## REMARKS OF MR. WINSTON, OF BERTIE CO.,

ON THE SUBJECT OF A CONVENTION.

Mr. Speaker:—Some of the ablest men in the State have recently taken the ground, that the Legislature may, by a mere majority of the members present, pass a bill, by and under which an unlimited convention may be called by a bare majority vote of the people of North Carolina. If this position be tenable, it is time that the people of the State were informed of it. I hazard the conjecture that not one man in a thousand, in this State, ever heard of it before. And, sir, that it is wrong, I think that, even with my weak ability, I can show beyond all doubt.

Before the convention of 1835, our State constitution was silent throughout, as to the mode of its own amendment. It contained no direction express or implied on the subject.—As the instrument had been framed by the people through their agents, of course the same people had the sole right, by a majority of votes, to alter, mend and change it at will.—The General Assembly very properly "disclaimed all right and all power in themselves to alter the fundamental law;" and there was positively not a word in the Constitution requiring any other vote than a majority of the people. There was, therefore, no other possible mode of amending the Constitution of the State, than by the majority principle, adopted at that time. The convention of 1835 introduced into the Constitution two modes in which it might thereafter be amended. The manner of calling that convention can consequently furnish no precedent to guide us now.

The act of the Assembly calling the convention of 1835 gave to that convention discretionary power over some sixteen subjects. In regard, however, to four other subjects, the convention were not left to exercise their discretion. They were *directed and commanded* to act. First, it was enacted that said convention "*should*" adjust the Senate basis. Secondly: the like as to the Commons' basis. Thirdly: the like as to the qualifications of Senate voters; and fourthly, as follows: "*That the convention shall provide in what manner amendments shall in future be made to the Constitution of the State.*" I quote the exact language, italicising it myself. Upon this clause of the act of 1834, nothing has been said by the advocates of the majority doctrine. It is strange that it should have been entirely overlooked, especially by gentlemen who have assumed to give in their speeches the substance of the act of 1834.

Sir, I undertake to say, that when this part of the act is seen and properly understood, the principle, that there is still another mode of amending the Constitution besides the two provided by the convention, vanishes into thin air. The case in a few words is this: The people delegated to the convention of 1835 the whole power to do what they pleased, in regard to the modes of amending the Constitution in future. They not only delegated this power, but they commanded its full exercise. The convention, in obedience to this command, adopted the two modes contained in the Constitution. Now, sir, if I know anything of language or law, those two affirmative modes exclude any and every other. "*Inclusio unius est exclusio alterius.*" The Supreme Court of North Carolina, the "final interpreter," would be bound to adopt my reasoning without any hesitation. And, sir, if there is any gentleman in the House who holds the contrary doctrine, I would be glad to know it. [Here, Mr. Phillips, of Orange, informed Mr. Winston, that he should reply to him, and should contend, first, that the Supreme Court could not look at the act calling the convention in construing the amendments of 1835; and secondly, that if they could, the clause of the act relied on did not exclude the call of a convention by other modes than those provided for in the Constitution.] I am glad, sir, that it is the gentleman from Orange who takes issue with me on this occasion. His knowledge of the law and Constitution is such, that if he fails to maintain his position, it will be because the position cannot be maintained. "If Troy could not be defended by Hector, it could not be defended at all."

Before I discuss the points made by my friend, let me ask him to turn his mind to one or two points. First: as he holds that the face of the Constitution is the only guide in construing it, let him inform me where he derives the power for the Legislature, by a majority vote, to originate a bill whereby a majority of the people call a convention. The Constitution of the State speaks of legislative action, in regard to this matter, only in two places.—My friend is obliged to admit that he can find nothing in the Constitution itself to warrant his position. And, sir, as he denies himself the right to look outside of the instrument, he cannot move an inch. Even the precedent of 1835 (of no value when found) cannot be resorted to by him. What additional vigor or validity, I ask, can be given to the proposed convention by an act of Assembly preceding it. The powers of the Legislature are well defined in the Constitution, and there is not a word said therein of their calling a convention, except by a two thirds vote. But it is said that it is more proper for the Legislature to call it. This is a yielding of the whole argument. The question is one of constitutional power, and not of propriety. I undertake to say that if a convention of the people could assemble without an act of the Legislature, their action would be as valid as if an act had preceded and authorized their assembling. Judge Gaston's expressed opinion was, that the act of 1834 was "no more than a proposition or a recommendation." Suppose that delegates of the people were to assemble in Raleigh, could they not make a proposition or recommendation for a convention? And, sir, it is taking the whole question for granted, to say that it is necessary to have an act of the Legislature in order to direct when, where, and how the elections are to be held. If the Legislature, by the vote of a majority, has no power in the premises, then what additional force is given to such a convention by the act?

