THE 8 TO 7 DECISION

FULL TEXT OF THE OPINION OF ASSOCIATE JUSTICE MONTGOMERY.

THE COURT WANTING IN POWER.

He Argues that the Majority Decision Of the Court has Chosen the Lesser of the Two Evils to be Dreaded--Both Are Serious Menaces to Popular Government--But the Court, he Thinks, Has no Right to go Behind the Recod.

We published on Sunday, the opinions of Chief Justice Faircloth and Associate Justice Clark on the assignment act, the Chief Justice rendering the decision of the majority of the court, and Justice Clark dissenting.

To-day we publish the opinion in full of Justice Montgomery, Fusion Judge, on the same side with the Chief Justice. To-morrow we will publish the opinion of Justice Avery, who dissented.

We give space to these opinions because we regard the decision of the majority the most monstrous decision that has been rendered by any judicial tribunal since the Tilden-Hayes fiasco, except, possibly, the recent decision of Judge Goff in South Carolina.

The assignment act was an admitted fraud. If courts of equity cannot relieve the people of such forgery, then there never was a case for equitable jurisdiction.

While criticising the decision we give to our readers the opinion of the majority so that every one may determine the matter for himself.

N. C. Supreme Court: Feb. term, 1895.
Carr vs. Coke, Montgomery, J., concurring:

The single question for decision is, can this Court inquire into and pass upon the history of a paper writing which purports to be an Act of the General Assembly and which is authenticated by the undisputed and genuine signatures of the President of the Senate and the Speaker of the House of Representatives? It is to be always kept in mind that the point is not as to the powers of the Supreme Court to pronounce a law which is admitted to have been enacted void by reason of its unconstitutionality. Our jurisdiction in that case would be complete and unchallenged. But the question is when the Legislature has solemnly certified to a fact, that is, to the passage and ratification of an act which is within its own sphere, will the judiciary be permitted to inquire into or dispute that certification. The case is of the very first impression, and it ought to be settled upon the principles of sound reason and well considered authority. This is a strictly legal question, and ought to be settled according to the principles of the law. The court is aware that its judgment in this case may be attended with dangers in the future, but it is not our province to provide against dangers to the Commonwealth further than to continue honestly and as intelligently as we can, the laws which the Legislative Department of the government has enacted. It may be said, however, in this connection that if policy ought to have governed the court in this matter, if results ought to have been anticipated, we feel that in the decision of the court we have chosen the lesser of the two evils to be dreaded.

The question at issue brought to the light the more than possibilties of two most serious menaces to popular government. The first one—that of the power of a corruptable or incompetent clerical force, or that ot a depraved and hired set of lobbyists, or both together, to tamper with the acts and proceedings of the legislature, and have that certified to be law which was never in fact enacted; the second, that of the power of defeated and unscrupulous politicians, when stung by loss of office or a desire for revenge on their political enemies, to practically repeal the legislation of their successful opponents by resorts to the courts upon mere allegations that there was fraud in the passage of the acts or in their ratification, and by procuring injunctions upon affidavits obtained possibly through bribery or through the ignorance or carlessness of the oath maker. By the decision of the court the latter danger, the far most to be dreaded, is avoided. The presiding officers of the two Houses may, by taking a sufficiency of time and by close scrutiny and rigid examination of the bills and wrappers, prevent fraud and error in ratification, if such a thing be attempted; while for the latter danger no limit or restraint can be found in the conscience of men who have never cultivated a sense of either generosity or justice. The motives and purposes of the plaintiffs in this action are not intended to be reflected on, neither are the character or official conduct of any officer or clerk of last General Assembly. No testimony has been heard in the case and this court knows nothing of the facts or motives. We have simply discussed dangers in the future, in this connection. In the conclusions to which I have arrived, I have tried to keep before me the great importance of the legal question involved and to keep out of mind, as an utterly insignificant feature of the case, the wretched creatures who would commit such a detestable piece of meanness as the complaint charges. They, when detected, will receive the excretion of all good men and most richly will they deserve it It would have been well for the people and for the cause of good government if they had, or could have been ferreted out and named in the complaint that they might have been pilloried in an indignant public sentiment. But to the law in the case:

