

THE RALEIGH STAR AND NORTH CAROLINA GAZETTE.

TK J. LEMAY, (Printer for the State,) EDITOR AND PROPRIETOR.

"NORTH CAROLINA—POWERFUL IN MORAL, INTELLECTUAL AND PHYSICAL RESOURCES—THE LAND OF OUR SIBES AND THE HOME OF OUR AFFECTIONS"

[THREE DOLLARS A YEAR—IN ADVANCE]

VOL. 35.

RALEIGH, N. C., WEDNESDAY, DEC. 19, 1844.

No. 31.

REPORT.

To the Honorable
The General Assembly of the State
of North Carolina.

The President & Directors of the Literary Fund of North Carolina beg leave to submit the following

REPORT:

In conformity to an Act of the last Legislature, passed on 17th Jan'y, 1844, chapter 59, the Literary Board invested \$50,000 in the Bonds of the Wilmington & Raleigh Rail Road Company, endorsed by the State, which fell due in January, 1843.

A "Resolution relating to the Treasurer," was passed at the same Session, on 25th January, authorizing the public Treasurer to borrow, as the exigencies of the Government might require, from the Funds of the Literary or Internal Improvement Boards, or of either of the Banks of the State, a sum not exceeding fifty thousand dollars. It was ascertained immediately after the adjournment of the last Legislature, by the Governor, who is, *ex officio*, President of this Board, that the public Fund was exhausted and upwards of \$27,000 of the other Funds in the Treasury had been used to meet the current expenses of the State; that it was more than probable that a large amount would have to be paid out of the Treasury for principal and interest due upon Rail Road Bonds endorsed by the State, besides the current expenses; and that the loan of \$50,000 authorized by the foregoing resolution would be wholly inadequate to meet the demands at the Treasury: it was therefore suggested to the Board by the President, that as the acts, which authorized the State to endorse the Rail Road Bonds, directed the Treasurer to pay, in the event the Rail Road Company failed to pay, out of any monies in the Treasury, and as the loan of \$50,000 would not be sufficient to meet all the legitimate demands at the Treasury, and therefore there must be necessarily a deficiency—that it would be better not to make a loan to the Treasurer, which must necessarily be limited to the sum he was authorized to borrow, but to permit the Funds of the Board to remain in the Treasury, to be used under the authority of the acts aforesaid, which directed him to pay out of any monies in the Treasury—whereby the Treasurer would be enabled to meet the demands at the Treasury, although they might greatly exceed \$50,000—the sum he was authorized to borrow.

The Board approved of these suggestions, and being desirous to aid in sustaining the public credit, permitted their funds to remain in the Treasury for its use and the public service; whereby the Board has lost a large amount of interest, which could have been made if the fund had been loaned or invested; but the credit of the State has been sustained—and the public Treasurer has been relieved from the necessity of borrowing a dollar.

It is, therefore, most respectfully submitted, by the Board, to your honorable body, in behalf of the Fund entrusted to their care, whether interest should not be paid upon that portion of the Fund which has been permitted to remain in the public Treasury to sustain, and which has sustained, the public credit.

So likewise the Legislature of 1840 directed the public Treasurer to borrow money of this Board, to meet the expenses of the Government. The formality of a loan between the Treasurer and the Board was not entered into, but their funds were permitted to remain in the Treasury for the public use and were so used, whereby the Board was prevented from loaning or investing them. It is likewise submitted whether interest on these funds should not be allowed.

The monthly settlements between the Comptroller and Treasurer will show the amount of the Literary Fund used by the Treasurer for public purposes.

By another Resolution of the same session, passed on 26th Jan'y, the Board was directed to loan "the balance on hand of the Literary Fund," or to invest it.

It is needless to say, that after redeeming the Rail Road Bonds, they were directed to take up, and supplying the Treasury with the funds it needed, there was but little to loan or invest.

Twenty seven shares of Bank Stock have been purchased, and loans to the amount of \$3,150 have been made since the adjournment of the last Legislature.

The amount of the net annual income of the Literary Fund, for the fiscal year ending 1st Sept. 1843, was \$90,947 22, and for the fiscal year ending 1st Sept. 1844, \$92,027 71; which sums were ordered to be distributed among the several counties of the State according to their Federal population, except the counties of Edgecomb and Rowan, which have not yet adopted the Common School System.

