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DAVID FULTON, EDITOR.

OUR COUNTRY, LIBERTY, AND GOD.

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PROTEST
Of Senators, against the Resolutions to expel the Senator from Onslow.

The undersigned, members of the Senate, availing themselves of their Constitutional privilege, as secured by the 45th section of the Constitution of the State, to dissent from, and protest against any act or resolve of the Senate, which they may think injurious to the public, or to any individual, and to have their reasons for such dissent entered upon the Journals of the Senate.

Do here now present to the Senate, their most solemn dissent and protest against certain acts and resolves of the Senate, in the case of Mr. ENNETT, Senator from Onslow, with their reasons therefor, that the same may be entered on the Journals of the Senate.

The committee appointed to investigate his case, reported the following Resolutions:

Resolved, That the certificate of the Senator from Onslow, and by him introduced to the Senate as genuine, the first day of the session, is a forgery.

Resolved further, That inasmuch as no evidence has been offered before the Committee to implicate any other person in the transaction, that the Senator himself has either been guilty of the forgery, or procured it to be done, or was at least aware that it was not genuine; and therefore, practised a fraud upon the Senate and ought to be expelled.

Resolved, That for the reasons aforesaid, the Senator from Onslow be, and is hereby expelled from the Senate, and his seat therein vacated.

The first resolution passed the Senate unanimously, the two last by the casting vote of its Speaker, (Mr. Gaither.)

The undersigned protest against the passage of the two last resolutions, because, the rule of evidence which that majority of the committee in their report applied to his case, was laid down in too broad, harsh and unqualified a sense;—because, the evidence was not correctly reported;—because, that report was accompanied by an argument against Mr. ENNETT, based upon unfounded assumption, and tended to prejudice his trial;—because, that report, and the principle contained in the second resolution threw upon him the burden of establishing his own innocence, because his counsel was denied that liberty of speech which is indispensable to fair and impartial trial; and because, Mr. ENNETT's own account of the way he was put in possession of the alleged spurious certificate, and which was part of the evidence reported by the Committee, being uncontradicted and fully supported by the whole evidence put in on his trial, and corroborated by unquestioned proof, of his having the most unblemished character, forming a weight of

testimony, which repelled every suspicion of his guilty connection with the spurious certificate.

The undersigned will now proceed to state the reasons and facts which form the grounds of their belief.

The proof shortly stated, was, that Mr. ENNETT left home under the most confident belief and expectation, of receiving his certificate of election in time to take his seat on Monday, the 18th of November, the day of the meeting of the Legislature—that he had assurances to this effect from the Sheriff and two other persons—that he was advised before he left home, and after reaching Raleigh, by several members of the Legislature, that his certificate was not indispensable to his taking his seat, but that his colleagues or others, would be heard to prove his election as had been the practice in other cases—that he had mentioned it publicly, on the day he arrived here, (Saturday,) that he had come without his certificate—that on Monday morning he informed his room-mate, Mr. Jackson, and also Mr. Melvin, and stated publicly in a company of gentlemen at Mr. Holden's office, that he had received his certificate on the night before (Sunday night)—that the statement he then made to Mr. Melvin of the way and manner he had received it, corresponded substantially with his two statements, one made to Mr. Stone on Tuesday morning after, and the other to the Senate on the 29th of November, altho' the latter was not so full: Which were in substance, that a stranger called at his room on Sunday night, about 8 o'clock, said he had a letter for him, did not make himself known to Mr. Ennett—he asked him to walk in—the stranger replied he was in a hurry, and handed him [Mr. E.] the letter, and immediately retired in the dark—that Mr. E. at first supposed it to be a letter from some office-seeker, but on opening it discovered it contained the certificate he expected of his election. The proof was also, that the signature to the certificate resembled the handwriting of Sheriff Averett, only slightly, but enough to make a person acquainted with it, suppose it might have been written on his knee; that on Monday after Mr. E. presented the certificate and took his seat in the Senate, Mr. Senator Heilen obtained possession of the certificate from the Clerk, Mr. Stone, without any order or authority from the Senate—took it out, kept it for some time, showed it to several persons marked their initials on the certificate, among them Mr. Gaither (afterwards chosen Speaker) and Mr. Senator Boyden—that it did not appear that this movement on the part of Mr. Heilen and others, intimating their suspicion, was made known to Mr. Ennett at the time—that as soon as Mr. E. heard of the suspicion of its genuineness, which was either on Monday night or Tuesday morning, he repaired to Mr. Stone, the Clerk of the Senate, on Tuesday before 10 o'clock, and asked to see the certificate, Mr. Stone handed it to him, and after examining it, he stated to Mr. S. that he was not sufficiently acquainted with Mr. Averett's handwriting to say that the body of it did resemble Mr. A.'s handwriting, but parts of the signature not so much—and then gave Mr. Stone the account as above set forth of the manner he had gotten possession of it—that this statement of Mr. Stone was made after he had taken his seat, but before the Senate had organized on Tuesday morning the 2d day of the Session—that on the 29th of November he had received the certificate of his election in a letter from Sheriff Averett, enclosed to him in a letter from Mr. Marole, and on that day presented the certificate and the two letters to the Senate, made his statement how the possession of the alleged spurious certificate had been put upon him, and that he now believed, from comparing the two, he had been imposed upon, and asked the Senate to raise a committee of investigation on the matter. The Hon. Wm. H. Washington, of the House of Commons, proved, that Mr. E.'s general character was that of an ignorant, inoffensive, harmless man, without a blemish resting on it. Mr. Tho. D. Meares, of Wilmington, that he stands as fair as any man in Onslow. Mr. Jeremiah Nixon, of the Ho. of Commons, that he has known his character intimately for 10 years, that his general character was that of an honest good man, without a blemish, simple and confiding, a domestic man in his habits, a sober, moral, industrious farmer, a kind father and an obliging benevolent neighbor. No one disputed this testimony.

