

RALEIGH REGISTER, AND NORTH-CAROLINA GAZETTE.

"OURS ARE THE PLANS OF FAIR DELIGHTFUL PEACE, UNWARP'D BY PARTY RAGE, TO LIVE LIKE BROTHERS"

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NO. 14.

MR. OUTLAW'S SPEECH On the Resolutions to instruct Mr. Mangum.

MR. SPEAKER.—I am fully sensible of the disadvantages under which I rise to address this House. Its attention has already been wearied by the length of this discussion, and many are anxious to bring it to a close. I am also aware that many of those whom I am addressing have so far prejudged the subject, that there is little hope that any thing which can be said, will produce any change in their opinions. Notwithstanding all these discouraging circumstances, so important do I regard the principles involved, that I shall proceed freely to express my sentiments; and whilst I shall be restrained, both by a proper self-respect and respect for the body of which I am a member, from violating either the rules of propriety or decorum, I shall yet speak with becoming freedom, the words of soberness and truth.

We were told, at an early period of the session, by the gentleman from Warren, (Mr. Bragg,) when the proposition was made by him to go immediately into an election of Senator, that it was necessary to dispose of that distracting question, in order that our minds might be properly qualified for a discharge of our legislative duties. Scarcely, however, is that triumph achieved, scarcely are the hearts of the democracy gladdened, before the battle-shout is again heard, the banner of party unfurled, and all faithful lieges called upon to rally under its standard. The hearts of the democracy are again to be gladdened; our idol is not satisfied with the re-election of Mr. Brown; the most distinguished of our public men must be sacrificed; and we are called upon to officiate at the altar. Yes, that miserable policy of dragging down our eminent citizens as soon as they attain any distinction, that policy which has peopled the South, the South-west and the West with your most able and enterprising young men, is still to be continued. I took occasion, Mr. Speaker, upon a former occasion, when we were told that the Hon. Mr. Brown was the Administration candidate, to inquire whether orders to that effect had been received from the upper or nether Cabinet. Were it not perfectly unnecessary, I would repeat that inquiry. We can, however, be at no fault upon this occasion. The official paper of the Administration has called upon us, in terms very much like a command, to pass these resolutions, and why? Because Mr. Benton desires it, and Gen. Jackson has an almost filial regard for North Carolina! Yes, the foul and filthy organ of the Kitchen Cabinet has dared to lecture us upon our duty. We are to degrade and disgrace, in public estimation, one of the distinguished sons of this State, to minister to the gratification of Mr. Benton and Gen. Jackson. Are we prepared to register this receipt, at which the most degraded of the Roman provinces would have felt itself dishonored? Sir, have we so far forgotten the dignity of our stations, the honor of our constituents, as to submit to this dictation? Have the people of North Carolina commissioned us to do this deed? Have we any, the slightest authority to sacrifice our citizens for the gratification of any man, in or out of office?

Mr. Speaker, these resolutions have in view three objects. One is the expulsion of Judge Mangum from the Senate, because he neither is, nor will he become the instrument to aid the elevation of Martin Van Buren to the Presidency, or the introduction of his abominable and detestable system of party tactics and proscription. They have another object. I am aware that I may appear to speak harshly, and, if so, I regret it, but I am in the discharge of a high public duty, and I cannot mince my words. I say they have another object, which does not meet the eye. Some ambitious aspirant of the party, some friend of the democracy, their friend because he wishes to use them, wishes Judge Mangum's place. Yes, sir, and so keen are his desires, so eager are his palpitations, that he cannot wait until Mr. Mangum's term expires. Shall we minister to this unchastened ambition? But, Mr. Speaker, these resolutions have another object vastly more important than either of those to which I have adverted, and which, I confess, fills my mind with profound alarm. They win a blow through the Senator from this State, at the Senate of the United States. They are designed to prostrate that body, the principal barrier against arbitrary power, as the foundation of the Executive of the United States. It has dared to say to the President that he shall do as he pleases, and no other; and it is either to be made to bend, or to be rendered odious and contemptible in public estimation. This is one of a series of measures having in view the same object, that is, the subversion of the Senate, or

important changes in its very constitution. This is a grave charge, and ought not to be lightly made. Does any man doubt the fact? If he does, I direct him to the President's Protest. Are not the aristocratic features of the Senate held up in bold relief in that document to the public gaze, either to excite popular prejudice or to produce popular distrust? Does not that paper speak of its irresponsibility, its long term of service, its not being the immediate representative of the people? Is this all? Has not the party press waged against it a constant war? Has it not been called the "factious Senate," the "irresponsible Senate?" Have not some of them boldly advocated the most important changes in its organization? Have not resolutions, of which these are a mere copy, been introduced into the New Jersey Legislature, and passed?—Sir, all these are significant indications, pointing to the same object, which it becomes this House solemnly to consider. I ask the members of this body, if their constituents have sent them here to participate in this nefarious and wicked conspiracy against one of the departments of the Federal Government? I ask them, as they shall answer it to their consciences and their country, to withhold the sacrilegious blow uplifted against that Senate in which the federative character of our government is preserved—that Senate to which we must look for a defence of the rights and sovereignty of the States.