Exhibit A, hereto attached, shews the sources from which these funds were raised.

It is believed that the Common Schools have generally gone into operation throughout the State, and in some counties where an enlightened and liberal spirit prevails, they are doing much good: where a faithful magistracy do their duty by imposing the taxes required by law for that purpose, and where the superintendents and school committee-men discharge their duties with a spirit and devotion worthy of the good work in which they are engaged.

But this Board cannot but express their deep regret to learn that in some counties, the Justices fail to lay any tax whatever for Common Schools, alleging that the law does not impose it as a peremptory duty upon them to do so, but leaves it to their discretion.

If this construction be correct, it is matter of surprise, that there is to be found, at this enlightened day, any body of men actuated by a spirit so niggardly, and so totally at variance with the true interests of the community.

This departure from any thing like an enlightened policy and liberal spirit, is the more surprising, when we reflect how much more money is returned to the counties in the annual distribution of the Common School fund, than the counties pay, in public taxes into the public treasury. Surely this fact is not known, or, if known, it is unheeded.

It is a FACT, and, perhaps, an anomaly in Government, that the public Treasury of North Carolina, from the Literary Fund, returns to the citizens, to educate their children, a larger amount than is paid into that Treasury from every source of taxation. Take, for instance, the land and poll tax due and payable in 1840—the sum, as appears by the Comptroller's Report, is \$62,886 36—the amount distributed in Sept., 1843, from the Literary Fund, was \$90,817 22. So, the land and poll tax of 1844 was \$63,503 95—the amount distributed from the same fund in Sept., 1844, was \$92,027 71. And let it be remembered, that of these sums, thus distributed, not one cent rises from land or poll tax.

Here, then, we see the counties receiving from the public treasury nearly fifty per cent. more than they pay into it; and yet a niggardly magistracy thwarts the enlightened designs of a wise Legislature, by neglecting or refusing to tax themselves for their own benefit to half the amount thus gratuitously returned to them!

If popular education is a matter in which the State is interested, he is interested in the education of all; and thus does she extend her liberality to all.

If she requires her citizens to aid her in this good work in proportion to their means, by way of county taxation, is it unreasonable that all should aid in proportion to their means? Is it right, is it just, that one portion of the citizens should aid the State in so praiseworthy an undertaking, while another is permitted to go without render-

ing any aid?

If the law be not peremptory on the magistrates to lay a county tax for Common Schools, it is most respectfully submitted whether it should not be so.

The Board cannot but press upon the attention of the Legislature again, the absolute necessity of a State agent of Common Schools, whose duty it should be to travel over the State, and aid by his knowledge, experience and skill, in bringing the system into more perfection and usefulness—who will carry out the plans that may be determined upon by the Board, and see that others do so—who will see to the collection and application of the funds set aside for the purpose—who will aid in procuring proper teachers and in introducing proper books into the schools—and who will see that the school committee men discharge their duties, in making proper returns to the superintendents, and that the Chairmen of the latter make out their returns as required by law.

The Literary Board does not deem it proper to employ so important an agent without the sanction of your honorable body; and if the matter is left discretionary with the Board, it is believed that such services might be employed and dispensed with, whenever the public interest required it.

Exhibits B and C, which accompany this report, may give some idea of the operations of the schools in some of the counties; but such is the defective manner in which many of their reports are made to the Board, that it is very difficult to extract any thing from them that is either satisfactory to the Board or useful to the public.

These returns the Board would be pleased to lay before your committee on Education, by which, it is believed, they will see the evident propriety of having a State Agent to attend to these matters.

It will likewise be seen from these exhibits, that no return whatever is made from a number of counties.

Exhibit D shews the state of the Fund on the 1st December instant.

Exhibit E shews the cost and whole expenditure of the Swamp Improvements.

The Board has made no attempt to make sale of the swamp lands which have been drained, since the last session of the General Assembly. The disastrous storms which visited that section of the State, and by which the crops were utterly ruined, rendered it prudent to make no attempts at a sale, until the people should recover in some degree from their severe losses. The lands, in the mean time, are improving in quality by undergoing a more thorough decomposition.

The present being an excellent crop year in that region of the State, the next season may be a propitious time to bring some of these lands into market.

The Board has the pleasure to announce, that, of the various loans made by it, not a dollar has yet been lost; nor is it believed that a single debt due to it is doubtful.