The proof was also, that the committee of investigation had incorrectly reported Mr. Sanders' testimony before the committee. They reported, that Mr. S. said before them that he thought it was on Monday morning Mr. Ennett told him that he had not received his certificate, whereas, Mr. Sanders when brought to the bar of the Senate swore, that he told the Committee several times, that he was uncertain whether it was Sunday or Monday, and that since his examination before the Committee, upon reflection, he was still uncer-

tain, and Mr. Senator Louis D. Wilson, also stated on the trial, that Mr. Sanders had, when examined before the Committee and after his testimony was written down, stated twice or thrice that he was uncertain whether it was Sunday or Monday.

The whole proof then established these facts:—1st, that Mr. Ennett's three several statements of the manner he got possession of the spurious certificate, was not unnatural or improbable—that he was that good, honest, simple, confiding man, that might easily have been imposed upon in a City where he was a stranger and did not know the habits of intercourse. 2d, That he had no motive to palm a forged certificate upon the Senate, as he knew he could obtain his seat by other proof of his election. 3d, That as soon as he heard it rumored that its genuineness was suspected, on Tuesday morning before the Senate was organized, he called on the Senate's officer, Mr. Stone—made a full and open statement of the matter, which, if he was a guilty man, it is improbable he would have done, as the officer by reporting it to the Senate placed it in the power of that body to rescind the order admitting him to his seat, and thus have defeated his whole purpose. 4th, That as soon as he received the genuine certificate from the Sheriff, whereby he was enabled to form a belief as to the true character of the first certificate, he lost no time in stating that belief to the Senate and asking for a Committee of Investigation.

The Committee of Investigation rested their belief of Mr. Ennett's guilt upon three principal points: 1st, the general maxim of law that he who is in the possession of a forged instrument, and gives no satisfactory account of the manner he got the possession, nor the person who did it, and uses it for his own benefit, must be presumed to have forged it himself. 2d, That the manner that Mr. Ennett got possession of the certificate, was so suspicious in itself, that every other man would have suspected it under like circumstances. 3d, That Mr. Ennett's statement ought to be discredited because he did not inform his room-mate, Jackson, he had received it.

We shall examine these points in their order.

1st. As to the maxim of law.—We say that its application to Mr. E.'s case was too harsh and unqualified, and that even as harshly as they applied it, it only raised a technical presumption of guilt, which under the exercise of a small degree of the ordinary benignity of the law, was completely repelled by the fact, of all absence of motive on his part to forge a certificate; by his consistent and reasonable account of the way it came into his possession; and by the proof of his unblemished, simple, confiding character, which latter fact, his good character, the committee do not allude to in their report, and therefore we must presume did not enquire into it, notwithstanding in their report, they express such a great anxiety to find out and report to the Senate all the evidence that might establish Mr. Ennett's innocence.

