

NORTH CAROLINA SENTINEL.

LIBERTY...THE CONSTITUTION...UNION.

VOL. XVII.

NEWBERN, FRIDAY, JANUARY 3, 1834.

NO. 872

PUBLISHED BY THOMAS WATSON.

Three dollars per annum, payable in advance.

GENERAL ASSEMBLY.

REPORT.

On the subject of amending the Constitution of the State of North Carolina.

The Joint Select Committee, to whom were referred the several resolutions of the two Houses of the Legislature, instructing them to take under consideration the propriety of Amending the Constitution of this State, and to inquire what mode is expedient to adopt for the accomplishment of the same, have had these subjects under consideration, and Report:

That a due regard for the interests of the whole, and a proper respect for the wishes and rights of a large majority of the people, require that the Constitution of this State should be amended. The committee have been relieved in a great degree, from the responsibility of this determination, by a previous expression of the will of the people. For, it appears by a message of the Governor to this Assembly, that, in August last, polls were opened in thirty three counties, for the purpose of taking the vote of the people for and against amending the Constitution. When 30,000 freemen recorded their votes in favor of a change; while they, who voted against it, were less, in number than 1,000. Moreover, there is good reason for believing, that if the polls had been kept throughout the State under the authority of law, the vote would have been in favor of reform one third greater than it was.

Since our Constitution expressly declares, "that all political power is vested in, and derived from the people only; that they ought to have the sole and exclusive right of regulating the internal government and police thereof; that the people have a right to assemble together, to consult for the common good, to instruct their representatives, and apply to the Legislature for redress of grievances." it may well be questioned, whether those who are sworn to maintain and support these principles, will be at liberty to disregard so clear an indication of public sentiment, or evade such a direct application for the redress of a popular grievance. A plain people will find it difficult to perceive the value of a power, which cannot be exercised, or to understand what availeth the right to instruct their representatives, or petition their Legislature, if these instructions may be resisted, or these petitions refused. Any government, which neglects to provide, by law, for the practical and safe enjoyment of all the rights which it recognizes, is certainly not true to the great purposes of its creation. A monarch, who claims dominion over his subjects, *jure divino*, will act consistently, by refusing to aid them in the control of his sovereign power, because he administers a government which denies the right of the people to remodel its forms. But the American States have indisputably recognized the right of the people to change their constitutions, at the will of a majority of the qualified voters, in any manner that may suit their pleasure; and, therefore, if after so clear an expression of public opinion, a Legislature refuses to provide, by law, for the safe and practicable exercise of this right, it must be condemned as faithless to the spirit of the obligation, and the genius of our political institutions. What would be said of that system of laws, which, while it vests the title to an estate in one man, provides no means short of positive force to secure its possession and enjoyment? And what epithet would attach to an agent, who, although he acknowledges the right of his employer, to instruct him, and to change his commission, and binds his conscience to make these the leading principles of his agency, yet scorns the instructions after they are received, and uses all the means in his power to prevent any alteration of his commission?

But the committee are instructed further, to consider of the amendments which ought to be made in our Constitution, and they are gratified in being able to state, that, on these questions also, they have been preceded by the public voice.

The great and prominent defect in our present Constitution, is the unequal representation of the people and property of the State. It must be conceded that the fairest way of adjusting the proportions of benefits and burthens in a State, is, by combining pecuniary ability and burthens with such as are merely personal. The justice of this principle, secured to the southern States, under the Constitution of the Union, a scale of representation not including merely their white population, but combining with it three-fifths of their slaves; and if it be sound in one case, there seems to be nothing which renders it less so in the other. Some regard, however, is due to the situations and peculiar interests of different sections, and especially, to the settled habits of the people. But when we are about to reform long established practices and principles of the Government, your committee deem it to be a high distinction to our people, a reproach to those who would deny their capacity for self government, and the clearest proof of their integrity, patriotism and enlarged liberality, that they have so heartily embraced a proposition to compromise, upon these principles, this agitated question.

