RALEIGH REGISTER
AND NORTH-CAROLINA GAZETTE.

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STATE CONVENTION.

DEBATE

ON THE THIRTY-SECOND ARTICLE.

The Convention being in Committee of the Whole, Mr. *Fisher* in the Chair, Judge GASTON spoke as follows:

Mr. *Chairman*:—The peculiar situation in which I am known to stand with respect to the question now under consideration, and the character of the debate which has already taken place upon it, may be thought to render it indelicate in me to interfere at all in the discussion. But no considerations of delicacy ought to deter me from the full and faithful performance of my duties as a Delegate of the People in this Convention. Besides, silence is likely to subject me to much greater mis-construction than the most frank and fearless exposition of my opinions. At all events, the latter is the course to which I am prompted by inclination as well as by a sense of propriety, and therefore is it, that I must ask the patient and kind attention of this Committee—and, Sir, in reference to the peculiar situation to which I have already alluded, permit me to embrace this opportunity, the most public and imposing which can be presented, and the first fit one that has yet been offered to make an explanation to the People of North Carolina, of the circumstances under which I accepted and continue to occupy the high judicial office, which they have been pleased to confer upon me, and which, some persons may doubt whether I am constitutionally qualified to hold. I am not indeed aware that any one decent citizen of the State has called in question the purity of my motives or questioned the propriety of my conduct, or has expressed dissatisfaction at my course. But this is an age of detraction. Calumnies are the ordinary weapons of warfare with religious as well as political factions; and if I have not yet been assailed by slander on this subject, it is not unlikely that I soon shall be. This explanation is therefore due not only to my own character, but to the character of the State, whose honor is always involved in the fair fame of her sons. When the vacancy occurred on the bench of the Supreme Court, which was occasioned by the death of my excellent friend, Chief Justice Henderson, I was urged to accept of the office by reasons which I found it impossible to resist. It is needless to say more of these reasons than that in my judgment they made out a *plain case of duty* not to decline the appointment, unless the Constitution excluded me from it because of my religious opinions. That Constitution I had repeatedly sworn to support, and therefore whether it did or did not thus disqualify me was a serious question and well worthy of the fullest consideration. It is not easy for a man to speak of himself or of his principles, without disgusting egotism. It will be enough for me to say, that trained from infancy to worship God according to the usages, and carefully instructed in the creed of the most ancient and numerous society of Christians in the world, after arrival at mature age, I deliberately embraced from conviction, the faith which had been early instilled into my mind by maternal piety. Without as I trust, offensive ostentation, I have felt myself bound outwardly to profess, what I inwardly believe, and am therefore an avowed, though unworthy member of the Roman Catholic Church. Upon examining the Constitution of the State with respect to its requirement of a religious test, it is apparent that the subject is not free from difficulty. The Bill of Rights (*Section* 19) which is made *the basis* of that Constitution, declares "that all men have a natural and unalienable right to worship Almighty God according to the dictates of their own conscience," and the 34th section of the Constitution further provides, "that there shall be no establishment of any religious Church or denomination in this State, in preference to any other." But while these provisions seem to contemplate a perfect equality of religious tests, the 32d section of the Constitution declares "that no man who shall deny the being of God, or the truth of the Protestant Religion, or the divine authority of either the Old or New Testaments, or who shall hold religious principles incompatible with the freedom and safety of the State, shall be capable of holding any office or place of trust or profit, in the civil department, within this State." As all these declarations emanated from the same authority and at the same moment, it was proper, if possible, to give to them a construction which would render them consistent with each other. The enquiry was, whether so expounded, the Constitution did prohibit Catholics from holding a civil office. This enquiry I had recently had an occasion to prosecute, at the request of a Catholic friend who received a public employment, with much care and with an earnest desire to come to a correct conclusion. The result to which I then arrived was now re-examined, and on re-examination, fully approved.

Not long after the great schism which arose in the Christian Church in the 16th century, the term Protestants was used to designate all those denominations of Christians, which, however divided among themselves, then separated from the main body; while *these* claimed to be called Catholics or members of the Universal Church, and because of their remaining in union with the Bishop of Rome as their Chief Pastor and visible head, were also called Roman Catholics. The clause disqualifying those who should "deny the truth of the Protestant Religion," might have been intended to incapacitate Roman Catholics, and the supposition was rendered the more likely by the consideration that North Carolina had been settled almost exclusively by Protestants, at a time when bitter religious disputes and prejudices prevailed, and that these prejudices had not lost their force when the Constitution was framed. But the clause in question was part of the written fundamental law of the land, and ought to be expounded according to the well established rules of legal interpretation. According to these, unless it contained a clear disqualification, it must be considered as leaving unimpaired the right of the citizen to hold, and of the country to confer office. The People of the State have a right to the service of every citizen whom they think worthy and capable of serving them, and there can be no restriction on *their* choice except such as they have *unequivocally* imposed on themselves. Every citizen having an *unalienable* right—that is, a right which he cannot part with nor Society take from him, to worship Almighty God according to the dictates of his own conscience, any penalty or degradation imposed on him, because of the exercise of this right, unless plainly denounced by the Constitution, must be regarded as a grievous wrong.

