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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GENERAL ASSEMBLY.

BANK QUESTION.

House of Commons—Saturday, Dec. 11.

[Mr. Stanly's Speech continued.]

By what rule the gentlemen undertake to ascertain the too-much or too-little circulating medium of the State, I am uninformed: I do know, however, that although the ruined state of commerce, rendering torpid commercial activity, and the operation of the suspension act, postponing the collection of debts, have, for a while, lessened the necessity of borrowing, and reduced the urgency of the applications to the Banks, there are still applications for as much as the banks can lend—And so far from money being obtained at 6 per cent, good paper sells at a discount of 25 per cent. If the State Bank or any of its branches believe they could lend more than they have already lent, let them manifest a willingness to loan and they will soon find customers. While, sir, there are applications to borrow more than the existing banks can lend, it is as absurd to say there is already too much banking capital, as it would be to declare there are too much land cleared, or too many houses built, although every field was cultivated, and every house had a tenant. The use of money or its substitute bank notes, is proportioned to the commerce and wealth of the state. Can it be believed that North-Carolina, the fifth state of the Union in point of population and territory, has not as much wealth and trade, and cannot employ as much bank capital as is kept in activity in the ten-mile-square district of Columbia, or in the little State of Rhode Island? And yet, sir, the capitals of the Banks, if extended as proposed, and that of the State Bank, will not together exceed the half of the bank capital in the district of Columbia or in the small state of Rhode-Island. That the state bank stock is not sought after, only proves that the plan and management of that institution have not secured general confidence. It cannot be quite consistent to say that there is already bank stock enough and no more will sell, and yet tell us there will be too much if the bill authorises the banks of Newbern and Cape Fear to enlarge their stock—Since if the stock is not wanted, the subscription will not fill and the increase will be on paper only. But let it be supposed for the argument that there may be more banking capital actually subscribed and paid for, than the business of the state requires, what will be the consequence? Sir, I venture to express my clear conviction that an excess of bank capital cannot be in any wise injurious to the community. If the banks emit notes for which there is no employment, they will return upon them; they must pay them in specie; this error cannot long be indulged; for their interest's sake they will not commit it twice. The surplus capital thus useless in banks, will speedily be directed to other purposes; the establishment of manufactures, the making of turnpike roads and canals. This application of the money may not be as profitable to the proprietors as bank stock, but it will be as beneficial to the public. On the other hand, suppose the banking capital of the state is too little, there is then in fact a scarcity of circulating medium; the consequences are obvious, enterprise is checked, property and produce fall in value, industry is discouraged, usury flourishes, the poor are trodden down, and the bank stockholder gets rich. No man but a stockholder in the State Bank can fail to see that an excess of bank capital, if such excess could be created, so far from being injurious, would be highly beneficial to the state. It is further objected that the state, by compact with the State Bank made in the years 1810 1811, is precluded from adopting the measure. To this opinion Mr. Stanly said, he entered his decided dissent. He should contend that these acts did not import any such compact; and if the compact was even unequivocally made, it was *unconstitutional and void.* This part of the subject involving questions of great magnitude—the interpretation of an act of the legislature implicating the faith of the state; and an examination of the constitutional powers of the Legislature; he hoped he should be pardoned for the time he should consume in its investigation.

By an act passed in 1804 the Banks of Newbern and Cape Fear were incorporated for sixteen years. In the year 1810 the State Bank was incorporated for twenty years, and in 1811 the term is extended five years.—In consideration of certain advantages represented as resulting from the State Bank (though in my humble opinion these advantages have not yet, nor ever will appear) the legislature in both acts declare, "no other bank shall be established by any future law of this State during the continuance of the corporation hereby created for which the faith of the state is hereby pledged."

The promise of the legislature is that "*no other bank shall be established.*" Upon the meaning of the word "establish" depends the extent of the promise. I shall not, as a gentleman who has preceded me, has done, resort to Johnston's Dictionary to aid me in digging after the Greek root of common and popular sense. The meaning of the word "*establish*" is as well settled by common acceptation as that of any other in our language, to be, "to create," "to found," "to erect." In the constitution of the United States where every word was weighed, the word "establish" is repeatedly used in this sense: "we the people of the United States do *establish* this constitution." "Congress shall have power to *establish* post roads" "to *establish* an uniform system of bankruptcy," &c. and in the act of Congress *creating* the bank of the United States, and in our own acts *creating* the banks of Newbern and Cape Fear and the State Bank, it is enacted that the bank be *established.* Further, to shew that the word "establish" does not mean "to improve or to alter," I would make this appeal to the understandings of every member of this house. The State Bank was created in 1810; by act of 1811 its charter was extended five years; does any man say that the State Bank was *established* in 1811, or, should the bill, under consideration become a law, will any man of common sense say we have passed an act *establishing* the banks of Newbern and Cape Fear?