The amendments proposed have been discussed before the people, and no one can fail to perceive that they are the result of a spirit of equity and concession, which the peculiarity of our political situation has, perhaps, rendered indispensable to our quiet. By this amendment, the majority make these concessions: Counties which, upon general principles, would not be entitled to elect one member of either branch of the Assembly, are yet al-

lowed one in the House of Commons, not because there is any real necessity for it, but because our long established habits of legislation have created a desire for it. The largest counties whose population and taxes combined would entitle them to more than two Commons and one Senator, withhold any demand for strict right from a commendable desire to promote the good of the whole; and to assist the strength of the lesser counties, portions of these excesses of population and taxes, not necessarily represented in these large counties, are, as it were, generously cast into the scale of their brethren, to make up their deficiencies. True, the system of representation that is here proposed cannot be regarded as perfect in itself, or exactly equal; but then it should not be forgotten, that perfection is unattainable by human efforts; and, at the same time we must remember that equality is departed from by the authority of the sovereign people, in deference and concession to the prejudices, feelings and expectations of those, who alone are objecting against this amendment.

Your committee are persuaded that the necessity for a change of our present basis of representation is too obvious to escape the perception of any one.

As early as 1788, when a large proportion of the Assembly consisted of our Revolutionary Fathers, and before the demon of party discord had taken sway over the councils of the State, a resolution was introduced to alter and amend the Constitution: 1st, Because the representation was not equal; 2nd, The General Assembly was too expensive; and 3rd, Legislation was unstable. Unfortunately this resolution was then rejected by a single vote against the almost unanimous voice of such members of that body as had been in the Convention of 1776. Ever since that period, this subject has been occasionally brought forward for discussion in our Legislature, and, for the last 20 years, presented in every shape which seemed likely to secure for it an impartial and just consideration. There is among the people of the State a settled conviction that representation by counties is unequal, unjust and unnecessarily expensive. Were our counties less numerous and more nearly equal in population and wealth, the evil would never have been felt or complained of. It is idle to say that the Legislature may remove the grievance by re-dividing the State into counties of more equal size; for every one knows that this will not be done. No free government can prosper, while a majority of its people are hostile to the great leading features of their Constitution. This dissatisfaction is of itself sufficient to induce a change. Who among us have not observed its bad consequences upon our Legislature's elections to office? and, indeed, in all the functions of this body? Sectional parties, excited passions, unhappy feuds, vacillating policy, unstable legislation, indifference to the public weal and ignorance of public affairs, are its ill omend descendants; and no real lover of his country can but be pained at the clouds and darkness, if not the desolation, they have spread over the early hopes and bright expectations of North Carolina.

The committee entertain the opinion, that the Legislature meets oftener than is necessary; that biennial sessions will answer the valuable purposes of giving to the laws more permanency, and more vigilance in passing them, besides diminishing one half the expenses of this department of the Government; and to take away all just ground of opposition to this amendment, they believe that it should be put in the power of the Governor to call a special meeting of the Assembly, whenever, in his opinion, the interests of the State require it.

The committee entertain the opinion that the Governor of the State should be elected for two years, by the people, and not by the General Assembly; because the Executive and Legislative departments of the Government ought to be more distinctly separated; because the Chief Magistrate is now, in a great degree, dependent on the General Assembly; because he is the servant of the people, and should be responsible to them directly, for the discharge of his trust; and because the people are desirous to make this election, have the right to do it, are competent to make it, and the office is clothed with no patronage that renders it prudent or expedient that they should surrender the election into the hands of others. Experience teaches us lessons on this subject, which are too imperative to need comment.

The committee recommend, also, that the 14th article of the Constitution should be amended so as to put it in the power of the General Assembly to confer on some other body (in their discretion) the election of militia officers. If the good of the State requires this power to be exercised by the Legislature, they will retain it or resume it; but if otherwise, (as it seems to us the case,) the General Assembly ought to transfer it.