Every part of this short clause "who shall deny the truth of the Protestant Religion" is to be well considered. It is obvious that the term 'deny' does not include those who merely doubt, nor even those who disbelieve—unless that disbelief be accompanied by some overt act of *negation* of its truth. To *deny* is the reverse of *affirm*, not of *believe*. Many considerations of propriety and of decency may induce an individual to forbear from denying that of which he has not seen sufficient evidence, or to which he can not yield his assent, or that which on the whole he disbelieves. What kind of overt act does the Constitution contemplate as the denial which is to bring down this incapacity? Is the profession of a faith, and the worship of God as held and practised by other than Protestant Churches such a denial? If the clause justified a liberal and enlarged interpretation this might well be deemed sufficient. But we have seen that the prohibition is to be construed strictly. The Bill of Rights has asserted in the strongest terms the right of every man to worship God according to the dictates of his own conscience, and the 34th section expressly prohibits a preference to any one religious Church or denomination. It is hardly possible to reconcile the first with a constitutional penalty for *the simple* exercise of that right, or the other with a monopoly of civil offices to the professors of the tenets of particular sects. Besides Society generally legislates not upon opinions but on acts. Where this clause means to make opinions a cause of disqualification it expressly says so; "or who shall *hold* religious principles incompatible with the freedom or safety of the State." In the penal laws of England against heresy the "denial" (See 9 & 10 *Wm. 3, ch.* 32) is to be evinced by writing, printing, teaching or advised speaking. Upon the whole it may fairly be inferred that the word deny, as here used, cannot be satisfied by any thing short of this offensive denial. The Constitution does not prescribe the faith which entitles to, or excludes from civil office, but demands from all who hold civil office that decent respect for the prevalent religion of the country which forbids them to impugn it, to declare it false, to arraign it as an imposition upon the credulity of the People.

In the next place, who shall judicially say what is "the Protestant Religion?" If the Constitution defined the Protestant Religion, or if the Protestant Religion were made the religion of the country, and there were organized some ecclesiastical court or other proper tribunal to determine its tenets and to decide on heresy, there would then be the means of legally determining what is that Religion. But the Constitution does not define it, nor has it been made the Religion of the State. Such a tribunal has not been established, nor under the 34th article of the Constitution can it be erected. Innumerable sects, differing each from the other in the interpretation of what all deem the revealed will of God—some holding for divine truth what others reject as pernicious error—are indiscriminately called and known as Protestants. But again, what is to be understood by denying its *truth*? Protestants have separated from the Catholics, because, as they alledge, the latter have added to the Christian code, doctrines not revealed. Protestants therefore reject as error, or at all events as of human invention, more or less of what Catholics receive as divine truth. But there is no affirmative doctrine embraced by Protestants generally, which is not religiously professed also by Catholics. The latter hold that the former err, not in what they believe, but in what they disbelieve. The acknowledged symbol of faith in the Protestant Episcopal Church in this country is the Apostles' creed. This very creed is the ordinary profession of faith in the Catholic Church, and as such is always repeated at Baptism. Do Roman Catholics then come within the description of persons denying *the truth* of the Protestant Religion? But besides all this; before the Revolution, Roman Catholics laboured in the mother country and in the colonies under grievous political and civil disabilities; and were moreover kept out of office by precise oaths, required to be administered to public officers, which they could not take. These disabilities were attached to them by plain and positive words. They were called by the legal nick-name of Papists and Popish Recusants. At the Revolution, the principle of Religious Freedom was proclaimed as the basis of the new Constitution. If the odious proscriptions against this class of Christians were deliberately intended to be retained or renewed, it was natural to expect that the test oaths would also be retained, or that this intention would be expressed in unambiguous language. Before they shall be regarded as the victims of religious intolerance, and degraded from political rank, a distinct expression of constitutional law ought to be required.