Again. Let me direct the attention of my friend to the wording of the Constitution. One clause is as follows:

"*No part* of the Constitution of this State shall be altered, unless a bill to alter the same shall have been read three times in each House of the General Assembly, and agreed to by three-fifths of the whole number of members of each House respectively: Nor shall any alteration take place until the said bill, so agreed to, shall have been published six months previous to a new election of members to the General Assembly. If, after such publication, the alteration proposed by the preceding General Assembly shall be agreed to, in the first session thereafter, by two thirds of the whole representation in each House of the General Assembly, after the same shall have been read three times on three several days in each House, then the said General Assembly shall prescribe a mode by which the amendment or amendments shall be submitted to the qualified voters of the House of Commons throughout the State; and if, upon comparing the votes given in the whole State, it shall appear that a majority of the voters have approved thereof, then, and not otherwise, the same shall become a part of the Constitution."

Notice the terms employed in this clause. It is, as clearly as words can make it, an assertion of one mode of amending the Constitution and a *denial of all other modes.* It was adopted in the Convention on the 6th day of July. Now, sir, suppose that the clause just quoted were the only provision contained in the Constitution providing for its own amendment. Every man will admit that the Constitution could not be amended in any other way, and that the majority principle contended for would be clearly wrong.

The only other reference to amendments contained in the Constitution is in the following words:

"No Convention of the people shall be called by the General Assembly, unless by the concurrence of two-thirds of all the members of each House of the General Assembly."

This clause was adopted in the Convention of 1835, two days after the former. How far does it break in upon the general rule expressed in the former? Only so far as to form an exception. The whole instrument is to be construed together, and, therefore, both clauses have to stand. Now, sir, I desire some gentleman to take the Constitution and show me on its face an additional mode of amending the Constitution. I go further here, and say, that the whole ground is here covered. I challenge any man to look either in the Constitution or *any where else*, and find any valid argument, or even suggestion against my position. Here is a general rule expressed in the clearest possible language. To this general rule, there is one expressed exception. Will any man say that the whole subject is not covered by the rule and the exception expressed? Story and Smith, in their works on the construction of Constitutions, both say that the whole ground is covered, and that no other exception can be implied. We need not, however, resort to them, if language means anything. The point, to my mind, is too transparent to admit of any reasonable doubt.

Here, sir, I might stop. But my friend from Orange will reply to me presently, and I will proceed to meet the points presented by him. First, can the Supreme Court take into consideration the act of 1834 in construing the amendments of 1835. I saw that they not only can but they are bound to do so. Nothing is plainer.

What relation did the convention of 1835 sustain towards the act which called them together? Most assuredly the same in every substantial particular that the Legislature sustains towards the State constitution. We are sworn not to violate the State constitution. The members of that convention were sworn that they would not "either directly or indirectly evade or disregard the duties enjoined or the limits fixed to the convention by the people of North Carolina as set forth in the act of 1834 which act was ratified by the people." The State constitution provides for the origin and existence of the Legislature, giving certain powers and withholding others. The act of 1834 did the same things with increased solicitude and strictness towards the convention of 1835. The State constitution was the work of the people before there was any Legislature. The act of 1834 was the work of the people; it called the convention into being and gave it certain well defined powers, excluding all others. In short, if ever there was a deliberative body on earth, with a written instrument controlling, directing and mastering their action, it was the convention of 1835.

Now, sir, nothing is better established than that the Supreme Court of this State not only can look to the constitution for every purpose in construing the act of the Legislature but they are positively sworn and bound to do so. The act of 1834 was to the convention of 1835 a constitution in every sense of the word. They were but members of a Legislature subordinate to that constitution. Will the gentleman from Orange admit that the convention was limited by the act, as I have stated? I suppose that he will. Can he then deny so plain a conclusion as I have drawn? Let him detect any flaw in the argument if he can. I might amplify it by examples and illustrations; but I presume that I am understood, which is all that I desire.

But Sir, the action of the Convention of 1835, as expressed in the amendments to the Constitution, itself, absolutely *compels* the gentleman to look to the act of 1834, in order to understand this matter. The preamble to the amendments, which the gentleman admits is to be resorted to, with the amendments, states the fact that "the act of 1834 was ratified by a majority of the people, and that, by said vote, the people declared their will that a Convention should be held, to consider of the amendments proposed." What amendments? The ones proposed. Where proposed? In the act of 1834. Does not every man here see that the Convention here expressly declares, that they were but subordinate to the act, and that the chart of their power was contained in the act. They also declared that they had made their amendments in accordance with said acts. Let any man take up the preamble, to which I refer, and read it carefully, and he will find that it declares, in every part of it, the point that I contend for. The Supreme Court of the State has decided that, by a proper reference of one deed to another, the descriptions of the latter are incorporated into the former. Now, Sir, the Convention of 1835 could not have made the case stronger, if they had repeated seriatim in the preamble, each and all of the provisions of the act of 1834. Yet, the gentleman admits, that the preamble is to be considered, but denies that the act, which in substance it repeats, is to be looked at. I will not say more on this point. I have only to say that either the gentleman or myself is in a decided mistake about it.