The committee also recommend that the 32nd article of the constitution should be abolished, at least in part, if not altogether. Its spirit is in conflict with religious freedom; it has no practical use, and it may be considered a mere badge of ancient prejudice, which, however excusable in those who first engrafed it upon our Constitution, is unworthy the present age of enlightened liberality.

The committee also recommend that borough representation should be abolished; because the injustice, besides the well known evils of the system, more than counterbalances the good it promises, either to the State or the towns which enjoy this right. And they also recommend for consideration the policy of confining the right to vote at the elections to white men, in accordance with the spirit of our Legislation for many years past; and from a conviction that the right of suffrage is in no sense a blessing to the negroes and mulattoes, as a class but contrariwise.

Former experience teaches us that some mode of effecting necessary changes in the Constitution is indispensable to its perfection; and

the committee flatter themselves that they have here recommended one which is too difficult in practice to invite mere innovation, and yet not so impracticable as to leave us without hope of necessary reform. It is similar to like articles in several of the Constitutions of the other States.

The committee state further to the General Assembly, that they have recommended no alterations in the Constitution but such as have been put before the people during the last year, and upon which their votes were taken, as before stated. They have not presented the very words of the amendments proposed to our last General Assembly; but they have not deviated from their substance and effect.

In respect to the proper mode of effecting alterations in the Constitution, it is believed by the committee that the Legislature may recommend the election of delegates, by the people, for the discharge of this special duty, or they may prepare distinct propositions of amendment, and submit them to the people; and if such propositions be sanctioned by a majority of the qualified voters of the State, the amendments will become a part of the Constitution, and have full effect and validity. The first mode is liable to such formidable objections, that your committee do not believe that the proposition to adopt it would meet with any success. It is useless, therefore, to inquire whether it has any advantages over the other. The only insuperable objection, however, is the difficulty of settling the proper basis of representation in the Convention.

Your committee, therefore, recommend the adoption of the latter mode; and in pursuance of this opinion, they have prepared specific amendments to the constitution, together with a bill providing for the taking the sense of the people upon the whole of them; which bill and the amendments proposed accompany this report.

Some doubt has been entertained by others whether this method of procuring a change of the Constitution is clearly regular; but the committee are not able to perceive any substantial grounds for it.

The governments of the American States are founded upon the consent of the people; and they have been instituted by written Constitutions; ratified by a majority of the qualified voters. Therefore, when one of these Constitutions points out no particular mode for its amendment, it would seem that either the system is unalterable, or else it may be changed by the same power that created it. At most, no other concurrence is requisite for this purpose than that of the representative department of the Government, which was created by the charter.

The reason why the General Assembly cannot change the Constitution is, that they have no power to bind the people, without their assent; but when the General Assembly do any act, which is deliberately assented to by the people, the sanction of sovereign authority is given to it as effectually as if it had been performed directly by the people themselves.

All agree that it is competent for the Legislature to recommend, by law, the election of Delegates by the people; and that these delegates, when assembled in Convention, may alter and amend the Constitution. No one denies that the power of the Convention in such a case is derived from the assent of the people; so if these specific amendments be proposed to the people, and sealed with their assent, it is difficult to conceive the objection to their validity. In the first case, the recommendation would be made by the General Assembly, and so, likewise, in the latter. The assent of the people would follow, and not precede the act, in both cases; and there is no more authority in the Constitution for recommending one, than there is for the other. In substance, there is no difference; and in form, no other difference can be found than that in the first case, the people must assent by their Deputies; in the latter, they assent for themselves. The committee have not been able to find out any principle in the Government which precludes the people from doing any act, for themselves, which they can elect delegates to do for them; and they who allege it, must be required to show it. If the people are obliged to act by Conventions of deputies, then it is certain that our Government rests on the assent of Conventions, and not on the assent of the people. Then may it be demonstrated that the "servant is above his master;" for while the people desire one form of Government, the Convention may prescribe another.

