

GENERAL ASSEMBLY.

DEBATE ON The Convention Question.

IN SENATE, Thursday, Dec. 2.

The Resolutions offered by Mr. Cameron, were read, as follows:

Whereas all power is inherent in the people, and all free governments are founded on their authority, and established for their peace, safety and happiness; and that for these ends all men have an inalienable right to alter, reform and amend the form of government, in such manner as they may think proper.

And whereas there are many defects in the Constitution or form of government of this State, which require alteration, reform and amendment. And there being no provisions in the said Constitution whereby amendments to the same can be made: The General Assembly, desirous at all times of manifesting their attachment to the rights of the people, and their zeal for the promotion of their welfare, deem it their bounden duty to point out some of those defects, and provide a mode by which the people may express their opinion on these and all other matters, touching the security of their rights and the advancement of their privileges.

Resolved (as the opinion of this General Assembly,) That all elections of Officers, under the government of this State should be vested in the people, where the right of election can be conveniently exercised by them.

Resolved, That the constitution of this State ought to be so altered and amended as that the Governor or Chief Magistrate of the State, shall be elected by the Freemen qualified to vote for members of the House of Commons; and that he shall at stated times receive for his services a compensation, which shall neither be increased or diminished during the term for which he is elected.

Resolved, That the said constitution ought to be so amended as that the Sheriffs of the respective counties shall be elected by the Freemen qualified to vote for members of the House of Commons.

Resolved, That the said constitution ought to be so amended as that the Judges of the Supreme Court, and of the Superior Courts of Law and Equity shall be removed from office for inability to perform their duty, or any other reasonable cause, on the address of both Houses of the General Assembly for that purpose.

Resolved, That the said constitution ought to be so amended as that the Judges of the Supreme Court, and of the Superior Courts of Law and Equity shall at stated times receive a compensation for their services, which shall neither be increased or diminished during their continuance in office.

Resolved, As the opinion of this General Assembly, that the representation of the people in the Senate and House of Commons according to the existing provisions of the constitution, is greatly unequal and highly unjust.

Resolved, That the said constitution ought to be so amended as that, the representation of the people in the General Assembly, shall be equal and conformable to the principles of Republican Governments.

Resolved, That the said constitution ought to be so amended as that sessions of the General Assembly, shall be held once in every two years, unless the public good shall otherwise require.

Resolved, That the said Constitution ought to be so amended as that no member of the General Assembly shall, during the term for which he shall have been elected, be appointed to any office under the State, which shall have been elected, or the continuance of which shall have been increased, during such time.

Resolved, That the said Constitution ought to be so amended as that no person, holding any office under the United States, shall be a member of the General Assembly during his continuance in such office.

Resolved, That the said Constitution ought to be so amended as that all impeachments of officers of this State, liable to impeachment, shall be tried by the Senate sitting as a Court for that purpose.

Resolved, That it be, and is hereby recommended to the Freemen of this State, on the days appointed by law, for the election of members to serve in the next General Assembly, that they signify their assent or dissent to calling a convention of Delegates, to be elected by the freemen for the purpose of revising and amending the Constitution of this State, by voting by ballot "Convention" or "No Convention."

Resolved, That it shall be the duty of each and every of the Sheriffs or other returning officers, at the close of the Polls in their respective Counties to sum up, and certify to the Governor of this State the whole number of votes for "Convention" and "No Convention." The said Sheriffs or other returning officers shall deliver a duplicate of such returns to the Senators of their respective Counties, to be by them taken to the Seat of Government at the next General Assembly.

Resolved, That at the next meeting of the General Assembly a joint select Committee of both Houses shall be appointed to receive, count and report the number of votes so returned for and against the calling of a Convention for the purposes aforesaid.

Mr. CAMERON said, as he had the honor to submit to the consideration of the Senate, the above proposition for revising the Constitution, it became his duty to state the reasons which led him to believe it expedient and necessary, to adopt it.

on this subject, as the proposition itself contained sufficient evidence of the expediency of the measure.

When, in the goodness of Providence, our former Colony became a free and independent State, the people claimed the right of establishing a free and independent government, in order to secure their future happiness and prosperity. The period at which they were called to form this free government, was a time of difficulty, the country was just emancipating itself from the tyranny of Great-Britain. The people were, of course, but little acquainted with Republican principles, and could not be expected to form such a Constitution as would at all times suit the condition of the people of this State. They deserve no ordinary degree of praise for what they did.—They formed an excellent Constitution considering the light they possessed—it has proved a shield to the people for 40 years. But it did not occur to the venerable body of men engaged in this important work, to make provision for such amendments to the Constitution as might from time to time become necessary. But though there be no provision to this effect, it is competent for the people, when assembled for the purpose, to alter, amend or repeal any part of that instrument, or any other which may hereafter be formed.

