

COLUMBIA TELESCOPE,

AND SOUTH-CAROLINA STATE JOURNAL.

[XII]

COLUMBIA, (S. C.) TUESDAY MORNING, FEBRUARY 29, 1836

[NO. 9.]

COLUMBIA TELESCOPE

BY BLACK & SWEENEY,
Printers to the House of Representatives of South Carolina.
TERMS.—THREE DOLLARS per annum, payable in advance, or FOUR DOLLARS payable at the end of the year.
Advertisements are inserted at the rate of seventy-five cents for every twenty lines, or a less number, for the first insertion, and forty cents for each continuance.—Those from non-subscribers must be accompanied by the cash, or a responsible reference, or they will receive no attention.

Store Removed.
THE Subscribers respectfully inform their Country Friends and the public, that they have moved to the corner store, north of Market, Law, Ellison and Adger, and opposite Messrs. C. & D. Drexler's, where they carry on their business as formerly.
R. & J. PURVIS,
January 13 36

Wanted Immediately.
A WHITE woman who is capable of taking charge of a public house, and doing every thing appertaining to her capacity during the absence of the proprietor. Liberal compensation will be given.—Apply at this Office.
Dec. 16.

A Bargain will be Given.
THE Subscriber wishes to dispose of his HOUSE and LOT on the corner of Sumner and Taylor streets. The house contains eight rooms, and there are all necessary out buildings on the premises, with a well of good water, and a garden attached thereto. He also wishes to dispose of a small tract of LAND, on the waters of Crane creek, containing 240 acres, with all necessary buildings on the premises. The land will produce well of either corn or cotton. For further particulars apply to the subscriber, on the corner of Sumner and Taylor streets.
JOHN M. MILLER,
Columbia, Feb. 21.

A good Cotton Gin Wright
WHO is master of his trade, would receive 11 shillings wages by the month or year after the first day of March next. Stated and regular wages, or a reasonable share of the profits of an extensive shop would be given to a diligent workman. For further particulars enquire of the subscriber by letter.
RICHARD SMITH,
Adamsville, Port Office,
Marlborough district, S. C. Jan. 6.

Notice.
COME to the plantation of Ebenezer Jencks, in Columbia County, near the turnpike road, about six miles from Newburgh, on the 25th day of January last, a man who called his name either William or Lewis Patrick and said he was from Orangeburg District, South Carolina, and was going to Bryan County, in this state, on a visit to a child of his by his first wife, whom he married in Bryan County, and is now deceased.—Said Patrick was a man of middle stature, about five feet ten inches in height, light hair blue eyes, and about forty-five years of age he rode a small grey horse, with a half worn saddle, and middle aged—he had \$200 in money at the time—came to the plantation very sick with the measles, as was supposed, but which proved to be the varioloid, and died on the 25th January, with the disease. His friends can have further particulars on application to EBENEZER JENCKES, 5th March.
LET Editors of papers in South Carolina will please notice the above.
Feb. 21

Valuable Property in CAMDEN.
THE subscriber offers for sale on accommodation terms, that well established stand recently occupied by Charles Jugnot, & Co. (next door below Mr. John Doby's). The above is a full lot, 60 feet in front, on which is a dwelling house and various necessary out-buildings, well adapted for an extensive Mercantile Business. Possession to be given when required. For terms apply to Wm B. Parker.
CHARLES JUGNOT,
April 14.

Select School.
DR. McNAMARA begs to inform his friends and the public, that he has returned to Columbia, where he will undertake to instruct twelve Pupils only in English, French, Greek and Latin. Terms extremely moderate in all or any of the above branches. For particulars enquire of the Advertiser, at Mrs. Williamson's Boarding House, corner of Taylor and Richardson streets, Columbia.
LET No extra charge for French.
February 21.

Treasury of the Lower Division, Charleston.
LET Borrowers of Paper Medium, &c. be hereby notified, that the payments upon Bonds required by law, (one fourth of the principal, and the whole interest,) must be made at this Office, on or before the FIRST WEDNESDAY in March next.
CHARLES M. FURMAN, Treasr.,
Charleston, Jan. 29, 1836.

