

DEBATE

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

Mr. Wellborn said, he perfectly agreed with the honorable Speaker as to the unconstitutionality of the course adopted by Congress of making Roads and Canals in the several States, and it was his intention in bringing forward his Resolution for obtaining a portion of the surplus funds in the Treasury, that in future the States should expend the money themselves as they thought proper.

Mr. Shober observed, that some days ago, when this subject was under consideration, he had said, that he would, hereafter, offer an amendment to the proposition under consideration. He agreed with the gentleman from Greene as to the unconstitutionality of the course adopted by Congress in relation to Internal Improvements; but as it appears that there is a majority in that body disposed to follow that course, and they have acted in this way for several years, it becomes a question whether some mode cannot be devised for obtaining a portion of the money thus annually expended, without coming in contact with the provisions of the Constitution.

That, in the opinion of this Legislature Congress have a right to create a fund for Internal Improvements and Education, to be apportioned among the States, according to their federal representation, and to be applied to such particular objects as each State may specify.

Mr. Shober believed Congress had a right to create a fund for the purposes mentioned in his amendment, and that each State might rightfully accept of its portion of it, and apply it to the objects proposed. The words to "provide for the general welfare," must mean something. He thought Congress had a right to appropriate to the States, in equal proportions, any surplus money that might be in the Treasury, for objects of Internal Improvement or Education, and leave it to the several State Legislatures to apply it in such manner as they may think proper.

What, Mr. S. asked, had been done by the General Government to promote the general welfare of this State? He knew of very little. This proposition provides for a more equal division of the bounty of Government in future, and will go far to silence the clamour on this head.

In conclusion, Mr. S. said, no man was more anxious than he to comply with the provisions of the Constitution. He had taken an oath to support it, and he would comply with it according to his best judgment.

Mr. Wellborn said, it was immaterial to him what mode was adopted, provided his object of obtaining a due portion of the surplus money in the Treasury for the use of the State, was obtained.

Mr. Meares did not intend to have said a word on this subject; but finding no one had expressed his views upon it, he would trouble the committee with a few remarks only.

The original question submitted by the gentleman from Wilkes, proposed that we should instruct our Senators and request our Representatives in Congress to obtain for this State a portion of the surplus funds in the Treasury of the United States.

The gentleman from Edgecombe had moved to amend the resolution by a substitute, denying to Congress the power of appropriating money for Internal Improvements, &c.

The gentleman from Stokes proposes to amend the amendment by striking out the whole of it, except the word "Resolved," and insert in its place, the proposition moved by him. He was in favor of this motion.

If, said Mr. M. the question was now to be decided, whether Congress has the power to make Internal Improvements in the several States, he would vote against it. But he considered the present situation of things to be quite different. The right of Congress to cut Canals and make Roads has been settled by the only power that ever will settle it. He knew that in most cases of differences of opinion on important subjects, decisions were referred to the Judiciary. But the power in question must depend on the construction of Congress alone. It is a decision which will never be contested by any other tribunal. For, if he were of opinion that Congress had not the power to cut a road through his land, yet, as he knew it would be beneficial, and would improve the value of his property, he would receive the benefit. And he presumed, for the same reason, no State would ever object to a Road or Canal passing through it.

How, then, is this matter ever to be settled? It must depend on the construction which Congress gives to it. This construction does not rest on a single decision. The question has been discussed and settled over and over again; and though the decision was contrary to his opinion, yet the decision being made by the proper tribunal, he was clearly for submitting to it, and for coming in for his share of the benefits which may result from it.

But, said Mr. M. the proposition of the gentleman from Stokes does not at all conflict with the Constitution. It resolves that Congress has the right to create a fund for Internal Improvement and Education, &c. This does not interfere with the opinion that each of the States is sovereign and independent; and if it is asked where Congress obtains the power to make this appropriation, he should answer, from the power "to collect taxes, &c. to pay the debts, and provide for the common defence and general welfare;" for no one can say, that to promote Education and Internal Improvements, is not "to provide for the general welfare."

This, then, is a proper grant of Congress, not for the purpose of making Canals or Roads, as they may think proper, but to be appropriated for such purposes as the Sovereign States may recommend.

When the great State of New-York, with the great Clinton at its head, solicited aid from Congress to their great Canal Scheme, Congress refused to grant it. New-York undertook the work herself, and completed it, and now she is opposed to the power since exercised by the General Government in promoting works of this kind.