We have reason to believe, said Mr. C. that there are many defects in this Constitution; and the time has arrived at which it is proper to provide a remedy for them. In times of difficulty, when contending against a foreign foe, it would be impudent to stir a question of this kind—at such a period, a sense of common danger should unite every heart. At present, under the goodness of Providence, we are at Peace with the whole world, and there is none to make us afraid, either at home or abroad—a situation peculiarly fitted for an undertaking of the kind proposed.

The truths contained in the Preamble to these Resolutions were such as could not be denied by any Member of the Senate, or any man in the Nation. Whatever defects may be in the Constitution, the people, then, have a right to amend. He meant to show to this Committee, that these defects exist; and it was intended, by the course proposed, to call the attention of the People to these defects, and submit it to their determination, whether they will correct them, or not. This he thought right and proper, and he should think he failed in his duty if he did not call the attention of the People to whatever concerned their interest or happiness.

According to the theory and nature of our government, said Mr. C. all its important Officers should, at stated periods, be brought, as far as practicable, within the reach and control of the People. There are certain Officers which the people cannot conveniently elect. He did not mean that they could not go to the polls to do so; but that they could not be presumed to be judges of the qualifications of certain officers, such as Judges. But he spoke of that class of officers of whose qualifications the people are able to form a tolerably correct opinion; and he thought no body of men ought to presume to take this power from the people.

The Constitution of this State provides that the election of the Chief Magistrate shall be by joint ballot of both Houses.—Mr. C. objected to this. He wished to place the election of the Governor of the State in the hands of the People. He is the Chief Magistrate of the People, and not of the General Assembly. His power may reach every individual of the State, and should therefore pass before them at every election.

What, asked Mr. C. is the example of our sister States on this subject? Every State which has revised its Constitution, and every new State, has in its provisions one for the election of the Governor by the people. There are, at this time, sixteen out of the twenty-two States, which elect their Governors immediately by the people. New-Jersey Maryland, Virginia, North-Carolina, South-Carolina, and Georgia, are the only States which elect their Governors by joint ballot of their Legislatures.

Do I ask any thing improper for the people, said Mr. C. in claiming for them the right of electing their Governors? The people are virtuous and enlightened; and may shrewdly be trusted with the exercise of this power.

He wished to call the attention of the committee to the manner in which the election of the President of the United States is made. He is not elected by Congress, but by the people at large. Congress, indeed, have given a tone to this election which it is difficult for the people to resist, by meeting in Caucus, and recommending a Candidate for the office. But the virtuous and enlightened framers of the Constitution of the United States placed the power of electing the President in the people; and he could see no reason why the people of every State should not elect their Chief Magistrate.

The next proposition relates to the election of Sheriffs. On this subject the Constitution is silent. The election of these officers has been regulated by Act of Assembly. The defect of the Constitution in this respect, is, that the election of the Sheriffs is not secured to the people. The election of these officers may,

by some, be deemed unimportant; but he considered it in a different light. There is no office of the Government which comes more immediately home to every man than this. He executes your laws and collects your revenues. And how are the Sheriffs at present appointed? By a majority of the justices of each county. The Sheriff has only to secure a majority of the Magistrates in his favor, and he will be continued in office, though thousands be made to feel the abuse of his powers. And does not the election of this officer by the County Court create parties among the members of it, and produce more mischief, in this respect, than any of the popular elections? It certainly does. Let these Courts chuse their Clerks and Constables; but let the Sheriff be elected by the people.

It may be objected that if these officers be elected by the people, instead of the county courts, it will produce a party feeling throughout the county, instead of confining it to the Bench.—I did not believe this. In States where the Sheriffs are elected by the people nothing of this kind is seen, but men of standing and character are elected to the office. He may not serve every precept himself; but he sees that the duty is duly performed. This is no new principle in our country. Most of the new States have adopted it; and he trusted it would be adopted here.

The next Resolution provides for the removal of a Judge from office, in cases of inability. This proposition contemplates a great change in our Constitution in this respect; and he confessed, that he approached the subject with great reverence and respect. No person, by education and habit, was more attached to this branch of the Government than he; and he was desirous of making the Judges secure from interference on all ordinary occasions. It was for extreme cases only that he wished to provide.—Considering it to be inconsistent with the principles of free Government, that there should be any branch of it perpetually excluded from the control of the people.