Considerations like these, sir, brought me to the conclusion that whatever reason there was to suspect that this clause might have been intended by some or more of the Congress who framed the constitution, to impose political disabilities on Catholics, the clause could not be judicially interpreted as excluding Catholics, as such, from office. The language used indicated such a conflict between prejudice and principle, as rendered it impracticable to adjudge a clear victory to either. A penal provision against a portion of the freemen of the State; a disabling provision against the whole community in its selection of civil officers: penal and disabling provisions because of religious opinions, which it was an unalienable right to possess and to follow out in practice; could not, I thought, be upheld and enforced, unless clearly and definitively declared. The question was purely one of legal exposition. It involved the construction of a written provision in the Constitutional law of the country. If a construction had been settled by judicial tribunals, *that* must be deemed the correct one. If none had been so settled, then the construction which judicial tribunals must attach to it according to the fixed principles of legal interpretation, must be taken by all to be the true construction. Private conscience was concerned so far as not to violate the law.—But what the law was, conscience could not determine, nor even private reason decide, against either an official interpretation actually made, or such as must result from the rules universally observed by judicial tribunals. I may without impropriety add, that on a question where I was, above all, solicitous to have a clean conscience, I was not governed by my own views only, but sought the ablest assistance that I could obtain, and that I was confirmed in these conclusions by the *highest legal* authorities, both *within* and *without* the State.

Had the office been sought as a mere matter of personal ambition, I might have deemed it safer to forego the gratification, rather than to risque a *possibility* of infringing either the letter or spirit of the Constitution. But, under such circumstances, to decline an office which my conscience told me I was bound to take unless disabled by the Constitution, appeared to me an abandonment of duty. I had no well-founded scruples myself. To be deterred by the apprehension of what others might think of my conduct, seemed to me, rank cowardice. Besides, if from any mistaken motives of delicacy, I could have consented to impose an interdict on myself, ought I by such conduct to have practically aided in interpolating into the Consfitution a prohibition, which I did not believe it to contain?—a provision insulting to the feelings and injurious to the rights of a portion of my fellow-citizens—hostile to the principles of Religious freedom, and abhorrent from all those sentiments of liberal toleration, which, at this day, belong to enlightened Christians of every denomination. My course appeared to me a plain one, and therefore I did not hesitate to persue it. I shall be gratified if my country approve of what I have done—but whether it does or not, I have the consolation, that on mature reconsideration, my conscience does not reprove me for taking the office which that country, with a full knowledge of all the circumstances, thought proper to offer to me.

One more remark on what may be regarded as the *personal* part of this discussion, and I shall then cheerfully abandon it altogether. As a citizen of North-Carolina, having a deep concern in her institutions and in her honor, I yield to no one in the interest which I feel, that this question should be properly decided.—But as an *individual*, I beg it be understood, that I am utterly indifferent as to the determination of the Convention and of the People, except to desire that the Constitutional provision may be rendered perfectly explicit. If it be thought essential to the good of the State that a monopoly of offices shall be secured to certain favored religious sects, let it be so declared. He who now addresses you, will not feel a moment's pain, should such a decision render it his duty to return to private life. Office sought him—he sought not office. An experience of its cares, its labors and its responsibilities, has not tended to increase his attachment to it. Let him but know what is the Constitution of his country, and be it in his judgment wise or unwise, equal or unequal, he will to the best of his understanding and ability, in his own case and in all cases, uphold and defend it. So he has often sworn, and as he acknowledges no power which can absolve, so he holds that no inducement of ambition or interest can excuse him, from the exact and faithful fulfilment of this oath. His only perplexity will be to know what course he ought to pursue, if the Convention should forbear to act on the subjert. Had he made up his own mind on this point, he would not *at this moment* reveal the determination to his nearest and dearest friend on earth. But, in truth, he has endeavored, as far as possible, to hide even from himself, the result to which his reflections would seem to conduct him in that event.

