



GENERAL ASSEMBLY.

In Senate... Nov. 29.

DEBATE ON MR. CRUDDUP'S CASE, CONCLUDED.

Mr. Yancey (the Speaker) said, he had hoped that some gentleman better acquainted with the subject under consideration, would have presented a full view of the question, and allowed the Senate more information than he could promise them. I do not, sir, said he, profess to be well acquainted with the Church discipline of the several religious denominations; or with the powers conferred by them on their Ministers. The information, however, which I have acquired, induces me to believe, that a liberal and enlightened construction of the 31st section of the Constitution of this State, will show that the gentleman from Wake is not eligible to a seat in the Senate.

From what I have understood, said Mr. Y. of the qualifications of the gentleman, of his private worth and character, as well as a due regard for the rights of his constituents, I should have been perfectly satisfied that the question had not been bro't before us. Being presented, it is a constitutional question, and therefore an important one, and it becomes our duty to decide it upon its merits, and according to the best information we can command.

The clause of the Constitution under consideration declares in substance that "no Clergyman or Preacher of the Gospel of any denomination shall be eligible to a seat in the General Assembly, while he continues in the exercise of the pastoral function;" and to give it a sound construction, it becomes necessary to inquire, who are Clergymen and who are Preachers of the Gospel—and apply to each of those characters the latter clause of the Constitution, "the exercise of the pastoral function."

Clergyman, I believe, said he, is a character unknown to the Scriptures, but understood by Divines to be one who has taken Holy Orders; and I agree with the gentleman from Wake, that the term cannot be applied to a Preacher of his denomination, of Christians, but was intended to be applied exclusively to the established Episcopal Church of England. I believe, sir, said he, I may be permitted to say, that I know more of the tenets and discipline of the Baptist denomination, than any other; for I have been raised among them, and though not a member of the Church, yet, to use the expression of an old friend of mine, I am myself of that persuasion.

The term Clergyman, is not applicable to that Church; but the term Preacher of the Gospel, is applicable; and the exercise of the pastoral function, must be applied as well to Preacher as Clergyman. According to the best authorities which I have been able to consult, while at this place, a Pastor of the Baptist Church is one who has taken the charge of a particular church, and according to the discipline of that church, he cannot take charge of any one church without its consent and solicitation. To make him a Pastor, he must be willing to take the charge, and they willing to receive him as their constant and local preacher. Every Pastor, therefore, is a Preacher of the Gospel, but every regularly ordained Preacher is not a Pastor. The authorities read by the gentleman from Wake, which are said to be the highest human authority, proves this doctrine to be correct. The term Pastor is not mentioned in the Constitution; the expression is "Preacher of the Gospel of any denomination;" so that the person constitutionally excluded from a seat here, is not a Pastor, but a Preacher, while in the exercise of the pastoral function. Can a Preacher exercise the Pastoral function? It certainly was considered by the Convention, that he could, or otherwise they would not have excluded him, while in the exercise of it. Give to the words pastoral function in the Constitution the technical meaning which has been applied to it in this discussion, and apply the exercise of this function to a preacher of the Gospel, & you make the latter clause of the Constitution mean any thing, or nothing. According to the argument of the gentleman, none but a Pastor can exercise the pastoral function; but according to the provision of the Constitution a Preacher of the Gospel can exercise that function; for it has declared that while in the exercise thereof, he shall be disqualified. What is the pastoral function of a preacher, but a ministerial employment? The plain and obvious meaning therefore of those who formed the Constitution was, that while a preacher was in his ministerial employment of proclaiming the Gospel to the world and administering the ordinances of the Church to which he belonged, he was exercising the pastoral function, and it was persons of this description that was intended to be excluded from the Councils of the State.

According to the discipline of the Church of which the gentleman is a Member, persons who are considered by them called to the Ministry, and appear to be qualified, are regularly ordained and receive from their Church authority to preach and administer, as I believe, all the ordinances, belonging to the Church,

One authority read by the gentleman, shews that Ministers have the power to administer the ordinance of Baptism, without being a Pastor; all admit they have power to solemnize the rights of matrimony and their constant practice is, to assist at the sacramental table. If not to administer the ordinance. A preacher therefore, regularly ordained by the denomination to which he belongs, has all the authority, and is under all the obligations to preach that a Pastor is; and the material difference seems to be, that the former is under obligations to preach to many, while the latter is confined to his own flock; yet the argument is, the former is entitled to his seat, while the latter is excluded. In other words, when his influence and cares are confined to a single Church in his neighborhood, he should be excluded from the Legislature; but when they extend to the whole circle of his acquaintance or to the world at large, he is eligible as a Member. Such a provision never was intended by those who formed the government, and such a construction ought never to be given to the constitution.