As the term of service of the present Board must shortly expire, the members of the Board desire a thorough investigation into the affairs of the Board, and invite the strictest scrutiny into the manner in which they have discharged their duties.

The importance of this Board is daily increasing: it should be managed with the strictest honesty and pre-eminent ability. It is proper that the public should have the utmost confidence in its management, and it is still more important that its management should be entitled to that confidence.

It is mostly through investigations made by your honorable body, that the public are informed how its affairs are managed; and, therefore, in behalf of the public and of the members of the Board themselves, the strictest investigation is solicited.

It will be seen, by reference to Exhibit D, that the amount of notes due the Board is reduced, and it is believed that it will be much better for the Fund that these should be collected and invested. These loans give the Board much trouble, and cause considerable expense to the fund, while but little accommodation is extended to the citizens generally. Most of the debts now due, are renewals of notes given for the original loans made in 1837, or are notes substituted for the originals.

To enforce collections merely to loan to others, is deemed by the present debtors an ungracious act, notwithstanding the long indulgence they have had. The Board believes that it will be much better to invest the fund in some permanent security.

It will appear, by reference to the last report of this Board, in "Statement A" of that report, that \$111,745 60 of the fund then remained to be invested. Of this sum, \$52,700 00 have been invested in rail road bonds and bank stock, as aforesaid: the balance of \$59,045 60, still remains to be invested.

The balance of the appropriation of \$200,000 for draining the swamp lands, after deducting the expenditures of the improvements, is \$23,034 14, which will be kept at interest, by loan or investments, until it may be needed. The sum, it is believed, will be sufficient to make such other improvements, if any may be necessary, as will bring the lands fairly into market.

All of which is respectfully submitted.

J. M. MOREHEAD

President ex officio
of the Literary Board.

Executive Office,
Dec. 4th, 1844.

REPORT AND BILL

ON

LOCATING THE JUDGES OF THE SUPERIOR COURTS.

REPORT.

The committee on the Judiciary, to whom was referred a bill, entitled "A Bill to locate the residence of Judges of the Superior Courts hereafter to be elected," have had the same under consideration, and beg leave to report that the great object of the proposed law is to place a Judge of the Superior Courts, by means of elections which may hereafter occur, within each Judicial Circuit in the State. It is not proposed to interfere with the Judges already elected. As to them, the right of selecting their residence after election, in any part of the State, might have constituted a strong inducement with them to accept the office: such right was not restricted at the time of election, and your committee would not deprive them of its exercise, especially, as to do so might involve great pecuniary sacrifice, or constrain them to resign their offices. But while they decline, for these reasons, to make the law retrospective, they are very sensible of the existence of much inconvenience to many portions of the State, caused by the distant residence of the Judges from such portions. These Judges, together with those of the Supreme Court, are vested with many judicial powers to be exercised in vacation; such generally as demand immediate application, in order to render relief effectual. Applications for writs of *mandamus*, *recorari*, *certiorari*, *injunctions* and *habeas corpus*, must all be made to a Judge, and are of very common occurrence during vacation; and, moreover, are accorded to the citizen as a matter of right. Whatever, then, tends to place them out of his reach, or greatly to embarrass his attainment of them, without some high and overruling necessity, amounts to a partial and unjust denial of the equal benefits of a judiciary system intended for the common good, and supported out of the common purse. It is certain, that, at this time, many parts of the State, owing to the expense, trouble and delay of obtaining these writs, or

some of them, are greatly injured and delayed, of that justice which is of common right; and your committee will enquire what sufficient excuse exists for the perpetual continuance of a hardship now loudly complained of? The bill, if enacted into a law, would, in all probability, remove in a few years the worst features of the evil, by selecting, in the earliest elections, Judges for those districts which are furthest removed from resident Judges. This seems to be admitted, so far as concerns the convenience resulting from the mere residence of Judges; but it is alleged that such location of residence, as proposed, would lower the character of the judiciary, by limiting the space for selection. If such, to any considerable extent, would be the consequence of the measure, it would, indeed, be a deplorable result—a result, however, easily to be remedied by a repeal of the law, whenever experience shall demonstrate its impropriety. But it is submitted that such a consequence would not follow. The bill does not confine the selection of the proposed incumbent within narrower limits than those now allowed by law. The whole State, throughout its length and breadth, is open for the choice; and if the law shall be executed in its spirit, the evil apprehended cannot exist. It is urged, however, that whatever may be the liberality of the bill in this respect, yet the practical execution of it will be far different; and that in a short time, the selection will be made, as a matter of course, from the district in which he is to reside: That this will be the case, first, because no one duly qualified for the office and residing in a healthy region, will, for the office, consent to locate in either of three eastern districts; secondly, because from a feeling of pride attaching itself to the districts, a claim of right will soon spring up to select the Judge for each district out of the district for which he is to be selected; and, thirdly, because of the sacrifice which the incumbent, if selected elsewhere, must make in his pecuniary affairs and otherwise.

