

struct works of Internal Improvement; and these States have as yet, I believe, managed so as to pay the interest on their debts, but it is totally and utterly impossible for *these States* to pay the debts which they owe in England. If such is the deplorable condition of the States which I have just named, what must be the unfortunate consequences which must inevitably ensue to those States who are so deeply involved that they cannot pay the interest on their debts? I believe that the States of Pennsylvania, Maryland, Louisiana, Indiana, Illinois and Arkansas, have not been able in some time to pay even the interest on their English loans. This is an unfortunate and lamentable condition, and one that I humbly trust North Carolina will never be placed in while virtue has a name, or liberty a friend. We now behold about twenty of the sovereign States of this Union, involved in a debt of some two hundred and fifty millions of dollars to British Stockholders. It is a system that I wish North Carolina never to embrace. It is a system calculated to "enrich the rich man's field with the sweat of the poor man's face." And whenever this system of legalized plunder, of enriching the few at the expense of the many, shall become firmly engrained on North Carolina, and the farmers, mechanics, and laborers converted into mere stewards of their own estates, for the benefit of foreign capitalists, we may bid a long adieu to the blessings of political freedom.

I come now to pay my respects to the gentleman from Orange, (Mr. Mebane) who has expatiated in a fanciful and unrestrained manner on the immense benefit the Raleigh and Gaston Rail Road is to a large portion of the people; and has favored us with a smattering of his ideal and sentimental logic upon the great importance that this road is to the public. In the extraordinary zeal displayed by the gentleman, he has said but very little pertinent to the question now before the House, and without wishing to taintize the seeming sincerity of the gentleman on this occasion, I would most respectfully say to him that many a proud word comes from a weak stomach. The unillustrated proposals of the gentleman, however well-intentioned and specious he may suppose them to be, would be of all instruction, as they breathe throughout the evidence of the infirmity, frailty and fatuity of human nature. The gentleman informed the House, I believe, that he was in favor of authorizing the Governor to bid for and on behalf of the State, the sum of \$400,000, and even more than that, if it should become necessary for the purpose of saving the road to the State. But why will not the public be equally as much benefited if this road belongs to a company as if it was to belong to the State? I should like very much to know how the people will receive any greater advantages from this road should it fall on the hands of the State than if it was owned by a company of individuals? The road cannot be sustained unless it is patronized by the public, it makes no difference so far as those who wish to avail themselves of the conveniences of the road, who may be its owner; and,

"Strange such a difference there should be, 'Twixt tweedledum and tweedledee."

#### REMARKS OF MR. SCALES,

OF ROCKINGHAM.  
In the House of Commons of the late Legislature, on the bill to reorganize the Portsmouth and Roanoke Rail Road Company.

MR. SPEAKER: In the remarks which I propose to submit to the House on this occasion, it will not be my purpose to discuss to a very great extent the question of law that is involved in the passage of the bill now under consideration. I am no lawyer and do not feel equal to so important a task, I leave it to those who are learned in the law, and better able to do that branch of the subject justice. But I propose to take a common sense view of the subject, and in so doing, to offer such reasons as are conclusive to my mind against the passage of the bill.

Before entering into the discussion of the merits of this question, I wish to notice some of the remarks which fell from the gentleman from Halifax, (Mr. Moore).

Sir, if a stranger had stepped into this Hall on yesterday, without a knowledge of what the question was, he would have supposed that the House was a court and jury, sitting on the trial of Francis E. Rives for the crime of murder or high treason, and that the gentleman from Halifax (Mr. Moore), was the prosecuting attorney. Was not the principal portion of the gentleman's speech devoted to denunciations of Rives, the Petersburg Rail Road, and the State of Virginia? Why did the gentleman make an attack on that time honored State? Was it not for the present view of consideration? What has the Petersburg Rail Road Company, or the State of Virginia to do with the discussion of the bill to sell out and reorganize the Portsmouth and Roanoke Rail Road Company? Is the gentleman offended because President Tyler with his Virginia abstractions defeated his party in carrying into effect their destructive measures, which he was bound to do as a conscientious man, with his known and expressed opinions upon those subjects? Why speak in such harsh terms about Virginia and her citizens? Neither President Tyler, the Petersburg Rail Road Company, nor Capt. Rives are the State of Virginia.

Sir, the monuments of Virginia's renown are enrolled too high upon our country's escutcheon to be reached by the venomous shafts of the gentleman from Halifax. The original of that painting behind your chair sir, (pointing to the portrait of Washington) is one of the monuments of her greatness. But Virginia needs no defence at the hands, against the attacks of the gentleman, her whole history from her earliest settlement by the subjects of the Virgin queen, to the present time is her own vindication.

