

THE NORTH-CAROLINA STAR.

THOMAS J. LEMAS, Editor

NORTH CAROLINA—Powerful in intellectual, moral and physical resources, the land of our sires and home of our affections.

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DEBATE

IN THE SENATE OF NORTH CAROLINA, ON THE CAMDEN AND CURRITUCK ELECTION. (Continued.)

Thursday, Oct. 7th, 1852.

Mr. Jones resumed and concluded his remarks, which were interrupted by the adjournment yesterday. Having disposed yesterday of two points, viz: first, the necessity that the certificate of return should, in all cases, be under the hand and seal of the returning officer; and secondly, the necessity in case where the district is composed of more than one county, that the certificate should be under the hand and seal of the Sheriff of each county within the district, he proceeded to discuss the question as to the duties incumbent upon those officers, when met according to law to examine the polls, contending that the law looks them to all intents and purposes, *pro hoc vice*, judicial officers, and makes it imperative upon them to decide and make a return, and that they have the right to adjourn the examination from time to time, until they come to a decision. This they had failed to do. They had not agreed, but each one had made a separate return. It was then clearly the duty of the Senate, he contended, that to whom the decision of the matter naturally belonged, to complete the work which the Sheriffs had failed to perform, and to investigate the facts as to who had been elected. What was it the duty of the Sheriff to do, he asked, when informed that a vote had been improperly struck off? His duty was to count the vote as given, and, in each case he could not return either candidate as elected, because it would make no sense. It was the duty of the Sheriff to make returns according to the truth of the case. Truth said, Mr. Jones is not to be changed or destroyed by raising the pen through it. Truth is unchangeable and indelible. And, sir, it is for the Senate to determine what is the truth in this case. I am sure that you, and if we fail in the performance of this duty, we shall be justly answerable to public opinion.

Now, sir, it is said that neither one nor the other of these reports is correct. I have brought here the evidence that he is elected. This is so. There have not brought here the full evidence. I was by the duty of the Sheriff to determine who was elected. They have not done so. I am sure that you have decided that one of the candidates is elected and the other has decided that the other is elected. Here is a clear and distinct opinion. The case has come up by way of appeal to this House. We are required to do that which this inferior court ought to have done, and which they failed to do. Now, sir, this House has got to determine it. How will they provide for the people? If a person is elected, and I do not say, respect for the rights of the majority of the people of the district, I do not say respect for the gentleman who present themselves here claiming the seat, for they have the least to do with it, and less for less than those people who voted at the election—but I do say, respect for the rights of the majority of the people of the district, who will be virtually disfranchised if we fail to do our duty, should prompt this body unhesitatingly to furnish us with a committee that the matter may be investigated and the truth manifested. I hope it will be done. I hope the Senate by their votes will give vitality to that excellent old maxim, *ad justitia ratio* rather than *colorem*.

Mr. Gilmer said he had a few observations to make in relation to this controversy before voting upon any of the propositions which had been submitted. What it is, said he, that is proposed on the part of Mr. Bernard and his friends? First, they propose to have the matter referred to a committee in order that it may be investigated, that the evidence now before the Senate, together with such other evidence as may be adduced by the parties, may be examined, and a report made so as to enable the Senate to proceed understandingly, and upon their solemn oaths to declare whether or not Dr. Shaw is entitled to the seat. This is the proposition? What objection can there be to this? Has Dr. Shaw or his political friends anything to fear from it? As we remarked yesterday by the Senator from Randolph, his political friends have the control in this House; a speaker in whom all have confidence, elected by them, to appoint this Committee, and as we should reasonably expect, to appoint a majority of his political friends upon it. What objection can there be to this on the part of all fair, candid and reasonable men? None whatever. Again, it is proposed on the part of Mr. Bernard and his friends, if the first proposition should not be considered satisfactory, if it is not in the opinion of our friends on either side a proper mode of regulating matters of this kind, then, we say let the case go to the people of the district, and let them decide the question for themselves. Or, if an inquiry it is ascertained that one of the claimants is entitled to the seat, then it is proposed to let the freemen of the district decide the question for themselves.