Mr. Chairman, in the act which authorises this Convention to be called and which has been ratified by the people, the Convention is instructed to enquire into the expediency of amending, and is empowered *at its discretion* to amend the 32d Section of the Constitution. The first consideration which presents itself is, does the Article require amendment? On this point, I had supposed, until very lately, that a difference of opinion *could not exist*. Far be it from me wantonly to wound the feelings of any gentleman, or arrogantly to set up my notions of right as the standard by which others ought to be governed; but where my convictions are thorough and without doubt, I must be permitted so to state them. Where the path of duty seems to me as plain as day, I must be allowed to call on my associates, not to desert it. Sir, so indispensable, in my judgment, is the obligation of framing *some amendment* to this Section, that I should hold the Convention guilty of an unpardonable dereliction of duty, were it to adjourn and leave the section untouched. In the course of this discussion, which has now lasted three days, the ablest members of this body have stated their views as to the meaning and operation of the article—and yet, scarcely two of them have concurred in the same exposition. One informs us that it excludes *nobody*—that it cannot be interpreted to exclude *any body*—that for want of a tribunal to enforce and expound it, the entire provision is *a dead letter*, as if it had never been embodied in the instrument. Another thinks, that it clearly excludes Atheists and such Deists as make a parade of their infidelity, by proclaiming the Holy Scriptures to be false. A third believes that it disqualifies Atheists, Deists and *Jews*—for that the latter necessarily deny the divine authority of the New Testament, and Deists deny the divine authority both of the New and Old Testament. A fourth supposes that these are excluded, and that it was intended also to exclude Catholics, but that the language is not sufficiently explicit to warrant a judicial exposition to that effect. A fifth holds that it was not only intended to exclude, but, by legal construction, does exclude them. A sixth is satisfied that Quakers, Memnonists and Dunkards are disqualified, because their doctrine that arms cannot lawfully be used in the defence of the country, is subversive of its very freedom and repugnant to its safety. Some think it will be a matter of fact for a Jury to determine—others, a matter of law, for a Court, to pronounce what religious principles are incompatible with the freedom and safety of the State—while not a few are inclined to hold that the Legislature may, in this respect, define what the Constitution has left vague and uncertain. It is also perfectly known to us, that the first men of the legal profession, out of this Hall—the first for knowledge and purity of character—differ also in their exposition of the Article. This Convention is assembled to revise and amend the Constitution, and the people call our attention to this Section, and submit to us the propriety of so amending it that hereafter its meaning may be understood. What excuse, what apology, what pretence can be assigned for giving the go-by to this manifest duty? Law is a rule of action prescribed by the sovereign power and commanding the respectful obedience of all within its sphere. The very nature of such a rule implies that it should be communicated, and of course rendered intelligible to those who are to be bound by it. That master must be the worst of tyrants, who purposely declares his commands so as not to be understood by those subject to his will.—Perhaps nothing has more effectually consigned the name of Caligula to undying infamy, than the fact recorded of him by Dio Cassius, that he wrote his edicts in a very small character and hung them up on high pillars, purposely to ensnare the people. But still by the use of extraordinary means, these could be read, and when read, it is presumed they might be understood. But no diligence, no exertions, can enable the people to understand what is not designed to be understood, and is therefore couched in words without defined meaning. A command so given, is in an unknown tongue, and the Lexicon, by which it is to be translated, is withheld. If, however, perspicuity be required in all laws, so that no law-maker can intentionally fail in it without guilt, how emphatically is it not demanded in a *Constitution*—the fundamental law—the charter of all delegated powers—the palladium of all reserved rights? Here, if possible, every thing should be made clear to the man of the plainest capacity, that he may know how much of his natural freedom he has parted with, what are his duties, what are his privileges, and how he may distinguish between commands which it is treason to resist, & oppression which he would be a miscreant to endure. Every individual within the State is bound, at the cost of the last cent of his treasure and the last drop of his blood, to uphold and sustain that Constitution—and will you purposely leave it unintelligible?—Every officer, from the highest to the lowest, is required to take an oath that he will support, maintain and defend that Constitution; and will you intentionally and advisedly leave a clause in it, having no distinct meaning—where you refuse to declare your meaning, and where you know that your meaning is not understood, in order to alarm timid, or to ensnare unenlightened consciences?

Here we have been met by an obstacle to all enquiry, and of course to all action, interposed by the gentleman from Orange (Dr. Smith.) He informs us, that from some occurrences which preceded the election in his county, which he does not particularly explain, and because the choice of the People of that county fell upon himself and his colleague, he considers the People of Orange as having *instructed* their Delegates not to take up this subject. Sir, I must be permitted to deny that any such instructions have been given, and to call for the document which authoritatively certifies them. I will not confound clamour however got up—temporary excitement—popular feeling, more or less extensive—with deliberate *Instructions*. I take issue with the gentleman on the fact of Instructions, and demand the proof—I do so the more readily, because, the People of Orange are *estopped* from giving such instructions—*cannot* give them, without a disregard of the most solemn assurances, and without bringing down on themselves a dishonour which they never, never, will incur.