Mr. Speaker, I do not stand here as the feed counsel of Capt. Rives, or any one else; with that gentleman I have but a very slight acquaintance, and never met with him, until since the commencement of the present session, when I was introduced to him in the lobby of the House. I had heard a great deal about the difficulty between him and the Portsmouth rail road company, and came to the same conclusions on the subject that I now have, after a full investigation.

But, sir, I stand here as one of the representatives of a portion of the freemen of North Carolina, to defend the rights of any and all persons, whether they be the citizens of Virginia or any other State, or of the world. Such is the position I occupy on this occasion.

The bill under consideration proposes that the Governor of this State shall appoint a commissioner who shall (in connection with another appointed by Virginia) have "full power and au-

thority to sell the said Portsmouth and Roanoke Rail Road including the Weldon Bridge," and makes no provision whatever for the title Capt. Rives has obtained to the Bridge and 17 miles of the road, and for which the Company have received a credit of twenty thousand one hundred and one dollars on the executions which he held against them.

In the discussion of this subject, I shall in the first place call the attention of the House to the interest which the State of Virginia has in this road, and the impolicy of our legislating on the subject. In the second place I shall examine the title of Capt. Rives to the property which he has purchased, and the liability of the property of corporations to the payment of their debts. And in conclusion give a brief history of the transactions connected with the sale of the bridge and part of the road.

The Portsmouth and Roanoke Rail Road is about 80 miles long, of which more than 60 miles is in Virginia, and the remaining portion in North Carolina. The former State owns about two fifths of the capital stock, and her board of public works has a mortgage upon all the road (except the part bought by Rives) as security for the sum of one hundred and fifty thousand dollars principal, and thirty five thousand dollars interest; it being money loaned the company by the above named board. With all these facts before us, in the absence of any expression on the part of Virginia who is deeply interested, in the absence of any application on the part of the creditors and stockholders, would it not be premature—would it not be presumption in us to pass this bill? It does seem to me very strange that the gentleman from Halifax should volunteer in this matter, and dictate to Virginia what is best to be done with her property. Yes, sir, the gentleman gravely proposes to sell out the old and create a new company, when four fifths of the road and nine tenths of all the interests in it, are in another State. Is it right, is it just to pass this bill? It is not, because the bridge and 17 miles of the road about which it proposes to legislate has been sold no longer belongs to the company. But says the gentleman from Halifax, the bridge and road cannot be sold for the debts of the Company, because it is a "public highway," and the title has not therefore passed from the company. This brings me to the second branch of the subject. The Portsmouth and Roanoke Rail Road Company is independent of the Legislature, or creating power for a term of years, provided it conforms to the provisions of the Act of incorporation which it promised to do by accepting the same; it has an unquestionable right to all the property it has acquired, and is beyond the reach of the sovereign or legislative power so far as the right of property is concerned; and it is the province of the judiciary to protect the corporation in the enjoyment of its property against every body except creditors.

Then it follows that the claims of creditors are paramount to the claims of the public, and that the public cannot require its use at the expense of creditors. If the property be taken to satisfy creditors, and the consequence is that the corporation cannot perform its duty to the public, then it will be for the sovereign to claim a surrender of the franchise.

I contend then that a corporation is a franchise, and under that franchise it can acquire property, and that it is fully competent to separate the property from the franchise. Therefore it follows that the sovereign has no claim on the property, but the creditor has; that which is tangible can be taken in execution and must go in payment of debts; but that which is ideal, the franchise, can be taken by the sovereign, when the object for which it was granted, fails to be accomplished; and according to the opinion of Chancellor Kent, it is the implicit act of the corporation itself that has been the cause of its utility being interfered with, by contracting debts it could not pay, or by its own act of insolvency.

Under no circumstances could the State take more than the franchise (unless a creditor) because it would have no right to take more than it gave. It gave nothing but the franchise, and therefore could demand nothing more.

If the creditor pursues the legal remedy pointed out by the Revised Statutes of North Carolina, (and I wish the House to bear in mind that our Statutes declare "that the property of corporations, both real and personal, can be taken in execution" for the satisfaction of debts; but, perhaps the gentleman from Halifax may be able to prove that a rail road is not a corporation) and thereby places the corporation in a situation that prevents it from performing its duty to the public as was contemplated by the sovereign, is it pretended that he would be indictable? He most certainly would not; but the corporation would be unless it surrendered the franchise, or ceased to attempt to exercise it, for by its own act of insolvency as I said before, such a state of things would be produced.