The aid given by Congress to Ohio, Alabama and other States, in making Roads and Canals, has fixed the principle beyond dispute, and other States will continue to avail themselves of the advantages thus held out to them.

Believing the question decided by Congress, he, for one, would be willing, as already stated, to submit, and come in for a division of the spoil.

Mr. Brown observed, that he had the honor the other day to submit a few remarks on the constitutional question involved in this debate. He should therefore now confine his observations to what had fallen from the gentleman from New-Hanover.

He understood that gentleman to state, that the question in relation to the power of Congress to make Internal Improvements in the several States, had been deliberately settled by that body, and that it would probably never be again revived. He admitted, that when a question was settled by the highest judicial authority, all inferior Courts were bound to respect that decision. But the matter was far different in respect to legislative decisions. That the decision of one Legislature should be binding on a succeeding one, would be a strange doctrine in this country, where every new session of a Legislature is perfectly independent, and at liberty to pass such laws as may be deemed for the public interest.

He believed that the period would soon arrive when the foreign commerce of the United States would greatly diminish under the onerous provisions of the tariff laws, which would lessen in a corresponding degree the revenue derived from that source. The alternatives would then present themselves to the people, whether they would submit to a system of direct taxation to enable the General Government to prosecute a system of Internal Improvement, which, without some amendment to the Constitution, securing an equal participation in the expenditure of the public money among the States, would always be partial, or whether they would abandon it. He did not doubt but that the latter alternative would be preferred by the people of the United States.

But it is said, that the proposition now before the Committee does not touch the constitutional question. But whence, he asked, did Congress derive the power to create a fund for Internal Improvements and Education? We are told, indeed, that the authority is claimed under the authority in the Constitution to "provide for the general welfare." But if Congress claimed this power from this clause, what power might they not claim under it? They might even undertake to change our rules of descent.

Mr. B. thought gentlemen ought to shew clearly that Congress has the power to create the fund of which they propose to claim a part, before they passed a Resolution on the subject.

Suppose Congress were to create the contemplated fund, and North-Carolina were to receive a portion of it, would the Legislature of the State be bound to appropriate it to the purposes of Internal Improvement or Education? Where would the responsibility rest for the proper expenditure of the money? He thought there was some danger of the power being abused.

Mr. B. concluded by suggesting that great abuses might be practised in the exercise of this power.

After a few remarks from Mr. Mebane, Mr. R. D. Spaight, Mr. Meares and Mr. Shober, the question was taken on adopting the amendment offered by Mr. Shober, and carried.

It was then moved to strike out all the original Proposition except the word "Resolved," which was also carried.

The Committee then rose, and the Resolution of Mr. Shober was reported to the Senate. The question on concurring with the Report of the Committee of the whole was taken by Yeas and Nays, as follows:

Yeas.—Messrs. Alexander, Bailey, Beasley, Burch, Burton, Davenport, Davidson, Deberry, Franklin, Irwell, Harden, Love, McDowell, McFadden, McFarland, McNeill, Marshall, Meares, Mebane, Pugh, Ramsay, Reichardt, Royal, Smith

of Davidson, Smith of Perdue, Sierrard, Shober, Walton and Webb.—29.

Nays.—Messrs. Askew of Bertie, Bell, Boddie, Brodnax, Brown, Davis, Franklin of Surry, Gray, Harrell, Hinton, Hunt, Joiner, Leonard, McDowell, McDearmid, Matthews, Miller, Parker, Middleton, Ruffin, Salway, Scott, Shuford, Spaight, Williams of Beaufort, Williams of Martin, and Wilson.—27.

GENERAL ASSEMBLY.

SENATE.

Monday, Dec. 29.

Mr. Love, from the committee of claims, made unfavorable reports on the petitions of David Masburn and Wm. T. Priestwood, which were concurred in.

Mr. Ward, from the committee of Finances reported a bill to ratify and confirm the sale of the land and negroes, conveyed to the Governor for the use of the State, as made by Jos. Pickett, James F. Taylor, and Wm. Roberts, Commissioners, on behalf of the State; also, a resolution, in favor of Wm. Roberts, Jos. Pickett, and James F. Taylor, which passed their first reading.

The following bills were presented, viz: By Mr. Mebane, a bill to amend the laws respecting the inspection of Flour in the town of Fayetteville. By Mr. Pugh, a bill to incorporate a Company, entitled, the Mattamuskeet Lake Canal Company, and for other purposes. By Mr. Williams of Beaufort, a bill to incorporate a Light Infantry Company, in the town of Washington.

