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LEGISLATURE OF NORTH-CAROLINA

DEBATE

On the Motion of Mr. Wilson to proceed by a joint ballot of both houses, to choose electors of president and vice president.

HOUSE OF COMMONS—THURSDAY, NOV. 19.

ELECTORAL LAW.

Mr. *D. Cameron* called up the resolution submitted by him on Tuesday, to wit:

"*Resolved*, That it is expedient to repeal the existing law prescribing the mode of choosing electors to vote for a president and vice-president of the United States—and to provide by law for choosing such electors by laying out the state into such number of districts, as the state is entitled to electors under the last census and apportionment of representatives by congress."

Mr. *Wilson* moved to postpone the resolution for the purpose of taking up the one on the same subject offered by himself for proceeding to morrow morning to choose electors by joint ballot.

The latter motion was decided to be out of order.

The question on taking up Mr. Cameron's motion was then decided by yeas and nays, and lost. Yeas 64, nays 65.

The house then took up Mr. Wilson's motion, in the following words:

"*Resolved*, by the senate and house of commons of North Carolina, that they proceed on to-morrow morning, at the meeting of the two houses, to appoint by joint ballot, fifteen electors to vote for president and vice-president of the United States, agreeable to the provisions of the act of assembly passed in 1811".

Mr. *D. Cameron* then moved to amend the resolution, by striking out the whole thereof except the word "resolved," for the purpose of inserting the words, "That it is expedient to repeal the existing law for electing electors, by a joint ballot of both houses of the General Assembly to vote for president and vice president of the United States, and to provide by law for laying out the state into districts to choose five electors; such electors for the ensuing election to be elected by the members of this general assembly, representing the counties composing such districts; and hereafter by the freemen of this state in their respective districts."

A question was hereupon raised by Mr. *Stone*, whether it was in order to offer a resolution, the same in substance, as he contended, with one which the house had just refused to take up?

Messrs. *Steele*, *W. W. Jones* and *Cameron* contended that the proposed amendment was strictly in order. The object of it was to have a fair expression of the sense of the House upon the merits of the question. To have such an expression upon any proposition he might make, they contended, was a right which every member possessed: and on the present question, it could not otherwise be obtained than by something similar to the motion then offered. It could not be obtained by a vote on the resolution offered by Mr. Wilson: neither, in the consideration of that resolution, would it be in order to take into view the whole subject connected with the electoral law of last session.

The Speaker decided Mr. Cameron's motion to be out of order. From which decision an appeal was made to the house when it was confirmed, yeas 75, nays 54.

Mr. Cameron's motion was therefore not received. The gentleman then moved to postpone the consideration of Mr. Wilson's resolution until Monday next.

This motion he declared, did not proceed from any desire to prevent a vote for electors in some shape or other, but from a wish to afford time for every member of the house to reflect upon a subject, which was certainly of great magnitude.—Perhaps all who were present felt determined to proceed, in some manner, to the choice of electors; yet there were but few who would not prefer one mode to another. None could wish the state to remain unrepresented; but for the purpose of allowing time to all to make up a calm and deliberate opinion, he wished the motion for postponement to prevail. Mr. C. thought it in order, on this motion, to go into the merits of the question, so far as to shew the propriety of adopting some other mode of choosing electors than the one proposed in the resolution before the house. He would state a case which would prove this. When the consideration of a resolution, substituting another mode of choice for the one proposed in the resolution of the gentleman from Stokes, (Mr. Wilson) was called for, the house refused to hear it. Now was a member to be precluded from expressing his sentiments upon any proposition he might bring forward? Certainly not. And yet, if it was not in order to go into the merits of the question upon the motion for postponement, such would be the effect of the vote the house had given. Mr. Cameron was proceeding, when

Mr. *Stone* enquired of the chair, whether on a simple question of postponement it were in order to go into the general merits of a proposition? If so, debate might be rendered *infinite*.

Mr Speaker gave it as the opinion of the chair, that debate on the merits would not be in order.

Mr. *Steele* (of Salisbury) then enquired *when* such debate *would* be in order? If a member could not, at some period, express his sentiments on any motion brought forward, the rules of the house were very defective. If the sacred right of freedom of speech, of fair debate, so essential to the preservation of liberty, could be evaded or trampled under foot—if they could not be exercised at all times, the rules of the house required immediate amendment. Every citizen in the community had an undoubted right to be heard on the floor of the house by his representative. If the merits of the question could not be debated now he would be thankful to be informed by the chair when they could be gone into?