The object contemplated in creating the corporation was "the transportation of persons and produce between the Portsmouth and Weldon." Cars, engines, &c. are as necessary as the road itself for "the transportation of passengers and produce" between the above named points. Suppose these cars, engines, &c. of every description were to be levied on and sold at the instance of a creditor as fast as the company could procure them and place them on the road, and he thereby prevented the company from transporting persons and produce from Portsmouth to Weldon, and vice versa; and it will be recollected that the gentleman from Halifax admitted that these things could be sold; I ask you then sir, if the purchaser would be indictable for thus putting the corporation in a situation which rendered it impossible for it to convey persons and produce as required by the charter? The road is of no importance without cars, and the cars are not of any use without the road. It is totally immaterial to the State whether the high way as the gentleman from Halifax will have it, is not used for want of iron and rails on the road, or a want of cars, engines, &c. to run them on.

But it is said that "the road is entire, and so long as the company exists, it must exist as the charter prescribes, and the company can travel the whole road without interruption;" that the road cannot be disposed of in parts, but must be sold entire. Let us see where this doctrine will lead to. The State of Virginia has a mortgage on all that part of the road situated in her limits. If the gentleman's doctrine be true it is a nullity, because the mortgage does not embrace the whole road. Again there is another mortgage on part of the road, in which a Mr. Candler, one of the company's council is trustee, which minutely described all the property conveyed, and among other things is mentioned the iron and rails, by which they indirectly admit that they are subject to sale under mortgage or execution.

You know sir, that when the Weldon toll bridge company was an independent company, it borrowed money of this State to the amount of about 8000 dollars, and gave a mortgage on the bridge; since that there has been one formed from Weldon to Portsmouth. Now, if you cannot sell it in parts how is the State to get its money? Would the State have a right to foreclose the mortgage on the bridge and put an end to the existence of the company? If so, why should not an indi-

vidual who had a lien on another part, sell and end its existence.

But how will the gentleman's doctrine work in his own way? Suppose you attempt to sell the road entire, would you not have to sell it in many parcels as there are counties through which it passes? The sheriff of any one county is not authorized to sell any property except what is situated in or brought into his county. So you see this doctrine of the gentleman from Halifax is absurd in any view which you will take of it.

The gentleman from Halifax (Mr. Moore) on a former occasion, asked, if a rail road could be sold and its sills and iron taken up by the purchaser, could not a canal also be sold and the masonry of its sides and aqueducts be taken up also? Sir, the gentleman knew very well that the two cases were entirely different. In the latter case "the property is held by the proprietors as tenants in common and is real estate." [See Dismal Swamp canal charter, page 221, 2d vol. Revised Statutes, also, see 2d vol. Revised Statutes, pages 240 and 266.] But what is said about the sills and iron composing the superstructure of the Portsmouth and Roanoke rail road? The charter declares them to be "personal estate" and the property is not held by "tenants in common" but by an ideal person. Thus it will be seen by this House, that the gentleman did not accomplish so much as he imagined, when he asked that question so triumphantly, as there is no similarity in the two cases.

As there is no statute bearing directly upon this subject, I wish to direct the attention of the House to the Acts of Assembly of '40 and '41, for the relief of the Raleigh and Gaston rail road, page 92, and it will be seen that that Legislature took the same view of this subject that is taken by all those who are on the same side of this question with myself, and that they regarded the superstructure of rail roads as subjects of execution, cannot admit of a doubt. That part of the Act which I allude to is in these words: "that the rail road extending from Raleigh to Gaston, and the engines and other apparatus necessary to its use, and all the lands and houses, and other fixtures that are attached to the said road, or are convenient to its use, shall not be liable to seizure or sale by execution at the instance of any creditor who may hereafter see fit to contract with said corporation." The act further declares that the object of the Legislature was to "protect the public interest against any impvidence." It is evident therefore that that Legislature looked upon those articles as being subject to execution. If they did so regard them, why did they adopt this negative legislative provision? Then I have their opinion as expressed in their own act to sustain my position.

But to make assurance doubly sure I would call your attention to the legislation of other States upon this subject. For instance the State of Massachusetts, which I have no doubt will be regarded as good authority; her Statute provides that rail roads and all their fixtures, and even the franchise shall be subject to execution to satisfy creditors. I could refer to many other States who have similar provisions in their statute books; but what has been already said is sufficient to sustain the position that rail roads are and of right ought to be subject to execution in payment of their debts.