With many a politician, the whole doctrine of instructions is but a pretext for shunning responsibility, and shifting with every turn of popular caprice. Supposed instructions furnish a justification, or at least an excuse, for every act. If he has erred, it was because he *thought* he was instructed. He now finds that he is instructed otherwise—and he will certainly reverse what he has done amiss. "Change as ye list, ye winds," he sails before the breeze. But there are men of unquestioned integrity and independence who differ in opinion as to the just force of instructions *under the Constitution*. That the People have a right to assemble together to instruct their Representatives, is solemnly declared by that Instrument; and this declaration would not have been inserted, if it were not considered that the Instruction, when given, was entitled to respect. All agree in this:—but they differ in defining the limits within which such Instruction is practically obligatory. They concur in declaring that it cannot be obeyed where it directs any action forbidden by the Constitution or by the law of God; because no power on earth can absolve a man from his sworn obligation to defend that Constitution or from his duty to obey his great Creator. They do not practically differ where the Instruction relates to a matter of local convenience, in which the opinion of the majority of those concerned is of course the best criterion for deciding it. The debateable ground is, with respect to those matters of where the *public welfare* is concerned. The Representative will here, of course, be happy to think with his constituents—will yield to their deliberate opinion very great deference—and unless he has a clear conviction to the contrary, may without a sacrifice of conscience, believe their judgment a safe guide for his conduct. But, if he has this clear conviction to the contrary, some think he ought to obey the instruction, because he is but an Agent—and *their* will, not *his*, ought to govern. Unquestionably, this is not my opinion. I hold that he is more than an Agent—that he is *also* a member of a body to which *the Constitution* has intrusted him with the power of *making laws*—that the decision is not a mere matter of *will*, but of consultation with his fellows—of deliberation and judgment—and that within the sphere of delegated power, *every* functionary is bound to do what he verily believes the public good demands, and to abstain from all which his best judgment tells him will be injurious to the State. I am perfectly satisfied that this is the true Republican doctrine, the only doctrine which secures to the constituent the best exercise of all the faculties of his Representative, and holds that Representative to a full accountability for neglect to inform himself, for haste, or carelessness in decision, for error of judgment, as well as for wickness of purpose. But be the force of instructions under our Constitution from the Constituent to their Representative what they may, I do most decidedly and solemnly protest against *any* right of the People of one County in this State, to instruct any member of this Convention how he shall perform his delegated functions.

Sir, from whom does he receive these functions—what are they—and to whom is he accountable for their exercise? The vote of the majority of the People of North Carolina, voting *en masse*, called this Convention into being, and gave to this body and to every member in it the functions which they are to exercise.—"The following propositions," says the Organic Act "shall be submitted to the People for their assent or dissent, the former of which shall be understood by the vote "For Convention," and the latter by their vote of "No Convention." True, after the People shall have given this assent, the Delegates to frame the proposed amendments are, by the Act, to be appointed by the People in the several counties. This affords to the citizens of every county an opportunity of selecting those whose feelings and general modes of thinking are most congenial with their own; and secures to the Convention the advantages of a knowledge of the wishes, and a sympathy with the wants, of every section of the State. But the Delegates once appointed, they come as Agents under the letter of Attorney of the whole People, and with instructions from the whole People. Before they are permitted to form in Convention, these Delegates are obliged to swear that they will not transcend the powers, nor disregard the duties, thus required of them by the whole People. *This Act* limits their powers and *this act* contains their instructions. They *shall* frame certain amendments therein pointed out, and in *their discretion*, they may propose certain other amendments submitted to *their consideration*. Within these limits, they become a consulting College—their acts have of themselves no force—their doings are to be submitted to the whole people, voting again *en masse*, and if approved by the majority of that people, then, by the authority of the whole people, they become a part of the Constitution of the State. If any portion of the people, less than a majority of the whole, dare to give instructions, either restraining the power or controlling the discretion of the Delegates on the proper subjects of their deliberations, it is a flagrant usurpation. If some counties can thus tie up the understanding, conscience and will of their Delegates, it is a fraud on the other counties who have theirs unfettered. There can be no arrangement—no final action—unless these, the uninstructed Delegates, the Delegates with *full* powers, give in to the views prescribed at home to the instructed and partially empowered Delegates. An interchange of opinions, consultation, discussion, are useless, when whatever may be the conviction which these may produce, the convinced are bound to act against conviction. When gentlemen talk of instructions from their constituents, other than the great and commanding instructions from the collective body of the People who gave this Convention being, and for whose weal or woe we are consulting under the most sacred and awful obligations, it is but a proof, that they do not elevate their minds above the ordinary range of every day legislation. Ours are not local, nor temporary provisions, called for by the emergencies of the day or the convenience of particular sections of the State, but universal Constitutional Ordinances, which once adopted, are incapable of change, save by recourse to the fountain of original sovereignty.—"*Sursum corda*," (elevate your hearts,) is the address of our country to us before entering on this solemn office. Raise your affections, raise your views, high above the intersts, the excitements, the passions, the prejudices of the passing moment and the narrow circle around you. Consult for your whole country; consult for your country through all