



"Ours are the plans of fair, delightful Peace,
"Unwar'd by party rage, to live like Brothers."

DEBATE ON THE
CONVENTION QUESTION.

CONCLUDED.

HOUSE OF COMMONS.

Dec. 18, 1821.

(Mr. Stanly's Speech concluded.)

By consulting the very correct Map of the State, by Price and Strother, it appeared, that the point midway between the Ocean and the Tennessee line, on the northern boundary of the State, was the north-western corner of Granville county; suspending a plumb, or drawing a line south from that point, it gave to the Eastern half of the State, thirty-five counties, including the whole of Granville, all Wake but a small section on its south-west corner, the greater part of Cumberland and Bladen and Brunswick. In his calculations, he rejected Cumberland from the East. That county does not go with us, and we take no benefit of its weight in our scale.

From the Comptroller's Report to the present session, of the land-tax, at the rate of six cents of tax for every one hundred dollars of the value, the value of the lands in the Eastern 35 counties, rejecting fractions, is \$18,710,000

And the value of the lands in the Western counties, at the same rate, is 15,252,000

The late census shews that the Eastern counties contain 113,891 slaves; estimate them at \$250 each, the value is \$28,472,750

The Western counties contain 91,026 slaves, value 22,756,500

The result of these statements, gives to the East a property in lands and slaves of \$47,000,000

And to the West 38,000,000

Shewing the property in the East, in these items only, to exceed that of the West, \$9,000,000

Apportion the whole representation of the sixty-two counties in the House of Commons, (124 members) by this estimate of property, and the East will be entitled to sixty-eight members, and the West to fifty-six members.

That part of the revenue of the State, collected by the sheriffs, for the present year, is sixty-six thousand dollars. Of this the East paid thirty-seven thousand dollars, and the West twenty-nine thousand dollars. Apportion the representation by taxation, the East will be entitled to sixty-nine members, the West to fifty-five members.

Upon the basis of property and taxation, then, the Eastern half of the State would be entitled to thirteen representatives more than the Western half. And permit me to say, that the growing value and improvement of the Eastern section, will continue to increase the difference in their favor. Before leaving this view of the question, it was proper to remark, that there was other property not brought into the estimate. The West have their farms stocked; so have the East: but the East have large towns, which possess and employ a considerable commercial capital, in merchandize, vessels, &c. They own too, unquestionably, nine-tenths of the bank capital of the State. Against these funds, amounting to many millions more, the West have nothing to set off.

But the West claim the advantage of numbers. On this point I was gratified, said Mr. S. to hear the gentleman from Hillsborough, (Dr. Smith) admit the rule of federal numbers to be the proper ground of calculation. Certainly this is correct, and objections to the rule would come with an ill grace from us, who enjoy it as a right in our compact with the Northern States, and under which this State sends three representatives to Congress, gives three votes in the election of President, and which places in the hands of the Southern States, the power to turn the scale in the election of President. By this rule of apportioning the one hundred and twenty-four members, the West would be entitled to seventy-four, and the East to forty-nine representatives. Upon the average of the three modes, the East would have sixty-two, and the West sixty-one members.

As to the other branch of the objection, arising from the equal representation of counties of unequal size and population, Mr. S. said, if any injustice resulted from this circumstance, it admitted a remedy without a Convention: the Legislature was competent to regulate the boundaries of counties. But no rule could be adopted which would give equality. The counties must vary daily, as well in population as in wealth; and if made equal, the equality could not be preserved for a day. In his view, no inconvenience or injustice resulted from the existing state of the counties. Each section of the State formed one great community, with common feelings and interests; there were small counties, in both sections; and invariably there would be found such strong affinity between the great and general interests of adjoining counties, great and small, that while all were represented, and while all were governed by the same laws, there could be no just ground of jealousy; although it might happen the representative was elected by three hundred men in one county, and by three thousand in the next.

Mr. S. said he could not believe that the Constitution was imperfect, nor the practice under it unjust, in regard to the important matter of representation. Wealth, taxation and population each had its influence. For the opposite claim, that population alone should govern representation, and give laws to the State, there was no pretence of reason, and no sanction of authority. North-Carolina, he hoped, would not be the first to fall into a fanciful experiment, at the sacrifice of a principle of the utmost magnitude.

Mr. S. said the complaints against the practice under the Constitution, were as unfounded as the charges against the Constitution itself. Our laws are equal; good or bad, we all alike live under them: if our burdens are unequal, it is the East that pays the larger part of the tax, and we do not complain of it. Public money is not lavished upon the East; with the power in our hands, we have given money to improve the West, and have taken nothing to ourselves. The honors and offices of the State, the loaves and fishes, so called, from

the frugality of our government, are not of a kind to excite those active principles of the human breast, avarice and ambition; but such as they are, the West have more than an equal share, and at this moment, as is generally the case, the far greater proportion of those of importance are filled from the West. It is fit, also, to mention one important particular in which the East have given the whole power to the West: I mean the power of choosing the electors of President and Vice-President—since by the general ticket election, the West having more votes than the East, can elect a ticket, in opposition to the unanimous vote of the East. This surrender of right and power, must be remembered as one of those sacrifices of public good, which, in times past, party spirit made to party purposes.

