RALEIGH REGISTER AND NORTH-CAROLINA GAZETTE.

"Ours are the plans of fair, delightful Peace,
"Unwarp'd by party rage, to live like Brothers.

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STATE LEGISLATURE.

DEBATE

On Providing for the Choice of Electors.

HOUSE OF COMMONS,
Thursday, Nov. 19.

Mr. *Cameron* called for the consideration of a resolution offered by him on Tuesday last, proposing a repeal of the existing law prescribing the mode of choosing Electors, and to provide for laying off the State into such number of districts as the State is entitled to Electors.

This was objected to by the friends of the resolution introduced on the same day by Mr. Wilson, proposing to proceed to the election of Electors, in conformity to the law of last session; and on the question being taken, the motion was negatived 65 to 54.

Mr. *Wilson* then moved that his resolution be taken up; which motion being agreed to, it was read as follows:

"*Resolved, by the Senate and House of Commons of the State of North Carolina*, That they proceed on Friday next to appoint by joint ballot fifteen Electors to vote for a President and Vice President of the U. States, agreeably to the provisions of the act of Assembly passed in 1811."

The question being stated from the Chair,

Mr. *D. Cameron* moved to strike out all the resolution except the word "*Resolved*," and to insert the following by way of amendment:

"That it is expedient to repeal the existing law for electing Electors by a joint ballot, and to provide by law for laying out the State into districts to chuse fifteen Electors—such Electors for the ensuing election to be elected by the Members of this General Assembly representing the counties composing such districts—and hereafter by the freemen of the State in their respective districts."

Mr. *Stone* enquired of the Speaker if it were in order to move as an amendment to a proposition under consideration, the matter of a resolution which the House had just decided it would not now consider?

Mr. *D. Cameron* knew of no rule or proceeding of that house which declared such a motion out of order.—The house, it was true, had decided against taking up his resolution, but the question was now on its merits.

Mr. *Stone* did not think it was in order to debate a question of order. He had barely asked for the decision of the Speaker whether the motion was in order. It certainly cannot be in order, because it is contrary to common sense, to refuse one moment to consider a subject, and in the next to move it by way of amendment to another proposition. The house could not be tricked out of their will in this way; if so, it would be in vain to attempt to do business. He hoped the Chair would decide.

Mr. *Steele* said, the motion was perfectly consistent with the rules of proceeding in that house and all other Legislative bodies with which he had been acquainted. Though the house refuse to take up a certain motion, this does not preclude a gentleman from offering the same matter in a shape in which it might be debated, so as to afford him an opportunity of giving to this house and to the public his sentiments on the subject. If the Chair were to decide whether or not a member shall deliver his sentiments on any subject, it would indeed be exercising a very high prerogative. He knew no other way in which the gentleman could get an opportunity of delivering his sentiments on the occasion.

Mr. *W. W. Jones* said, it would be recollected that the resolution offered by the gentleman from Orange, was introduced for the purpose of repealing the law of last session, without making any provision for electing the Electors at the present time by the members from the districts. In that form he should have voted against it; but as proposed in this amendment, he should vote for it. If the first resolution had been adopted, it might have prevented us from electing Electors at all; and however unwilling he might be to elect certain persons, he was not for throwing the vote of the State away. The matter of this amendment being widely different from the resolution, he hoped it would therefore be received. He wished to have an opportunity of shewing why he was in favor of electing by districts, rather than by joint ballot.

The *Speaker* declared the motion to be out of order. The rules of all deliberative bodies, he said, must be founded in common sense; and it would certainly be contrary to the principles of common sense to say, that a subject which the House had just decided it would not consider, should be immediately received by way of amendment to another proposition.

Mr. *D. Cameron* appealed to the house from the decision of the chair.

Mr. *Steele* called for the yeas and nays upon the appeal, which were taken and the Speaker's decision was affirmed 75 to 54.

The question returned on adopting Mr. Wilson's resolution.

Mr. *D. Cameron* moved to postpone the further consideration of the resolution till Monday next. He did not make this motion, he said, from a desire to defeat the election of such Electors as a majority of that house was desirous of electing. It must have been perceived that his sole motive in bringing his proposition before the house was, to obtain an expression of the opinion of members on the two different modes of election. Many members differ in opinion on this subject; but there were few who would refuse to give the State a vote in any shape. That members should differ in opinion on a subject of such importance was not wonderful. If men think at all, they must differ in sentiment on every important subject. By this postponement, he wished to give members an opportunity of devising some more acceptable mode of electing the Electors than the one prescribed by the law of last session. Mr. C. was going into the merits of the resolution; but on a suggestion of Mr. Stone that it was not in order to do so, he desisted.