Of the three coequal departments of our government, the Legislative is of the most importance. It is sovereign as long as it keeps within the bounds of the Constitution. The powers of the Judicial Department are clearly defined and limited in the Constitution. Except to hear claims against the State (and then only to recommend action to the General Assembly) the whole power of this court is embraced in these words: "The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below upon any matter of law or legal inference." Const. Art. IV, Sec. 8. This means in plain English, that this court can construe the laws when their meaning is a matter of contention between litigants, and that it can determine in cases properly before it whether or not statutory enactments are constitutional. The writer of this knows of no other instance in which this court can directly or indirectly pass upon the conduct of the General Assembly. As to the formula that are necessary to convert a bill into a law, we cannot inquire, if the ratification in proper form appears and the signatures of the proper officers are duly attached. However, in the case before us, the plaintiff alleges that what he styles the pretended Act is not a law because it was not read three times in each house before it received the signatures of the presiding officers of both, as the Constitution requires. That instrument certainly does require that "all bills and resolutions of a legislative nature shall be read three times in each House before they pass into laws; and shall be signed by the presiding officers of both Houses," and it is as equally certain under the decisions of this court that the certificate of ratification attested by the signatures of the presiding officers carries with it the presumtion conclusive, that all such bills and resolutions have been duly passed by the bodies and cannot be questioned by the courts. Suppose, as individuals, we admit, which the answer does not, that this bill did not pass its several readings, can that fact be shown in a court of law in the face of ratification and the genuine signatures of the presiding officers certifying the contrary? This is the naked question. Ratification gives authority to the Act. The presiding officers who upon ratification attach their signatures to a bill do it in open session, calling the attention of the members to the fact that the same is about to be signed and reading the title of the bill. When it is signed, ratification is thereupon made of it by the body through their agent, the presiding officer. It is their act and deed and nothing, not even the journal itself, can contradict it, or be used as evidence against it. Ratification is of higher dignity and of more authority than the journals kept by the clerks. Ratification and the signatures of the proper officers presume a passage of the bill by the Legislature according to the requirements of the Constitution, and the courts of law—the judicial department—a co-equal department, are not allowed to go behind or question them. We have clear authority for this in our own reports. In the case of Broadnax vs. Groom, 64 N. C., 224, certain tax payers in Rockingham county, in their complaint, sought an injunction against the collection of a tax levied by the commissioners under an Act of the General Assembly on the ground that the act was private and was passed without the thirty days notice of application required by the Constitution. That case presented the very question which we have before us now. Could the plaintiffs in that case be allowed to go behind the ratification of the act and show by any kind of proof, by the journals or otherwise, that the constitutional requirement had not been complied with? The Constitution provides that "The General Assembly shall not pass any private law unless it shall be made to appear that 30 days notice of application to pass such a law shall have been given." The Constitution provides that "all bills are resolutions of a legislative nature shall be read three times in each House before they pass into laws." The constitutional requirement in both these instances is specific and definite and positive; and yet this court held in the Broadnax case, supra, that the act having been certified by the presiding officers of both houses as duly ratified it was not competent for the judiciary to go behind the ratification. Chief Justice Pearson who delivered the opinion of the court in that case said: "We do not think it necessary to enter into the question whether this is a Public act or a Private one, in regard to which thirty days notice of the application must be given; for taking it to be a mere private act we are of the opinion that the ratification certified by the Lieutenant Governor and the Speaker of the House of Representatives makes it a "matter of record" which can not be impeached before the courts in a collateral way. Lord Coke says: "A record until reversed importeth verity." There can be no doubt that acts of the General Assembly, like judgments of courts, are matters of record, and the idea that the "verity of the record" can be averred against in a collateral proceeding is opposed to all of the authorities. The courts must act on the maxim "*omnia presumpter.*" Suppose an Act of Congress is returned by the President with his objections and the Vice President and the Speaker of the House certify that it passed afterwards by the Constitutional majority, is it open for the courts to go behind the record and hear proof to the contrary?" It is clear from the above that the meaning of the Chief Justice, when he said, "We are of opinion that the ratification certified by the Lieutenant Governor and the Speaker of the House of Representatives makes it a matter of record which cannot be impeached before the courts in a collateral way," was, that all attacks in the courts upon legislation which appeared to be ratified and had the signatures of the presiding officers attached, were collateral attacks, and that any direct impeachment of such acts must arise in, and be conducted by that jurisdiction which has power in the matter, the Legislative Department. If he only meant to say that the courts could afford a remedy in such matters, but that they would not do so in the case then before the court, because the attack was collateral, then it would have to be admitted that he expressed himself most confusedly in one of the most important questions ever brought before the court. That would be a bold assertion to make of Judge Pearson. And besides if the proceeding in that case was not direct but only collateral, then it is not saying too much to declare that no direct method of attacking an act of the Legislature through the courts can be devised. Certainly that was a more direct impeachment than the one now before the court. We are not without direct authorities from other courts than our own.

In the case of ex-parte Wren, 63 Miss. 512 this same question is discussed and decided upon the same principle as was Broadnax vs. Groom, supra, that court holding that an enrolled act of the Legislature, having been signed by the presiding officer of the two Houses and the Governor, is the sole expositor of its contents, and is conclusive evidence that the act so signed contains the provisions of the bill as passed by the two Houses. And the journals of those Houses cannot be resorted to, to show that such act does not contain amendments to the bill which were adopted by the two branches of the Legislature. The court said "Every other view subordinates the Legislature, and disregards the co-equal position in our system of three departments of government." The opinion in Wren's case is comparatively of recent date, is a very able one, and reviews the decisions of many of the State Courts on this question. It mentions that the courts of many of the States, including that of North Carolina in the case of Broadnax vs. Groom, held the same opinion as did the Supreme Court of Mississippi.