The next objection urged against the Constitution, is that advanced by the gentleman from Richmond (Mr. Leake): The want of a more speedy means of removing the Judges of the Superior and Supreme Courts, than that of impeachment for crimes: in other words, the want of a provision to make the tenure of the office of Judge to be not during his good behaviour, but during the pleasure of the Legislature. Mr. S. said, he had hoped a doctrine so dangerous to the best interests of the country, would never again have found an advocate in this House. By the forms of government happily adopted in these States, the Executive, Legislative and Judicial departments are made separate and distinct: the Constitution limiting and superintending the operations of the Legislature. The Legislature is bound to act within certain prescribed limits; its power is strictly defined. Can the agent transcend the authority given by his principal?—and if he does, shall not the will of the master, the people, be preferred to the will of the servant, the Legislature? With power to make laws, and with power to execute them, the Legislature would have been despotic. To prevent this evil, to check the Legislature, to confine its acts within the limits marked out in the Constitution, the Judiciary, as a separate and independent branch of government was created. Important as this department is, it has no control over the strength or the wealth of the State, it has no capacity to injure; it is the least dangerous and weakest of the departments: yet as it is its province to protect the citizen against the oppression of the Legislature, it is justly regarded as the citadel of public justice and public safety. Experience has shewn that passion and injustice, at periods, have influenced every community: the favorite of one day, has been the victim of the next, and systems of policy and ambition, of folly, or of wisdom, have flourished and fallen with their authors. This department, the Judiciary, has been created, separate, co-ordinate and independent, to check the career of the Legislature; to bring us to pause, and by compelling reflection, to protect us against our worst enemies, ourselves! While you secure its independence, you preserve its integrity and firmness: and it remains what the Constitution intended it should be, the ark of our safety: but if you render the Judges dependent on the Legislature for the continuance of their offices, and the supply of their bread, you barter independence and virtue for servility and corruption: you convert the sentinel into an enemy, and render that department a curse, which was designed for a blessing. Mr. S. said, these truths were so obvious, and the observations to enforce them so trite, that he had believed a doctrine so dangerous as that he now opposed, a doctrine which claimed omnipotence for the Legislature, and dependence for the Judiciary, had ceased to exist, except as rare and melancholy instances of partial lunacy: and he fervently prayed that the malady might not be more extensively injurious to the individuals afflicted.

The mode of appointing militia officers mentioned by the same gentleman as an objection to the Constitution, Mr. S. considered as of no consequence. As the militia ought to be, the whole body of free men armed and disciplined, the command would be interesting: but as they are! not uniform either in arms or dress, and without discipline; who are their officers, or how they are chosen, was not worth consideration.

The gentleman from Hillsborough, (Dr. Smith) is pleased to say, there should be no objection to a Convention, for a Convention could not injure us. Surely I misconceived the gentleman's meaning. Passing over the heavy expenditure which must attend the measure, I ask will not a Convention be unrestrained? Will it not have absolute power? Who can control it? Does not the formation of a Constitution require the greatest effort of human genius, directed by the purest virtue? What security have we, that a Convention to be now assembled, would be thus enlightened and guided? May they not authorise encroachments still further than we have already made on the right of trial by Jury? May they not render the Legislature despotic, and life and property insecure, by destroying the independence of the Judiciary? May they not adopt the notion to day advocated, of regulating representation solely by population? May they not, in short, while they preserve the form of Republican Government, mar the enjoyment of every right, and abridge every blessing of prosperity? We know that a Convention may do these mighty mischiefs: this is sufficient to warrant us in withholding the power, until evils which do not yet exist under the present Constitution, require so hazardous a remedy. It is true other States have had Conventions, but Mr. S. said, he believed it was also true, that, with very few exceptions, they had not improved the condition of the States in which they had been called, but had left them worse than they found them.

The authority of Vattel, read by the gentleman from Hillsborough, Mr. S. said, he considered entitled to more respect than was paid by those who sneered at his "worm-eaten pages." Vattel gives as his opinion, "that a nation may change its Constitution, by a majority of votes; and whenever there is nothing in this change that can be considered as contrary to the act of the civil association, or to the intention of those united under it, all are bound to conform to the resolution of

