



AND NORTH-CAROLINA GAZETTE.

"Oursure the plans of fair, delightful Peace,
"Unwarped by party rage, to live like Brothers."

Vol. XIX.

FRIDAY, APRIL 24, 1818.

No. 9704

INTERNAL IMPROVEMENT.

The following Speech will give our Readers a correct view of the ground on which the proposition for constructing Roads, &c. was opposed in Congress.

Mr. BARBOUR, of Va. said, that having on yesterday intimated his intention of taking part in this debate, he now rose for the purpose of expressing his ideas upon the subject. The first thing which he considered it necessary to do, was to clear the way for the discussion; to disengage it of all extraneous matter, & to call the attention of the committee to the question before them. A great deal had been said as to the various and important advantages derivable from a system of internal improvement; we have been told, that nature had done much for the United States; and that with the aid which might, by roads and canals, be given to our natural advantages, not only individual prosperity, but public convenience and economy would be greatly promoted. He should not deny, that the improvement of the country was a desirable object; but, if the position which he should attempt to maintain, were correct, that is, that this system was not within the constitutional powers of Congress, then all reasoning of this sort was wholly inapplicable. It would be properly addressed to us, if we were now discussing an amendment to the constitution, which had for its object the giving the proposed power to the federal government; whenever that question shall be presented, it will belong to us to consider it with the greatest attention, and to decide it with the utmost deliberation; for, however desirable the object was, he thought it a matter of very serious doubt whether the power to accomplish it ought to be taken from the individual states, and given to the United States; he thought we could not use a caution too guarded, when we were called upon to disturb that political balance, which our ancestors had settled between the several governments of this country.

The great desideratum which the convention had in view, was to devise a scheme of government, which should combine the greatest practicable individual happiness and liberty with the necessary degree of national strength; they were deeply versed in the history of other times and governments, as well as their own; they had thence learned to know, that whilst, on the one hand, a single government, embracing a large extent of territory, was incompatible with the freedom of the citizen; on the other, an association of independent states, bound together by nothing but the loose band of a mere confederacy, was like a rope of sand, and constantly in danger of falling to pieces by its own weakness. Their wisdom and experience produced the constitution under which we live, as the best system by which to effect these two great objects. To the federal government it had given powers few and defined, such as war, peace, negotiation, &c. which called either for the strength of the national arm, or the union of the national will. With the state governments, it had left all the remaining powers which constitute sovereignty, all those which relate to the lives and liberties of the people, and to the internal improvement, order and prosperity of the state. He believed he had quoted, if not the words, at least the substance of the Federalist, No. 45, in relation to this subject. He repeated, then, that he should, at all times, with the greatest caution, attempt to disturb this political balance; his fear was, that by continued diminutions of state powers, they would ultimately become so inconsiderable in political importance, compared with the general government, as to furnish, from that very circumstance, a strong argument for one national consolidated government. Under the influence of these considerations, he doubted extremely, whether he would give the power, if we were now called upon to decide that question; nay, he was inclined to believe that he would not. But we are now not about to make a constitution, but to expound one; the question, therefore, is, not what power ought to be given to us, but what has been given to us. It would be his endeavor to shew, that the constitution of the United States had not given to Congress, the power of making internal improvement in the several states.

With a view to proceed with something like system, he would take up the subject in the order in which it was discussed in the report. It had admitted this principle, to wit, that, to sustain the power, it must be shewn, either that it was expressly granted, or that it was both necessary and proper, as an incident to the execution of some power which was expressly granted. In further pursuance, then, of the order of the report, and taking the principle which itself has admitted, he would endeavor to shew, that we were not authorized to construct either post roads or military roads, or to dig canals, either by any power expressly granted or properly to be inferred.

First, then, as to post roads, and as to the express power to construct them; the text of the constitution was short: it was in these words: "Congress shall have power to establish post offices and