By Mr. Harden, a bill to appoint Commissioners on the road from the Watuga in Ashe county, to the head of John's river, in Burke county. By Mr. Meares, a bill to authorize the payment of the purchase money on entries of land made in 1826, in all cases, where surveys have been made and returned to the office of the Secretary of State. By Mr. Mebane, a bill to provide for the representation of the State, in meetings of the Stockholders of the Banks of this State. The last bill was laid on the table, and the others passed their first reading.

Mr. Pugh presented the petition of Christopher O'Neale, of Hyde, for a pension, and Mr. Miller, a resolution in favor of Bryn and Henry Korngay. Referred.

The bill for the better regulation of Fisheries, on Salmon Creek, in Bertie, and amendatory of an act passed in 1822, concerning the same—the bill to incorporate a Zoroable Chapter, No. 11, in Edenton, and the bill to establish a separate election in the county of Person, were read the third time and ordered to be enrolled.

A message from the House of Commons, with the following bills, which passed their first reading: A bill, to authorize the Wardens of the Poor, in Chowan and Hertford, to purchase land and erect buildings for the reception of the poor thereof, and for other purposes—A bill, to amend an act passed in 1786, to lay off the town of Sireeta, on the North-east branch of the Cape Fear, and appointing Commissioners for the same.

The engrossed bill, amendatory of an act passed in 1826, for the better regulation of the County Courts of Martin, was indefinitely postponed, on motion of Mr. Williams.

The bill, requiring Registers and Clerks of the Superior and County Courts, and Clerks and Masters in Equity, to keep their Offices at their respective Court-houses, was indefinitely postponed, on motion of Mr. Meares.

The bill, in aid of the fund for Internal Improvement, was indefinitely postponed, on motion of Mr. Joiner, by a vote of 57 to 17.

The bill, concerning the payment of Pilots, in certain cases; and the bill, explanatory of an act relating to bonds, given by Sheriffs, and Clerks of the Superior and County Courts, passed in 1810, passed their third reading and was ordered to be engrossed.

The bill to alter the time of holding the Superior Courts of Mecklenburg and Cabarrus—the resolution, in favor of Thomas Phillips—the bill to repeal an act passed in 1827, prescribing the manner in which staves, heading and angles shall hereafter be counted, so far as respects Perquimans and Hertford counties—and the bill for the better regulation of the town of Windsor, were read the third time and ordered to be enrolled.

Mr. Crook submitted the following resolutions, which were adopted:—

Resolved, That the committee on the Judiciary, be instructed to enquire into the expediency of so amending the law, as to render any slave who may attempt to poison any white person, guilty of felony without benefit of clergy.

Resolved, That the same committee be directed to enquire into the expediency of so amending the law, as to render any legacy or distributive share, belonging to any person not residing in the State, subject to attachment and execution, in the hands of the Executor or Administrator.

Tuesday Dec. 30.

Mr. Shober, from the committee of Propositions and Grievances, reported a resolution in favor of William Griffin and his securities; also, a bill, authorizing the County Court of Stokes to interfere in behalf of Leonard Aust, if they deem it expedient—which passed three readings and was ordered to be engrossed.

Mr. S. reported unfavorably to the petition of Wyatt Moye. Concurred in.

Mr. Williams of Beaufort, from the committee on the Militia Laws and Public Arms, reported a bill, which passed its first reading, to provide for the protection of the Arsenal and safe keeping of Public Arms and other purposes.

Mr. Meares, from the Judiciary Committee, reported several bills, which were made the order of the day for to-morrow.

Mr. Meares, from the committee to whom was referred a resolution relative to legacies and distributive shares belonging to any one not residing in the State, begged to be discharged from its further consideration.

Mr. M. also reported a bill, more ef-

fectually to punish persons who attempt to poison others, which passed its first reading.

The resignation of J. J. Carrington, Brigadier-General, was read and accepted.

Mr. Mebane, from the committee of Internal Improvement, reported unfavorably to the petition of sundry citizens of Ashe and Wilkes. Concurred in.

The following bills were presented, viz:—By Mr. McDowell, a bill to provide for the sale of lands acquired by treaty from the Cherokee Indians, which have been surveyed & remain unsold. By Mr. Spaight, a bill to regulate the finances of Craven county. By Mr. Crook, a bill to provide for the gradual diminution of the Capital of the Banks of the State by the purchase and extinguishment of shares—which bills were read the first time.

