

DEBATE ON THE CONVENTION QUESTION.

HOUSE OF COMMONS.
Dec. 18, 1821.

The House formed itself into a committee of the whole, Mr. Brickell in the Chair, on the following Resolutions, submitted by Mr. Fisher, from Salisbury, on the 11th instant:

1. Resolved by the General Assembly of North-Carolina, That the representation of the people of this State in both branches of the Legislature, under the present Constitution, is greatly unequal, unjust, and anti-republican.
2. Resolved, That the Constitution ought to be so amended as that each citizen of the State should have an equal share in the rights of representation upon the principle of free white population and taxation, or of free white population, including three-fifths of all other persons.
3. Therefore, Resolved, That, at the next Election for Members of the Assembly, the people of this State, who are entitled to vote for Members of the House of Commons, be invited to vote at the said election, whether they are in favor of a Convention, or not, by writing on their ticket, *Convention, or No Convention.*
4. Resolved, That the Sheriff of each County in this State, or other returning officers, be and they are hereby directed, immediately after the next election, to ascertain the number of votes given for or against a Convention, and to make out a correct statement thereof, and transmit the same to the Governor, to be laid before the next Assembly.

Mr. FISHER said, before he entered upon the subject of the Resolutions, he must express his thanks for the very courteous manner with which the House had thus far treated his proposition. He could not forbear contrasting their conduct on this occasion with that of another body not far off; and he was proud that the comparison redounds so much to the advantage of this House. When a member, said Mr. F. rises in his place, and submits a respectful proposition, it is nothing but justice to give him an opportunity of delivering his reasons in its favor—it is common courtesy to let him be heard. But for the majority to arrest it at the threshold, and at once put it down, is neither justice nor courtesy.* Majorities should remember, that minorities too have rights. And, Sir, when the majority of a deliberative Assembly, in the true spirit of tyranny, prohibits debate, gloomy indeed is the prospect of an impartial decision at such a tribunal. In looking in on such a body, we are almost tempted to say, as is said of Dante's Hell, "Hope never enters here." But, if one branch of the Legislature has shewn us that we have nothing to hope from them, we may rejoice that prospects are more promising here—that in this House, we will at least be decently heard. Mr. F. said he regretted the occasion that had called forth these remarks. He would now proceed to the subject before the committee.

Sir, whenever a Convention is talked of, we immediately hear the cry of the sacredness of the Constitution—that it is the work of our forefathers, and, therefore, it is next to sacrilege to touch it. This cant is the chief argument used by many against calling a Convention, and, as there are some well-meaning persons on whom it has influence, Mr. F. said he would, in the first place, call the attention of gentlemen to the circumstances under which the Constitution was formed, and see if these were the most favorable for the accomplishment of a work of such magnitude. He would then proceed to point out some of the defects of the Constitution requiring amendment.

When we consider the state of things under which the Constitution was framed, it would be a miracle were it otherwise than defective. The whole continent was full of confusion; in our own State more particularly, the difference of opinion among the people ran high. The majority, it is true, were in favor of the new order of things, but there were many that still adhered to the old;—and all, from habits, from education, and early feelings, were strongly attached to the principles of the British Government—they still thought that the British Constitution and forms, were the wisest and the best. Sir, if it was necessary to stop by the way to prove the existence of these feelings, proofs are abundant. The very Congress that framed the Constitution furnish proofs. That body, in the most solemn manner, signed a *test* in which these attachments were declared. The Congress that met at Hillsborough, only twelve months before, also furnish proofs: they in like manner signed the *test*, acknowledging the British Constitution and Laws. [Here Mr. F. read several extracts from the Journals of the Congresses of Hillsborough and Halifax, to shew the feelings that prevailed in those bodies, and their high estimation of the forms and laws of the mother country.] But, continued he, besides these feelings, strongly inclining that body to the adoption, in the new Constitution, of British and Provincial forms and principles, there were still many other embarrassments that surrounded them. They were engaged in a work to them new;—new indeed to the world. History furnished no example where any people had met together, under like circumstances, to frame a government for themselves. Constitution-making was, as yet, but little known. They were without the light of experience, or the benefit of the examples of the other States; for, as yet, but few of the States had formed their Constitutions. Under circumstances like these, is it at all surprising that the Congress at Halifax should form a Constitution partaking largely of the features and forms of the British institutions? Indeed, it was their design and policy to do so, in order that it might be the more acceptable to all classes of the people. In an address published by the Congress of Hillsborough, to the British people, we find the following sentiment. "Whenever we have departed from the forms of the Constitution, our own safety and self-preservation have dictated the expedient."

