

The Old North State

SALISBURY, FRIDAY, FEB. 17, 1871.

GOV. CALDWELL AND THE CONVENTION ACT.

We surrender most of our editorial space this week to the message of Gov. Caldwell, declining to execute the Convention Act on the ground of its unconstitutionality, together with his correspondence with the Supreme Court on the same subject.

The Governor argues the question with clearness and ability, and a careful perusal of his message will convince many, if not all unprejudiced minds, of the unconstitutionality, and revolutionary character, of the law which he has been called upon to execute. Of this fact we have been for some time convinced, and let for the strong position now prevailing in the State we think the legislative precedents and constructions of 1854 and 1861 would have been generally accepted as having settled the question. Of course the Governor will be extravagantly maligned by the ultraists of one side, and as extravagantly exalted by the ultraists of the other, for the course which he has taken. When we first heard of his determination we regretted it for several reasons, but upon mature reflection we cannot see how, with his convictions, he could easily have done otherwise and remained in office.

He himself, in his message, has left no doubt about his honesty in the manner who remembers the young he was as President of the Senate when the bill passed that body. It may be said by one side that he should have done on the present occasion as he did on that—executed the office of Governor for one who had no scruples about the execution of the law. On the other side it may be said with more justice that he was guilty of a dereliction of duty on the former occasion—that he suffered an unconstitutional and revolutionary act to be done when he had it in his power to prevent it.

But whatever may be said it cannot, we think, be denied that the Governor is fully sustained by the teachings and precedents of Jefferson and Jackson. Both of those great Democratic lights always taught that when an Executive officer, or any other, took an oath to support the constitution he took an oath to support it as he understood it. And both of them, but more especially Mr. Jefferson, acted upon those teachings. Indeed the Governor is more than sustained by their example, as he first consulted the Judges, a practice which formerly prevailed in England, though it has never obtained in this country until now.

What the result of the Governor's action will be we cannot tell, but we presume the Legislature will proceed to execute the law itself by the passage of a supplemental bill for that purpose. But of one thing we have no doubt whatever, and that is if a Convention is assembled under the present Act, it proceeds to do what the Legislature has called it to do, it will result in nothing but loss and mischief to the people of the State.

We would indulge in some advice to the Conservatives in the Legislature, if we thought the time had come when the counsels of moderation and prudence stood any chance of receiving a respectful consideration. We hope that if that time has come yet; still we are strongly impelled to General Assembly, by a bare majority, can immediately call a convention to submit to the people, without delay, an Act submitting the question of "Convention" or no "Convention" to the people, as was recommended by Gov. Manly in his message to the Legislature in 1860. If a large majority vote for a Convention, as is very likely to be the case, the "Moral Effect" of it will be such as easily to secure the votes of the requisite "two-thirds of all the members of each House" for the call of a Convention. This course will meet the views of those Conservative members who think the people ought to be consulted on the subject, and that a Convention should not be called without their sanction. If this course had been taken promptly on the meeting of the Legislature after the holidays the sense of the people might have been taken by this time. If it is taken now it will not be long before the Legislature can act under the advice of their constituents in the matter. Let the law pass immediately, and without opposition, and then let the House of Representatives adjourn until after the election and await the result. The Senate, in the meantime, can remain in session and proceed with the impeachment trial. We feel sure that there is wisdom in such a course, and we sincerely hope the General Assembly will see it.

IX ARTICLE OF IMPEACHMENT.

The House of Representatives has added another to the list of Articles of Impeachment against Gov. Holden. The IX article charges him with complicity in the banks and windfalls of the Western N. C. Railroad ring. Only two white Radicals voted against this article.

From the Raleigh Telegram.

GOV. CALDWELL'S MESSAGE.

He declines to Order an election for Convention.

HE IS SUSTAINED BY THE SUPREME COURT.

STATE OF NORTH CAROLINA, EXECUTIVE DEPARTMENT, Raleigh, Feb. 13th, 1871.

To the Honorable the General Assembly of North Carolina:

Gentlemen.—There has been certified to me an act concerning a Convention of the people, ratified on the 5th day of February, 1871, by the terms of which the Governor is directed to issue a proclamation commanding the Sheriff of the respective Counties in the State to open polls and hold an election for a convention, &c., &c. If a majority of the voters are to give a Convention, then the Governor is required to issue another proclamation summoning the delegates to meet in Convention, &c., &c. Said act does not purport to have been passed by two thirds of all the members of each House of the General Assembly, but I understand that no member of the General Assembly, nor any other person who values his reputation, will consent for refusing to do an act which I find am precluded from doing by the oath I have taken to support the constitution. Were I to do so, I should feel that I mortified the scorn and contempt of every honest and honorable man in the State, and that I was utterly unworthy to occupy the place I now hold. I would much prefer your censure when I have a conscience void of offence to your censure with an avowing conscience.

With an earnest desire to arrive at a correct conclusion and to do nothing rashly or unadvisedly, I have betaken myself to the great information of the Supreme Court on this vital question. It is the peculiar duty of this tribunal of justice to extend the constitutional and the law, and I feel it my solemn duty to inquire in their decision. In reply to a letter addressed by me to the Chief Justice and Associate Justices on the 29th instant, I have received an answer, a copy of which I herewith transmit to you—honorable body, as well as a copy of my letter to the Court.

Very Respectfully,
Your Obit Servant,
TOD R. CALDWELL,
Governor.

Senator who had no constitutional scruples on the subject. The Senate did not concur in my view, and I vacated the Chair, calling to the honorable senator from Beaufort, whose opinion was known to be in accord with that of the senate, since that time I have been called to the Executive Chair of the State, and as the Chief of one of the three Departments of the Government, I at first felt that it was hardly courteous for an ordinary department to require me to do what I had previously announced I could not conscientiously do on account of the unconstitutionality of the act; but upon further reflection I now feel that the General Assembly is right in suspending that the act can in neither way be executed except through the Executive of the State.

I deem it respectful to state briefly why I think said act unconstitutional.

Article 13. Section 1, of the Constitution declares that "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." The act under consideration is unquestionably an act calling a Convention. It provides that the number fixes the time and places of voting, declares who shall vote and who shall not; who are eligible as delegates; when they shall meet; what oath they shall take; what they may do; what they shall do, and what they shall not do, and what they shall do with the Constitution which they may frame, and upon what conditions it shall become effective. If this is not calling a Convention, then it is difficult to tell what would be.

That the legislature does not call the convention, but only authorizes the people to call one, for the sake of argument, supposes that in the act only it makes no express warrant or authority to call a Convention of the people; but it is manifest only to a fair and strained interpretation of some words in that instrument that it is in the face of contemporaneous explication and decisions of the same question in the convention of 1855, by the oldest men, and by a very large majority of that body of people, upright and eminent citizens; that it has been more than once determined, and I had supposed, finally determined by the action of many of the best lawyers in the State, that this was the true construction of the act.

No one will be less likely than I to interpose objections to the mode, or manner of effecting such changes as are proposed by the representatives of the people, or as may be in accordance with a distinct, definite and popular will expressed upon the subject.

But it cannot be successfully denied that the most popular proposal is novel and irregular to use no stronger language than that it is an express warrant or authority to call a Convention of the people; that it is manifest only to a fair and strained interpretation of some words in that instrument that it is in the face of contemporaneous explication and decisions of the same question in the convention of 1855, by the oldest men, and by a very large majority of that body of people, upright and eminent citizens; that it has been more than once determined, and I had supposed, finally determined by the action of many of the best lawyers in the State, that this was the true construction of the act.

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