In Pangborn vs. Young, 32 N. J., 29, The principle laid down in the Broadnax case is more than endorsed. The Supreme Court of New Jersey in that case decided, first, that when an act has been passed by the Legislature and signed by the Speaker of each House, approved by the Governor, and filed in the office of the Secretary of State, an exemplification of it under the great seal is conclusive evidence of its existence and contents. Second, It is not competent for the court to go behind this attestation or to admit evidence to show that the law, as actually voted on and passed and approved by the Governor, was variant from that filed in the office of the Secretary of State. Third, The minutes of the two Houses, or either of them, although kept under the requirements of the Constitution, cannot be received as evidence for such purpose. In that case the court said that "The body which passes a law must of necessity promulgate it in some form. In point of fact the legislative power over the certification of its own laws is of necessity almost unlimited as will appear from the circumstance that, with regard to the body of an act, there is no evidence of any kind but that which the legislature itself furnishes in the copy deposited in the State archives.

We are also to reflect that it is the power which passes the law, which can best determine what the law is, which itself has created. The legislature in this case has certified to this court by the hands of its two principal officers that the act now before us is the identical statute which it approved, and in my opinion it is not competent for the court to institute an inquiry into the truth of the fact thus solemnly attested." The above cited authorities seem to me to be founded on experience and the law, and on a wise public policy; and as Justice Avery well said, in substance, in Logan vs. Railroad, at this term, we ought to be influenced, when looking for assistance from the decisions of other courts, by those opinions which embody sound principles and just reasoning rather than by a simple numerical array of decided cases.

I have tried to show that the decision of the court in this case is in harmony with its former decisions and that the court is sustained by the opinions of some of the ablest courts of other States. The State vs. Glasgow, 1 N. C. 176, was not even cited as an authority by the counsel for plaintiff in the argument before us. It has no bearing that I can see on this case as a law authority, though interesting as a bit of early official corruption. No legislative Act or power was questioned. It was simply the case where a former Secretary of State himself fraudulently issued a land warrant, and was indicted and convicted for the offence, and stripped of his official honors.

In addition, there is to my mind another insuperable objection to the adoption by the court of the plaintiff's view of this case. It is this: There could in that event be no unity of decision even in our own courts. If the certificate of ratification can be inquired into by the courts, then the trial courts, with the same matter in issue, that is, whether an Act properly certified as having been ratified had only passed its several readings, might and could arrive at different verdicts and judgments, as the proof varied in each trial. To-day a statute might be declared void because a jury had determined that it had not passed its several readings, and to morrow the same statute in a new trial with additional testimony, or in a different court, might be declared good and valid. And again if ratification be not conclusive, how are the stability and integrity of our statutory laws to be maintained in other States and abroad.

From the position I have taken in this concurring opinion, it is not necessary for me to discuss the other allegations of the complaint that the signatures of the presiding officers were procured by fraud. If the certificate of ratification cannot be impeached in a court of law even by the journals themselves as evidence, it is certain that by all the rules of evidence, parol proof cannot be introduced for that purpose.

In conclusion, I desire to emphasize that the court has not made a decision upon a mere matter of fraud. It is a question of jurisdiction, of power; whether one co-equal department of the government can invade the province of another and question or dispute the solemn act of the latter attested by the genuine signatures of those officers who are empowered and required to attest and certify those acts. I insist that the decision of the court in this case upholds the integrity and independence of one of the co equal departments of the Government, and preserves the power and jurisdiction of the two involved in this suit. It is better for us, and will be better for prosperity, if in cases where fraud and deceit have been or shall be practiced upon the presiding officers of the Senate and House, by means of which their signatures to spurious bills have been obtained, for the Legislature to be convened (if an adjournment was had before discovery) and allowed to correct such errors or mistakes, than that the court should assume a jurisdiction which does not belong to it, and thereby begin an encroachment upon the rights of the legislative department, to end possibly in judicial tyranny the basest and the most detestable species of oppression.

DANCE AT CHAPEL HILL.

Given by Mr. Lindsay to the Young Ladies of the Village.

Special to the News and Observer.

CHAPEL HILL, N. C., May 28.

Mr. C. L. Lindsay, gave a dance to the village girls and visiting young ladies on Monday evening, May 27. The hall was beautifully decorated in roses and daises The following couples were present and participated: Mrs. Dr. Max Jackson, of Macon, Ga., green organdie and diamonds, Mr. C. L. Lindsay; Miss Mannie Gibson, of Macon, Ga., lavender organdie and diamonds, Mr. A. F. Williams; Miss Isabella Winston, blue crepe de chine satin and roses, Mr. Sid Cooper; Miss Mattie Kirkland, yellow silk with gold trimming and roses, Mr. O. H. Dockery; Miss Bessie Hunkle, of Baltimore dotted swiss with satin trimmings, Mr. Frank Rogers; Miss Clyde Mason, white swiss with roses, Mr. T. J. Wilson; Miss Nellie Barbee, white albatross with satin trimmings, Mr. Harry Lake.

The stags were Messrs. Bruce, Rollins, Gudger and W. E Lindsay.

Chaperons, Mrs. Tankersley and Mrs. S. M. Barbee.