The Speaker observed, that debate would be in order on the question of adopting the resolution.

Mr *Steele* said if the general question could then be discussed he was satisfied.

Mr. *Stone* would be sorry, he observed that any question of order should be prematurely decided, before it actually occurred. The present was only a simple question of postponement, and not a general question on the resolution before the house.

The question on postponement was now taken, and *lost* without division.

Mr. *Stone*, being seconded, called for the yeas and nays on the main question.

Mr. *Steele* then moved to amend the resolution, by striking out the whole thereof except the word resolved, and inserting, "That the present general assembly view the act of the last general assembly, vesting the power of appointing the electors of president and vice president of the United States in the present legislature, unconstitutional, and an infringement upon the elective franchise of the free people of the state of N. Carolina."

Mr. *Murfree* called for a division of the question on striking out and inserting; which was agreed to.

Some conversation then took place as to the propriety of debating the general question, on the motion to strike out.

The Chair decided and the general question was open for debate.

Mr. STEELE. On the present motion, Mr. Speaker, I should consider myself as perfectly in order in expressing my opinions upon the whole question before the house. So much, however, has been said, on the various forms in which the electoral law of last session has been discussed relative to the impropriety and inexpediency of the measure, that I shall confine my remarks strictly to the most important aspect in which it is to be viewed—its unconstitutionality. This I trust I shall be able to illustrate by the most irresistible conclusions and convincing testimony. I shall undertake to make it appear that the act passed by the last Assembly, not only violated the constitution, but was hostile to the very spirit and genius of that freedom which the sacred instrument was intended to secure.

In forming an opinion on all constitutional questions, it is necessary that a recurrence be had to first principles. One of these I hold to be, that the freemen of the United States have a right to enjoy all the priviliges they can conveniently exercise, except so far as those rights are surrenderend or modified by the adoption of the federal constitution. This principle is clear; and it will not be contended, that the choice of electors, immediately by the people, was a privilege which they could not conveniently exercise.

I may have occasion, Mr. Speaker, in the course of my remarks, to refer to the state constitutions; but I shall only do it with the view of illustrating and establishing first principles. The constitution of the United States is the only authority which is conclusively binding on the subject.

At all times has been considered essential to the preservation of those institutions which were designed to secure the welfare and happiness of society, that a constant eye be had to the views with which they were established. So in the bill of rights, it is declared, "that a frequent recurrence to fundamental principles is necessary, in order to secure the blessings of liberty." Every one will admit that the section of the Bill of Rights, which contains this declaration, directly referred to cases in which the legislature might transcend the limits of those powers with which they were vested. The other departments of government are so restricted in their operations, and so dependant upon the legislative branch, that they have not the means in their own hands, if at any time they should possess the disposition to render themselves formidable to public liberty.

Therefore, with regard to them, a frequent recurrence to fundamental principles is not absolutely necessary. Not so with the legislature. They are too apt to indentify themselves with the people, and to suppose that they have a right to do any thing the people can do. Under the influence of this impression, it is, that they are sometimes induced to exercise powers never intended to be granted to them, which never came within the contemplation of the people and which neither they nor the people would tolerate in any other department. It was doubtless with a view to encroachments of this nature, that the caution in the Bill of Rights. When the legislature encroaches upon the privileges which the constitution intended to secure to the people they have an undoubted right to recur to the fundamental principles upon which the government is founded. This idea is supported by Mr. Madison, in combating, in 1788, objections which were raised to the adoption of the federal constitution. "The legislative department," says he, "is every where extending the sphere of its activity, and drawing all power into its impetuous vortex." And he adds, that "it is against the enterprising ambition of this department, that the people ought to indulge all their jealousy and exhaust all their precautions." Such was the language of the present chief magistrate in the year 1788; and if it was correct and proper in him and justified by circumstances at that time, I trust I shall not give offence to his friends in this house by making use of it on the present occasion, and recommending it to their serious consideration.