But there is another fact that must be considered on this part of the subject. Mr. F. said, until within a short time, he had all along entertained the opinion, that the Congress of Halifax had been chosen and convened for the express and sole purpose of forming a Constitution. This was far from being

the case. Judging from the Journals of that body, the formation of a Constitution seems to have been but a minor object of their attention. The Congress met and proceeded to business. In a few days, a committee was raised for the purpose of draughting and reporting a Bill of Rights, and the form of a Constitution. The Congress then resumed its other business, of which it had a vast crowd, such as naturally arose out of the state of the times, and the situation of the country. Thus they went on, until the committee reported the form of a Constitution and Bill of Rights, which were examined, amended, passed at short intervals their several readings, and finally adopted. Judging from the Journals, the whole time bestowed by the Congress on that subject, could not have equalled more than three or four days, at the most; and, out of two quires of paper containing the Journal, not more than three pages are taken up with the proceedings on the subject of the Constitution. After the adoption of the Constitution, the Congress continued in session for some time, devoting its attention to the many interesting and embarrassing subjects before it:—such as raising troops, providing the ways and means, hearing memorials, and settling the internal condition of the State. These things, said Mr. F. I only mention, to shew the pressing difficulties that engaged the attention of the Congress, and how utterly impossible it was for them to bestow that time and deliberation upon the formation of the Constitution that its great importance required. Indeed, the examination of the journals connected with the consideration of these circumstances, must satisfy every impartial mind, that the framers of the Constitution only intended it as a temporary work—one that the people would examine, alter and amend, when the troubles of war would pass away, and the sunshine of peace be restored. But grant, for a moment, that the Congress of Halifax designed this as a permanent Constitution, then we must recur to still other circumstances to shew how next to impossible it was for them to form a Constitution that would suit the future condition of the State. The same feelings that now are called *Eastern and Western*, then, and long before, existed in the Province of North-Carolina. If they existed among the people, it is reasonable to presume that they were not absent from the Congress of Halifax. Indeed the journals of that body furnish proofs of the fact. In the several Congresses before that of Halifax, the votes were always taken by "Counties and Towns." In that of Halifax, a proposition was made to change the mode so as that each individual member should have one vote. For this proposition every Western County voted—Against it, none but the smallest counties in the East voted. In the Congress that adopted the Constitution, 36 counties were represented; of these, only ten were Western: All that wide range of country lying west of Raleigh, was then divided only into ten counties. That body being thus composed, suppose that an effort had been made to fix the principles of representation on other basis than the present, what would have been the result? The same feeling that will influence members on these resolutions would have put it down: the vote, in all probability, would have been 26 against 10.

These, Sir, said Mr. F. were the circumstances under which our State Government was formed; and this accounts for the features of aristocracy that appear throughout the Constitution. In fact, few indeed were the alterations that the Constitution made in the then existing laws and polity of the Province: even the names were retained. The judicial department was but little altered:—and the Legislature not much more, except that instead of the "House of Burgesses," the popular branch is called "the House of Commons," a name as appropriate for this branch, as the *House of Lords* would be for the Senate. The *General Assembly* was the term by which the Legislature was called under the Provincial Government, and it is retained in the Constitution. The qualification of fifty acres of land, and the representation by counties, were taken from the laws of the Province. In short, Sir, the Provincial laws and customs were the materials out of which the Constitution was built, and the Constitution is but little more than a compilation from these materials. And this is the monument of wisdom that we are told it is sacrilege to touch! Sir, it is right to reverence the work of our forefathers, but its being their work does not make it perfect: like ourselves, they were erring men; nor do I hold with the maxim of the "Holy Alliance," that "whatever is ancient, is good." Even admitting that the Constitution was the best for the times in which it was made, sure its framers were not political prophets to foresee that it could suit equally well the conditions of future generations.

The old Congress, said Mr. F. that framed the articles of Confederation, the first American Government, was a body of men never surpassed for warmth of patriotism, clearness of intelligence, and force of sagacity; and yet, Sir, these men, with all their wisdom and foresight, formed a government that in a few years began to tumble to pieces:—to save our infant republic, a new Convention was called, and a new Constitution was adopted. How is it then, that the sages of the old Congress failed in their first government, and that the Congress of Halifax, should, at once have reached the point of perfection! It is not so;—our Constitution is full of defects; and I will now proceed to point out some of them.

To dwell upon all the defects of the Constitution, said Mr. F. would require more time, than he could at present command. He would, therefore, only take up a part, and leave a wild field for his friends to occupy.

Of all the objectionable parts of our Constitution, the system of representation is the most unjust and oppressive. Upon this, said he, I shall confine my remarks; and for the sake of being better understood, I shall consider, 1st. The representation of the people. 2dly. The representation of property; for the theory of the Constitution seems to be, the representation of the people in one branch of the Legislature, and of property in the other.