Alfred Bynum, ATTORNEY AT LAW.
HAS opened an Office, immediately adjoining that of W. C. Preston, Esq., in the upper part of the house occupied by Wallace & Co. He will practice in the Courts of Law in Marlborough and Lexington districts, and will attend at any of the adjoining districts, where Courts do not interfere with the sittings of the two above-mentioned.
Conveyances, in all its forms, will be executed with care and accuracy, and the collection of large debts, undertaken, during months of absence, by his usual presence.
Feb. 14.

A LOTTERY,

FOR BUILDING A Roman Catholic Church, IN THE TOWN OF COLUMBIA.

FIRST CLASS
1 Prize of 6,000 is 6,000
1 Prize of 2,000 is 2,000
2 Prizes of 1,000 is 2,000
3 Prizes of 500 is 1,500
4 Prizes of 100 is 400
9 Prizes of 50 is 450
12 Prizes of 25 is 300
20 Prizes of 10 is 200
30 Prizes of 5 is 150
7400 Prizes of 5 is 37,000

7482 Prizes, \$50,000
20000 Tickets, \$2½ each, 50,000

*7400 Prizes of \$5 each, to be entitled to tickets in the Second Class, subject to no deduction. First drawn number on the first day, prize of \$1000. Last drawn number on the last day, prize of \$3000.

SECOND CLASS.
1 Prize of 20,000 is 20,000
1 Prize of 15,000 is 15,000
2 Prizes of 10,000 is 20,000
2 Prizes of 5,000 is 10,000
3 Prizes of 1,000 is 3,000
4 Prizes of 500 is 2,000
5 Prizes of 100 is 500
1900 Prizes of 5 is 9,500

1918 Prizes, \$80,000
16000 Tickets at \$5, 80,000

PRIZES only to be drawn, subject to a deduction of 10 per cent, and to be all sent from the commencement, except the following.
ORDERS FOR TICKETS from any part of the United States (post paid) and enclosing the cash, addressed to J. H. ANTHONY, M. ANTONIO, or B. D. PLANT, will meet with prompt attention.
The following gentlemen have kindly volunteered their services to act as managers, viz: Messrs. JOHN R. ANTHONY, D. J. MCCOY, JAS. T. GOODWIN, W. B. WATTS, and M. ANTONIO.
LET The editors of the City Gazette, Charleston Pioneer, Yorkville Chronicle, Augusta Republic, Savannah Patriot, Baltimore and Globe & Emerald, New York, are requested to publish the above weekly, (for one month) and remit their accounts to this place for payment.
June 17.

Division Orders.

BRIGADIER General Dawkins having resigned his commission, as Brigadier General of the 9th Brigade, and the Governor and Commander in Chief, having directed me to order an Election to fill the vacancy, the Colonels of the Regiments composing the 9th Brigade, are ordered to hold an Election at their respective muster grounds, on the THIRD MONDAY in April next, for a BRIGADIER GENERAL, in the place of General Dawkins, of the 9th Brigade. The Colonels will advertise and manage the Election according to law, and return the state of the polls to Major General O'Neal, at Newberry Court-House, by mail or otherwise.
By order of Major Gen. O'Neal,
JAMES EDWARD HENRY,
Adjutant-General.

The Court of Appeals.

WILL be held in Columbia, on the 1st day of February 7, 1836, at 10 o'clock, a. m., in the Court of Appeals, in the case of *James S. Guignard vs. James S. Guignard*, as usual. The order of the Court will be reversed, unless the business of the Court will be first taken up.—The Court will meet at the Middle Circuit next, and at the Northern Circuit.
By order of the Court,
JAMES S. GUIGNARD, Clerk.
February 14, 1836.

BUNCOMBE Turnpike Company.