The gentleman from Wake, seems to doubt from an authority he has read, and upon which he relies, whether he had power as a Minister, to perform the several ordinances of his Church, which he admits he has performed. It is admitted that he has regularly been ordained to the Ministry, that he has married persons and baptized; but he says the Baptism was performed at the request of the Church of which he was a member. The special request of that Church could confer no authority, but the authority to do so, must be derived from his being regularly ordained by his society.

There are but two descriptions of persons, known to our laws who can solemnize the rights of matrimony; those are Justices of the Peace and Ministers of the Gospel having the cure of souls. Under this authority given by law, all ordained and licensed Ministers, whether technically Pastors or Preachers, have married persons; and yet if Preachers regularly ordained and authorized by their several societies to preach the Gospel, have not the cure of souls and do not exercise the pastoral function, all those marriages are illegal, and their offspring illegitimate; such a construction would declare more than half the marriages in the State illegal: But sir, said he, I have no doubt the gentleman from Wake had full power to solemnize the rights of matrimony, and that he acted correctly in the exercise of this pastoral function or ministerial employment.

Mr. Y. said he concurred in opinion with the gentleman from Wake, that a liberal construction should be given to the Constitution; one which is calculated, to prohibit the evil intended to be guarded against by those who formed the Constitution. Sir, said he, in construing the Constitution, we should not apply to it, the rigid rule of law applied to Grants; but we should look to it as the great charter of our liberties, containing the elementary principles of government. Apply such a rule of construction to this case, and who can doubt for a moment as to the intention of those who formed the government, and the mischief intended to be guarded against? The primary object of the Convention was to keep forever separate and distinct Church and State; to keep out of the Church the influence of politics, and to keep out of the Legislature the influence of the Church; to let religion support itself on its own merits, without such extrinsic aid. Will it be considered that in making this provision, the Convention were unfriendly to Christianity? No sir: look to the next section to the one under consideration, and it will be seen that no man who disbelieves the divine authority of the Scriptures, or holds religious principles incompatible with the safety and liberty of the State, can hold a seat here. The 34th section also provides, that a man shall not be compelled to contribute in the purchase of any real or personal estate for the use of a Church or support it in any way, otherwise than by his own voluntary contracts.

Considering the construction which has been given to the Constitution a correct one, how does the question stand? It was the intention of those who made it to guard against the improper influence, which history teaches us, always has accompanied in the legislative council, those who were conspicuous in the Church; and can it then be considered, that a man who has the charge of a particular Church, and therefore technically a Pastor, has more influence & of a more dangerous tendency than he who preaches constantly to the world at large & is confined to no particular neighborhood? Consider the effects of this principle, as it regards the several religious denominations in this country. A Baptist and a Presbyterian Preacher, according to the discipline of their several Churches, never become a Pastor of a church until they locate themselves by agreement to that particular church; but a Methodist Preacher, according to the discipline of the society to which he belongs, is technically a Pastor, while he continues to ride the circuit. Let him locate himself in a particular society in his neighborhood & make it his duty to preach

to them, and he loses his pastoral character and becomes a preacher.

According to this doctrine which has been advanced then, a located Methodist preacher would be entitled to a seat, while a located Baptist or Presbyterian preacher would be excluded; and a circuit rider of the Methodist denomination who preached through a large section of the State would be excluded from a seat, while a minister of either of the other denominations, who preached by authority of his church to the world at large, would be entitled to a seat. Such an opinion, therefore, makes a great constitutional question depend upon a difference in church discipline, and not upon the employment and influence of a minister of the Gospel. The true meaning, therefore, of the Constitution, said he, as it appears to him, is, that a preacher of the Gospel of any denomination, while he continues in his ministerial employment, is excluded from a seat in the Legislature.

In regard to Mr. Bowen's case which had been mentioned, he knew nothing of it, and would be glad if the gentleman could turn to the case in the Journals, to hear the facts of the case read.

Mr. Y. concluded by saying he had, he hoped, a profound reverence for Religion and a due respect for the clerical character, but he wished to see it confined within its proper sphere, and employing its influence in disseminating the principles of Christianity.

Mr. Crudup made some further remarks, chiefly as to the distinctions between Preachers who had the right to exercise the pastoral function, and those who had not; to which Mr. Yancey replied.

Mr. Baker said he was not a member of the Legislature when Mr. Bowen's seat was vacated some years ago, but he understood that he was very differently situated from the member from Wake. He had been expelled from the Methodist Church, of which he had been a Minister, for some impropriety of conduct, and was never admitted again, though he still continued to preach. He was, therefore, suffered to retain his seat.

Mr. Calloway regretted that his health would not permit him to say much on this subject. The gentleman from Wake, under trial by the House, was unpleasantly situated in having to defend himself; as no one could speak for himself so well as for another. But he had, nevertheless, supported his cause in a manner which had not been answered.