1st. Then as to the representation of the people. And here be it said, that in practice, the people are not represented at

all. It is not the *people*, in the true meaning, it is the *counties*, that are represented. If the people were represented, numbers would form the basis of the system. The counties are as much represented in this House as the States are in the Senate of the U. States; but not upon the same principles, or with the same propriety. The States are distinct sovereignties, and it is by compromise that they all have an equal weight in the Senate of the Federal Legislature; not so as regards the counties. There is not a greater disparity between the population of Rhode Island and New-York, than there is between Columbus and Rowan; and yet, in that branch of the Federal Legislature where the people are represented, Rhode Island has only two members, while New-York has twenty-seven: but here in both the Senate and Commons, Columbus has as many members as Rowan—so that it is not the people, as a relative part of the whole, but the counties, as a kind of separate governments, that are represented. The original of this feature in the Constitution will be seen, when it is remembered that counties in the first settlement of the province, were separate and distinct governments—we have altered the theory, but retained the practice. This then is a relic from the old colonial system; but, Sir, come from where it may, it is a system under the operation of which, our State government has ceased to be a Republic, and become a complete and perfect aristocracy. What is an aristocracy, but where the few govern the many? Is it not essential in a Republic that all the citizens of the same grade of qualifications should have an equal participation in the rights and privileges of the government?—and that a majority shall rule? No government where these principles are absent, can merit the name of a Republican government; and, Sir, it will not be difficult to prove that this is the case under our Constitution. To show that it is, said Mr. F. I ask your attention to a few calculations bottomed on the last Census, and on the revenue laws of the State. Let me here premise, that in all calculations made on population, the *free population* alone is taken; for that is the only population entitled to representation under the Constitution; and, when gentlemen are contending for the perfection of that instrument, they surely will not wish to assume data not recognised by it. Slaves are not felt in our Legislature, either as population or as property; and where calculations are made to shew the operation of the system, we must confine ourselves to the provisions of that system. Mr. F. said he made these remarks, because some gentlemen may wish to assume the *federal numbers* as the data of calculations—an assumption which he could not admit.

View I. The State is divided into 62 counties, of very unequal extent and population,—yet each sending to the Legislature the same number of members—making in all 193, including the borough representation. The free population of the State is 433,912 souls, which, divided by the number of members in the Legislature, gives to each member 2248 souls: or, in other words, every 2248 souls, upon principles of equality, would be entitled to one representative. Take this then as the ratio of one member, and how will the result appear?—Why! The counties of Washington, Jones, Greene, Chowan, Columbus and Brunswick, each would be entitled to one member, while, upon the same calculation, Rowan would obtain 9, and Orange 7 members. But take the free population of Greene or Washington, as the ratio that shall send 3 members; and, then, each of the little counties just named, will retain their 3 members, while Rowan will send 27, Orange 22, and the other large counties in due proportion.

View II. To the six counties just named, add Tyrrel, Martin, Lenoir, Hyde, Gates and Carteret, making twelve counties. These twelve counties contain a population of 38,037 souls, while Rowan and Orange contain 37,967, nearly the same amount; but these twelve counties send 36 members, and Rowan and Orange only 6, exclusive of the borough representation.

View III. We have seen that twelve small counties contain 38,037 souls; contrast this with the population of twelve large counties, viz: Rowan, Orange, Lincoln, Guilford, Mecklenburg, Stokes, Rutherford, Burke, Iredell, Randolph, Surry and Wake, with a population of 156,726. Thus 38,037 souls in certain small counties, send as many members to the Legislature as 156,726 souls, existing in a like number of large counties—the twelve large counties contain 118,689 souls more than the twelve smaller ones.

View IV. The counties of Washington, Jones, Greene, Chowan, Brunswick, Columbus, Tyrrel, Martin, Lenoir, Hyde, Gates, Carteret, Ashe, Beaufort, Bladen, Bertie, Camden, Currituck, Franklin, Hertford, Haywood, Moore, Northampton, Nash, New-Hanover, Onslow, Pitt, Pasquotank, Perquimons, Warren, Wayne, Person and Richmond, in number 33, contain 144,928 souls, just about one-third of the free population of the State; yet they send 99 members, which is a majority of the whole Legislature! Does it not plainly appear, from this view of the subject, that one-third of the population of the State completely govern and control the other two-thirds? What is this but aristocracy? The few governing the many: one third controlling two-thirds—making all the laws—appointing all the officers, judicial, executive and military? Again: the eleven large counties (omitting Wake) enumerated in *view 3d.* also contain about one-third of the free population of the State, viz. 144,041 souls; but these are entitled only to 33 members, or 66 less than what the same amount of population, in another part of the State, is entitled to.

Is this, said Mr. F. justice, or is it republicanism? Is this giving to the citizens of different sections of the State an equal participation in the rights and privileges of the government? Surely not. But perhaps this system has its palliatives! Since we have not an equal voice in making the laws and appointing the officers for their execution, perhaps, by way of atonement, we are exempted from bearing an equal share of the burdens of the State: No, Sir, we pay our full share of the taxes, and, in times of danger, we furnish our full

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* Mr. F. alluded to the conduct of the Senate. When Mr. Williamson introduced Resolutions similar to those of Mr. F. that body refused to refer them to a committee of the whole House, or even to lay them on the table, but showed a disposition to reject them at once. On the next day, however, they agreed to consider the Resolutions.