My friend, the Senator from Mecklenburg, has said that the affidavit of Mr. Cherry, the affidavit of the Senator from Pasquotank are all included in the evidence upon which the Senate should act. Mr. Speaker, the Senator from Mecklenburg is a lawyer, and an able one; no Senator in this House understands more correctly than he does, what is legal procedure is meant by *ex parte* evidence. With, sir, is there any thing before the Senate other than *ex parte* evidence? What is *ex parte* evidence? It is evidence that by the subpoena, the construction of law. How is it with regard to the certificate of Simon? Is that admissible or is it *ex parte*? How is it with regard to the certificate of the Sheriff of Camden? Is that admissible or is it *ex parte*? What is the law which makes the

statements of the Sheriff of Camden and of Simon admissible? The act of the assembly regulating this matter requires that there shall be the joint statement or certificate of the two returning officers. That is not all. Not only that, but a concurrence in giving the certificate but a concurrence in the statement of those two officials. This is the evidence that the law requires. And anything that does not come up to the requirements of the law is *ex parte*. Now have these two returning officers united in certifying that Dr. Shaw has been duly elected from this second Senatorial District? If they had done so, though the certificate might not have had a seal, for one, I should have been willing to say let us admit Dr. Shaw to the seat. I should have been willing to receive such a certificate as *prima facie* evidence, that he was entitled to the seat. Not because the law does not require a seal, but because the objection, if made, would not be fatal, but I should be willing to waive the objection and allow him to take the seat. Suppose that a gentleman comes here with a certificate under the hand and seal of the returning officer, or where the district is composed of more than one county, under the hands and seals of the returning Sheriffs, and when at presents willing to take his seat, a majority of the Senate should say, you shall not have your seat; though you take your *prima facie* right you shall not have your seat. What should we think of ourselves after giving such a vote? What would all intelligent men think of such a proceeding? Then, sir, if this would be justly, objection to such a mode of proceeding on the part of the Senate, what would be the converse of the proposition? A man comes here with a certificate and what he alleges to be a certificate and without the Senate going to the seat. If the certificate should be struck off in the first place, would it be less so in the second? Sir, I say there is no evidence here except that of *ex parte* nature, and I submit that taking the statement of the Sheriff of Pasquotank, the statement of the Senator from Pasquotank, and the statement of the three inspectors all together, or adding the several papers containing them, are not independent of each other, what the law requires cannot be made out of the whole or any part of them. Suppose a Judge, sitting on the bench of the Superior Court, should be presented to him the certificate of the Sheriff of the county, setting forth that A. B. had been duly elected according to law. Clerk of the county, and which has been produced here, it is but fair to say that the Judge should have the privilege of knowing what it is.

Now one word as to the one which is said to have been struck off. Sir, how stands that matter? What right had the Justice of the peace to strike that off? Suppose he had struck out more than he did? He had no right to do either. First, he did it in the absence of the two other inspectors; secondly, the day of election was past, his ministerial power, his ministerial functions had passed, they had come to an end. Suppose a Sheriff returns to the office of the Superior Court, presents a writ, or a subpoena, if you please; or on the back of the process he returns "A. B. Sheriff." That is spread upon the record of that Court. Afterwards, suppose the Clerk of the Court or some other individual should take it into his head to write the word "not" before "elected." At the next Court the Judge is required to say what is the legal interpretation of the return. Would he be expected to decide that it was not executed, without making further inquiry, merely because the word "not" had been interpolated by a person who had no authority to alter the return? If not how is it that a person may alter the record of an election?

Sir, a motion was made by the Senator from Mecklenburg, to lay this evidence on the table. If one portion is laid upon the table, why not lay the whole? It is all *ex parte*; and I submit that if any part of the evidence is to be suppressed, it should all be laid aside. On motion of Mr. Steele.

Resolved, That the Committee on Finance be instructed to inquire into the expediency of the passage of an act requiring the Public Treasurer to issue "warrants" attached to all the bonds of the State hereafter issued by him, under authority of an act of Assembly now in force, or which may hereafter be passed.

The Senate proceeded to vote upon the joint order of this morning, for Engraving Clerks.

Mr. Drake subsequently reported that Mr. Harris was duly elected. The vote stood: Harris 83, Jenkins 51, Hanson 31.