It has been said, however, that the people at the polls are subjects, and not sovereigns; and, therefore, they cannot assent to changes in the Constitution by voting upon specific amendments; but this is a mere pretext. Do not the people exercise their sovereign power by electing delegates to a convention? And do they not elect delegates by voting at the polls?—The error of those who oppose this mode of effecting a reform in our Constitution, grows out of their mistake of supposing that a Convention has some inherent power; when, in truth, it is nothing but an assemblage of delegates or deputies of the qualified voters of a State, from whom it derives all its powers.

The committee conclude by adopting the language of one of the distinguished authors of the "Federalist," where, in answer to the objections against the Federal Constitution, "that the Convention which proposed it, had exceeded their commission," because, being elected to amend the Articles of Confederation, and report to the State Legislatures and to Congress, they recommended to the people an entirely new Constitution, which they had formed, he declares, "They know that, as the plan to be formed and proposed was to be submitted to the people themselves, the disapprobation of this supreme authority would destroy it forever—its approbation blot out all antecedent errors and irregularities."

OSMYN B. IRVINE, Chairman.

Amendments recommended in the above Report.

Whereas it appears, from a message of His Excellency the Governor, to this Legislature, that a large portion of the people of North Carolina expressed, at the last annual elections, a wish for certain amendments to the Constitution of the State; and whereas it is a fundamental political principle in the free States of America that the people have the right to make such changes as will conduce to their safety and happiness: Therefore,

Resolved, That the following proposed amendments to the Constitution of North Carolina be submitted to the freemen of the State at the time, at the places, and under the rules and regulations specified in the annexed bill:

ARTICLE I.

So much of the second article of the Constitution of this State, as provides that one member of the Senate shall be chosen by each county; and so much of the third article as provides that two members of the House of Commons shall be chosen by each county; and so much of the said Constitution, and of the ordinance of 1789, as provides for the election of members to the House of Commons by certain boroughs, are hereby repealed.

ARTICLE II.

The General Assembly shall, at its next session, and again at its first session after the taking of the next census of the United States, and every ten years thereafter, lay off the State into districts in the manner following, viz.

Every county which shall contain not less than 1-40th part of the white population of the whole State, or which shall pay into the Public Treasury 1-40th part of the aggregate taxes of the whole State; upon an average of the ten years next before each apportionment, shall constitute a district.

Wherever there shall be a county deficient in the ratio of population and taxation, lying contiguous to one or more counties having an excess of either of such ratios; such excess or excesses shall be computed as belonging to the county deficient; and if by the acquisition of such excess or excesses, such county shall have either of the requisite ratios, it shall constitute a district.

Wherever there shall be two or more counties contiguous to each other, which, though united, shall not have either of the requisite ratios, the excess or excesses of one or more contiguous counties shall be computed as belonging to the counties deficient; and if, by the acquisition of such excess or excesses, they shall have either of the requisite ratios, they, together, shall constitute a district.

Wherever there shall be two or more contiguous counties which, together, shall have either of the requisite ratios, they shall constitute a district.

Every district shall be entitled to one Senator and two members of the House of Commons. Provided, that where a district is composed of more than one county, each county shall be entitled to one member in the House of Commons.

ARTICLE III.

So much of the Constitution of this State as is so construed as to entitle free persons of color to vote for members of the Senate, of the House of Commons, and of the House of Representatives of the United States, is hereby annulled.

ARTICLE IV.

All officers, excepting the Governor, who, under the old Constitution, are elected annually or triennially, by joint ballot of the General Assembly, shall be elected, in the same manner, biennially, after the ratification of these amendments; and the General Assembly shall be elected, and shall meet, biennially; but the Governor may call extra sessions whenever, in his opinion, the public interest or safety shall render it advisable.

ARTICLE V.