the majority." That the power of the nation is unlimited, cannot be denied—all power rests in the people! they made the Constitution, and physically, a majority can destroy it. Yet the Constitution spoken of by Vattel, was that unwritten form of government, resulting from usage, which alone had existed at the period in which he wrote. And one view of this subject Vattel could not take, because it results from a state of things not existing in his day. I mean the formation of written Constitutions by a free people. When the people of these States declared that all connexion between them and Great-Britain was dissolved, and that they were free, sovereign and independent, they reduced their "act of civil association" to writing: they formed written Constitutions. By the terms of this association, by this written Constitution, the people surrendered their natural rights into the hands of the Legislature, except so far as by express reservation they retained them. With great caution the people of this State prefixed to their Constitution a Bill of Rights, which I understand to be an enumeration of rights reserved, and of powers not granted. Is this power to form a Convention and destroy the Constitution reserved? Is the power reserved to a portion of the people, without the consent of the representatives of the whole, expressed in an act of the Legislature, to form a Convention? And if the power is not reserved, would not such a Convention, in the words of Vattel, be "contrary to the act of association, and to the intention of those who united under it?" A portion of the people may assemble, but to me it seems, said Mr. S. it will be nothing more than the exercise of the "holy right of insurrection," which, as it succeeds or not, may be termed rebellion or revolution. At all events, the inference is strong, that the right to form a Convention and to alter the Constitution, without the sanction of the Legislature, is not believed to exist; since in every State it has originated with the Legislature, and though often applied for, and repeatedly refused, no attempt has ever been made to proceed without Legislative sanction. And the repeated applications from a portion of this State, to the Legislature, for a Convention, shew beyond contradiction, that they act under the conviction that a Legislative authority is necessary, to justify the measure.

Mr. S. said he would recommend to the gentleman from Hillsborough, to extend his study of Vattel to the following sections of the chapter he had read: he would find Vattel there inculcating "that great changes in a State being delicate and very dangerous affairs, and frequent changes being in their own nature prejudicial, a people ought to be very circumspect in doing it, and never be inclined to make innovations without the most pressing reasons, or an absolute necessity."

Mr. S. said he believed a Convention to change the Constitution, was unnecessary: that the grounds offered in support of that measure were unjust and untenable: that in going into a Convention, we put at hazard a Constitution which, if not perfect, was upon the whole, a good one, while we could have no certainty what we should obtain in its place. He felt himself bound to vote against the Resolutions.

[The Yeas and Nays being taken on the Resolutions, the result was as follows—Nays 81, Yeas 47.]

CONGRESS.

HOUSE OF REPRESENTATIVES.

FRIDAY, FEBRUARY 22.

Mr. Floyd, from the select committee appointed to inquire into the expediency of making any alteration of the law in relation to the subject of Vaccination, made a report, concluding with the following resolution:

Resolved, That the committee be discharged from the further consideration of the subject referred to them by the resolution of the 6th instant.

The report was agreed to, and two thousand copies thereof ordered to be printed.

The House then agreed to take into consideration a resolution offered yesterday by Mr. Cocke, calling for a statement of woollens purchased for the army in 1820 and 1821; which, after a modification proposed by Mr. Rich, which was assented to by the mover, was adopted.

The House then resolved itself into a committee of the whole on the bill supplementary to the acts to provide for persons engaged in land and naval service of the United States in the Revolutionary War.

Mr. Cocke explained the general objects of the bill, which was to re-establish the law, on the ground on which it was supposed to stand prior to the opinion that had been given by the Attorney-General. He referred to the particular provisions of the bill for its further explanation, &c.

Hereupon, arose a conversation on the bill, in which Messrs. Smith of Md. Reid, Chambers, Stewart and Wood, took part.

In the end, Mr. Wood moved to strike out the first section of the bill, and in lieu thereof, to insert the following:

"That the Secretary of War be, and he hereby is, authorized and empowered, in all cases where a defective schedule has been, or shall hereafter be, exhibited to him, under the act, entitled 'An act in addition to an act, entitled 'An act to provide for certain persons engaged in the land and naval service of the United States in the revolutionary war,' passed May 1, 1820 - or where, upon any schedule exhibited, or hereafter to be exhibited to him, under the said act, he shall have stricken, or shall hereafter strike, the applicant from the list of pensioners, to receive a new schedule or schedules, supplying any defect, or exhibiting new or additional evidence; and if, upon the exhibition of such schedule, the Secretary of War shall be satisfied that the pensioner ought to be restored, he shall be, and hereby is, authorized and required to restore him; or, in place of an original application, to place him on the pension roll."

Whereupon, the committee rose and obtained leave to sit again; and the amendment was ordered to be printed.

The House then resumed the consideration of the unfinished business of yesterday, (the military appropriation bill)

Mr. Chambers moved to recommit the bill to the committee of ways and means, with instructions to modify the same so as to limit it to such appropriations as are indispensably necessary, and he supported his motion by remarks of considerable length. A debate ensued, but no question was taken.

SATURDAY, FEBRUARY 23.

Mr. Eustis, from the committee on naval affairs, requested to be discharged from the further consideration of the petitions of Marcos de Villiers and Arnald Guillemard, (who pray the interposition of Congress to release them from prison, in Pensacola, where they are confined by the acting Governor of West Florida;) and moved also that the petition, together with the accompanying documents, be referred to the President of the United States. This motion produced a debate which occupied the whole of the day, and was not at length decided. Much warmth took place in the course of it, especially between Messrs. Randolph and McDuffie.

MONDAY, FEBRUARY 24.

The Speaker presented a communication from the President of the United States, relative to the correspondence which led to the treaty of Ghent; also on the subject of extinguishment of the Indian title to lands, of which