Mr. Boyd presented the following resolution, viz: Resolved, That the Comptroller report to this House a tabular statement of the public taxes paid into the Public Treasury of the State by the cities and towns thereof, for the years 1848, 49, 50, 51, and 52. That he set forth, in each report, the aggregate amount of public tax paid into the Public Treasury in the five years aforesaid, and the average amount paid by each county in this State; and that he certify not forth in each report the aggregate amount paid; also the average amount paid by each county in this State, created since the last five years aforesaid.

The resolution was laid upon the table, and subsequently taken up and passed.

LEGISLATURE OF NORTH CAROLINA.

STANDING COMMITTEES OF THE COMMONS

APPOINTED ON WEDNESDAY THE 10TH, 1852.

On Claims—Messrs. Dillard, Northcutt, Meigs, Wood, Colleton, Rivers, D. F. Caldwell, Waugh, Wheeler, Calhoun and Boyd.

On the Proprietary and General—Messrs. Bennett, Manning, Auld, Ward, Waters, Farr, Holman, Puryear, W. S. Harris, Cherry, and Lowry.

On Education—Messrs. Cherry, Steele, Wilber, W. E. Hill, McNew, Pagan, S. P. Hill, Steele, Dargatz, Eaton and Burton.

On Agriculture—Messrs. Lockhart, Tripp, Wilkins, Scales, Foster, Simmons, Wm. Iddig, Caldwell, Sherman, Miller, and McNeil.

On Internal Improvements—Messrs. Reynolds, J. M. Saunders, Russell, Strange, W. Lutz, J. Turner, Isaac, A. S. Wall, Avery and Egg.

On the Prisoners and Debtors—Messrs. Barrow, Wynne, Smith, Sutton, McDowell, Barrett, Durham, Dunn, Trecker and Musgrave.

SENATE.

Tuesday, Oct. 12, 1852.

The Speaker announced the following standing committees:

On Proprietary and General—Messrs. Watson, Wagoner, Alford, Boyd, Richardson, W. M. Hill, Murray.

On Claims—Messrs. Drake, Richardson, Arnold, Barrow, Cooper, Ward, Abbott &c.

On the Judiciary—Messrs. Woodley, Caldwell, Rose, Gilmer, Dymon, Lillingston, Kelly.

On Internal Improvements—Messrs. Thomas, J. M. Mitchell, Canady, Jones, of Pasquotank and Reynolds, Kerr, Jones, of Wake.

On Agriculture—Messrs. Clark, Mitchell, Speight, Shaw, McNeill, Henson, and McNeill.

On Education—Messrs. Perry, Thomas, Thompson, McNeill, Woodley, Woodley, Barrow, Barrow, Fisher.

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Mr. Jones, having introduced the foregoing resolutions, left his duty, before the question was taken, to make a few remarks in explanation of the difficulties which had occurred to him, in regard to proceeding with the ordinary business. The preamble showed that the amended Constitution required that the Legislature shall meet biennially, and that the session fixed the 3rd Monday of November as the time for the regular biennial meeting. It was also provided that, in cases of emergency, the Governor might call a meeting for special purposes. Such an event had occurred, and he had called them together to arrange the Electoral Districts. This work had been accomplished, and it was a question whether any ordinary business could lawfully be introduced, until the regular session, which under the statute, cannot commence until the 3rd Monday of November. But in order to convert this into the regular session, it is proposed to repeal the statute, and pass another to meet on the 1st Monday of October. Now, if this should be done, what, he asked, would be the consequence? They, or their predecessors would be constituted, in fact, the Legislature, until the 3rd Monday of October. The term of a Legislature was the 52 days of a year, or a year and a day, commencing from the first day of the Legislature should meet at a later day, it would cause longer period than two years to intervene between the times of meeting, and be a violation of the constitution, which requires biennial sessions. The meeting held under the call of the Governor, could not be considered a session as contemplated by the Constitution. Mr. Jones said he had looked into the debates of the Convention of '33, by which the Constitution was adopted, and found that some of the words, which are most distinguished champions of the public interest, in that body, offered strong reasons against the amendment for prolonging the period between the regular sessions of the Assembly, and insisted on adhering to the original provision, requiring annual sessions.