post roads." The advocates of the resolutions say, that the power to establish, authorizes them to construct. We say, that it gives us power to designate what roads shall be mail roads, and the right of passage or way along them, when so designated. His colleague who preceded him to-day, had gone at length into the meaning of the word "establish," in itself, and as derived from various other parts of the constitution. He should offer to the committee some other views upon the subject. He said, he utterly denied, for his own part, any authority to legislative construction; but, as it was greatly relied upon in the report, and in argument also, and as perhaps the committee might be, in some degree, influenced by it, he would beg leave to shew what had been the legislative construction upon this very question, merely as an offset to the instances cited on the other side. As early as February, 1792, Congress passed an act, the title of which was "to establish post offices & post roads." The first section of this act established many roads as post roads. It was continued, amended, and finally repealed by a series of acts, from 1792 to 1810; all of which have the same title and the same provisions, declaring certain roads to be post roads;—from all of which it is most manifest, that the legislature supposed they had established post roads in the sense of the constitution, when they declared certain roads, then in existence, to be post roads; and designated the routes along which they were to pass. As a further proof upon this subject, the statute book contained many acts, passed at various times during a period of more than twenty years, discontinuing certain post roads. No gentleman would undertake to say, that these went further than to declare, that they were no longer post roads; in the states, on the contrary, were discontinued, they were actually shut up. The argument then stood thus, in states, discontinued roads were actually shut up, and, as by the laws of Congress, they only ceased to be post roads, the discontinuing by states was the opposite of constructing, the discontinuing by congress was the opposite of declaring them to be post roads. But he would go yet a step further, and shew to gentlemen a legislative construction, the authority of which, he was sure, they themselves would not submit to. One of the sections of the act of 1810 provides, that, when any roads shall be obstructed by gates or fences, or be out of repair, for want of bridges or ferries, the postmaster general shall report the same, that Congress may establish another along the same main direction. From this it would seem, that Congress considered that they not only had not power to construct post roads, but that, even after an existing road was established as such, if it were obstructed or out of repair, they had no remedy but the establishment of another. After having offered this offset of legislative construction, which he thought would more than balance the account on the other side, he would now repeat, that, in his opinion, it ought not to influence the committee either way; and he would, therefore, proceed to refer the committee, in support of his opinion, to what he considered better authority. In the first place, then, it was material to carry our recollection back to the history of the times when the constitution was adopted; the country was not then new, but on the contrary, it had long been settled, and, as may be fairly presumed, had all those roads which the necessity or convenience of the people required; it was also fairly to be presumed, that the state governments which then were, and long had been, in existence, and which were abundantly competent to the purpose, would continue to make such roads as the increasing necessity or convenience of the people might require. Let it be remembered, that they were to be post roads; no portion of the country can require a post road, until it shall have been previously settled, and until there shall have arisen an intercourse of some kind between its different points; the same circumstances, then, which would require a mail road, would have previously required, in the nature of things, a road for other purposes. A strong argument, too, he thought, was derivable, from the practice of Europe, with which the framers of the constitution must be supposed to have been intimately acquainted. Upon looking into the books upon public law, and particularly Martens, it would be found, that the different states of Europe had established posts, and, for their mutual convenience, had combined them upon their frontiers, and had, by common consent, and sometimes by treaty, a list of which would be seen in the book just referred to, stipulated a free passage for the posts through their respective territories. It seemed to him, then, probable, that the constitution then intended nothing more by this provision, than to enable Congress to do, by law, without consulting the states, that which he had shewn had long been done in Europe, either by acquiescence or by treaty stipulation; and, when it is considered, that the roads were already in being, all the power which it was necessary to give, was that of designating the mail routes through the country, that thereby there might be unity of design, and continuity in the line of mails.

as a still further proof of the propriety of his construction, he referred to the Federalist, number 42, where it would be seen that this subject was disposed of in a single paragraph, declaring it to be such a harmless power, but it would be far otherwise, if it had been contemplated to be as extensive in its operations as is now contended for; for it is said that we have a right to cut roads wheresoever we may think proper, through the United States, and to use timber, stone and every other material necessary for their construction. If this be the case, there is nothing to prevent us from pursuing what we consider the most judicious plan; we may therefore turnpike them, and for that purpose may incorporate a company.— Suppose a state legislature to incorporate a company at the same time, and for the purpose of turningpike the same road, he should like to hear gentlemen say, which government would prevail in this collision; but, in incorporating a company, we may fix the toll to be demanded; we may inflict penalties for not paying it, and we may prescribe what carriages shall be permitted to pass upon it, as, for example, none but those of the broad wheel kind. If we can do all this, we must have right of jurisdiction, and some right of property in the soil too; for we cannot prescribe toll, &c. without right of jurisdiction, and we cannot take the timber and other materials necessary for the construction of the roads without some right of property in the soil. Now he had always thought that, as the states possessed both these rights at the adoption of the constitution, they still retained them, unless they have transferred them. Have they done so? Let the last clause but one of the 8th section of the 1st article answer the question. In that clause Congress are expressly authorized to derive jurisdiction from the states, over such district not exceeding ten miles square, as, by the section of different states, and their acceptance should become, the seat of the federal government; and both jurisdiction and right of soil over such places as should be purchased with the assent of the legislature of the states, for erection of forts, arsenals, magazines, dock-yards, and other needful buildings. It seemed to him impossible to conceive that the framers of the constitution could have thought it necessary to insert a distinct and substantive power to purchase such considerable spots as these, an acre of land for example, and at the same time intend to convey, by implication, the right to construct roads throughout the whole country, with the consequent right to use timber, &c. and to exercise jurisdiction over them. Gentlemen had said, unless Congress had the power which they contended for, that the mail roads might be obstructed or discontinued at the will of the state authorities. That consequence did not at all follow from his position; for he had admitted that we had a right by the constitution, to the use of the roads, or a right of way; whenever, therefore, we had by law declared a particular road to be a mail road, we had until the law was repealed, such an interest in the use of it, as that it was not competent for the state authorities to obstruct it.