So much of the 15th article of the Constitution as provides that the Governor shall be elected annually, by the General Assembly, is hereby annulled; and hereafter the Governor shall be elected every two years, by the free white men of the State, who are qualified to vote for members of the House of Commons; and no person shall be eligible to the office of Governor for more than two terms in succession. The General Assembly shall provide by law the time and manner of holding elections for Governor; and in case of the death, resignation, removal out of the State, or other disability of the Governor, the General Assembly, if it be in session at the time when such death or other disability occurs, shall, by joint ballot, elect a Governor to fill the vacancy until the next regular election: Provided, that if such vacancy occur while the General Assembly is not in session, the same shall be filled until the next regular election in the manner prescribed, in such cases, by the old Constitution; and if it shall so happen that no person designated by said Constitution as Governor *pro tempore* in such cases shall be in the State, or, being in the State, shall be constitutionally unqualified, the Counsellors of the State shall meet in Raleigh and appoint a Governor, to hold the office until the next regular election.

ARTICLE VI.

The 14th article of the old Constitution is hereby annulled; and the General Assembly shall regulate by law the manner of electing the Generals and field officers of the militia; but if at any time the public safety or interest, in their opinion, requires them to do so, they may, as heretofore, elect such officers: Provided, that this article shall not in any manner affect officers whose commissions issued upon elections heretofore made.

ARTICLE VII.

So much of the 42d article of the Constitution as provides that "no person who shall deny the truth of the protestant religion, shall be capable of holding any office, or place of trust or profit, in the civil department, within this State," is hereby annulled.

ARTICLE VIII.

The General Assembly which shall be elected in the year 1834, shall be competent to make laws under the restrictions of the existing Constitution, any thing in these amendments to the contrary notwithstanding; they shall pass all laws necessary for carrying these amendments into effect; they shall elect a Governor to hold his office until the first election of Governor, by the people, according to the Constitution as amended; and the General Assembly to be first elected under the Constitution as amended, shall commence their session in 1835.

ARTICLE IX.

The Constitution of this State may hereafter be amended as follows, and not otherwise, viz. Any amendment may be proposed in the Senate or House of Commons, and if such amendment be agreed to by two thirds of each house, it shall be entered on the journals, and also be published in all the newspapers in the State for three months previous to the succeeding election for members of the General Assembly; and if such amendment be agreed to by two thirds of each house of such next General Assembly, then it shall be the duty of such General Assembly to submit the proposed amendment to the vote of the people; and if a majority of the votes given shall be in favor of such amendment, it shall become a part of the Constitution of the State.

ARTICLE X.

The preceding amendments shall form part of the Constitution of North Carolina, and shall have full effect and validity from and after 50 days from their ratification by the freemen of the State.

A BILL to provide for ascertaining the sense of the people of North Carolina relative to amending the Constitution of the State.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same. That it shall be the duty of the Governor to cause a certified copy of this act, and of the proposed amendments to the Constitution, to be transmitted to the Clerks of the Courts of Pleas and Quarter Sessions of the several counties in this State, whose duty it shall be to furnish the inspectors of the several elections in their respective counties with correct copies of the same, under the penalty of one thousand dollars fine, and twelve months imprisonment; and it shall be the duty of the inspectors, after proclamation made, to read aloud the said copies before the polls are opened.

II. Be it further enacted, That it shall be the duty of the sheriffs, inspectors, and other officers holding the next election for members of the General Assembly, in the several counties in this State, under the same rules and regulations which govern such elections, to receive the votes of all free citizens for and against the proposed amendments to the Constitution; and it shall be the duty of the sheriffs of the respective counties to make a return of the state of the polls to the Governor, at Raleigh, within 30 days after the election, under the penalty of one thousand dollars fine and twelve months imprisonment.

III. Be it further enacted, That if any vote or votes shall be given at the polls in favor of some of the amendments, and against others, such vote or votes shall be regarded by the sheriff and inspectors as against the whole amendments; and shall be so reckoned in the result.

IV. Be it further enacted, That it shall be the duty of the Governor, immediately upon the receipt of the returns from the several counties, to call together, in Raleigh, the Council of State, who, with him, shall compare the votes for and against the amendments to the Constitution; and it shall further be the duty of the Governor to make proclamation of the result in all the newspapers in the State for three months, and to cause the same to be deposited in the archives of the State.

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