I had originally intended, Mr. Speaker, to say nothing on the first resolution of the gentleman from Edgecomb (Dr. Potts.) Upon further reflection, however, I will express briefly my views upon the proposition therein affirmed, lest it should be supposed I shrink from an avowal of my opinions. The subject is one to which my attention has not been directed until recently, and I had taken it for granted the Legislature had the right to instruct, simply because such had been the practice. But, sir, I deny that there is any thing in the Constitution which, either directly or by implication, clothes the General Assembly with this high power claimed for it.

The gentleman from Halifax, (Mr. Daniel,) if I understood him, claimed this as resulting from our legislative powers. Sir, this will not stand the slightest examination. The right of instruction is not a legislative power in any sense of that word. If the Legislature have a right, by reason of their legislative powers, to instruct in matters of legislation, by parity of reasoning the State Judiciary have a right to instruct the Senators in regard to their judicial duties, and the State Executive as to their executive duty. So far as our Constitution speaks of instructions at all, it is in the Bill of Rights. What is there said? Is not the power in question in express terms reserved to the people themselves?—Under what pretence, then, do this body arrogate this power to themselves? Sir, the power of electing a Senator was conferred after the adoption of our State Constitution, by the Constitution of the United States, upon this Assembly. But I am to be told that we elect that we are the constituents of the Senator, and, therefore, have this right. True, sir, we do elect, so do the electors chosen for that purpose elect a President. We are an electoral college for one purpose, as they are for another. Yet who ever heard, what political madman ever dreamed, that those electors had any right either to instruct or censure the President? But are we the constituents of the Senator? No, I deny the proposition in the most unqualified terms. What says the Federal Constitution? That each State shall be entitled to two Senators, to be elected by the Legislature thereof. Sir, the Senators represent the State, the sovereign people of North Carolina, and when I speak thus, I speak in the words of the Constitution. They are, when chosen, the agents of the people, to effect certain specific purposes, to wit, their agents to effect certain other purposes. We the constituents of the Senators? We the sovereign State of North Carolina? The proposition need only to be stated, to be laughed to scorn.

Sir, I put this case to those who support the first resolution, which asserts in broad terms this right, and I call upon them to answer it. Suppose the Senate, sitting as a court of impeachment, under the solemn obligations required by the Constitution, and our Senators express an opinion or give a vote, in the propriety and correctness of which the wise men of this body do not concur. Ask, can it be pretended that this Legislature has a right to interfere in the slightest degree with the high judicial duties of their station? Again: Suppose the Senate is in the discharge of its executive duties. Can it be supposed that the framers of the Constitution ever intended that the manner in which those duties were to

be performed, was subject to our revision and control, when that instrument has placed it completely within the power of the Senate to place the seal of secrecy on its proceedings, and forever veil them from the public view? Can we, when the President and Senate have formed a treaty, within the scope of their constitutional powers, with a foreign nation, whereby the public faith is pledged, bid them rescind it, and violate the faith of the nation? The most bigoted, blind and furious partizan will scarcely contend for such monstrous propositions; and yet we are called upon to vote for a resolution, which claims for this body this high prerogative—one which would introduce infinite confusion and mischief.

Sir, we have no authority whatever to instruct Mr. Mangum, unless the people have sent us here for that purpose. If we undertake to do so, we shall be guilty of that usurpation, which some gentlemen allege against the Senate. Sir, I appeal to the candor of the members here, and confidently ask them, have you been delegated for any such purpose? Did you—of course I address the great mass of the party, not their leaders—did you ever hear of this movement until you reached this city, and until Mr. Brown was re-elected? Was the proposition to expunge this resolution of the Senate discussed in five counties in North Carolina? No man can have the hardihood to make such an assertion. Sir, I put it to the gentleman from Halifax (Mr. Daniel) to answer me, which represents that county correctly, him or his colleagues? It is my misfortune to be in the same predicament as that gentleman. My colleagues differ with me in politics. There is the same diversity of sentiment in Northampton, Hertford, and many other counties. I mention these facts to prove, as they do most conclusively prove, that these resolutions have not originated with the people; that the elections were not made with a view to this matter; and that, therefore, we are assuming unauthorised power.