The rule of evidence which the Committee ought to have applied to his case, is this, "that where the possession is of such a kind, as manifests that the stolen goods (or forged certificate) have come to the possessor by his own act or with his undoubted concurrence," it affords presumption of guilt. (See Judge Gaston's opinion in the late case of the State vs. Smith, 2d Iredell's rep.) In Mr. Ennett's case the evidence did not manifest that the spurious certificate came to his possession by his own act, nor by his own concurrence, nor that no other person could have had a motive to put the possession upon him. His statement being that of an honest man, and made part of the evidence in the case, showed, that a LETTER was put into his possession, by an unknown hand, and that until he opened it, he did not know what it contained; and that before he opened it, the unknown bearer of that letter was gone. He had no suspicion of any thing being wrong, because letters are often times handed by unknown hands—because office-seekers about Raleigh are in the habit of sending letters to members in every form and way, and he expected at first that it was a letter from an office-seeker, and after he opened it, and found it contained a certificate of his election, it was what he also expected to arrive every hour, although he did not know certainly in what way, by hand or by mail; and he had enquired that night at the post office, and had not obtained it, before this letter was handed to him. His statement then showed, that he did not acquire the possession of the certificate, by his own agency, but that it was put upon him under cover of a LETTER—not by his own concurrence, for he did not know what the letter contained, until opened—nor, that no other person had a motive to do it, for office-seekers had a motive to do so, as he had been a day in Raleigh, and had made known he was without his certificate.

The rule of evidence which the Com-

mittee applied, they rested on the authority of the State vs. Britt, 3d Vol. Devereux Reports of the Supreme Court, page 122. That case was this: Britt, the defendant, was found in the possession of a forged order in his own favor, had presented and obtained on it money or goods, and upon being charged with the forgery, said, "he had intended to take up the order before it was discovered." In this case, the rule of the Committee was applied by the Court, because, the defendant did not attempt to account for the way he acquired the possession, by any accompanying statement of his own, or otherwise; nor did he impute any other agency or concurrence than his own in obtaining it; on the contrary, he stated, that he intended to have taken up the order before the forgery was discovered, which manifested, that he had come to the possession by his own act and concurrence.

The next authority cited in argument by the majority Committee, was the State vs. Morgan, reported in 2d Vol. Dev. & Bat. page 348. That case showed that the defendant had himself presented a forged note to the Bank at Salem for discount in his own favor, and had received the money—no statement of the defendant imputed guilt to others, nor circumstance appeared to raise a suspicion that any other person had been concerned in the possession than the defendant, nor did it appear that any other person had a motive to impose it upon him, but all the evidence manifested, that he alone forged the order. But even in that case, the Court in applying the Committee's rule of evidence, said, "The force of the presumption, depends upon the ability of the accused to show WITH FACILITY, the real truth; and his refusal to do so, if there be other circumstances from which it may be judged that certainly or PROBABLY his possession was not acquired by his own taking, then the whole presumption fails." The case of the State vs. Britt was decided in June, 1831, the latter case in June, 1837.

In a very late case decided by the Supreme Court, June, 1842, State vs. Scipio Smith, 2d Vol. Iredell's Rep. page 402. Judge Gaston as organ of the Court, lays down the rule of evidence truly applicable to Mr. Ennett's case. The evidence in that case, was, that one Chambers had had his tobacco stolen on Friday night, that he followed the tract of a cart from near his tobacco house, to a house of the defendant, Scipio Smith, on the next morning, Saturday—that said house was on Smith's land and within 80 or 100 yards from his dwelling house, and that on that day (Saturday) his tobacco was found in Smith's house—that Smith claimed the tobacco so found in his house, as his own, in the presence of Chambers, and stated in what field it was grown, and that he, Smith, had ordered it to be put in that house. It was also proved, that Scipio Smith's two sons lived with him at the time, who were jointly indicted and tried with their father.—The Judge who tried the cause below, applied to Scipio Smith, the father's case, the rule of law which the Committee have applied to Mr. Ennett's case. All the defendants were convicted; they appealed to the Supreme Court, and the Supreme Court set aside the verdict against Scipio Smith, the father. Judge Gaston, who has been truly called "a good man and a great Judge," delivered the opinion of the whole Court. He says as follows: "when we examine the cases, in which such a presumption has been sanctioned, or considered the grounds of reason and experience on which the presumption is clearly warranted, we shall find that it applies ONLY, when this possession is of a kind, which manifests that the stolen goods have come to the possessor by his own act, at all events, by HIS UNDOUBTED CONCURRENCE." He then mentions a leading case, stated by that great and good Judge, Lord Hale, where a horse was stolen from A, and that same day B was found upon him—B was tried, convicted, and hung for stealing the horse, on the ground, that being found in possession of the horse, and not able to account for it, he must be presumed to be the thief. Yet, shortly after this, C was apprehended and tried for robbery and convicted; and when executed, confessed that he had stolen the horse for which B was hung, and being closely pursued, requested B; a stranger to him, to walk his horse for him while he turned aside on a necessary occasion, and escaped. Here B was hung, because being found in possession; he could not account how he came to the possession.—The Jury forgetting that the possession of a horse might be put upon a man, and he nevertheless be unable to account for it, as the Senate may have in Mr. Ennett's case, forgotten, that a man may be put in possession of a letter containing a forged certificate or counterfeit notes, and the possessor be unable to prove who gave him that letter—much more easy and common it is to palm a letter upon a man, than to palm a horse upon him, and yet both have and may happen. Another case is mentioned