He commented at some length, with his usual force and ability, on this subject, and concluded by saying that the resolutions he referred to the Judiciary Committee, with instructions to report upon them at an early day, and upon the propriety of adjourning forward. It would be for the committee to propose what they saw the need of, the 3rd Monday of November? If we repeal the law, and adjourn on the first Monday of October, shall we not be compelled to meet on the same day two years hence, or violate the Constitution? The resolutions declare that the first meeting is not a session within the contemplation and meaning of the Constitution. If so, what new arrangement requires to be made at the first meeting after 1851, cannot be long gone. He wished to make these suggestions, which had recently occurred to him, to the committee.

The motion to refer was carried, and "The Senate adjourned until tomorrow, 11 o'clock."

HOUSE OF COMMONS

Tuesday, Oct. 12th, 1852.

The Speaker announced the following committees:

On Private Bills—Messrs. Collins, D. Reid, W. Sanders, Cogden, Gwynn, Linder, Webb, Love, Alford, George, Johnston, Foreman, B. T. Williams and Jarvis.

On the Judiciary—Messrs. R. M. Saunders, Spruill, Dobbin, Leach, Avery, Phillips, Barrow, Dargatz, Carmichael, S. P. Hill, and McDougall.

On Education—Messrs. Cherry, Dillard, Smith, Northcutt, Waters, Wheeler, W. J. Long and Durham.

On Libraries—Messrs. Wiley, Strange and J. Turner.

Mr. Leach offered a resolution requesting our Senators and Representatives in Congress to make application, by bill or otherwise, for an appropriation to the State of North Carolina of a late and equitable portion of the public lands, which, when so appropriated, shall be applied to purposes of Internal Improvement, public education and in relief of the Treasury and public burdens of the State.

Resolved, That the Committee on Finance be instructed to inquire into the expediency of the passage of an act requiring the Public Treasurer to issue "warrants" attached to all the bonds of the State hereafter issued by him, under authority of an act of Assembly now in force, or which may hereafter be passed.

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The resolution was laid upon the table, and subsequently taken up and passed.

Mr. P. E. Jones introduced the following resolutions, viz: Whereas by the amended Constitution of the State, article 2, section 7th, "the General Assembly shall meet biennially," and whereas by an act of Assembly, chapter 53, section 25, it is declared "the meeting of the General Assembly shall be biennially on the third Monday in November." Therefore,

Resolved, That it is inexpedient to repeal the said statute, chapter 53, section 25.

Resolved, That it is inexpedient to pass a statute repealing the said statute, chapter 53, section 25.

Resolved, That the Convention of the General Assembly, by his Excellency the Governor, by virtue of the power in him vested by law, and upon an extraordinary occasion, does not constitute, within the meaning and contemplation of the Constitution, a session of the General Assembly.

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Clark, was referred to the committee on corporations. Read and adopted.

The Senate then adjourned until tomorrow 11 o'clock.

HOUSE OF COMMONS.

Wednesday, Oct. 13th, 1852.

Mr. Dobbin introduced a bill to incorporate the Fayetteville and Raleigh Plank Road Company. Read first time, and referred to the committee on Internal Improvements.

Mr. Williams introduced a bill to pay taxes on the State and County. Referred to committee on the Judiciary.

Mr. Carmichael introduced a bill to repeal in part a bill passed in 1848 '49, entitled "An Act to secure the purchasers of land sold under execution." Referred to committee on the Judiciary and ordered to be printed.

Mr. Strange introduced a bill to amend an Act of the Revised Statutes, chapter 54, entitled "An Act for establishing public landings and places of inspection, and appointing Inspectors in the town of Wilmington." Referred to committee on Private Bills.

Mr. Leach introduced a bill to ascertain the will of the freemen of North Carolina as to the call of a Convention on the federal basis. Laid on the table and ordered to be printed.

[The bill makes it the duty of the County Courts, at the first term after the 1st Monday in March, 1853, to appoint inspectors to superintend an election on the first Thursday in August, 1853, at which the vote shall be taken for "Constitution" and "No Constitution," &c.]

Mr. Webb introduced a bill to amend Tax Collectors, which was laid on the table and ordered to be printed.

[Provides that a Tax Collector shall be elected in each county on the 25th day of November to hold office two years, and to be compensated by receiving a certain per cent, on all moneys collected.]