Sir, my ideas upon this subject are simply these: This Legislature has an undoubted right to express its opinions upon any subject. It not only has the right, but it is its solemn duty to do so, when the public liberty is endangered, when the rights of its constituents are invaded, or when any "great public emergency" demands it. This opinion, expressed by the immediate representatives of the people, so far as it may be supposed to express their sentiments, should be listened to by our Senators with the most respectful attention, and, when it relates to a matter of expediency, ought to be generally obeyed.

But, sir, whilst I go thus far, I am further bound to say, that, upon constitutional questions, neither the people nor the Legislature have any right whatever to instruct. They have imposed restrictions upon themselves and upon the Senator, which he nor they can throw off.

These resolutions, even if we have a right to instruct, are not such as I could vote for. What is the only legitimate object of instruction? I have always understood that it was to enlighten the mind of the representative in regard to some great question of public policy then actually pending, or upon which it was expected he would be called to act. If this be not, then I confess I have always been laboring under a delusion upon this subject, and I am utterly unable to appreciate its value.—Is that the object of these resolutions? Will any man say it is? Is not the object an entirely different one—one which the friends of this measure are ashamed to avow in plain terms, and which they have not the slightest right to effect, viz. Judge Mangum's expulsion from the station which he now fills with so much honor to himself and credit to North Carolina?

Another question involved in these resolutions is, had the Senate a right to pass the resolution which has given so much offence? I confess, sir, that it is with some degree of astonishment that I have heard the negative of this proposition affirmed. The facility with which politicians and public men change their principles, is even now the theme of scorn and ridicule. And, sir, it is one of the most ominous and fearful signs of the times that whole communities of men, without any conceivable reason, should suddenly change their most cherished and deep-rooted opinions at the bidding of one man. It argues either such deep corruption in the people, or such a spirit of idolatry, as seriously to threaten our institutions. Have we not seen the great State of Pennsylvania, as if by magic, entirely changing her political principles at the command of a President? It is really astonishing how forgetful we are when in the pursuit of a favorite object for I cannot suppose that the well informed members of the Jackson party in this House can be ignorant of the precedents on this subject, or that they

would wilfully mislead those who are. Charity, sir—that charity which, from the infirmity of my nature, I so frequently need, and am, therefore, willing to extend to others—forbids me to make any such supposition.

The case of the Postmaster General was mentioned by my friend from Rowan, (Mr. Craige,) where, by an unanimous vote, it was declared that, in borrowing money, he had violated the Constitution. I defy any man to point out any distinction in principle in the two cases. If this resolution, which we wish expunged, was a judicial act, so was that. If the Senators had disqualified themselves to sit as judges in one case, they had in the other. But, sir, this is not the only precedent. It will be recollected by those familiar with Mr. Adams's administration, that, in a message nominating to the Senate ministers to Panama, he claimed the power to have commissioned them without "the advice and consent" of that body. The honorable Senator from Halifax, at that time a Senator in Congress, then, as now, opposed to usurpation, then, as now, on the side of liberty, the law, and the Constitution, introduced a resolution solemnly denying the doctrine asserted by Mr. Adams, and protesting, in the name of the Senate and of the States, against this unconstitutional assumption. The subject was debated, and so far as I know, and I have examined the debates upon that subject with some attention, not one individual pretended to question the right of the Senate to pass such a resolution. No, sir, that profound discovery in political science and constitutional law was left for the Solomons of the present day. It was left to that foul cabal who, unfortunately for Gen. Jackson's own fame, and for the prosperity of this nation, practically control its destinies.

Sir, am I to be told that, as this was a defence of the Executive powers of the Senate, it is not analogous to this case? Sir, are we children? Do we view this matter with the enlarged views of statesmen, or the narrow spirit of special pleaders? Have not the Senate as much right to defend their judicial or legislative powers as their executive? It is an insult to the understanding of this body to argue such a question.

But I will not stop here. I know the force of names, and I invoke to my aid "clarum et venerabile nomen," a name which makes this State respected in every other in this Union—the name of NATHANIEL MASON—a man, sir, not just washed white from his sins of Federalism by Jacksonism, but one of the fathers of the Republican church. In the debate on the resolution to which I have referred, he thus expressed himself:

"If every department of this Government, the Senate, the House of Representatives and the President, did not watch the power which the Constitution has given them, but let it be taken from them by piece-meal, who could tell where it would end?"