by Judge Gaston, where the sheep of A stray from his flock to the flock of B, and B drives them up with his own flock and shears them. B was held not guilty, because he might not have suspected they were not his sheep, and it was better that 99 guilty persons should escape than that one innocent person should suffer.

The coincidence of many circumstances pointing to one thing, forms so natural a ground of belief according to human experience, that it is upon that very ground, that the rule of evidence has been so well established in law, that handwriting may be proved by a person who has received a letter from a stranger to him, in the due course of business, from whom he expected to receive a letter on that particular business, although he never before had seen his writing. So strong were the coincidences in Mr. Ennett's case, that he was not only in law and according to common experience, warranted in believing the certificate to have come from the Sheriff, Mr. Averett; but it would have been thought strange indeed if he had suspected it had not. It came in a letter—which he expected—at that time—and purporting to be from the person he expected to send it—resembled that person's handwriting and he was not well enough acquainted with that person's handwriting to detect a plausible imposition.

The next ground the Committee take in their report is, that the manner of his receiving the certificate, was so strange and unnatural, that it ought to have excited his suspicion. Had the Committee examined with due care all the foregoing coincidences, (six in number) which could only consist with innocence—had they compared them with Mr. Ennett's confiding simplicity of character—with the consistency of his three several statements—with the absence of all motive on his part to perpetrate such a crime; with his open disclosure to the Senate's Clerk on Tuesday morning soon after a fraud was suspected, of all the circumstances which attended the way he got into possession of the certificate, and with his unblemished innocent life, and character, they would indeed have shown that anxious wish they professed, to search out in the evidence, the circumstances of his innocence, instead of first assuming, as they have done, that his account of the matter was suspicious, and from that suspicion, in their own minds, drawing the most unfavorable inferences against him, and arguing the case in their report altogether on one side.

The next ground the committee take is, that his whole statement ought to be discredited, because he did not mention to his room-mate, Jackson, on Sunday night, when he returned home from preaching at 9 o'clock, that he had received his certificate. Had Mr. Ennett taken extraordinary pains to make known the receipt of his certificate, would it not have excited suspicion? As it was he did inform Mr. Jackson, his room-mate, although a stranger to him until that day, and Mr. Sanders, his colleague, of it the next morning, and when the question was asked in a public company at Mr. Holden's office on that same morning, "who was the member that had left home without his certificate," he being present replied, "he supposed that it was the person meant, but that he had received it on the night before." Here, then, the Committee so anxious to establish Mr. Ennett's innocence, assumed the fact that not to mention the reception of the certificate to his room-mate was suspicious, and when the fact appeared on the trial, that he had not only mentioned it to his room-mate but to his colleague and to others, it availed him nothing with his accusers.

The undersigned further protest in this, that as the Committee in their report, & the Senate by the mode of his trial, had thrown upon Mr. Ennett the burden of proving his own innocence, contrary to the maxim of law and usages in such cases, his counsel ought not to have been refused, as they were, the right and privilege of replying to such objections as might have been made in argument to that proof, and more especially, as the Committee's report charged with all its errors, had been printed, circulated, and must have prejudiced Mr. Ennett's cause. And the undersigned also protest in this, that the Speaker ought not to have interrupted Mr. Ennett's counsel as he did, by repeatedly calling him to order, for we think it was the counsel's duty to say what he did, when thus called to order, with the view of securing an unprejudiced trial to his client.