If then, "to *establish*" means to *create*, to *erect*, or to put into existence, and not to alter, or to improve what is already in existence, as the banks of Newbern and Cape Fear were created and in existence prior to the year 1810, and the bill reported by the Committee does not create, erect or *establish* a bank, but only modifies and improves those previously established, Mr. Stanly conceived such an action in no wise inconsistent with the promise of the acts of 1810 and 1811. But it is contended in behalf of the State Bank, that although the word "*establish*" does not mean "to create," yet the Legislature used it in another sense in the acts of 1810 and 1811. Without admitting the words used in the acts to be susceptible of any doubt, let us examine what course should be pursued if the words used really were equivocal. The rights of this legislature within its constitutional limits is supreme; elected by the people to advise and to act for their benefit, they have the uncontrouled power of doing every thing which in their opinion will advance the public good, if the thing proposed to be done is not forbidden by the constitution of the State or by the constitution of the United States.—This sovereign power of judging and acting is accompanied by a duty as sovereign, of doing that which is calculated to promote the public good. The right of the legislature in this particular is in fact the right of the people, the real sovereigns of this country, and Mr. Stanly said he held it to be a principle of law perfectly settled, that equivocal words in the grant of a sovereign shall be construed most beneficially for the sovereign, "If the grant of the king can insure to two intents, it shall be taken in that intent most for the benefit of the King." Such at least is the doctrine of the common law, as established since the time of the year-books and recognised by Lord Coke. It will not be a question which of the constructions contended for is most favorable to the State. That insisted on by the State Banks puts fetters on the hands of the legislature, erects an unprofitable institution into an odious and dangerous aristocracy, and arms it by means of an exclusive privilege with power over the freedom and the fortunes of the people. The construction which I support, while it saves to the State Bank its corporate rights, leaves the legislature free to do an act, most beneficial in its nature for the revenues of the State and the interest of the people—preserves a rivalship among the banks, the only means to keep down usury and prevent oppression; and forms a check and counterpoise to the political influence of the State Bank.

The construction for which I contend must then prevail as most favorable to the honor, to the safety, and to the interest of the state. The legislatures of 1810 and 1811 who promised not to "establish another bank," knew that there were then in existence, two banks established by law, in promising not to establish another, they engaged only not to create a new bank. To this only is the faith of the state pledged, and that pledge is in no wise violated by an act, which, without establishing another bank, only modifies and improves those already existing. But, Mr. Speaker, the right of this legislature to pass the bill for improving the banks of Newbern & Cape Fear, does not, in my opinion, depend on our shewing that no compact has been made with the State Bank, as insisted on by that institution; for sir, if that compact does exist *to the extent claimed by the State Bank*, it is a grant of a MONOPOLY and therefore unconstitutional and void. We must here keep in view, that the State Bank insists, that the words of the legislature in the acts of 1810, and 1811, that no "other Bank shall be established," shall be construed into a promise, that neither the capitals nor the duration of the banks of Newbern and Cape Fear shall be extended, nor any new bank created; but that after the duration of the present term of the banks of Newbern and Cape Fear, the State Bank shall have the sole and exclusive privilege of carrying on banking operations in this state. Such a promise I contend is a monopoly. It is necessary here to have a correct idea of the word 'monopoly.' The opinion which I advanced on this point, on a former day, has been assailed by several of the advocates of the State Bank, each of whom has given a different explanation of the term. One gentleman, (Mr. Williams) with the aid of his *Greek* makes it to mean the sole right of selling *commodities*, and money and bank notes, he thinks, cannot be considered *commodities.* Another (Mr Ruffin) says it is a privilege taken from all and granted to one. Another, (Mr. Iredell) that it is concentrating in one set of men certain rights previously enjoyed by others—and these gentlemen argue, and are joined in the argument by the gentleman from Orange, (Mr. Cameron) that the business of a bank being to lend money, and every man having money being at liberty still to lend it, nothing is taken from the great body of the people, nothing granted to the State Bank which all others do not enjoy, and therefore there is no monopoly!—With great submission I must say, there is no solidity, and but little ingenuity, in this argument. If the acts of 1810 and 1811 grant to the State Bank, no privilege other than the persons interested in it possessed prior to these acts, and no privilege which the rest of the community do not equally enjoy, for what purpose were these acts passed? To what end was the faith of the State pledged? Why has so much labor been bestowed to keep that pledge sacred, and why so much opposition to extending the privileges of the banks of Newbern and Cape Fear, if they already possess them? Surely, sir, I need not explain to this house, the privilege which the Stockholders in the State Bank, as a corporation, possess; they set apart a certain portion of their estates as a banking capital, upon the credit of which they issue their notes; they contract debts without being personally bound for them; if by bad debts or other calamities this capital is lost, the residue of their estates are exempted from liability to their debts; their notes by law are a tender in all payments at the treasury; the death of a Stockholder does not, as in other cases of partnership, dissolve the concern, their rights die not with the person—these and every other corporate right they enjoy by virtue only of the express *grant* of the legislature; as the grant is exclusive so is the enjoyment.

A monopoly is defined by law writers, for centuries, to be "a license or privilege, allowed by the State, for the sole buying and selling, working, or *using* any thing whatsoever." I quote from Blackstone's Commentaries.