NOTICE is hereby given that the whole amount of capital in said company, not having been subscribed against the first day of March, 1835, agreeable to the provisions of an act of the general assembly of the state of North Carolina, entitled "an act to authorize the making of a Turnpike Road from the Saluda Gap in the county of Buncombe by way of Smith's, Mottsville, Asheville, and the Warm Springs, to the Tennessee line"—That Books are again opened under the direction of the undersigned commissioners appointed by said act, at this place, and under the direction of Col. Abram Blanding, and Daniel Morgan, Esq., at Columbia, S. C. (who have been regularly authorized by the undersigned to open the same) to receive subscriptions for that part of the capital stock yet remaining unsubscribed.
JAMES PATTON,
SAMUEL CHUNN,
GEORGE SWAIN,
Asheville, N. C. March 24, 1835.
LET Books for the above purpose are opened at the store of D. Morgan, & Co. in Columbia.
A. BLANDING,
D. MORAN,
March 23.

Valuable Property FOR SALE.

THE Subscriber intending to leave Columbia, offers for sale his HOUSE and LOT on Richardson street, opposite Messrs. Purvis Store. The dwelling house is built of Brick three stories high on the premises are, a new two story Brick Kitchen, a Brick Smoke House, with a large Stable, Coach House, &c. The lot is completely enclosed by a good Brick wall. It is a desirable situation for a Tavern and Dry Goods Store. Possession can be given as soon as required.
Terms: One half cash, the remainder on credit of 4 years, well secured, with interest from date. Apply on the premises.
F. BELCHER,
October 14.

STATE RIGHTS.

MR. O'NEAL'S SPEECH
Before the committee of the whole on Mr. Phipps's resolutions in the Legislature of South Carolina, December 15, 1835.
MR. O'NEAL spoke, in substance, as follows:

Mr. Chairman.—The question now under discussion, is certainly one of great importance. I have already received a long and laborious investigation, and I should not trespass on the time and patience of the committee, did I not believe my duty to my country required I should express my dissent from some of the arguments which have been advanced. The gentlemen who have supported the amendment and resolutions offered by the member from York, aim (I have no doubt) to promote the public good. The gentlemen who, with myself, are in opposition are equally solicitous on that subject. Indeed I am well satisfied that we are all equally desirous of promoting the welfare of our common country. By different roads we all aim to arrive at the same goal—the happiness of our constituents.

It is my lot to believe in the doctrine of the committee who reported at the last session, and I am much deceived if I shall not be able to convince this committee that that report is right, and that its reasoning and conclusions are entitled to receive the approbation of South Carolina.
I propose to discuss two questions: 1st, As to the right of this legislature to pass in judgment on the constitutionality of the acts of Congress. 2d, As to the constitutionality of the acts of Congress, in the instances pointed out by the amendment and resolutions of the member from York.

Under the constitution of this state, legislative authority is vested in the senate and house of representatives. If it can be shown that the act which we are now called upon to do, bears any resemblance to legislation, I might be satisfied to yield the power. But my idea of legislation has hitherto been, that every act done by a legislature, within the scope of their constitutional authority, acts, and is obligatory upon the people. Can any thing be done under a grant of legislative authority, to which is intended to act upon another body, not acknowledged to be possessed of powers superior to ours, and altogether independent of us? I should suppose not. Before I could be satisfied under a grant of legislative power to us, that the people intended we should supervise the acts of Congress, it must be clearly shown that Congress is a body inferior to the state legislature, and bound by its acts. The absurdity of such a proposition is so manifest, that no advocate of State Rights has yet ventured an argument in support of it. It is certainly then not to be pretended that as a legislature we can pass the amendment and resolutions, without usurping powers not granted to us.