These your committee believe to be the main objections; and they reply, that, as to the first, which is founded upon the comparative health of the two great sections of the State, its utmost effect would be to allow for the three unhealthy circuits a selection confined to them, and, as to all the healthy circuits, a selection from the whole State. Your committee do not doubt that the eastern part of the State will always be able to furnish men well qualified for Judges for the eastern districts, even if gentlemen from the healthful regions of the State should refuse the office upon the terms of locating there: So that the worst practical operation assigned in the first objection would be, to select, as to three Judges, from about one half of the State, and, as to four, to select from the whole State. As to the second objection, springing from district pride, they reply, that there is now and always will be a feeling more powerful still, that of interest, which will control the other. The past history of the State proves its high regard for the due qualification of men for these responsible stations, and is, as your committee believe, a sufficient guaranty that such qualifications will ever be the controlling motive in future selections. But even if the particular district for which one was to be selected, might, regardless of necessary qualifications, feel such local pride and set up such claim; to countervail this, there would be State pride and a common interest prevailing in all the other districts, constituting six-sevenths of the entire State. The alternation of ridings, which is preserved by the bill, will continue in full force the interest now felt to select able Judges. This view of the case fully answers, in the opinion of your committee, the second objection; and, as to the third, that of pecuniary sacrifice which will attend such a might be selected out of the district, it is answered by the fact, which recent events have well attested, that if any in the eastern part of the State are selected, they will, in general, encounter no more than they now do; and your committee cannot conceive that the sacrifice can be very great, certainly not decisive as an objection with a man who desires the office—whose tenure is for life.

But if the operation of the proposed law should eventuate in district selections, your committee are far from believing that a necessary or even probable consequence would be the election of unqualified Judges. If we cast our eyes over the State, we shall become convinced of the fact, that competent Judges might be selected, one at least out of each district; and it is submitted that whatever may be the superior qualifications of the Judges now in office, a new election now to take place for every office filled, with liberty to choose from those who are Judges, would afford a judiciary altogether equal, if not superior to the present. There are ten Judges in the State, and only two are resident east of Chapel Hill; and of the seven circuits, four have no resident Judge. In the fourth circuit there are six Judges—two of the Supreme and four of the Superior Court; and the inconvenience now experienced from their peculiar location, great as it is, is not likely to be diminished.

As your committee perceive in none of the objections, an inconvenience equal to the delays, and in many instances, denials of justice which attend the present system, they recommend the passage of the bill into a law. Respectfully submitted.

B. F. MOORE.

A BILL.

To locate the residence of Judges of the Superior Courts, hereafter to be elected.

Be it enacted by the General Assembly of the State of North Carolina, and it is hereby enacted by the authority of the same, That in all elections hereafter to be made of a Judge of the Superior Courts, the election shall be made for some judicial circuit in which there is no such Judge resident; and it shall be the duty of the Judge so elected to reside in some one of the counties of the circuit for which he shall be chosen, so long as he may hold the office: provided, however, that this act shall not be so construed as to alter the law which now requires the Judges of said Superior Courts to allot the circuits among themselves, or allows them to exchange courts.

RESOLUTION

Requesting the payment by the General Government, of the 4th instalment due under the Deposit Act.