The facts being these, the counsel cautioned the Senate against any unfavorable impressions or prejudice that the report of the Committee might have made in various bosoms, as that report contained various errors of law and fact, and had been for some time printed & circulated from which he was fearful his client's case may have been prejudged, disclaiming at the same time any intention to impute improper motives to the Committee or to the Senate.—The counsel was here called to order by the Speaker for charging the Senate with having presumed the case. He promptly reiterated his disclaimer of intending any thing personal and was permitted to

proceed.

The counsel then remarked, upon the embarrassment which surrounded his client's defence against such charge at this time; that all men, in all ages, were subject to the infirmity of entertaining prejudices, however honest might be their hearts and intentions; that the most honest and confiding men were sometimes the most insensible to its influence; that he imputed no more infirmity to the Senate than our own experience, than the laws, than the Bible and the decalogue imputed to all mankind, and to himself, (the counsel.) Therefore, he begged leave to assume the province of the Preacher—as the Preacher's congregation ought not and could not take any offence, when the decalogue was read to them, so the triers of a man charged with an infamous crime, could take no personal offence at being respectfully warned and cautioned to examine their hearts, and guard against any prejudice insensibly taken possession there. He spoke of the latitude allowed in this respect in Courts of Justice, where, not only it was made the duty of counsel, but also of the Judge, to warn the jury against the danger of entertaining any prejudices, or participating in any public excitement on the defendant's case—that he felt it to be his duty as counsel to give this caution, and meant not to be personal or disrespectful in the least.—Therefore, he thought the Senate ought to be wary and distrustful of themselves, when party spirit was so rife every where in this State, and throughout the country, and discard all personal sectarian or party prejudice, for that prejudice would sometimes course through honest minds as insensibly as the blood did through the veins silently and warmly; or as insensibly as the atmosphere through the lungs." Here he was again called to order by the Speaker, on the grounds that a discussion of party feeling was out of order. The counsel immediately took his seat.

Senator Wilson then arose to the question of order, and stated that he did not perceive how the counsel was out of order, and that it seemed to him impossible that he could do justice to his client, unless such latitude of remark was allowed him. The Speaker called Mr. Wilson to order, and he took his seat. Senator Biggs next arose to the question of order, stating that he did not perceive that the counsel's remarks were out of order. The Speaker called him to order, unless he meant to appeal from the decision of the Chair, and if he did, he must reduce his point of Order to writing. Mr. Biggs did so, and read it aloud to the Speaker, who remarked, that he would write down his point of order himself. Having written it, and read it to the Senate, it was this—"The chair decides that the counsel for Mr. Ennett must confine himself to the rules prescribed for the government of the Senate in the discussion of the question before the House, and that it was not in order to refer to, or discuss the state of parties that divides the country."

The excited manner of the Speaker—his having changed the grounds of his decision—and the remarks of the counsel showing that he was improperly interrupted by the Speaker—satisfied the undersigned, that justice could not be done to Mr. Ennett's defence, unless that freedom of debate was allowed his counsel, which in no other tribunal before have they known it to be denied, and the necessity for which they think the sequel to this trial has fully shown; for, the fact is now before the world, that whilst the whole Senate of both parties, recorded their votes in favor of the first resolution, only his political opponents, [by a strict party vote,] voted his guilt and expulsion, and that AT LAST, this dreadful degradation of a man, [of unblemished character,] of his family and constituency, was only accomplished by the casting vote of the Speaker.

The enormity of the charge against Mr. Ennett; its enduring character; its blasting effect upon all connected with him; the honor of the State; and above all, the important fact that no appeal could lie, from the decision of the Senate, demanded the most unprejudiced and dispassionate enquiry, and free discussion of his cause.

Therefore, we most solemnly protest against the conviction and expulsion of Mr. Ennett, as a dangerous precedent, which in the ever-changing fortunes of party, renders every public man's character insecure—because we believe he had not a fair and impartial trial—because we believe the whole strength of evidence was in favor of his innocence, and because he was deprived of the free liberty of counsel, and a dangerous blow has thus been given to the inalienable privilege of freedom of debate.

Whitell Stallings, Larkin Swain,
W. A. Jeffries, Asa Biggs,
Geo. W. Thompson, Owen Holmes,
Thos. N. Cameron, Robert Melvin,
Robert H. Hester, C. Etheridge,
Thos. I. Pasteur, John Walker,
Geo. D. Boyd, James Tomlinson,
Jno. H. Drake, Jr. E. G. Speight,
John Reich, J. K. Hill,
John Ezum, L. A. Gwynn,
Geo. C. Eaton, W. N. Edwards,
Louis D. Wilson, W. N. Edwards
RALEIGH, Jan'y 4, 1845.