The bill to compel the County Court of Lenoir to appoint a committee of Finance, the bill, to incorporate a Light Infantry Company, in the town of Washington, and the bill to amend the practice in Courts of Equity, passed their third reading and was ordered to be engrossed.

The bill to alter and amend an act passed in 1771, directing what fences shall be sufficient &c. & the bill limiting the time which Executors to last Wills and Testaments shall be permitted to qualify, were indefinitely postponed.

The Senate entered upon the order of the day, being the bill to lay out and improve a road, from Fayetteville to Wilkesborough. Mr. McDermid, moved to postpone it indefinitely, which was negatived 33 to 21. An amendment was proposed and carried, to strike out Fayetteville and insert Nicholas Hall's in Moore, and thus amended, the bill passed its second reading.

Mr. Alexander, from the select committee, to whom was referred that part of the Governor's Message, which related to certain resolutions and Reports of the Legislatures of Vermont, Ohio, Georgia and South Carolina, respecting the power of the General Government to appropriate funds for the purpose of aiding the Colony of free persons of color, made a detailed report, which concludes with the following resolution:—

Resolved, by the Senate and House of Commons, of the State of North-Carolina, that the Congress of the United States have no Constitutional power to appropriate funds to aid the American Colonization Society, or for any other purposes, for which that Society was established, which they may hereafter contemplate; and that this Legislature, as the organ of the will of the people of this State, do solemnly protest against the exercise or any attempt to exercise such constitutional powers by the Congress of the United States.

Another branch of the resolution provides for its transmission to our Senators and Representatives in Congress, and the Governor of each State in the Union.

The same being read, on motion of Mr. Shober, they were laid on the table.

Wednesday, Dec. 31.

Mr. Shober, from the committee of propositions and grievances, reported unfavorably on the petition of Christopher O'Neale, of Hyde. Concurred in.

Mr. Boddie introduced a resolution in favor of Archibald Lamon, which was referred.

Mr. Gray presented a bill to establish Sandy Creek Academy, in Randolph, and to incorporate the Trustees thereof.—Read three times and ordered to be engrossed.

Mr. Hinton, a bill directing in what manner the acts of Congress shall be distributed in future.—Read the first time.

Mr. Love, from the committee of claims, reported without amendment, the resolution in favor of John Barnett, which passed its 3d reading and was ordered to be engrossed.

Mr. L. also, from the same committee, to whom was referred an enquiry, as to the propriety of continuing the appropriation for the education of Miss Udney M. Blakely, reported that it is inexpedient to discontinue it at this time, which was concurred in 35 to 24.

Mr. Davidson, from the committee on public roads, to whom was referred an enquiry as to the expediency of amending the road laws, so far as regards the manner in which roads are worked on, reported that it is inexpedient to make any alteration in them.

Mr. Love, from the committee of claims, reported unfavorably on the petition of Bryan and Henry Korngay of Duplin.—Mr. Miller moved to reverse the Report, and Mr. Askew of Bertie, moved that a provision in favor of Lewis Bond of Bertie, be added, when on motion of Mr. Wellborn, the resolution and amendments were indefinitely postponed.

The bill to incorporate a company, entitled the Mattamuskeet Lake Canal Company and for other purposes—the bill to regulate the finances of Craven County—the resolution in favor of Edwin Griffin and his Securities, and the resolution, in favor of William Roberts, Jos. Pickett's and J. F. Taylor's heirs, Commissioners on the part of the State, to sell the late Treasurer's property, were read the third time and ordered to be engrossed.

The Senate went into committee of the whole, Mr. Mebane in chair, on the bill to provide for the final settlement of Executors and Administrators. After some time, the committee rose and reported the bill, with sundry amendments, which were agreed to, and it was read the third time and ordered to be engrossed.

Thursday, Jan. 1.

Mr. Crook presented a bill, more effectually to suppress the practice of Usury. Mr. Walton, a bill, to appoint Commissioners in the county of Chowan, for the purposes mentioned in the bill; also, a bill, to authorize and direct the Supreme Court, to be holden in the places therein

mentioned—which bills passed their first reading.

Mr. Love presented a resolution in favor of James Bryson, jun. which passed three readings, and was ordered to be engrossed.