If he were right in his idea, as to the extent of the power expressly granted in relation to post roads, it would require but little argument to prove that a power to construct could not be derived as an incident, for it was a contradiction in terms; it was a solecism in language to say, that the incidental power could be granted than the principal one. The principal power pointed out the end to be effected, and the incidental one was only the means to attain that end. But he had shewn, as he hoped, that the object to be effected was only the designation of the mail route, and, therefore, no power could extend further, which included only the means of effecting it.

He came next, in the order of the discussion, to military roads; as it respects these, it is not pretended that there is anything like an express grant in the constitution of a power to construct them; the advocates of the resolutions, then, must derive this power, if it exist at all, by implication. They had referred to it as an incidental power to the authority given by the constitution, to declare war, and to arise and support armies. With a view to explain his ideas upon this subject, it would be necessary here, to go into some general remarks upon the nature of implied or incidental powers. He would attempt to lay down what he considered a correct principle, which was, that to justify a power, as an incident to some other, it must have a natural, direct, and obvious relation to the principal power. He believed he could illustrate his meaning more clearly by an example; he would, therefore, state a case which he had mentioned in debate during the last session. The constitution gives us power to lay and collect taxes; a necessary incident to the attainment of this end, was the appointment of collectors. He would not say that this example furnished the precise limit to the extent of incidental powers, because neither the science of morals nor of politics, in their nature, admitted of the precision which belonged to mathematics, but it furnished a pretty good exemplification of his idea. If you adopt the principle, that every thing falls within the pale of incidental powers, which remote-

ly conduces to the attainment of any specified object, if you pursue the long chain of connection between end and means, to the extremest link to which that chain extends, you go beyond the range of necessity and proper laws; you effectually break down all the barrier of the constitution, and remove every limitation intended to be imposed upon us. Let us see to what point this doctrine would lead us. The constitution gives us power to provide and maintain a navy.—Ship building requires a particular kind of timber, live oak for example; if there be but a small portion of our country which produces it, shall we be at liberty to send our agents forth, to cut it down without consulting the owners?—If so, can we not go a step farther and seize the land upon which it grows, with a view, to its preservation?— These would conduce to the maintenance of our navy. Let us now, for a moment, turn our attention to what would aid us in raising an efficient army. It is a very common opinion that early education is the most effectual mode of acquiring proper habits of discipline and military knowledge in general. Have we a right to establish primary schools throughout the United States, for the purpose of accomplishing this object? If we have, we must have houses, & houses require timber for their construction and soil for their foundation; have we a right to seize all these things? Can we, after the manner of the Spartans, take the children of the country from their parents, at an early age, claiming them to be property of the public, to have them brought up in a course of military education? If we cannot do all these things, then we cannot, under the name of an incidental power, do whatever will remotely conduce to the attainment of an object which is granted. We must adopt some other rule, and he knew of none better than the one he had stated, that the incident must have a natural, direct, and obvious relation to the principal. The power to construct roads, has no such necessary connection with the power of declaring war, and raising and supporting armies. It is said, however, that for the want of them, vast injury was sustained during the war, & enormous sums of money expended. Sir, inconvenience will not justify a construction of the constitution in itself incorrect, for the purpose of removing that inconvenience; but he would furnish to the gentleman a constitutional remedy. Transport your ordnance and other munitions of war, in time of peace; build other armories, if those which we have be not enough, and establish arsenals and magazines in convenient places. But it has been asked, if a road be indispensably necessary for our army, will you deny the power to make it? He said cases of great urgency, or necessity, might be stated, in which he would not deny it; if in time of war an army should be so situated as not to be able to march to the attack of the enemy, or to retreat from one, without making a road; as if, for example, there were none in the direction required, in such a situation they would possess the power; as being, for the particular purpose, a necessary incident to the right of carrying on war. But the case supposed is altogether different from the principle of these resolutions. They propose a permanent system of roads, giving to the United States a right of jurisdiction over them, as well as a right of property in the soil; whilst the case which he had stated furnished a right, which being derived from necessity, continued no longer than the cause which created it, and, therefore, the moment that necessity passed away, the right passed with it. Upon his principle a road never would be made, but when and where it was wanting. Whereas, upon the principle of the resolution, we should be attempting to construct military roads without knowing that a single American soldier would ever march upon them. We know not with what enemy we shall next be engaged in war; we might construct a military road upon our northern frontier, and the first march of our armies might be to our southern—and so, precisely the reverse of this state of things might occur. In exercising the right which he had just mentioned, of making a road in time of war, for the purpose which he had stated, we should only do that which, under some circumstances, one foreign state would have a right to do in the territory of another. But, say gentlemen, if you have the right in time of war, you must have it in peace, also, by way of preparation. That consequence did not at all follow. He would at once state to the committee a case in which a right in war would be admitted, whilst no gentleman would undertake to contend for it in peace. We have at this time no right to destroy any private house in the city of Washington; but, let it be supposed that we were now in war, and that the same house intercepted the operation and effect of one of our batteries, we should, without difficulty, raze it to the foundation. It is not correct then to say, that whatever right we have in war equally belongs to us in peace also.