Mr. *Steele* wished to know at what time, and in what manner gentlemen would be at liberty to deliver their opinions on this subject generally.—Surely the rules of the house would not deprive them of this opportunity If the rules were so defective, he had formed an erroneous opinion of them, and they would require amendment. He had supposed it was one of the most valuable privileges of a freeman that his Representative should be heard on any and every subject which came before the Legislature.

The *Speaker* informed the gentleman from Salisbury that he would have an opportunity of discussing the subject fully on the question of adopting the resolution the consideration of which was now moved to be postponed.

The motion for postponement was negatived without a division.

The question on adopting the Resolution being again before the House,

Mr. *Stone* called for the yeas and nays upon it.

Mr. *Steele* moved to strike out the whole of the resolution except the word '*Resolved*,' and to insert the following as a substitute:

"That this present General Assembly view the act of the last General Assembly vesting the power of appointing the Electors of President and Vice President of the U. States in the present Legislature as unconstitutional and an infringement upon the elective franchise of the free people of North Carolina."

Mr. *Murfree* called for a division of the motion. He hoped the first question would be on striking out.

The question was so stated,

Mr. *Steele* observed, that though the question was on striking out only, he hoped he should be permitted to go into the merits of the question, and not only to shew the propriety of striking out the substance of the resolution before the house, but of adopting the amendment which he proposed as a substitute. He said he meant to confine himself to the constitutionality of the question.

It would not be expected of him that he should undertake to prove, by an elaborate argument, that the freemen of North Carolina are entitled to exercise and enjoy all the rights and privileges secured to them by the Constitution of the State and by usage under that Constitution, except so far only as those rights and privileges were surrendered or modified in express terms by the subsequent adoption of the Constitution of the United States: He should have occasion to refer to the State Constitution to support and illlustrate the first principles which he should advance.

There is in our Bill of Rights a section which declares, "That a frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty." This declaration he considered as having reference to cases in which the Legislature might be tempted to transcend its powers and to trespass on forbidden ground. The other departments of the Government are so strictly limited, so entirely dependent on the Legislature that if at any time they possessed the disposition to transcend their powers they have not the means in their own hands to become formidable to public liberty, so that it was unnecessary to have a recurrence to first principles in relation to them. But it is not so in respect to the Legislature. The members composing this numerous body coming directly from the people and presuming on the strength which their confidence inspires, are apt to imagine they are the people themselves, and to suppose that they have a right to do any thing that the people themselves might do; and under the influence of this unfounded pretension they sometimes exercise powers never intended to be delegated to them, and powers which neither they nor the people would tolerate in any other department.

With respect to the tendency of Legislative bodies to encroach on the rights of others and to extend their powers we have high authority. The present President of the U. States, in 1788, in a series of papers, part of which he wrote recommending the adoption of the Constitution of the United States, makes use of these remarkable words: "the Legislative department is every where extending the sphere of its authority, and drawing all power into its impetuous vortex. It is against the enterprizing ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions."—If this sentiment was correct at the time it was written and justified by circumstances (and Mr. Steele contended that it was) he trusted it would not give offence to the friends of Mr. Madison in that house that he had made the quotation and recommended it to their most serious consideration.

Need I, said Mr. S. attempt to point out cases in which Legislative bodies have transcended their Constitutional powers? The fact is notorious. Legislative bodies, in moments of passion, have often done things of which they have afterwards had cause to regret. But he did not wish to take up the time of the house in repeating them.—Cases, even in this happy State, might be mentioned where acts of the Legislature have been declared by our Judiciary Tribunals unconstitutional and void. If, then, instances have occurred in this State and others where Legislatures have transcended their powers, it need not be surprising that the Legislature at the last session, in a moment of temporary delusion, transcended their powers in passing the act now under consideration.

With respect to first principles, it will not be denied by any friend of republican government in this Legislature that all political power is vested in and derived from the people only, and when delegated, to be exercised for their use and happiness according to the forms and with the limitations prescribed in their written constitutions.

It will also be admitted that the constitution of the United States is a grant of powers made by the people in their sovereign and unlimited capacity, and in no respect dependent on, or requiring the sanction of the State Legislatures to give it validity: On the contrary, that the State Legislatures were placed by the adoption of that constitution, in relation to the affairs of the general government, in a secondary, if not in a subordinate station; with duties to perform, with powers limited and controlled, in some instances expressly prohibited, and in all others confined to the strict letter of the grant, and consequently if the power to appoint Electors is not expressly given to the State Legislatures by the constitution, as it is not confided to any other department of government, it must be retained by the people.