Then Sir, as the Stockholders of the State Bank claim under the acts of 1810 and 1811, the sole privilege of making bank notes, and using the business of banking with the additional privilege of corporate rights, their claim seems to me as perfect a *monopoly* as if they had the sole privilege of making and selling shoes, or using any mechanic art, or liberal profession.

If such be really the nature of the grant of the acts of 1810 and 1811, you have only to compare them with the clauses of the Bill of Rights, which I will read, to pronounce the grant to be void. "No man or set of men are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services." "That no hereditary emoluments or privileges, or honors, ought to be granted or conferred in this state." "That perpetuities and monopolies are contrary to the genius of a free state, and ought not to be allowed."

By the first clause exclusive privileges may be granted in consideration of public services: such privileges are often granted. The exemption of justices of the peace from militia duty, of jurors from arrest, of millers from working on the roads, are some of the instances.

But no privilege shall be granted if it be a perpetuity, if it be hereditary, or if it be a MONOPOLY. Happily for the people of this country, supreme power is retained in their own hands. We, their representatives, can only act within the limits marked out by the constitution. Like the attorney of an individual, we cannot go beyond the authority expressly delegated. If we do the act is void. And the acts of 1810 and 1811, if they have the sense contended for by the State Bank, having attempted to establish a MONOPOLY, are so far, to every intent, *null and void.*

I agree then, sir, with the gentleman from Orange, at least in this one point, that an act of the legislature, in violation of the constitution, is void; and though I respect as the gospel of the law, the opinions of the great man (Judge Patterson) which he read to that point, I should have thought an authority on that subject at this day unnecessary. Telling us then with the book in his hand, that the legislature have made a contract with the State Bank, [to grant them a monopoly] that we cannot impair that contract, the gentleman adds he has "*an higher security* for the observance of our contract than the faith of the State." Passing by the compliment paid to the faith of the State, I would ask, with this *high security*, to protect you in the sole and exclusive enjoyment of banking, why so much opposition and dread of an act, which when passed, if you are right, the courts will declare to be void? Let the bill pass, let the question of its constitutionality come before a tribunal, where declamation will not pass for argument—before a supreme court, if you can find one, whose judges are not State Bank directors—& I shall not fear the decision.

The observation of the gentleman that the words of our act, "no other bank shall be established" are the same that are used in the act of Congress establishing the Bank of the U. States, gives no support to his construction. Congress, in fact, used them in the sense for which I contend "no other bank shall be *created*;"—a promise they were at liberty to make since the constitution of the U. States contains no clause forbidding the establishment of a monopoly.

The question which has been started, how far the legislature has the right to interfere with a corporation which it has created, is certainly not free from doubt. As it is not necessary for my purpose to shew they have or have not the power, I will not enter into the question, further than to observe that the British parliament, which creates, also destroys them at will;—The legislature of Pennsylvania has removed at pleasure the charter of the Bank of North America, & our own legislature has by several acts abridged the powers and encreased the responsibilities of the Banks of Newbern and Cape Fear.

Mr. Stanly said, the gentleman from Orange (Mr. Cameron) had not confined himself to the attempt to shew the inexpediency or the illegality of extending the charters of the banks of Newbern and Cape Fear. In the course of a pretty wide digression from the points he had indulged himself in remarks intended if not calculated to lessen the claims of the banks of Newbern and Cape Fear in the public estimation, and to give a new and exalted character of the state bank and its direction. Of this course Mr. Stanly did not complain, he asked only indulgence to meet the gentleman.

He has said the charters of the Banks of Newbern and Cape Fear grant them the extraordinary powers of taking judgment against their debtors upon a notice of ten days; that Newbern and Cape Fear dealt in paper money and their notes would not pass out of the state; that other states dealt only in gold and silver.—That the State Bank drew the paper money from the Banks of Newbern and Cape Fear, not from hostility but from duty—that they had made a treaty with the Banks of Newbern and Cape Fear and had observed it—That if the capitals of Newbern and Cape Fear are extended the paper money will be issued again.—The gentleman, I am to presume, does not advance these observations and insinuations "to inflame the passions or excite prejudices or jealousies" against the banks of Newbern and Cape Fear: I will consider them as addressed to our understandings and give to each a serious reply.

We are obliged to postpone the remainder of this Speech till next week.

State of North Carolina,
Edgecomb County.
Court of Pleas & Quarter Sessions, February Sessions, 1814.

Ephraim Daniel vs James Griswould } *Orig Attachment, levied on a tract of land adjoining the lands of Wm. White & others, 10 head of cattle, some hogs and all the household & kitchen furniture.*

IT appearing to the satisfaction of the Court; that James Griswould, the defendant, is not an inhabitant of this State. It is therefore ordered by the Court, that publication be made in the Raleigh Register for three months, that unless he appear at the next County Court of Pleas and Quarter Sessions, to be held for the county of Edgecomb, at the Court-house in Tarborough, on the 4th Monday in May next, and replevy and plead, judgment will be entered against him

Test, EDWARD Hall, C.