"It had often been said that, in this Government, the Departments were to balance each other. How was this to be kept up? Not by constantly increasing the power of one Department of this Government; but the House of Representatives should take care of the portion committed to them, the Senate theirs, and the President his. Was this House, when their rights were, as they supposed, infringed, to wait for the interference of the House of Representatives? There was, Mr. M. said, a tendency in every government to create power. Governments were made on the supposition that all those who had power could go wrong. He would go further, and suppose it a doubtful question, whether the Executive, in his message, had claimed this power to be kept up. Most of the gentlemen who had attended he did not, had contended he had a right to do so. If the majority of the Senate thought differently, was it not prudent in them to express their opinion? Had they not the same right to express their opinion on their powers? And was it not as much their duty to do so as for the President to declare his?"—Mr. Mason's Speech, Reg. of Debates, 1825 & '26, pages 634 & 35.

It is impossible for him to have been more explicit. Among those who acted with the Senators from North Carolina on that occasion, were the Senators from Tennessee, the bosom and confidential friends of Gen. Jackson, Mr. Van Buren, the present Secretary of the Treasury, and Mr. Benton, whose lugubrious notes on the cruel impeachment of the President we have heard so much, and to gratify whom we are to degrade one of our distinguished citizens.

Yes, Mr. Speaker, that very party who are so shocked at this judicial resolution, have themselves furnished a precedent precisely in point. In the absence of all precedents, however, I hold that it is not only the right, but the duty of each department of the Government to defend its own peculiar rights and privileges against either or all the others. They were designed as checks upon each other. That was the very object sought to be accomplished by the division of power among them; yet if this new fangled doctrine is to prevail, this object will be wholly defeated. If the Senate had no right to pass this resolution, where did the President obtain the right to make a protest? Do the special guardians of the Constitution require that paper to be expunged? Yet, sir, the right to send it might, with infinitely more reason,

be questioned. Why, sir, let us see to what consequences this doctrine will lead. The President takes it upon himself to commission a public minister in the session of Congress without the advice of the Senate. Sir, that body bound to acquiesce, lest, by possibility, the President may be impeached, and they become his judges? Am I supposing an improbable case? It is what has actually occurred during this Administration in more instances than one. The case of commissioners to the Ottoman Porte is familiar to us all.—Again: suppose, by some means or other, the House of Representatives has become subservient to the Executive, and that functionary having seized the public money, is surrounding himself with a band of hired mercenaries to overthrow the Constitution and liberties of the country. Are the Senators to sit like the Roman Senators when Brennus and his Gauls invaded and entered Rome, and see the barriers of the Constitution cloven down without offering any resistance? Sir, this very right, which is denied the American Senate in this free, representative, constitutional Government, has been exercised by the English House of Commons in the most arbitrary reigns of the most arbitrary princes of the house of Stuart. And, sir, have we made so little progress in the principles of free Government, that what was done in the reign of the first Charles again and again, is little short of high treason under the administration of Gen. Jackson?

"In the name of all the Gods at once
Upon what next doth this our Caesar feed:
That he is grown so great?"

Why, sir, "he bestrides this great republic like a mighty Colossus, and we small men must peep through his huge legs to look for ourselves dishonorable graves." How far is this devotion to an individual to carry us? Is it to unsettle all the ancient and undisputed principles—undisputed at least until recently, of our government? The House cannot assert its rights, because it is its province to prefer articles of impeachment; nor the Senate its rights, because the impeachment is to be tried by that body. Sir, they derive the power from the great principles of self-defence and self-preservation, and should they cowardly shrink from its exercise when they deem it necessary, they would basely betray the high trusts confided to them, and justly incur the abhorrence and scorn of the people. I maintain that, inasmuch as the Senate possess this high right, they must judge what act does constitute a violation of the powers granted to them; and that to deny this would render the right itself perfectly idle and nugatory; and that we have no authority to revise their decision, or sit in judgment upon it in our official character. But I affirm that the propositions contained in the resolution are true; that it was an unauthorised assumption of power on the part of the Executive to remove the deposits himself, or to interfere with the discretion reposed in the Secretary of the Treasury by Congress. Who, in fact, removed the public money?—Who took the responsibility? Sir, we are at no fault on this subject. It is most distinctly stated by the Executive that the act was his—that he assumed the responsibility. No, only did he assume the responsibility—he arranged the details, and, whilst Duane was yet in office, he announced in the public papers that they would be removed at a particular time. Sir, did the Constitution clothe him with any such power? Did the laws of the land? No, the deposits were to be made in the United States Bank and its branches, unless "the Secretary of the Treasury should otherwise order and direct." The gentleman from Halifax tells us this is a reservation—not a grant of power. Admit it. It is a reservation—by whom, to whom, and for what purpose? Why, sir, by Congress to the Secretary. In the removal, the Secretary acts as the agent of the law-making power.—The discretion is his discretion—not the President's discretion. His acts are to be the result of his judgment. His reasons for the act are to be rendered, not to the President, but to the representatives of the people, to whom, by the Constitution, the management of the public revenue is entrusted. It is admitted the money was safe—the Bank had complied with its engagements. But it is contended that, inasmuch as the President possesses the power of appointment and removal, he has a right to supervise and control all the subordinate officers of the government. Admit that he has the right to remove, still it will not sustain the position. For I hold that if this power is exercised to effect an illegal and unconstitutional purpose, it as much violates the Constitution as though he did not possess it at all.