To my mind usurpation is the same, no matter whether it occurs in Congress or the State Legislature. Both are confined to the powers granted or implied; and any act beyond them is not only without authority and void, but is also a flagrant violation of the duty which every Representative owes to his country. To me it is no argument to say, that the precluding proposal is sanctioned by precedent, the constitution is the law paramount, and is not to be subverted by precedents, no matter how often repeated. Precedents may make parliamentary rules and may establish the common law, but they can never make or destroy the constitution. But although under the grant of Legislative power, it is almost concealed by our opponents, that the amendment and resolutions cannot be passed, yet it is said that we are the Representatives of the people, and hence that we can do any act that the people themselves can do. It is true we are the Representatives of the people, but we are their Representatives for given purposes, such as imposing their taxes, paying their debts, making laws for the government of the state, and electing officers to carry those laws into effect. Beyond these I apprehend our powers will be found wanting. But upon general principles it is to be tolerated that we should say we are the people, and that we can do any act which they can do? If so where was the necessity of a constitution pretending to define our powers? If we are the people in their sovereign capacity, each legislature can alter and amend the constitution at its pleasure, and could even say we are absolute and can pass any law we please, for there are none to control us. But the people have denied us that omnipotence which might sometimes be very useful. They say to us the constitution is your charter, exceed your powers or neglect to pursue them, and your acts are void; and we moreover have taken care to provide a tribunal, whose duty it is to pronounce them so. It certainly never entered into the minds of our constituents, when they elected us as members of the House of Representatives

of South Carolina, that they had appointed us to the office of judging for them on the acts of their Representatives in Congress. If we should happen on the present occasion to pronounce a judgment in direct opposition to the will of our constituents, how do you suppose they would be disposed to act both towards our judgment and ourselves? The authors and the judgment would be both rejected with contempt. Indeed Mr. Chairman I can conceive of no more extravagant notion than that which has been advanced, that we have the right to say that Congress, the President, and the Supreme Court of the United States, have all violated the constitution of the United States. It is most assuredly a rash conclusion and one at which I hope we shall not arrive. It is the exercise of a great judicial power; and we should be well advised before we either affirm our jurisdiction, or pronounce our judgment. It has been said that the object of this amendment and the resolutions is to instruct our members of Congress. But I apprehend that the right to instruct, if it exists at all, does not belong to us. If members of Congress are subject to instruction it certainly must be from their immediate constituents. They are the agents of the people, and there is no principle which can be clearer, than that the principal has alone the power of instructing his agent. Hence the people and not we, have the right to say to their Representatives what they wish done. The members of Congress and this legislature, are equally the servants of one master—the people. To us as their agents for particular purposes, they have given a letter of instruction—the constitution of the state, by which our acts are to be bounded. If we take one step over this boundary, we trespass upon the rights of the people. What then is the character of a resolution of this legislature to instruct the Representatives and servants of the same people to whom we owe our brief authority? Is it not an usurpation of powers not granted? Can gentlemen point out a section in the constitution of South Carolina, which gives the Legislature such a right of instruction? No such power is to be given. The gentlemen do not shelter the exercise of such a right even under an implied power in the constitution under which we act, and from which we derive all our authority. In this they show themselves less scrupulous of usurping the rights of the people, than the members of Congress whose acts they now wish to censure; for they do not even pretend that they derive the power they now wish this legislature to exercise, from the constitution of the state either directly or impliedly. The constitution of this state ought to be as sacred to us as that of the United States to Congress. Both we are bound to "preserve, protect, and defend," and if neither gives us the power we are called upon to exercise, we dare not, and I am sure we will not attempt to usurp it.

To Congress, as their agent for more general purposes, the people have given another letter of instruction—the Constitution of the United States. If Congress transcend the powers therein granted so far as they go beyond the delegated powers of their agency; their acts have no binding power on the people. To try the question whether Congress have gone beyond their powers, and violated the constitution, a judicial tribunal, created agreeably to the will of the people, and its members, selected from all parts of our country, for their wisdom and probity is at all times open, with every motive to give and none to withhold an impartial decision between the parties. But should the judgment of this tribunal, between the people and Congress, be unsatisfactory to the former party, the remedy still remains in their own hands. The will of the people being the fountain of all power, they have only to give that will a new direction, and the old and muddy channel becomes dry. They have only to transfer their suffrages to more worthy men, and their former representatives are stripped of all power, and become again private citizens.