Mr. Caldwell, of Lincoln, introduced a bill to alter the line between the counties of Lincoln and Gaston. Referred to the committee on Propositions and Grievances, with accompanying memorial.

Mr. Brooks introduced a bill to repeal an act entitled "An Act for the better organization of the Courts of Pleas and Quarter Sessions in the county of Pasquotank." Passed at last session, chapter 35. Referred to committee on Private Bills.

Mr. Lander introduced a bill declaratory and explanatory of 2nd sec. 23th chapter of Revised Statutes, entitled "Divorce and Alimony." Referred to committee on the Judiciary and ordered to be printed.

[The bill provides that when a woman is present at the trial of her marriage, of which her husband is ignorant and that neither the man she married nor a former husband is the father of the child, it shall be sufficient ground for divorce.]

Mr. Lander introduced a bill to qualify and explain the duties of Grand Jurors.

[Repeals the present oath and prescribes another, by which they swear to present all such crimes as shall be given them in charge, and all such misdemeanors as the public will be benefited by prosecuting, according to the best of their discretion and understanding.]

Mr. Dargatz moved to reject the bill, and it was referred to the committee on the Judiciary.

Mr. Dobbin introduced a bill to change the name of the "Cape Fear and Deep River Steamboat Company," which the rules being suspended was read, three times and passed.

Mr. Lander introduced the following resolutions: Resolved, That the only true basis of taxation of any people, in a free government, is the cash value of the goods and chattels lands and tenements which the people may be said to possess, minus their liabilities.

Resolved, That it is the duty of the General Assembly of North Carolina, to pass such a revenue bill as shall most effectually arrive at, early and establish the principle contained in the foregoing resolution.

Referred to committee on Finance.

Mr. Strauge introduced a bill to incorporate "The True Brothers Society" in the town of Wilmington. Referred to committee on Private Bills.

On motion of Mr. Steele leave of absence for 10 days was granted Mr. Wm. of Hyde. On motion of Mr. Caldwell, of Lincoln, the House adjourned until 11 o'clock to-morrow morning.

SENATE.

Thursday, Oct. 14, 1852.

Mr. Woodlin, from the Committee on the Judiciary, to whom was referred a bill to repeal in part the 25th section of the Act of the Revised Statutes, (which fixed the time of meeting of the Legislature on the 3rd Monday of November) reported the same to the Senate, and recommended its rejection. Laid upon the table.

On motion of Mr. Brogden, a resolution was adopted directing the Public Treasurer to report to the Senate the amount of stock held by the State in incorporated companies—the sums due the state and debts for which the State is bound, &c.

Mr. Bowyer introduced a bill to confirm the establishment of the county of Yadkin. Passed first reading and referred.

Mr. Woodlin, from the Committee on the Judiciary, to whom was referred the resolutions of Mr. Jones, and recommended its rejection. Laid upon the table.

On motion of Mr. Brogden, a resolution was adopted directing the Public Treasurer to report to the Senate the amount of stock held by the State in incorporated companies—the sums due the state and debts for which the State is bound, &c.

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Mr. Woodlin introduced the following resolution: Resolved, That the two Houses do adjourn on the 15th of October instant, to meet again on the third Monday of November.

Mr. Woodlin said it was due to the business that was to come before the Legislature, to adjourn. He could not see what could keep them until the 1st day of January. It was regarded by some as inadvisable to adjourn to be in session on that day to witness the inauguration of the Governor. If they were to be here then, what were they to be doing in the mean time? The report of the committee was to revise the statutes was to be presented at the regular session.

Mr. Woodlin said that he had been appointed by the principal part of the business of the session; and if that is not to come before them, they could go home and remain there, and return on the third Monday of November, and then do the business and adjourn before the 30th day of January.

The question was then taken on Mr. Woodlin's motion to adjourn on the 15th of October, and it was decided in the affirmative—yeas 10, nays 2, and a non-decision by Mr. Steele.

Mr. Jones, from the Committee on the Judiciary, to whom was referred a bill to amend an Act of the Revised Statutes, chapter 54, entitled "An Act for establishing public landings and places of inspection, and appointing Inspectors in the town of Wilmington." Reported the same to the Senate, and recommended its rejection. Laid upon the table.

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