The Congress of the United States have the power without limitation to

borrow money; yet, if they exercise that power to accomplish an object not warranted by the warrant of attorney under which they act, they as much violate the charter of our liberties, as if they did not possess it at all. The President has, by law, the power of removal, to be exercised for good cause, for the benefit of the country, and not an arbitrary discretion—a despotic power, to be wielded to gratify his passions. I repudiate altogether the monstrous pretension claimed by himself and his minions, to supervise and control the officers of the Government in the discharge of the duties entrusted to them by the laws of the land. Sir, it is a power which is dangerous to our liberties, repugnant to our institutions, and which deserves public and unqualified reprobation. How is it derived? "The Executive power," we are told, is vested in the President. True, but what Executive power? The terms which I have quoted are a mere designation of that functionary's title of office. For immediately after, the instrument goes on to point out the manner in which he shall be elected. Then, sir, it defines and limits the powers which are intrusted to him. He has the powers and no more than are there specifically enumerated. He does not even possess power by implication to carry into execution those expressly granted. For "all power necessary to carry into execution any given power is in express terms confided to Congress. Now, sir, I challenge any man to show me where, in express terms, or by any the remotest implication, this monstrous assumption is supported. Let us examine it still further; for it deserves to be stripped naked, and exposed in all its hideousness. Suppose a judgment is obtained in the District Court of North Carolina. A writ of Execution is placed in the hands of the marshal; but the President believes the Court has erred—that the decision is unconstitutional. Has the President a right to command the marshal to suspend his proceeding? To control and direct him in the manner of its execution? Is he not the officer of the law, responsible to the law for the discharge of his duties? Sir, the President has the right to appoint, because the power must reside somewhere; but when the appointment is made, the officer is not his officer, nor responsible to him, but to the laws of the country. Sir, this power claimed for the President is repudiated by the plain meaning, if not by the very terms of the Constitution. All civil officers are liable to impeachment; and can it be pretended that, upon being arraigned, it would be a sufficient defence that the President commanded the deed to be done? Would not such an excuse be laughed to scorn? In my opinion, though I express it with great diffidence, the Constitution does not clothe the President with the power of removal even. He has power to fill all vacancies which shall happen in the recess of the Senate, and to nominate when that body is in session. Can it be said that a vacancy has happened, when that vacancy is created by the act of the President himself?

The expression used plainly intimates that the vacancy is to be the result of accident—not design. I know that the Congress of '89 decided differently, and that decision is entitled to great respect; but it is by no means conclusive. A man was then at the head of the Government, who had given the strongest proofs of his wisdom, moderation and patriotism. How far the decision may have been influenced by these considerations, I know not; but many of the ablest statesmen of that Congress entertained a different opinion, and, with graphic power, depicted the consequences which we have experienced. The celebrated numbers of Publius, written by Madison, Hamilton and Jay, hold a different doctrine. Sir, I deny the binding efficacy of precedents upon great questions of constitutional law. Are the members of this House not aware that we have equal authority for the sedition law, and still higher authority for the constitutionality of the U. S. Bank?

Clothe the President with this power of controlling all the subordinate agents of the Government; go with him one step farther, and say that he is to execute the laws as he understands them, and you convert this republican, representative Government into the simplest of all machines. You remove all the checks and barriers with which our ancestors fenced in the public liberties, and substitute the arbitrary will of one man in the place of the law and the constitution.

A great deal has been said in this debate of the enormities of the Bank—its interference in elections—its corruption of the press and the public morals. I wish it distinctly understood, I am not the advocate or defender of that institution. I am now, and always have been, opposed to the