Whereas, by the thirteenth section of an Act of Congress, approved 13th of June, 1836, and entitled "An Act to regulate the deposits of the public money," it was enacted that the money which should be in the Treasury of the United States, on the first day of January, 1837, reserving the sum of five millions of dollars, should be deposited with the several States, in proportion to their respective representation in the Senate and House of Representatives of the United States; and by the fourteenth section of the said Act, the said deposits were directed to be made as follows: one quarter part on the 1st of January, 1837, or as soon thereafter as may be; one quarter part on the first day of April; one quarter part on the first day of July; and one quarter part on the 1st day of October of the same year: And whereas after the payment of the first three instalments, by an Act of Congress in that behalf made, the payment of the remaining instalment was postponed and has never yet been paid: And whereas it appears by a report of the public Treasurer of this State that the Treasurer has borrowed the sum of seventy thousand, nine hundred and fifty four dollars and ninety seven cents, during the past fiscal year, in order to meet demands upon the Treasury of the State; and also that

the sum of two hundred and fifty thousand six hundred and sixty dollars must be provided before the next session of the General Assembly, in order to meet the liabilities of the State beyond the usual expenditures for the support of the State Government:

And whereas it appears, by the Message of the President of the United States, to both Houses of Congress at their present Session, that there will be in the treasury of the United States, at the end of the present fiscal year, a surplus beyond the current demands upon the Revenue of more than seven millions of dollars; and, consequently, it appears that the necessities of the Government of the United States do not require a further postponement of the deposit of the said fourth instalment—the immediate payment of which is necessary, so far as this State is concerned, to meet extraordinary demands upon her Revenue without recourse to additional taxes upon her people—Therefore,

Resolved by the General Assembly of the State of North Carolina, That the Senators and Representatives in Congress from this State, be requested to use their utmost exertions to obtain the passage of an Act of Congress, or such other act of that body as may be proper and necessary to the speedy payment of the said fourth instalment.

Resolved, That His Excellency the Governor, be requested to transmit copies of the above preamble and resolution to the said Senators and Representatives, and to desire, on the part of this General Assembly, that the same be laid before the two houses of Congress.

THINGS IN THE STANDARD.

The last Standard has an editorial which labours hard to clear its party of the odium of having wasted the people's money, by the unnecessary delay it occasioned in the organization of the Senate.—The facts of the case are few and simple, and as stated in the last Independent, are sufficient to satisfy every candid mind of the guilt of the Polkite Senators in this respect.

In noticing some remarks in the legislative proceedings, the Standard accuses us of a private animosity against Patrick McGowan, the Doorkeeper elect of the Senate. We are at a loss to conceive on what Mr. Holden grounds this assertion, or what position he supposes we could have been possibly placed in regard to Mr. McGowan, to give rise to a sentiment in our bosom so absurd.—The Standard says Mr. McGowan "was not elected to pray for the Senate."—Who said he was? This conical idea has its origin in the Standard's own brain. Neither was he elected because he is an Irishman or a Catholic, says the Standard.—Very well. Then he must have been elected because he distributed the "infamous appeal to the West," during the recent canvass—he had no other claims that the public will be able to discern.

The editorial headed "Governor's Message" is replete with studied and intentional misrepresentation. If this article is a true specimen of the Standard's synopsis of legislative action, the people will, in vain, look for even the semblance of truth in that paper. Upon the proposition of Mr. Caldwell to print copies of the Message, we are told that Mr. Shepard spoke an hour. Never has time been so measured, since the memorable droll of Feltus and Hotspur. Shrewsbury clock never told time half so rapidly as Mr. Holden.—We think Mr. S's remarks occupied about twelve minutes, and the "brief reply" of Mr. Caldwell, about ten. The editor then proceeds to say that "the proposition to print ten copies prevailed" that Mr. Wilder called for the eyes and nose, but that Mr. Moore "not liking this call, and fearing the consequences of it, contrived to find an article in the Rules which cut off the motion of Mr. Wilder." We think that this attempt to insinuate that Mr. Moore feared the eyes and nose is contemptible. In his legislative course he has never been subjected to such a suspicion, and we believe there is not a loc in the Commons, who could be made to indorse the insinuation. What are the facts? Why, that the motion had been put and decided, and the result announced by the Speaker, before Mr. Wilder asked for the eyes and nose. While the Speaker was doubting on the subject, Mr. Moore, who had just reported the Rules of Order, remarked that the Rules upon this subject required the demand for the eyes and nose to be made before the question was put. The Speaker then requested Mr. Moore to find the Rule, but in a moment the Speaker himself "contrived to find" it and read it to the House.

One who reads the Standard's article would be apt to suppose that there were cunning and artifice in Mr. Moore's conduct, disgraceful to a candid legislator. But the Editor of the Standard seems not to care for any injury, however unjust, which he can accomplish on a Whig. His purpose is to destroy the party, and in his means he is unscrupulous.—Independent