I take it, that the act of 1834 is to be looked at, in construing the amended constitution.—What then is the construction of that clause of the act, which says, "that the convention shall provide in what manner amendments shall in future be made to the constitution." They *shall* provide in *what* manner. This language is too plain to admit of any simplification. The words employed convey the meaning so clearly, that every effort to explain them will obscure them. The words "in what manner" are as strong at least as the words "*the* manner" would have been. My friend is too good a philologist to deny this. If the words "the manner" had been used, then it would have struck every one to enquire, why were not the words "a manner" or "some manner" used. Why were the words "*in future*" used? At first view, they seem unnecessary. The answer is plain. Before that, there was no constitutional provision for amending the constitution. It was doubtful how to proceed on the subject? Do not the words, "in future," impliedly, if not expressly negative a repetition of the mode then pursued. They knew that they were then pursuing a constitutional mode of amendment or they did not. If they did, then their language would have been, if they wished to retain that mode, that the convention should provide additional modes. If they did not, then, it is clear, that they wished in future not to be perplexed with doubts and that the convention of 1835 should substitute a plain course. Can any man read the whole of this clause and say that the convention did not have power to negative the mode then pursued? Suppose that the convention of 1835 had, in express terms, said that no other amendment should thereafter be adopted than the two now contained in the instrument. Of course, they had under this clause the power to do so, and such action, afterwards ratified by the people, would have been valid. This is all that I contend for in this connexion.

Take the clause altogether, and it is a direction to the Convention in the broadest terms, to provide for *the whole subject of future amendments.* It was clearly the meaning of that clause, that when the Convention had acted on it, no other mode than those provided by them could be pursued.

The only remaining question is this? Did the Convention of 1835 exhaust their power?—Did they fully execute it? On examination, it will be found that they did, as to all the other numerous requirements of the act of 1834. My friend from Orange knows too well that the Supreme Court would here apply the maxim of law already quoted, "*Inclusio unius est exclusio alterius.*" If I wish a piece of work done, I may say that my friend, Mr. Phillips, shall direct the manner in which it shall be done. If he gives directions, they are to be obeyed, although he does not say in his orders that no other plan shall be pursued. It is, however, not necessary to argue this point, as it is well settled as a rule of construction by every writer on constitutional law.

I say, therefore, that the Supreme Court of North Carolina would decide that a Convention, called by a majority of the people, under an act passed by a majority in the Legislature, would be unconstitutional.

But it is said, Mr. Speaker, that the clause of the Constitution giving the Legislature the power to call a Convention is guarded in its terms and that two thirds are required, because the people did not wish to be troubled with meeting in a Convention, whenever a majority of the Legislature might choose. This explanation is given, to show that the Convention required a two thirds vote of the Legislature, while the majority principle, now contended for, was retained. Gentlemen here find themselves in a dilemma. They cannot carry out what they now contend for, without the vote of a majority of the Legislature, and yet they say, that in substantially the same state of facts the Convention required two thirds. If a Legislative act adds any thing to the proposed majority Convention, we have no right to pass it, except by a two thirds vote. If it adds nothing, where is our right to pass it at all? But Sir, suppose that the Legislature had been permitted by a vote of a majority to call a Convention and had troubled the people. The first Convention could have remedied the evil. And, sir, I desire to know if the doctrine now asserted, is not quite as troublesome. According to that doctrine, a majority of the Legislature may, from session to session, keep the people voting on a convention without end.

Furthermore: The principle contended for is that an act may be passed, by a majority of the Legislature. A bare majority of the members present is all that is required. Does this look like the work or intent of the Convention of 1835? In both of the cases provided by them, three fifths and two thirds of the *whole number* of members are required. A majority of the people who happen to vote is also said to be sufficient to call the Convention. A majority of the whole number is not required. Two bare majorities, one Legislative and one popular, each of the most meagre kind, are all that is necessary to create a body of men with the full power to overturn every part and parcel of our time honored Constitution.

But one step further. Gentleman have made long and able speeches, quoting the debates in the Convention to prove the correctness of this majority principle. Now, Sir, Mr. Phillips is of the opinion that in construing the Constitution, the Supreme Court can derive no aid from the debates. Suppose that in this he is right. What, then, become of these long quotations with which we have been entertained? Subtract what is furnished by the debates and not a great deal is left. As I may not be misunderstood, however, nor be thought to shrink from an inspection of the proceedings of the Convention of 1835, I will refer to them likewise in one instance only. I could quote a dozen, but one will do. And that one is not what Mr. A. or Mr. B. *said*, but what the Convention *did*. The Convention assembled. The subject of future amendments was referred to a committee of thirteen. The report and the only one made by that committee was in the following words.

"That whenever a majority of the whole number of each House of the General Assembly shall deem it necessary to alter or amend this constitution, they may propose such alterations or amendments to the people, and the Governor shall, by proclamation, lay the same before the people six months before the ensuing election for members of the General Assembly; and if the two Houses of the General Assembly thus elected shall approve, as in the first instance, of the amendments proposed, the same shall be submitted to the people, for their ratification or rejection, and, if ratified by a majority, shall become a part of the constitution."