(Speech to be concluded in our next.)

BLANKS OF ALL KINDS,
may be had at this Office.

BY AUTHORITY.

AN ACT to establish the flag of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from & after the fourth day of July next, the flag of the United States be thirteen horizontal stripes, alternate red & white; that the union be twenty stars, white in a blue field.

Sec. 2. And be it further enacted, That on the admission of every new state into the union, one star be added to the union of the flag; and that such addition shall take effect on the fourth day of July, then next succeeding such admission.

H. CLAY,
Speaker of the House of Representatives.
JOHN GAILLARD,
President of the Senate pro tempore,
April 4, 1818.—Approved.
JAMES MONROE.

RESOLUTION directing medals to be struck, and together with the banks of Congress, presented to Major general Harrison, and Governor Shelby; and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the thanks of Congress be, and they are hereby, presented to major-general William Henry Harrison, and Isaac Shelby, late governor of Kentucky, and, through them, to the officers and men under their command, for their gallantry and good conduct in defeating the combined British and Indian forces under major-general Proctor, on the Thames in Upper Canada, on the fifth day of October, one thousand eight hundred and thirteen, capturing the British army, with their baggage, camp equipage, and artillery; and that the President of the United States be requested to cause two gold medals to be struck, emblematical of this triumph, and presented to Gen. Harrison, and Isaac Shelby, late Governor of Kentucky.

April 4, 1818.—Approved.
JAMES MONROE.

RESOLUTION requesting the President of the United States to present a sword to Colonel R. M. Johnson.

Resolved by the Senate and House of Representatives of the United States of America, in Congress assembled, That the President of the United States be requested to present Colonel Richard M. Johnson a sword, as a testimony of the high sense entertained by Congress of the daring and distinguished valor displayed by himself, and the regiment of volunteers under his command, in charging and essentially contributing to vanquish the combined British and Indian forces under major-general Proctor, on the Thames, in Upper Canada, on the fifth day of October, one thousand eight hundred and thirteen.

April 4, 1818.—Approved.
JAMES MONROE.

NOTICE.

THE subscribers having obtained Letters of Administration at the last February Court of Pleas and Quarter Sessions of the County of Randolph, on the Estate of Henry F. Wade, dec'd. All persons indebted to the Estate are requested to make immediate payment. And all those having claims against said Estate, are required to present them properly authenticated within the time prescribed by law, or they will be barred from recovery.

SETH WADE, Adm.
ARCH'D FULLER, }
Randolph, Feb. 20, 1818.

The high-blooded imported Horse BLUSTER,

Will stand this Season at the subscriber's Stable in Warren County N. C. half way between Warrenton and Louisa, and will be let to Mares at \$25 the Season, which may be discharged by the payment of \$21 within the season; \$15 the leap, and \$30 to insure a mare to be in foal. Pasturage and Servants board gratis; but mares may be fed at a reasonable price if required. Great attention will be paid, but no liability for accidents of any kind. The season to end the 1st of August.

Bluster was imported in 1816—is a beautiful bay, and is fully 15 hands 3 inches high. He ran with success, and was considered at Newmarket to be one of the speediest horses in England. He combines the most celebrated and favorite blood, as will appear from the following

PEDIGREE.
Foaled in 1808, got by Orlando (a son of Whiskey out of a Highflyer mare, sister to Escape) by Pegasus; her dam Squirrel.— Pegasus was got by Eclipse, out of a Bosphorus mare, sister to Grecian Princess. Orlando out of Amelia, by Highflyer; her dam Miss Timmis (sister to Maille); by Matchem Salttrap (a son of Eclipse) out of Galash, by Herod; her dam Theresa, by Machen, Regulus, Godolphin Arabian.

For his performances on the Turf, see Racing Calendars.
1812—Page 51.
1813— 7, 143, 157, 158.
1814— 53, 64, 69, 95, 111.
1815— 77, 29, 32.
P. HA
Warrenton, March 10.