It will also be conceded, that it is of the genius of a free State and essential to the existence of Republican Government, that the people should be allowed to vote and to exercise a direct influence over the proceedings of their public functionaries in all practicable cases. That it is practicable for the freemen of North Carolina to vote in the choice of Electors for a President and Vice-President of the United States, has been illustrated and established by the highest possible evidence, by the uniform practice of twenty years, in the course of which time no instance of violence or confusion has arisen, which would justify the Legislature, if they had the power, to suspend the exercise of this all-important right.

It will also be conceded, that the constitution of the United States being a grant of powers made by the people, as is among other things expressly stated in the preamble, for the preservation of their liberties, like all such grants it should be construed in the manner most promotive of, and consistent with the design of the people themselves in making the delegation; that is to say, liberally in favor of the rights of the people, and most strictly against the trustees, or depositaries of their authority. And consequently, though the State Legislatures are authorised to direct the manner of choosing Electors, being confined to the letter of the grant, they are not authorised to extend their powers by implication, and make the choice themselves.

Having premised these general principles, Mr. S. recommended them to the consideration of the house, and hoped the members would bear them in mind for the purpose of making an application of them to the subject under consideration. If these principles be admitted and thus applied, he had no doubt they would lead the house to this irresistable conclusion, that the act of last session is not only unauthorized by a fair interpretation of the words of the constitution, but manifestly contrary to the first principles of Republican Government.

He asked leave to make a brief analysis of the legislative power as defined in the Constitution of the United States, from which, he said, it would be seen that it could never have been the intention of the people to transfer this power of electing Electors from themselves to any other body of men.

By the Constitution of the United States, the legislative power is confided to the President, Senate and House of Representatives. The President has a right to participate in the legislative power in three ways. He is to give to Congress, from time to time, information as to the state of the Union, and to recommend to their consideration such measures as he may deem conducive to the public good, and thereby initiating legislative business, which is equivalent to the commencement of it by motion in either house. He has also power, by and with the advice of the Senate to make treaties, and these treaties, in a great proportion of cases, without the intervention of the House of Representatives, become the supreme law of the land. He has another legislative power, which is called a qualified negative, though in every case in which it has yet been exercised, it has amounted to an absolute negative. He has power to stop a bill in its passage and send it back to Congress with his objections—after which it cannot become a law, except two-thirds of both houses so determine, which has never yet been the case.

These extensive legislative powers of the President show the great interest which the people have in the election of that officer.

The Senate consists of members chosen by the State Legislatures.—This body also possesses extensive powers. It has a general concurrent power in making laws with the House of Representatives. It has power, with the President, to make treaties—has a final decision on all impeachments, and, with the President, has the appointment of all great public officers. It was in the Senate that the State Legislatures were intended by the Constitution to be represented, and there only.

The House of Representatives have a concurrent power with the Senate in passing all laws except in the case of treaties already mentioned. The people have given to this branch of the Legislature the exclusive power of originating money bills and the inquisitorial power of originating impeachments; but the Senate have the power of amending money bills, and of passing final judgment on the impeachments, so that in the few cases where the House of Representatives are entrusted with an exclusive power to originate proceedings, the Senate have powers which ultimately balance and control them.

It will be recollected that the President, besides his legislative powers, has other vast powers. The people have declared by the Constitution that no money bills shall originate but with their immediate Representatives—and may it not be inferred from reason and analogy, that the same caution would be extended in relation to the officer charged with the collection and disbursement of public monies, and that he, as well as the members of the House of Representatives were intended to be chosen immediately by the people. A money bill is a mere dead letter until it comes into the hands of the President to execute it. All the officers concerned in collecting and disbursing the public monies are nominated by the President, and confirmed by the Senate, without any agency of the House of Representatives. The President having the power of carrying on all Foreign Intercourse, may bring the Nation into such a position, that she can neither advance with safety nor recede with honour; and when involved in War he is the Commander in Chief of the Army and Navy of the U. States, and of the militia when called into actual service—of every freeman in the country. And is it possible that the people, the enlightened freemen of the United States, possessing at the time all power, should have been guilty of such an instance of political suicide, so regardless of consistency, of the dictates of self interest and of self preservation, as to vest the power of appointing the Electors of this great officer in any other body than themselves? That the people of the U. States who had principally descended from natives of Great Britain, who from their Revolution of 1688 had imbibed the principles of liberty and who had themselves just fought thro' the sanguinary struggle of the revolutionary war with the mother country—that men thus situated and thus instructed in the schools of experience and adversity could vest the power of chusing the President of the U. States in any other body than themselves is inconceivable. It cannot be the true construction of the Constitution.