This, I say, is all the plan ever reported by the committee. This plan which is more against the power of the majority than the plan which I now oppose, was rejected by a vote of 107 to 17, on the ground that *it placed the Constitution of the State too much in the power of mere majorities.* Let any man read the debates, page 346 to 350, and he will see that I am right in every word I say. *The report of the Committee and the two plans adopted were the only plans considered by the Convention.* Instead of the plan of the committee, our present Legislative mode, on motion of Mr. Meares, was adopted. The convention then supposed that no further action was to be taken on the subject. Had nothing more been done, every man must admit, as I have said before, that the present proposed plan would be wrong. Two days afterwards, however, Mr. Meares introduced, "*as an additional safeguard against the efforts of a bare majority to uproot the fundamental principles of government,*" a proposition requiring a two-thirds vote to call a convention. Read the proceedings of the convention, and you will find that if there was any sentiment settled in the minds of the members, it was that the constitution, which they were then settling, should not be altered by a mere majority. So much for this new doctrine; a doctrine which goes a bow-shot beyond anything that we have ever heard of before; a doctrine which drags down the constitution from its sacred position and gives it no more authority or dignity than a mere act of the Legislature; a doctrine which, in effect, abolishes the constitution which our fathers left us; a doctrine which will, in my opinion, meet the decided condemnation of the people of North Carolina.

## REMARKS OF MR. PHILLIPS, OF ORANGE,

IN REPLY TO THE REMARKS OF MR. WINSTON, OF BERTIE, ON THE SUBJECT OF A CONVENTION.

Mr. Speaker:—I ask permission of the House to enter my dissent from the proposition of my friend from Bertie. (Mr. Winston) and to state the reasons why I hold it to be law in North Carolina, that a convention to consider of alterations of the constitution may be called by the people, acting at the suggestion of a bare majority of the General Assembly.

In order to establish the contrary, the gentleman has assumed that the constitution is to be construed by the terms of the Act of 1834, which called the convention together. Merely as an Act of Assembly, that instrument has generally been admitted to exert no power over the expressions of the constitution. It was admitted that, as such, it could control not even the formal action of the convention of 1835, and therefore much more cannot affect the results of that convention, when ratified by the people. In brief, the proposition that the constitution can be restrained or enlarged by any law passed by the General Assembly, is at war with every idea of a constitutional government, and is wholly indefensible. But it is said, that this Act of Assembly, having been voted upon by the people; and, if not from that circumstance, then from being referred to in the preamble to the amendments; has, from these facts, or at least, from one of them, derived an anomalous power; and so, although no part of the constitution, is nevertheless an organic document, of a dignity equal to that of the constitution; and hence, that it is according to all analogies to say that the signification of the constitution may be controlled by its meaning.

The reply to these positions seems obvious. The first finds a parallel in the case of one man's giving a power of attorney to another, to create a life estate in a certain tract of land.—If the latter under this power creates a fee, and the principal subsequently ratifies that estate, the deed binds according to its terms as ratified, and not according to the language of the power of attorney. This case is no more clear, than the one which we are discussing, and the only advantage to be gained from citing it is, that it is one about which no excitement or prejudice exists; one which therefore may be settled upon its own merits, and the settlement of which necessarily involves the solution of the question before us. In arguing that the constitution of North Carolina is binding only so far as it pursues the terms of the instrument, under which the convention was called, whether that instrument be regarded as an Act of Assembly, or as a *quasi* constitutional document, it seems to me that the gentleman is trying to revive a rule of construction once thought applicable to the Constitution of the United States,—a rule with regard to that instrument at a very early day exploded and abandoned. Nobody contends now that the Constitution of the United States is in its various parts more or less binding, because more or less conformed to the purposes indicated by the States, which convoked the convention that gave it birth. Nor is there any better ground for applying that rule to our constitution. If the delegates exceeded their commission, that excess, after ratification by the people is as much a part of the constitution as any; and if there are any omissions, these cannot be supplied by reference to the act which prescribed what should be done. Their written report of the result of their labors, when subsequently ratified by the people, was all that was engrafted upon our constitution, and whether, as compared with their commission, defective or redundant, *it only* and *it all* was so engrafted. The number of its words cannot be increased or diminished, nor the force of its meaning enlarged or restrained by any other instrument which is not of a dignity at least equal to its own: I mean, by nothing unless found in the Constitution of North Carolina, or the Constitution and Laws of the United States.

We have before us a written Constitution, the meaning of whose terms is to be discovered from dictionaries, or, when technical, from their usage in the sciences from which they have been borrowed;—and this is my reply to the gentleman from Bertie, when he urges that the preamble to the amendments refers to the Act of 1834, and asks whether, in attempting to discover the direction in which the convention of 1835 went, we are not bound to consult the position of that "guiding star," by which the delegates profess their steps to have been guided? The white sails of the ship are in view, and we should keep our eyes fixed upon them in order to learn the direction in which it is going; the tracks of the caravan are deep upon the sand before us, and to discover its course, we should follow these, and not the rays of the star by which they believed themselves to be guided. We shall grossly deceive ourselves, if, in pursuing any object, we abandon the evidence of our senses, and fall upon some blind confidence in the results to be attained by balancing probabilities, by conjecture and hap-hazard. And I do not know why it is not to lose all the benefits of a written Constitution, if, with its pages before us, we desert the light of its clear provisions for the flitting fire-flies of the contemporaneous debates, or of the enactments which gave birth to the convention that framed it.