There is another argument which, to my mind, is conclusive and from its conclusiveness with me, I have been induced to think, ought to convince members of the absurdity of the right claimed by the gentlemen, of instructing the delegation of this state, in Congress. It might so happen, that the instructions of this legislature, and of the immediate constituents composing the congressional district from which a member is elected, may be directly opposed. In this case, whose instructions must he obey, those of the legislature, eight ninths of whose members are represented in Congress by other men, or those of the freemen who elect him? I have now, Mr. Chairman, shown that as a legislature, we have no right to pass the resolutions as instruction to our members of Congress. But I am now disposed to present to the committee my reasons for believing that instruction can, in no instance,

be rightfully given by the constituent to a representative. The doctrine of instruction has been always practiced upon the notion that the same relation prevails between the representative and constituent as between master and servant, principal and agent; and hence that the will of the constituents must be the law of the representative. That this is a mistake, I think manifest. The constitution, which was intended as well to secure our liberties, as to define the duties of every public functionary, has made the discharge of a representative's duty a matter of judgment, according to the best of his ability. This, then, is one great and leading distinction, that a representative is put into office for a given time, to discharge all the duties incident thereto, according as his judgment and conscience may direct. The constitution has, itself, pointed out in what instances he shall, and in what he shall not act. This, then, is his general instruction; and I apprehend none other can be given, but by amending the constitution agreeably to its own provisions. A representative in Congress, it is true, is elected by a particular district, and as to local concerns he is their organ, but on general questions he is a representative of the United States of America, in Congress assembled; and can any one district, or even any one state, have a right to instruct him to do an act which he believes to be inconsistent with the general welfare? If he were to comply with such an instruction, he not only violates his duty, as pointed out by the instruction under which he holds his office, but he has also violated that pledge which he has made in the presence of the whole Universe, that he would discharge his duty to the best of his ability. The instruction not only in its policy, but also in its constitutionality before he could conscientiously vote in obedience to it. A representative is usually selected for superior talents, honesty and patriotism, and hence, if these qualifications are to be of any avail, he must be left to an honest discretion in the discharge of his duty. Arguments are the usual means by which we are satisfied of the policy or impolicy of a measure. Deliberation and discussion are both indispensable to correct legislation. It is the duty of a Representative to hear and deliberate upon the arguments which may be used in connection with his own views, and from all these combined, he must come to a conclusion. But if he is bound by the instruction of his constituents who have had none of these advantages, neither discussion or deliberation, is of any advantage, and a representative becomes an useless appendage of government. This conclusion no freeman will be willing to draw; and hence I infer that the constitution is the only instruction to which a Representative can look, and the only manner in which that instruction can be altered is by amending the Constitution agreeably to its own provisions. The opinions and wishes of the people ought to be and always will be respected and attended to by their Representatives. They are sovereign in power and it is rare that they ever think of instruction, when they do, it is on great and momentous occasions and most commonly to give more efficiency to the man of their choice—their Representative. These views have satisfied me that we as a Legislature have no right to pass the amendment and resolutions of the member from York. But other considerations negating the idea of our having any such right, will be presented by recurring to the constitution of the United States. Upon examination it will be found that the sagacious who framed it, were not unmindful of the seven years of bloody toll which were spent in acquiring that liberty which it was intended to guarantee and protect, and that they carefully guarded against every possible encroachment on the rights of the citizen. It was the work of wisdom matured by adversity and experience. It provides in itself a remedy for every possible case of violation, and yet it does not give us the power of deciding when Congress errs. The constitution provides that the government shall be administered by three distinct departments, the legislative, executive, and judicial, all which are checks and balances upon one another. They are the safeguards interposed by the constitution, between the liberties of the citizen and abuse of power, by any public functionary. If Congress pass an unwise or an unconstitutional measure, the President may refuse to approve it, and return it to the House in which it originated with his reasons; two thirds of both houses must concur in re-passing it before it can become a law. When it is to be put in execution, it is to be supported unconstitutional, the hundred citizens whose rights may be thereby affected, can present the question to the supreme court, and if that should concur with him, it is adjudged to be void, and ceases to be the law. Any of the different acts of