Living in a part of the country where Baptist Professors are very numerous, said Mr. C. I am well acquainted with the practices of that church. There are three classes of Preachers amongst them. After a man is baptized, he may, if he pleases, preach, and many of the Preachers of the Gospel live and die in this situation. There is another class of Preachers, called Itinerant Preachers, who travel about the country, and have no control over the Church—all they do is by consent of the Church; but there is another class of Preachers called Pastors, which have greater powers. There were but few of these in his part of the country; for though there were nineteen Churches in the Mountain District, there were only three Pastors amongst them. If gentlemen wished information on the subject of these degrees of Preachers, Mr. C. would refer them to the 3d of Timothy and to the 6th chapter of the Acts of the Apostles. The Baptists say they walk by the good old Book, and to that he referred for authority. If the Constitution meant to exclude Pastors only from a seat in the Legislature, the prohibition would extend to but few of the clergy.

But it appeared from the remarks of the gentleman from Caswell and Hyde, that they were under great alarm from the admission of Clergymen into the Legislature. For his part, he was under no apprehensions on that head. Since the adoption of the Constitution, no law has been passed affecting the liberty of conscience; nor would any such, he trusted, ever be attempted.

He hoped the gentleman from Wake would be allowed to retain his seat. He was the Representative of a large and respectable county, and was doubtless a man of great talents.

The gentleman from Gates had said he was not a member of the Legislature when Mr. Bowen's seat was contested, and he could readily believe him; because what he had stated with respect to his case was not correct; for it was proved at the time, that Mr. Bowen was then a regular Minister in the Methodist Church. The subject was fully debated, and no doubt the decision in that case, had induced the gentleman from Wake to offer his services to his constituents.

From the high respect, he entertained for the county of Wake, and for the gentleman whose seat was contested, and from a belief that the Constitution was intended to affect Pastors only, he should vote in favor of the sitting member.

Mr. Singleton insisted on the fact that Mr. Bowen had been expelled from the Methodist Church.

Mr. Atkinson said he was a member of the Senate at the time Mr. Bowen's case was before it in the year 1812, and distinctly recollected, that it was proved that he was at that time in the Methodist So-

ciety; that he had been an Elder, & was then a local Preacher.

[The question on the Resolution for displacing Mr. Crudup was carried. The committee then rose, and the House adjourned without taking a final question on the Report. Next day, after some further discussion, which we did not hear, the report of the Committee of the Whole was concurred with, 20 yeas to 15, and a writ for a new Election ordered.]

REPORT ON THE TREASURY.

We lay the following Report before the Public with more pleasurable feelings than we know how to express.

The Joint Select Committee to whom was referred the Resolution of the two Houses of this General Assembly, directing them to investigate the Accounts, and enquire into the official conduct of JOHN HAYWOOD, Public Treasurer of the State of North-Carolina, having discharged the important and delicate duties assigned to them, and having given to the subjects of their enquiries all the patient investigation and deliberate consideration which their importance demanded, beg leave most respectfully to REPORT,

That your Committee being determined to make a thorough and complete investigation into the Accounts of the Public Treasurer, in order that if any frauds or errors existed in them they might be detected and brought to light, or, that if none such existed, there might be no loop left whereon suspicion might hang a doubt, commenced their examination with the accounts of the year 1787, at which time John Haywood first became the Public Treasurer of this State, and pursued their enquiries with rigid scrutiny until they came down to the 1st November of the present year; and that they would not listen to any suggestion, coming from what quarter it might, which would divert them from the course of their enquiries. Your Committee find that the accounts of each year, since the year 1787, to have been regularly balanced & settled, and the amount due in each preceding year, correctly carried on and charged in the account of the next succeeding year. That all the accounts of the Treasurer have been kept in a plain and intelligible manner; that in no one year, nor in no one instance, is there any mistake or variance between his accounts and his statements exhibited by him to the General Assembly, or between his balances and the accounts of cash with which he has charged himself in the accounts of the next succeeding year, and that his accounts of each year since 1789 have been examined and passed upon in the manner prescribed by the orders of the legislature. Your Committee find that the balance reported to this Assembly by the Treasurer, as being in his hands on the first of November last, is the true and correct balance, as appeared by the examination of this Committee into the books of the Comptroller and Treasurer; and that upon an actual count of the cash in the Treasury, and an inspection into the certificates of deposit which the Treasurer holds from the Cashiers of the State, Cape-Fear & Newbern Banks, that the said cash and deposits, and his accounts of it precisely correspond.

In this laborious and minute investigation into the accounts of the Treasury for thirty-three years, your Committee have not only found neither error nor fraud, but were gratified in beholding the most minute accuracy, and the most scrupulous integrity, and are proud in the reflection, that they are the citizens of a State which has in its service an officer of such ability and integrity. The attention of your Committee was indeed drawn to a supposed deficiency in the Treasury in the year 1805; but after hearing all the evidence which was brought before them upon this point, & investigating the matter fully and satisfactorily, your Committee are convinced that there is not a shadow of a reason to believe that there was a deficiency in the Treasury in 1805, or at any other time since the first appointment of John Haywood as Public Treasurer.