The Constitution provides that the Judges shall be elected by joint ballot of both Houses of the General Assembly, and shall hold their offices during good behaviour. They are, to be sure, subject to impeachment for criminal conduct.—But may not other cases arise, besides criminal, where it would be proper to remove a Judge from office? Our experience teaches us that there may. This proposition does not go to affect the independence of the Judges; it has relation only to inability, or other reasonable cause, which may render it proper that a Judge shall not continue on the Bench. Would it be right for a Judge to remain in office when incapable of discharging his duty—a blot on the Judicial Escutcheon? But it may be asked what is meant by reasonable cause? It should be such a cause as entirely unfitted the man for the office.—He did not deem it proper to point out remedies for defects; his object was merely to point out defects, not to recommend remedies. This would be the province of the Convention, if it shall be called.

But it will be said, that it is great cruelty when a man has accepted of a Judicial appointment, that he should, in his old age, impoverished in his circumstances, be turned adrift, to live as he can.—This is rather an appeal to our sympathy than our judgment. There is nothing in our Constitution, said Mr. C. to make a man take an office; and when an office is sought after, the person desiring it, thinks he has talents fit for it, and he knows the compensation which is attached to it. If it impoverish him, therefore, he cannot complain. He was no advocate for giving pensions indirectly, while we were forbidden to do so directly. And in cases where a person has disqualified himself to perform the duties of an office; what obligation is there on the community, to continue his salary? Such a case had never happened, and he hoped never would; but in case it should occur, there ought to be a remedy provided to meet it.

Mr. C. observed that he was not advancing a new principle. We ought to avail ourselves, of the examples of those who have gone before us. Examine other Constitutions, and you will find that New-Hampshire has provided that no Judge shall continue in office after he arrives at 70 years of age. And he thought this a good provision. Three score years and ten is marked as the extent of human existence; and if a man lives beyond this period, he ought to spend his few remaining days in qualifying himself for a future existence. But, at present, a Judge may continue on the Bench until he arrives at second childhood, and there is no way of removing the Incubus.

In Massachusetts—a State of which he was proud to speak, because it was the Cradle of our Revolution—a State which contained as many Patriots and able Jurists, as any other—their Constitution provides that the Governor, on the recommendation of two-thirds of the Legislature, may remove a Judge from office. And have we ever heard that this power was abused? No, that State has always had men of eminent talents in their Judiciary, and there has been no necessity for exercising this power.

Connecticut, a State distinguished for men of superior talents, till last year, had been governed by an old imperfect Charter. There was a considerable party in the State who clung to this old Charter, saying, "we have always done very well under this Charter, and lived very happily, why shall we change it for a new and untried order of things?" But a majority of the people demanded a definition of their rights, and a written Constitution. They have formed a Constitution, and what is the result? They have declared their Judges shall hold their offices during good behavior; but that the Governor may remove them, on the address of two-thirds of the Legislature.—Will it be said that this State has acted rashly, and with too little consideration towards the Judiciary Department? It is not for us to say they did not understand the principles of Republican Government.

The Constitution of New-York, framed by men as distinguished for talents and integrity as any in the Union, provides that their Judges shall hold their offices during good behaviour, but not beyond the age of 60 years.

Pennsylvania has a provision in her Constitution that a Judge may be removed by the Governor, on an address of two-thirds of the Legislature.

Delaware has a similar provision. In Georgia, the Judges are elected for three years; but are removable by the Governor, on the address of two-thirds of the Legislature.

In Louisiana, the Judges are appointed during good behaviour; but may be removed for any reasonable cause, by the Governor on the address of three-fourths of the Legislature.

Kentucky has a similar provision, except that the address is to be from two-thirds of the Legislature. This was the original provision in her Constitution; & though she revised it a few years ago, the provision was retained.

In Ohio, their Judges are elected to serve for seven years, if so long they behave well.

In Mississippi, the provision is the same as in Ohio.

In Indiana, the Judges hold their offices on the same terms as in Ohio.

In Illinois, the Judges are elected during good behaviour till 1824; afterwards they are to hold their offices during good behavior.

In Alabama, the Judges are liable to be removed on the address of the General Assembly.

This list of a majority of the States which have adopted the principle now contended for, shews that it has at least example to recommend it.

But it is said, if you give to the Legislature the exercise of this power, you will destroy the independence of the Judiciary; and if the General Assembly passed unconstitutional laws, the Judges would not dare to pass upon their acts. He had no apprehensions of this kind; as he should be for making the address of the Legislature almost unanimous which should require the removal of a Judge, & such an Address could not be carried except in a case which should be very notorious.

The next Resolution proposes that the Constitution shall be so amended as that the Judges shall receive a compensation for their services, which shall neither be increased or diminished during their continuance in office.