But sir, if I should be in error, and the doctrine of the gentleman from Halifax be correct, it should not be tolerated for a moment. An act should be passed at this session of the Legislature to remedy such an evil. Has it come to this that companies are to be incorporated without making their individual property liable for their debts; and the very same persons who oppose individual liability, turn round and tell us that we shall not only not make the corporators individually liable, but that because they are a rail road company, the property of the corporation should not be taken in execution? Sir, is not this the most abominable doctrine ever promulgated to a republican people.

The Legislature passes an act to incorporate a rail road company, which gives them the full power and authority to go upon the lands of others and have it condemned to their use, and provides further that the damages shall be assessed by certain persons, and that the company shall pay such damages; we are then told that the rail road which is very near all the property the corporation has, cannot be sold for the payment of such debts. Sir, what a mockery of justice is this. If you and I contract debts we can be compelled to pay the last farthing if we have any thing to pay with. This is all well enough. But if a farmer sells timber &c. to a rail road company and hauls it to them, they can sell it again and pocket the money before his eyes, and when he applies for payment he is told that the company is insolvent, and that their rail road is not subject to execution; and if he attempts to sell their property to get his money, he is hunted down with the ferocity of a hyena. This is no imaginary picture—it is verified to the very letter in the controversy between Francis E. Rives and the Portsmouth and Roanoke rail road company.

I will now conclude my remarks by calling the attention of the House to a few facts connected with that controversy.

The gentleman from Halifax was particularly careful to give us a history of the offences of Capt. Rives and the Petersburg rail road company. But, sir, the gentleman was an unwilling witness, he did not tell the whole truth; he did not tell anything about the misdeeds of the Portsmouth and Roanoke rail road company. I will supply the omission in his history of this transaction, and present a view of the other side of the picture; and it will be seen by the House that the gentleman has made a labored effort to create a prejudice in this House against Capt. Rives and the Petersburg company. Sir, never let it be said that this House will espouse the quarrels of one rail road company against another. Such a course would be too humiliating and degrading to the character of our State.

As the conduct of the Petersburg company and Capt. Rives has been handled so roughly, I will call your attention to the various instances in which the Portsmouth company has violated its charter. The act of incorporation provides that the company shall make annual reports to the Legislature of this State setting forth the situation of the road, which duty it has failed to perform. It provides that it shall not charge more than six cents per mile for the transportation of persons from Weldon to Portsmouth, while it has been charging six dollars for about 80 miles; and it further provides that persons shall be permitted to cross the Weldon bridge free of charge, to prevent which the company had the flooring of the bridge taken up, but failing in their purpose in consequence of the facility with which the bridge could be crossed upon the sleepers, they then resorted to the expedient of heaving them up an edge, and thereby prevented its passage entirely. All these cases I have mentioned are reckless violations of the provisions of the charter which gave the company its existence.

I will now allude more particularly to the incidents connected with the controversy between Capt. Rives and the company. After various propositions of the most reasonable character to make

terms with the company, without success, he determined to take possession of his property, (which the company had been using from the time of his purchase) and brought on a parcel of hands, and commenced taking up the iron and rails, being informed in the mean time by Maj. Gwyn that he intended to resist him with an armed force, which Rives no doubt regarded as only a threat, as he had a most undoubted right to his property. Maj. Gwyn resolved to carry his threat into execution and in addition to the effective force which he could raise in the neighborhood, he sent off to Portsmouth for an armed company of volunteers; and what is still more ridiculous, his friends there endeavored to procure a six pounder to bring with them; all for the laudable purpose of preventing Francis E. Rives from taking possession of property which he had bought at a sheriff's sale by which he received a bona fide title to the same.

To place the conduct of the Portsmouth company in a true light before the House, I will relate an occurrence which took place about the time Capt. Rives was expecting to obtain judgment against the company in Halifax county; and I would here ask the gentleman from Halifax if the Court in his county does not take place one week after it does in Warren county? The gentleman refuses to answer. I take it for granted then that I am correct. On the 17th day of April, the week before Halifax court, Maj. Gwyn, President of the Portsmouth and Roanoke rail road company, confessed judgment at Warren court in favor of A. Joyner and T. T. Wyatt in one case, and the Trustees of Portsmouth in another case, on both of which executions were immediately issued to Halifax and Northampton, that they could be levied on the road &c. before Rives could get his execution in Halifax, both debts amounting to about \$8,000 dollars, and all the plaintiffs except A. Joyner, living in Virginia. Thus showing a deliberate collusion between the company and a portion of its creditors for the purpose of cutting off another creditor; and thus showing most conclusively and triumphantly that the company regarded their property as subject to execution.