And have we not sir, had sufficient proofs not only in our own, but in neighboring states, that cases are not wanting wherein legislative bodies have transcended the powers with which they were designed to be invested? I need not take up the time of the house in stating these cases. They will unquestionably be recollected by the members of the house. That laws not warrented by the constitution have frequently been passed, does not admit of any question. Many acts adopted by different Legislatures have been pronounced by the proper tribunals the judiciary null and void. If then, cases have existed, wherein representative bodies have been found capable of so forgetting or mistaking the authority under which they acted, as to exceed their limits, will it be presumptuous in us, or in the present assembly to say, that the last legislature went so far astray from the spirit of the constitution as to transcend their powers? I cannot think it will.

With respect to first principles, it will not be denied that all political power is vested in and derived from the people only: and that such portions of it as may be delegated for the purposes of government, can only be exercised in the forms prescribed by a written constitution. That the constitution of the United States is a grant of power made by the people in their sovereign and unlimited capacity, in no respect dependent on or requiring the sanction of the state legislatures to give it validity. But, on the contrary, by the adoption of that constitution, the state legislatures were placed by the people in relation to the affairs of the general government in a secondary, if not in a subordinate capacity, with duties to perform, with powers limited and controlled, in some cases expressly prohibited, and in all others confined to the strict letter of the grant. Their powers were limited and confined to the *strict letter* of the constitution; and consequently, all powers not granted in plain and express terms must be retained by the people. On this point, sir, I mean to stand. If the power of choosing electors be not granted to the legislature in *express* terms, it must be retained by the people.

It will also be conceded as another of the first principles of a republican government, that the people shall be allowed to vote and to exercise a *direct influence* over their public functionaries in all practicable cases. That it is practicable for the people at large to choose electors, has been established by a practice of twenty years, under the federal constitution.

I hope it will also be admitted, that the constitution, being a grant of power for promoting the general welfare and preserving the blessings of liberty, as is expressed among other things, in the preamble to the instrument, is to be construed in such manner, as shall be consistent with and most promotive of the design and object of the people in making the grant. Every article must be considered in such light as may best meet the wishes entertained by the community at the time of its adoption. I mean, sir, that in every instance in which doubts shall arise, they are to be liberally construed in favor of the right of the people, and most strictly against the trustees or depositories of their authority. The legislature must construe every provision in the most advantageous light for their constituents, bearing in mind that as what is not plainly delegated is unquestionably retained, they are in all instances confined to the strict letter of the grant.

Having premised these few principles, which I consider of importance, I would ask of the house to give them a candid and fair consideration. If they be admitted, as they assuredly must; and if the arguments founded on them be heard with that disposition which leads the mind to seek for impressions, for such lights as may lead to a proper judgment, and not in the unpropitious temper, sometimes prevailing, which induces men to strain a point, in order to carry a favorite measure—I flatter myself with the hope of being able to maintain, to the satisfaction of the house, the position I have assumed on this question. This is, that the act of last session invaded the rights of the people: that it was not only unconstitutional, but that it encroached upon the first principles of free, representative government.

Before I proceed to a critical examination of the constitutional ground, it will be proper, as I ask the indulgence of the house while engaged in it, to enter into a brief analysis of the the legislative power as defined in the constitution of the United States. When these are carefully examined, I think it will clearly be manifested, that the nation never could have intended to transfer the right of choosing electors from the people at large to any other body of men whatever.

By the federal constitution the legislative power is confided to a president senate and house of representatives. The president, participates in the exercise of legislative functions in three ways.—By the constitution it is made his duty to recommend such measures to the consideration of congress as he may think conducive to the public good. This amounts to a power of initiating proceedings. It is equivalent to the priviledge of a member, of making a motion on the floor of congress. He also has the power of making treaties without the intervention of the house of representatives. When ratified by the senate treaties made by the president are binding, and by the terms of the constitution become the supreme laws of the land. This prerogative then, of the president will be admitted to be a very great legislative power; and this is one of the reasons which induces me to be of opinion that the people ought to have a direct agency in the choice of so important an officer. He has likewise another legislative power. His assent is required to all acts passed by the houses of congress, before they become laws. This is what has been called a qualified negative; but in all cases in which it has yet been exercised, it has amounted to an absolute vote. These are sufficient to shew what great interest the people have in the appointment of a president, if regard were alone had to the vast legislative powers with which he has been cloth-

The members of the senate, by the terms of the constitution, are to be elected by the state legislatures, who were intended to be represented in the senate and there-