These remarks are due to the cause of truth, and are not compelled by any fear of the consequences of the opposite doctrine upon the question at issue. Upon the contrary, did I believe it right to embark upon the sea of conjecture, into which my friend has launched his boat, I might fish from its depths proofs that his construction of our amended Constitution is one not to be relied upon; proofs, too, that are quite as conclusive as any that he has arrayed upon the opposite side. I shall return to this hereafter, but ask to make good that claim, in some degree, here, by calling attention to the manner in which the convention of 1835 was constituted, with the view of showing the bias under which it acted towards the subject of its deliberations. That convention was composed of 130 members. Of these, 78 came from counties which had voted "*No Convention.*" Speaking of this circumstance, which had been alluded to by a distinguished Eastern member, as "a melancholy fact which he could not pass by," Judge Gaston said in the convention, "He who enters upon a prescribed task, with a strong repugnance to it, seldom performs it faithfully." That proposition scarcely needed for its establishment the sanction of his great name: and after all his labors to nullify its effect upon the convention of 1835, its work bears obvious traces of its operation. I will refer briefly to one in point to this discussion, and then pass on. By the 16th section of the Act of 1834, which apparently came in as an after thought—every other duty of the proposed convention being prescribed in section 13—the convention is directed to provide in what manner amendments shall in future be made to the Constitution. The reluctance of the convention, a majority of whose members were indisposed to even the pending changes, to anticipate and provide for further alterations, is stamped upon the very first words of the clauses which point to such alterations.—They seem to intend a provision against all future changes, rather than a mode in which change may be effected. Both clauses commence with a negative. This circumstance becomes the more remarkable, in view of the strictures with which the convention adhered to the form of expression used by the General Assembly in all the clauses which direct its course upon matters not discretionary. Here the whole structure of the guiding enactment is altered. The General Assembly uses an affirmative expression; the convention a negative one. The Assembly indicates that a direction shall be given; the convention issues a prohibition. May I not ask, taking up the line of argument of my friend from Bertie, whether, in order to arrive at the meaning of the expression agreed upon, between such a body and the people who ratified them, we are to strain them still further in order to extract a prohibitory force even beyond the language of their obvious reluctance. Is not the contrary the rule of sound sense and of sound law? If a body of men, indisposed to act at all there in, is instructed to devise a method of amending the Constitution, the maxim of construction, applicable to their labors, is *contra proferentem verba fortius accipiuntur.* The expressions of the convention, if pressed at all, are to be pressed in a direction opposite to the basis of its members. Thus only can we fairly arrive at the common intention of the parties to that contract; I mean, the convention which uttered, and the people who accepted it.

I have introduced this allusion in order to show that it is not interest which determines me against pursuing the course taken by the gentleman from Bertie. Having shown this, I return to the canon of criticism laid down above, and protest against any other construction than that afforded by an accurate consideration of the expressions used in the Constitution.

It is true that there is another view in which it may be contended that the details of the act of 1834 are important, in considering the amendments to the Constitution. It may be said that as the assent of the existing government is necessary to any lawful change of government, it follows that any change in points not specified in such assent must be revolutionary. I reply that, as an act of Assembly, the material portions of the law of 1834 are, that it gives the assent of the existing government to the call of a Convention, and prescribes certain forms of ratifying the results of that Convention. Its other parts—I mean the limitations on the powers of that Convention,—so far as they are emanations from the General Assembly, were admitted by Judge Gaston to be void. They derive all their effect from the subsequent action of the people. Inasmuch, then, as any limitations upon the action of Conventions by the Legislature are *void*, it must be presumed that, even when the Legislature consents to a limited Convention, it thereby, for all legal purposes, consents to whatever the Convention shall do that may be ratified by the people; and therefore, that no changes of the Constitution made in a Convention, to whose calling the existing government has given its assent, are revolutionary. That these limitations were subsequently ratified by the people, and derive force therefrom, is a point without bearing upon the immediate question, and, so far as it affects this investigation at all, has already been considered.