Your Committee have listened with patience, and carefully enquired into every suggestion which was made to them touching the official conduct of the Treasurer. At the suggestion of the Chairman of this Committee several highly respectable gentlemen were called before the Committee and examined upon oath. Not one of them uttered a syllable affecting, in the most remote degree, the integrity or the ability of the Treasurer, while they all concurred in giving testimony to his honesty and to his worth. Some of them, being public officers, spoke of having received, at some times, though rarely, a part of their salaries before they became due; but your Committee find that in every such instance of advance it was made by the Treasurer upon his own responsibility, and with a view to the advancement of the public good. No loss has ever been sustained by the State by

* The Committee consisted of Messrs. Alston, Mebane, Blackwell, Cameron and Hillman, of the Commons; and of Messrs. Graves, Garland, McLeary, Perkins and Moddie, of the Senate.

any of such advances while in every instance the common interests of the community have been promoted. So far from censure, the Treasurer is, in the estimation of your Committee, entitled to the highest commendation for his risking his own fortune for the furtherance of public good. While many a man, if placed at the head of the Treasury Department, would have intrusted himself behind forms and ceremonies, and thus have suffered your laws and journals to lie upon your Printer's shelf without distribution, and your State to languish, the State being then in the hands of a man who staid at home for want of the means of holding your courts; your Treasurer, like a faithful and zealous public servant, boldly stepped forth, and by applying the remedy removed the evil, even at his own risk.

It being suggested to your Committee, by its Chairman, that the Treasurer had abused his authority in making a loan of \$25,000 of the State Bank in the year 1811, your Committee examined the subject with great care, and find that in making this loan, the Treasurer acted under express authority from the Legislature; and that the Treasury of the State required such a loan when it was obtained.

The enquiries of your Committee extended to the time when the Treasurer acted without giving bond; and they find that the affairs of the Treasury were managed with as much discretion and fidelity in these years as in those in which he gave bond and security. Anxious to investigate any and every charge which might be made against the Treasurer in his official life, your Committee repeatedly solicited the exhibition of charges or suggestions by those who would, or could make them, and although your Committee was sitting every day since the 28th November, in a place open to all, and where crowds attended, and although they daily courted the exhibition of charges, yet none, except such as your Committee had already taken notice of, were presented, or were offered to be presented.

Your Committee had heard of charges and insinuations made against the Treasurer in one of the prints of this State, and endeavoured to ascertain who the author was, to the end that he might be examined on oath touching the same charges, but they were unsuccessful in their endeavors.

To prevent misapprehension, your Committee have thought it advisable to keep a Journal of their proceedings, which has, at each of their meetings, been examined, approved of, and signed by the Secretary and Chairman; and this Journal they now submit to the Legislature, and pray that it may be taken as a part of this Report.

The Treasurer, understanding that it was the wish of a part of this Committee to see and examine his accounts as Treasurer in the State and Newbern Banks, procured copies of the same, & submitted them to the inspection of the Committee. They were examined, and your Committee find that the balances there stated to be due to the Treasurer, on the first of November last, correspond exactly with the certificates of deposit held by the Treasurer, and with his statement as made to the General Assembly.

Your Committee beg leave to report, that, during their whole investigation, the Treasurer has afforded every facility which they required; that his communications have been frequent and unreserved; and that he gave to your Committee free and unrestrained access to all his books, papers and accounts.

In conducting this arduous and important investigation, your Committee were deeply impressed with a sense of the importance of the subject, and the solemnity of their obligations. They were aware, that while to them was delegated, for a time, the protection of the rights and honor of the State, they also had their disposal the character and feelings of an aged and venerable servant of the public. They have endeavored, with their best abilities, to discharge their duty in a faithful and conscientious manner; in a manner which they hope will be approved of by their country and their God, as it is by their consciences. And having brought this investigation to a termination, having probed the official conduct of the Treasurer to the bottom; having weighed and examined every suspicion or accusation; and having found every thing perfectly fair and honest about him, your Committee would be wanting in respect to themselves, were they to withhold an expression of their deliberate conviction that the reports and suggestions which have been made against the Treasurer, impeaching his character as a man, or as a public officer, are founded in stupid ignorance, or in still more detestable malice; that in him the State possesses an officer at once faithful, intelligent and useful; one who for thirty-three years has administered the money concerns of this State with credit to himself, and with an unvarying usefulness to the public; one who with no higher sanction than his own sense of moral duty, has proven to the world that he is uncorrupted and incorruptible.

Your Committee therefore respectfully