

Raleigh N.C.

Jan 3rd 1870

Judge A. W. Sargis
Greensboro N.C.

Dear Sir

Your communication of the 22nd ult. was received after some delay occasioned by my absence from the city. So far as your therein disclaiming ever having reflected upon my integrity and good faith in what I have said from time to time in the Senate about the subject matter of this controversy (as the Winston Sentinel represented you as having done) it is entirely satisfactory.

Will you also relieve me from the imputation of duplicity in my course in the Constitutional Convention, upon the basis of office of members of this General Assembly you make a series of statements in reference thereto which cannot in justice to myself, permit to pass unnoticed.

Of course, accept your declaration that it was your honest, deliberate purpose

to enlarge said term, but I assure you I have not the faintest recollection of ever having heard you avow such a purpose, and I am positive that such a purpose was never developed in debate upon my report.

You say that for the purpose of securing such enlargement, you prepared a section which you submitted to Col. Heaton and that he called my attention to it.

I know nothing of your having submitted such a section to Col. Heaton. I do know however that he never called my attention to any such section.

You say that when the report was under consideration upon third reading, while some one was addressing the convention, yourself, Col. Heaton, and myself, retired into the lobby behind the President's desk, and talked it over. That Col. Heaton insisted that it "would ruin us" "would ruin the constitution" &c &c.

My answer to these assertions is, that I have no recollection of ever having retired into the lobby

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to consult with you and Col. Heaton
on that or any other subject; and I
unhesitatingly concur with Col.
Heaton in the declaration that
no such consultation ever occurred.

You say that I there suggested
an amendment to sec. 2 & sec 27 in
the Constitution) instead of the
one you proposed. That you looked
it over and changed a word or two
by inserting, as you say the word
"evening". I have already denied
any knowledge of your proposed
amendment; and as I understand
you to allege that all this occurred
at the time of the consultation
which you assert took place,
but which Col. Heaton and myself
deny, a second denial is unneces-
sary.

I am unable to
account for your statement except
upon the hypothesis that your
recollection has been disturbed
by the action of the Convention
on the terms of our Supreme and
Superior Court Judges.

You remember that a large
and respectable minority in the

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Convention, was opposed to an elective judiciary that the committee on the judiciary, of which you and seven members, was instructed to provide for an elective judiciary that this having been determined upon, there opposed to an elective judiciary ought to have as long a term as possible and that it was the purpose of the Convention to enlarge the terms of our Supreme and Superior Court judges first elected. This was well understood, fully discussed and unequivocally accomplished.

It is not improvable that you have misapplied this enlargement of term to this General Assembly.

After the "Committee on the Legislature, its organization &c" of which I was chairman, had determined upon two years as the term of office for members of the General Assembly, the suggestion was made by myself in committee, that the

first General Assembly would probably be elected soon after our adjournment, and the question was asked, what shall be done about their term of office.

My committee very naturally and promptly assented to the proposal to add to the ordinary term of two years, the time intervening between their election and the 1st Thursday of the succeeding August.

Section 28 of my report (see convention journal page 193) was framed by me for the purpose of accomplishing such result. Upon the third reading of my report, sec. 28 was struck out; the journal says (erroneously I think) upon my motion and substitute adopted, which became sec. 27 of art. 2 of our constitution.

I think the journal is in error in reporting me as the author of the substitute for the following reasons viz.

1st I was the author of the section struck out.

2nd I was originally and continuously in favor of the return of James on the first Thursday of August 1870 as provided in my section which was struck out; which fact I don't omit; many members of my committee remember.

3rd I never heard any delegate publicly, or privately, avow any other position.

There is no latitude of construction sufficiently broad to harmonize sections 27 and 29 of art. 2 of our Constitution.

The conflict is an evident fundamental one. This fundamental would not have been perpetrated if there had been as you assert a purpose of accomplishing such enlargement of term.

I was not until after the adjournment of the Convention that I discovered this conflict; and it occasioned a regret as sincere as my surprise is great at the attempt which is being made to represent the Convention as having designed an

enlargement of first legislative term.

I have no intimation of what the solution of the question will be, but if by action of the General Assembly, or by judicial construction of actual conflicting sections, the term of this General Assembly should be continued until the 1st Thursday of August 1872, I would deserve neither praise nor censure.

I am altogether innocent of any purpose to accomplish such an enlargement of term. Such a construction of the constitution would do violence to the spirit and purpose of the committee which framed the article on the Legislative Department, and I believe, of the convention which adopted said article.

I have no hope of being able to effect your judgment on the issue between us. Your conclusion is dependent upon a chain of facts to circumstantially remembered to justify each a hope.

I have very plainly, though kindly,
stated my position in this con-
troversy, and our mutual friend
Col. Heaton, in as far as he is
concerned, fully sustains
me. I have said all that
I have to say upon this subject.
I dismiss it with an expres-
sion of my sincere regret that
your recollection should so
widely differ from that of Col.
Heaton and myself.

I am respectfully
Your obt. servt.

W. H. S. Lovell.

Letter To

a. W. J.

CHAUTAUQUA COUNTY NY HISTORICAL SOCIETY 2013