But, the gentleman urges that the act of 1834, being referred to in the preamble to the amendments of 1835, thereby becomes a part of the Constitution, upon the principle which has led the Supreme Court to hold, that descriptions contained in a deed, referred to in a second deed, are to be considered as if contained in that second deed; the old legal maxim being *verba relata inesse videntur.* There is a fatal inaccuracy about this argument, in so far as it assumes that the preamble to the amendments is a part of those amendments; whereas, it is a mere *ordinance* of the Convention passed by it in obedience to the direction of the act of 1834. The 13th section of that act directs the Convention to "adopt *ordinances* for carrying into effect the *amendments* which shall be made," &c.—Surely, no one will contend that these ordinances are amendments. If so, where was the use of specifying the exact length and breadth of each amendment that the Convention could make, when the whole matter was to be left at sea by permitting the Convention to affect the constitution by ordinances? If the ordinance is no part of the constitution, then, assuredly, the act referred to therein is none. To make this matter still clearer, let me call the gentleman's attention to the preamble to the constitution of 1776. That refers to "an act of the British Legislature." Does he contend that by such reference, the provisions of that act of Parliament are incorporated into the constitution? If not, where does he draw the distinction between that reference and the one before us? If there be any difference between the dignity of the prefix to the constitution of 1776, and that to the amendments of 1835, it seems to be in favor of the former. The former appears to be strictly a part of the constitution, whilst the latter is plainly only a portion of the formal action of the Convention designed to bring the proposed amendments before the people; but no more a part of the constitution than are the proceedings about the organization of the Convention, or its daily order of business. Indeed, this point appears to be so obvious, that I must attribute it entirely to inadvertence that so sound a reasoner as the gentleman from Bertie has laid any stress upon it for the purposes of his argument.

I think, then, Mr. Speaker, that I have a right to conclude that the Act of 1834 cannot be appealed to in construing the terms of the amended constitution.

But even admitting that the gentleman is correct in bringing to bear upon this subject the language of the statute which provided for the convention of 1835, I suggest that there is much reason for complaint of his inconsistency. The strength of his argument seems to me to be contained in this proposition: The Legislature, among other things, directed the convention of 1835 to order the method by which the constitution thereafter should be altered; the convention did make an express order to that effect; therefore, as according to the ancient maxim of law—what is expressed puts an end to that which before was implied,—the constitution can be altered in no other way. By that argument the gentleman arrives at the conclusion that no convention to change the constitution can be called, except as is expressly provided in the amendments; and so, desires to change the proposition of his distinguished colleague (Mr. Outlaw) to call such a convention by the people at the suggestion of a majority of the General Assembly, by inserting "two thirds of the General Assembly concurring." I ask how any one, who believes in the argument just stated, can consistently say that any convention, even one called by two-thirds of the General Assembly can change our constitution? Where is it found that this *convention*, whose existence is provided for, may take upon itself to change the constitution? The constitution provides only for its existence and does not define, or even allude to, its powers; except indeed so far as the next clause, construing the instrument by the rule of my friend from Bertie, excludes from those powers that of changing the constitution. For it says—"No part of this constitution shall be changed," except by what is known as the legislative mode. Yet the gentleman admits that a convention called by two thirds of the General Assemby may alter our constitution; but how he can claim to be consistent in making this admission, I confess myself unable to comprehend.—Surely, if the insertion of one method of calling a convention does, as he asserts, exclude all other methods of doing it, then, *a fortiori* the insertion of one method of amending the constitution, when declared to be exclusive of all others, must be held to exclude them, no matter how allowable theretofore. Nor can it be urged that the word convention necessarily imports a body whose labors are conversant with changes of the State Constitution. Our own history shows the contrary. They are relied upon as tests of the popular will upon all extraordinary occasions of sufficient solemnity. A convention brought North Carolina into the Union, and the year 1850 is not so far distant from the present that we can forget that it is extensively relied upon as the proper means of carrying it out. If, then, conventions are parts of our political machinery, having other objects than such as concern our State Constitution, those who insist that the sort of convention specified in our constitution is exclusive of all others, are involved in gross inconsistency when they allow that that convention may intermeddle with the constitution. I am the more particular in calling attention to the consequences of this doctrine, because it is the cardinal error of this great heresy against popular rights. The position is not peculiar to the gentleman from Bertie, but is common to all who deny that a convention may be called by the people acting at the suggestion of a majority of the General Assembly. They all admit that a convention called upon the two-thirds principle may effect changes in the constitution; and yet, with this admission upon their lips, do not blush at denouncing *as revolutionary* those who, on the principle that they admit, maintain the position now occupied by myself.

No such inconsistency is attributable to us. Starting with that fundamental principle of our liberty,—That all power not granted in our organic law remains with the people, and bearing in our hands, as a lamp, that great rule of construction in all American Constitutions,—that the people are not included in any restraining provisions, unless referred to expressly, or by a necessary implication, our way is equally short and clear. The constitution says: "No Convention shall be called *by the General Assembly, unless,*" &c. That general words in statutes do not bind the Sovereign, is a maxim of construction pervading the whole body of the Law. The rule is not merely technical. It has good sense in it; and whatever the measure of that good sense may be, it is increased in its application to the position that no general expressions are derogatory to the rights of the people; how much more, Sir, when, as here, the restraint is in terms aimed at an individual, and, as regards the people, a *subordinate* department of the government. The provision is, as it were, a piece superadded in order to regulate another portion of the same machinery, and is not intended to apply to the hand of the operative which, from time to time, adjusts that machinery, putting it one while in motion, at another causing it to stop.

