that Thomas Jones resides without the limits of the State; It is ordered that publication be made three months in the Raleigh Register, that he do appear and answer at the next Superior Court at Equity to be held for the County of Washington on the second Monday in May next. Judgment pro confesso will be entered against him.