Sir, I am not disposed to enter into a course of crimination and recrimination, or to bandy epithets in the discussion of this subject. If I were, time would not permit. I will therefore only repeat in conclusion what I said at the outset, that I stand here to vindicate the claims of justice, and the rights of individuals, let them come from whatever quarter they may. Let us never do injustice to gratify our private prejudices and feelings; let this temple dedicated to the honor and pride of the Old North State, this monument of the munificence of her citizens, and the advancement of our countrymen in the arts and refinements of life, crumble into atoms; but let justice be done, though its recipient be a savage or a heathen, a Jew or a Christian.

#### FOR THE NORTH CAROLINA STANDARD.

MR. THOMAS LORING.  
Sir: Your position is a public one, and I therefore address you without apology. I will take occasion here to say that a press of other duties prevented me from paying the attention to this subject which I should have done before this. If I use language unsuited to your polished manners—that may grate harshly on the ear, or pierce the heart—you must bear with me, recollecting that I am not the assailant, but rather acting in the defensive. You have provoked me to it, by your unmitigated and uncalled for attacks upon the Democratic Republican Party; by your misrepresentation of matters relating to individuals connected with that Party; by your base betrayal of the confidence reposed in you while acting with that Party; and by your seeming to "have thrown off all the restraints which truth, justice, or propriety might require."

You have the reputation of being a gentleman and a Christian—at least with some persons, I do not say it is general. In what degree you are possessed of either of these qualities, I leave for others to judge: it is of you as a public man that I intend to speak. People will draw inferences, however—"a good tree cannot bring forth evil fruit, neither can a corrupt tree bring forth good fruit; by their fruits ye shall know them," said the Saviour in his sermon on the Mount. "Do unto others as you would they should do unto you," is an injunction which should be the rule of action engraven on the heart of every one, and especially those who take up the cross and profess to follow the meek and lowly Jesus. Your christian reputation is calculated to give weight to your assertions, where it is known; and but for this, in all probability you would have passed unnoticed, at least by me.

But, sir, as an avowed and avowed reader of my articles will agree that the position in which I left you was an unenviable one—that of a liar, a public liar. I use the word in its most unqualified sense. So hopeless and helpless was your case, that you dared not even attempt to confute my arguments, for you were accompanied by the proof, that your own words had taken up the arms of every one, and especially those who take up the cross and profess to follow the meek and lowly Jesus. Your christian reputation is calculated to give weight to your assertions, where it is known; and but for this, in all probability you would have passed unnoticed, at least by me.

From the time of taking charge of the Standard, in 1838, until about the commencement of the session of the Legislature of 1841-2, you were a zealous co-laborer in the cause of Democracy—the advocate of a strict construction of the Constitution, as contended by the Virginia and Kentucky Resolutions of '98 and '99—the champion of the Rights of the People, and the opponent of Federalism in any and every form; in other words, you were a disciple of the immortal Jefferson, the great Apostle of Liberty, and founder of the Democratic Republican Party.

It was a remark of Sir Robt' Walpole, I believe, that "every man has his price;" and if it be true, yourself among the number. It has been charged, with what degree of truth I leave for others to say, that you have been paid by the party, for your work of the Federal Party. If true, and I know it not to the contrary, you may perhaps excuse yourself as did Sir John Falstaff: "Dost thou hear, Hal? thou knowest, in the state of innocence, Adam fell; and what should poor Jack Falstaff do, in the days of villainy? Thou seest, I have more flesh than any other man; and therefore more frailty."

At the session of the Legislature of 1841-2, great dissatisfaction was felt, and justly too, at the course pursued by you; and this feeling spread in all sections so fast that opposition was seriously spoken of, you denying that the party had any claim upon you, and that you were under no obligation to you, you were under an obligation to the Standard, that your "connexion with the party was a private enterprise." The public know your conduct, on that occasion, relative to the election of a U. S. Senator—first the advocate for General Saunders, on the ground that two terms was long enough for one man (Col. Brown) to serve; next claiming, and that induced to your press, or that you were under an obligation to the party, so that you were under an obligation to the Standard, that your "connexion with the party was a private enterprise." The public know your conduct, on that occasion, relative to the election of a U. S. 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