The times may come, sir, when it will be a received canon of constitutional construction, that the powers of the people must yield to restraints by ordinary implication. I hope that those times are far distant, for they will be bad times. For ourselves, there is ground for congratulation that we live too near to the days of the Revolution, and the origin of our free institutions, to stand in danger of its prevalency in our generation. And I take occasion here to protest against its being suggested as a rule that may be relied upon amongst us for any purpose. No one can say whither it may lead, or how bitter, though remote, may be the consequences of its introduction into debates upon our Constitution.

But my friend from Bertie says that if a convention may be called by the people through the medium of a majority of the General Assembly, he does not see why any concurrence of the General Assembly is needed. I have already said that some concurrence of the existing government is necessary in order to prevent the change effected by the people from being *revolutionary.* That is the turning point of the decision in *Dorr's case.* I need not elaborate that point here. But I may be permitted to say that my understanding of that decision of the Supreme Court of the United States is that the right of the people to change their government is a revolutionary right, when exercised without the consent of the existing government; but when exercised with that consent, is a legal right. It seems to me that there is some confounding of the particular function exercised by the Legislature in convoking a convention, and that other function of rendering such a convention legal, amongst those who contend that we who allow a convention to be called by the people, at the suggestion of a majority of the General Assembly, are thereby permitting the Legislature to do indirectly what they cannot do directly. When the Legislature, by a majority of two-thirds, convokes a convention, it thereby at once calls a convention, and also gives its assent to such changes as it may effect. But surely, if there be among the other departments of government a power to call a convention, it cannot be said that the General Assembly, by giving its assent, before or after, to the exercise of that power by the other departments, is thereby itself calling such convention. This is at once to admit and to deny that some other departments may call a convention.

There seems to be a clear distinction between an act done by the General Assembly, and an act done by the People, with the consent of the General Assembly. High functions connected, at least as preliminaries, with changes in our organic law, if entrusted to the representatives of the people, at all, may properly have been so under restrictions for securing a more than ordinary approach to unanimity in order to perform them; at the same time that to manifest a consent by these representatives to such acts when performed by the People,—a part of whose ordinary legislation under our forms of government such acts are,—there may be very good reason why no departure from the common rules of proceeding should be demanded. There seems to be no color for contending that provisions restrictive of the former action comprehend as well the latter. As bearing somewhat upon this point, I cite the 5th section of the Declaration of Rights, which asserts that "all power of suspending laws, or the execution of laws by any authority, without consent of the representatives of the people, &c., ought not to be exercised:" which implies that there exists somewhere among the departments of our government a *power* to suspend laws, &c.: a *power*, although such an one as ought not to be exercised without consent, &c. This section is aimed at the powers in our system of government, wherever vested or left, that are analogous to the powers exerted over our Colonial Legislation by the King: exerted, too, in England, without question in its early history, but in later times only under bad government. It seems to me a much too narrow construction of this section to suppose that it restrains only the Executive in North Carolina. That is but a shallow consideration which concludes that the crown in England finds its correspondent in North Carolina in the Governor. In England the King is the source of all political power. The enacting clauses of the old statutes show that he alone was the legislative power, and I believe the former continues much the same at the present day. It was in virtue of this transcendent power that he claimed that right whose exercise without consent, &c., is stigmatised in the section before us. Its exercise in England was at all times strictly in accordance with the theory of the Constitution, but at length ceased under the continued encroachments of the growing freedom of the subject. It may have been thought by those who framed this section that it would find its appropriate object in the newly created Executive. It may be that from an inconsideration, which, however, I will not attribute to them, they concluded that the English crown was represented in the new form of government by the Governor. Time has taught us better. The history of the principle incorporated, and the language of the section, give it wider scope. That great source of legislative power which, in England, is represented by the King, finds its parallel with us in the People. And, if it be true that, in the language used above, this section is aimed at those powers amongst us that are analogous to the King's in England, then any intermeddling, the smallest, and therefore any greater, by the People in legislation without consent of their representatives is denied, but with such consent is impliedly affirmed. And I think it clear that the section recognizes action by the General Assembly, and action by some other power with consent of the General Assembly, as essentially diverse, although equally allowable. I conclude that, being different, the formal regulation of the former can by no means be construed to be as well a regulation of the latter. Nor need it be added that the word *laws* in this section extends to constitutional provisions, which are our supreme laws, and so of all our legislation that only which can fairly be compared with Acts of Parliament the suspension of which suggested this 5th section;—these latter being the supreme and over riding laws of Great Britain.

I sum up what I have said into the result: That the right of the people to call a convention, with the concurrence of a majority of the General Assembly, is a constitutional right, because not expressly or by necessary implication inhibited; and is not revolutionary, because effected with the concurrence of the existing government:

That Legislators may differ about the *expediency* of calling a convention by the people at the suggestion of a majority of the General Assembly, I can very well understand. Different degrees of confidence in the people may very well account for this disagreement. But how any good lawyer can assert that such a call is *unconstitutional*, I do not understand; not even now, sir, that I have had the aid of the strong and lucid argument of the learned gentleman from Bertie.