A message was received from the House of Commons, asking the concurrence of the Senate, to a bill supplementary to the several acts now in force for the relief of Insolvent Debtors, and further to mitigate the severity of executions—to a bill, to amend and explain an act, passed in 1784, for clearing out and improving the navigation of Trent river in Jones—to a bill, to compel the Clerks of the County and Superior Courts, and the Register of Chatham county, to keep their offices at the Court-house—to a bill to incorporate the Grand Royal Arch Chapter of North-Carolina—to a bill, to prevent the hauling of seines in Tranter's Creek—which bills were read the first time.

The bill to amend the laws regulating the inspection of Flour, in the town of Fayetteville; and the bill to amend an act passed in 1784, concerning Inspectors and unmerchable commodities, were read the third time and ordered to be engrossed.

Mr. Meares, from the Judiciary committee, to whom was referred a resolution, relative to the expediency of amending the Criminal Law, reported a bill, to settle and declare, what buildings and out-houses are and shall be deemed to be parcel of the Dwelling House. Read the first time.

The bill to amend the Inspection Laws of this State, passed in 1784 and 1796, was indefinitely postponed, on motion of Mr. Burns.

The bill to provide for the construction of a road from the Tennessee Line, over the Walnut Mountain, to the head of Little Ivy, in Buncombe, was rejected 24 votes to 23.

Friday, Jan. 2.

A message was received from the House of Commons, asking the concurrence of the Senate, to a bill to amend the acts respecting land sold for taxes, passed in 1819—to a bill to incorporate the Fayetteville Manufacturing Company—which bills passed their first reading.

Mr. Love, from the committee of Claims, reported a resolution in favor of Archibald Lamon, of Nash. Read the first time.

Mr. Meares, from the Judiciary committee, begged to be discharged from the consideration of the resolution, enquiring into the expediency of taxing lands in certain cases.

The bill, to prevent the hauling of seines, in Tranter's Creek, and the bill to amend the several acts of Assembly, respecting the Wardens of the Poor, were indefinitely postponed.

The bill to appoint Commissioners in the county of Chowan, for the purposes therein mentioned—the bill supplementary to the act, erecting the county of Macon—the bill more effectually to punish persons who attempt to poison others—the bill to provide for the protection of the Arsenal, and the safe keeping of the public arms, and for other purposes, and the resolution in favor of Benjamin Brittain and Isham Matthews, were read the third time and ordered to be engrossed.

The following bills have passed into laws, viz:—A bill to compel the Clerks of the County and Superior Courts of Chatham, and the Register of the same, to keep their offices at Pittsborough—A bill to amend and explain an act, passed in 1784, for the clearing out and improving the navigation of Trent river, in Jones county—A bill, to incorporate the Grand Royal Arch Chapter of North-Carolina—A bill, to amend the law, with respect to the collection of debts, from the Estates of deceased persons, and the law in relation to the levying of executions, issued by Justices of the Peace.

State of North-Carolina, Pitt County.

Court of Pleas and Quarter Sessions, November Term, 1828.

Benashy A. Atkinson, Original Attachment, vs. Amos A. Atkinson, Levied on Negro Captives.

Amos A. Atkinson, 25th August, 1822.

IT appearing to the satisfaction of the Court, that Amos A. Atkinson, the defendant in this case is not an inhabitant of this State: It is ordered that publication be made in the Raleigh Register, for six weeks, that unless the said Amos A. Atkinson appear before the Justices of the Court of Pleas and Quarter Sessions at the next Court to be held for the County of Pitt, at the Court-house in Greenville, on the first Monday in February next, reply to the property and plead to issue, final judgment will be taken against him, and the property condemned to satisfy the plaintiff's demand. Witness James Sheppard, Clerk of our said Court at Greenville, the first Monday in November, in the 53d year of our independence, A. D. 1828.

JAMES SHEPPARD, CLK.

State of North-Carolina, Halifax County.

In Equity—Fall Term, 1828.

Anthony A. Wylie, Complainant, vs. Edwin Whitehead, Wm. T. Williams, Saml. W. Tunstall & Jno. D. Amis, Defendants.

IT appearing to the satisfaction of the Court, that Samuel W. Tunstall and Wm. T. Williams, two of the Defendants in this case, are non-residents: It is ordered, that publication be made in the Raleigh Register, for three months, made in the Raleigh Register, for the second day of the next term, and plead answer or demur to the Complainant's bill, it will be taken pro confesso, and set for hearing ex parte, as to them.

Witness, Edmund B. Freeman, Clerk & Master of the Court of Equity, for the county aforesaid, at office, the 4th Monday after the 2d day of September, 1828.

EDM. B. FREEMAN, c. k. c.

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