In looking over the Constitutions of the several States, it will be found that a provision of this kind is in most of them; and if we had such a provision in our Constitution, it would save the General Assembly much trouble. Mr. C. considered the appointment of a Judge as a sort of contract with the Government.—The Judge agrees to fulfil the duties of the office for a certain salary. But after some time the Legislature is told that the business of the Judge is increased, or that money is depreciated, and it is necessary to raise his salary. If the salary of the Judges be insufficient, it ought to be increased; but before this is done, let them resign their offices and go before the General Assembly. If they be worthy and capable men, they will be re-elected. South Carolina has this wholesome regulation in her Constitution. Some years ago, an operation of this kind took place in that State.—The Judges of good standing resigned their offices and were re-elected; but others of them who were conscious of not standing well with the people, thought proper to continue to hold their offices at the old salary.

The next proposition, Mr. C. said, came near to the members of the General Assembly. It states the representation of the people in this General Assembly to be greatly unequal and highly unjust. Mr. C. called upon the committee to answer him in the affirmative or negative, if this were not true, in point of fact? If true, then candour, magnanimity, justice, and every honorable sentiment called aloud for correction of this grievance.

The representation of the people in this General Assembly, seemed to have reference to geographical boundaries. The earliest representation we have any knowledge of, was by precincts, such precincts sending a certain number of representatives to the Lords proprietors and their

Council. This precinct system continued & each precinct or county, sent two members to represent them. This was the state of things when the Revolution took place. At that time our population was small and scattering,—reaching from the seaboard to a little above the middle of the State. It was unimportant, therefore, from what section of the country the Representatives came. No attention was then paid to the true Representative principle according to numbers. Mr. C. disclaimed any attention of exciting any thing like sectional feeling. Let us, said he, examine the subject, find where the evil lies, and submit it to the people to provide a remedy. We are all members of the same family; let us not therefore consider how this or that course will affect certain parts of the State; but let us enquire what is wrong in our Constitution, and let a remedy be sought for its correction.

He had observed that the representation is at present, according to geographical limits, than which nothing could be more unequal. According to the Constitution of our State, every freeman who has attained the age of 21, and paid a public tax, is entitled to vote for a member of the House of Commons, and every freeman who possesses 50 acres of land has a right to vote for a Senator; but Representatives are still sent to each house on the old precinct principle, without regard to the number of their constituents.

In order to shew the inequality of the present Representation, Mr. C. said he would take the liberty to avail himself of the labours of his predecessor in the Senate, who had been Chairman of a Committee appointed on this subject, of whose industry and talents he could not speak too highly. This gentleman states,

"There are 62 counties in N. Carolina, containing a white population of 386,676—thirty-seven of these counties, containing a white population of 152,586 send into the Legislature one hundred and eleven members; and twenty-five counties, containing a white population of 234,090, send only seventy-five members. If the whole white population, viz: 386,676, be divided by 166 (the number of members elected by the sixty-two counties to the General Assembly) it will give within a fraction 2078, as the true number of white polls, for each member; and the twenty-five counties which now elect 75 members, would be entitled to 112; & the thirty-nine counties, which now elect 111 members, would be entitled to 74. If the white population be taken as the basis of representation, the following table will shew the number of members which each county would be entitled to elect, on the principle of equality of representation, disregarding fractional parts:

Table with 3 columns: County Name, Number of Members, and another column. Lists counties like Anson, Ashe, Beaufort, Bertie, Bladen, Cabarrus, Columbus, Currituck, Craven, Camden, Carteret, Chatham, Cumberland, Caswell, Chowan, Duplin, Edgecombe, Franklin, Guilford, Gates, Greene, Granville, Haywood, Hertford, Hyde, Halifax, Johnston, Jones, Iredell, Lincoln, Lenoir, Moore, Montgomery, Martin, Mecklenburg, Nash, Northampton, New Hanover, Onslow, Orange, Person, Pasquotank, Perquimans, Pitt, Robeson, Richmond, Randolph, Rutherford, Rockingham, Rowan, Stokes, Sampson, Surry, Tyrrel, Warren, Washington, Wake, Wilkes, Wayne.

"The fractional parts of the population being omitted, this table exhibits the return of 160 members only—these fractional parts exist as much in the large counties as in the small, & may therefore be disregarded, in estimating the equality of representation.

"From this table it appears that 21 counties would be entitled to elect 84 members; a majority of the whole representation of the State. These views shew clearly, that under the present operation of the Constitution, about one third of the white population elect a majority of the members to the General Assembly."

This statement clearly shews, that a minority of the white population of the State elects a majority of this Legislature; of course, that we are not governed by the will of the majority, according to the acknowledged principles of Republican Government, but by the will of the minority.

But to give to the opinion of some gentlemen, who think that not only numbers but the amount of taxation ought to be considered, their full weight, let us, said Mr. C. see how the question will stand in this point of view.

The federal number of the population of this State, he estimated at 400,000.