# STATE LEGISLATURE.

## SENATE.

Friday, Feb. 9, 1855.

The bill in relation to the Fayetteville and Warsaw Plank Road Company was read the third time and passed.

The bill to incorporate the Moore and Montgomery Plank Road Company was passed the third time by Ayes 13 to Noes 20.

The unfinished business of yesterday—the revenue bill—was taken up and discussed.

The Senate receded from its disagreement to the House bill for the completion of the North Carolina Railroad.

The Senate then took recess.

### AFTERNOON SESSION.

A number of private bills and engrossed bills from the House of Commons were read.

The Senate then resumed the consideration of the revenue bill. After being amended in several particulars, the bill passed its second reading by Ayes 31, Noes 8.

Mr. Jones introduced a resolution providing for holding night sessions, which was adopted.

The bill to improve the navigation of the Roanoke River was read the third time and passed, by Ayes 25, Noes 15.

The bill to provide for the construction and repairs of the public roads was read the third time and passed.

The joint resolution from the House of Commons, appointing nine directors of the Lunatic Asylum, was rejected.

### NIGHT SESSION.

The Senate was mostly engaged on private bills and bills of a local nature.

## HOUSE OF COMMONS.

Friday, Feb., 9th 1855.

The House met at the usual hour.

Mr. Cofield introduced a bill to incorporate the Carolina Hotel co in Fayetteville. On motion, the rules were suspended, and the bill passed its final reading.

Mr. J. G. Bynum, a bill from the joint select committee on Club-foot and Harlow creek canal, for the improvement of said canal.

Mr. Cansler from the committee on Internal Improvement reported favorably on a bill to incorporate the Fayetteville and Raleigh plank-road co.

Mr. Bryson presented a resolution in favor of Andrew Cope.

Message from the Senate. The Senate transmitted a resolution in favor of W. H. Winder, with an amendment, in which the concurrence of the House was asked. On an explanation from Mr. Jenkins, the House objected to the amendment.

Mr. Waugh from the committee on Propositions and Grievances presented a report on temperance. On motion of Mr. Sutton, the report was ordered to be printed.

On motion of Mr. T. H. Williams, the bill to charter the Bank of Wilmington was taken up. At the conclusion of the reading, the hour arrived for taking up the Yadkin Navigation co., one of the special orders. That bill was accordingly taken up and read.

Mr. J. M. Leach addressed the House on the merits of this bill. On its passage the ayes and noes were demanded. Ayes 58, Noes 41.

On motion, the rules were suspended and the bill read a third time. Mr. Smith offered an amendment. After a short discussion the ayes and noes were demanded on the passage of the bill. Ayes 60. Noes 38. The bill passed. (Mr. Leach, in his remarks on this bill, presented some statistics of an interesting character. His speech will be published.)

The bill concerning salaries and fees was taken up, on motion. The question before the House was an amendment, to strike out three thousand and insert twenty-five hundred. The House, voting at first under a misapprehension, agreed to strike out. On motion, the vote was reconsidered, and the House refused to strike out.

A number of amendments were rejected.

An amendment offered by Mr. Dargan, proposing to increase the salaries of none but the Governor, Treasurer and Clerk, was adopted by 72 ayes to 31 noes.

The bill was laid on the table.

Mr. Singeltary offered a substitute. A number of amendments were offered and rejected. The House took a recess without coming to a vote.

### AFTERNOON SESSION.

3 o'clock.

The discussion on the bill concerning salaries and fees continued. Mr. Whitaker offered an amendment increasing the Secretary's salary.

Mr. Mordecai said he had always been against increasing officers' salaries, but since there was a disposition to increase those salaries, he would change his course. He thought the Secretary,—who had served the State for forty years and worn himself out in that service—was particularly worthy of increased compensation, and, unless it was done, he (Mr. M) would vote against the bill altogether.

Mr. J. Barnes moved to postpone the bill indefinitely. The ayes and noes demanded. Ayes 26. Noes 57. On Mr. Whitaker's amendment, the ayes and noes were demanded. Ayes 22. Noes 91. Mr. Winston offered an amendment, "that those officers shall receive no other compensation whatsoever." Mr. Singeltary objected, that it cut off the fees of those officers. Mr. Winston explained and demanded the ayes and noes. Ayes 94. Noes 20. On the passage of the bill, as amended, the ayes and noes were demanded. Ayes 50. Noes 43. The bill passed its second reading. On motion of Mr. Baxter, the rules were suspended and the bill put on its final reading. Mr. Patterson offered an amendment striking out the words, "or clerks," which was adopted. The bill passed its third and last reading.

On motion of Mr. Humphrey, a bill for the construction of a railroad from the town of Beaufort to Fayetteville was taken up. An amendment offered by Mr. Humphrey, striking out certain sections, was adopted. The bill passed its second reading.

On motion of Mr. T. H Williams, the bill concerning the bank of Wilmington was taken up for a second reading.

Mr. Baxter offered a substitute. A discussion arose, during which the hour arrived for taking a recess.

### NIGHT SESSION.

The House met at 7 o'clock.