

In the ASSEMBLY, December 18, 1773.

The Bill, for establishing Superior Courts in this Province, was read the third time, passed, and sent up to the Council; on which they sent down to the House the following Message.

Mr. Speaker, and Gentlemen of the Assembly,

"This House upon the third reading of the Bill for establishing a Superior Court, are much concerned that the amendments they inserted upon the second reading of that Bill are not approved by your House. They now acquaint you, that they must still adhere to those Amendments, and desire with Candour and Moderation to justify their Conduct by such Reasons as they trust will be satisfactory to the good People of this Province.

"Your House are requested to call to Mind, that an Act for establishing Superior Courts, containing the same Clauses now insisted upon relative to Attachments, and limiting the Jurisdiction of the Superior Courts, passed last Session of Assembly, with a suspending Clause, and was transmittted by his Excellency the Governor to his Majesty for his Royal Assent. Your House has this Session been fully informed of his Majesty's Disallowance of that Act; a Disallowance expressly grounded upon those very Clauses for which you now so earnestly contend. Under these Circumstances, we confess ourselves at a Loss to know what beneficial End or Purpose can be answered by either House persisting to pass a Bill, containing Clauses which the Governor has so recently and solemnly declared to us in General Assembly he cannot pass.

"The Bill, as amended by this House, is conformable to the Plan proposed by his Majesty, and we are persuaded contains ample Provision for the Administration of Justice within this Province. Two legal Branches of the Legislature thus far approve the Bill; but if unhappily your House shall finally withhold its Assent, we shall soon find, by sad Experience, that the Wretchedness of this Country is not yet half complete.

"The Necessity of a Court Law is acknowledged by all; without one, this Province must soon be deserted by its Inhabitants, and an End put to its Name and political Existence. This House therefore are grieved to find so inestimable a Good as the Bill now offers to the People, rejected and refused by their Representatives, for the sake only of a comparatively small Advantage supposed to lie in a Mode of proceeding by Attachments; a Proceeding unknown both to the common and Statute Law of the Mother Country, relative only to the private Dealings between Subject and Subject, and if totally extinguished cannot in the remotest Manner be said to hurt the public.

"With Regard to the Section granting an Allowance to the Chief Justice and Attorney General, this House inserted it because it was Part of the late expired Law; not with a View of multiplying the Causes which at present so unfortunately divide the different Branches of the Legislature. We shall therefore not embarrass the present Bill by retaining that Section, but will submit a suitable Provision for those Officers to the Equity and Justice of the General Assembly. But this House cannot consent to a Repeal of the Fee Bill passed in 1748, till an equally sure and permanent Allowance is otherwise provided for the Chief Justice.

"Such are the Terms upon which alone this House can consent to pass the important Bill now before them; and if acceded to by your House, the Alterations will be made in the Presence of each of your Members which you will be pleased to find for that Purpose."

The House, in Answer to the said Message, returned the following:

Gentlemen of his Majesty's Honourable Council,

In answer to your message of the 18th instant, upon the third reading in your House of the bill for establishing a superior court, &c. this House, ever attentive to the faithful discharge of the important trust reposed in them by the inhabitants of this province, have in the conduct of every public measure, which during this session hath been subjected to our deliberations, had in view the interest and happiness of our constituents, as the grand object that ought to govern all our determinations. Appointed by the people to watch over their rights and privileges, and to guard them from every encroachment of a private and public nature, it becomes our duty, and will be our constant endeavour, to preserve them secure and inviolate to the present age, and to transmit them unimpaired to posterity. We have given to the bill, for establishing a superior court, the attention it merits; and without suffering private interest, passion, or prejudice, to intrude themselves upon our enquiries; conscious from our late melancholy experience, of the unhappy consequences that attend the extinguishment of the civil and criminal jurisdiction in the province. We dread the continuance of the calamity, and submit still to suffer, only to avoid a greater misfortune. We look back upon past grievances, without reproaching ourselves for being the cause of them; for an impartial world will do us the justice to own that we contend for nothing more than what we have, till lately, en-

joyed, in common with the rest of his Majesty's subjects in America.

The right of foreign attachments is exercised by our sister colonies, with every latitude requisite to promote their commercial interest, and to secure the property of their inhabitants. It is a right essential to every well regulated system of police, and is a security inseparable from traffic. In a province situated as this is, where trade is the vital principle of its constitution, every circumstance that places us on a more unfavourable footing than our neighbours is to enrich them at our expence, and build the increase of their trade upon the ruin of our own. You are well aware that we need but look to the colonies next adjoining us to discover the invidious distinction, and to find cause to regret, that with equal merit, we have been less the favourites of government.

We are fully sensible that the application to his Majesty, that an act passed at the last session of assembly, for establishing superior and inferior courts in this province, with a suspending clause till his Majesty's pleasure was known, with the right of attachment reserved to this province in its due extent, has failed to obtain his Majesty's concurrence. We lament the ill success of our endeavours; but still matter ourselves that our sovereign is not inexorable, and that he will ever lend an ear to the just complaints of his faithful subjects. To despair of obtaining redress from the grievances we now complain of, would be to impeach the justice of the British government, and to distrust the virtues of our King and father. To sit patiently down in an humble acquiescence under this denial of a security by attachment, would render us unworthy his royal interposition: It would be an implied resignation of the rights of subjects, and a violation of the duty we owe to him as the protector of them. We shall in the most humble manner, address his Majesty upon this interesting occasion; and doubt not but that you, equally zealous for the happiness of this colony, will heartily concur with us in a measure that promises the greatest probability of being accompanied with success, although your opinions are different from what this House maintain. We shall be happy to find that no passion, nor private motives, influence your consultations; but that with candour and moderation you pursue the same object, tho' by different means.

We doubt not but that in altering the bill for a superior court, &c. a most faithful and strict attention has been paid to the plan proposed by his Majesty to his Governor; but this House, the most important branch of the legislature, cannot conceive that the attachment clause, as proposed by the Council, give a remedy equal to the evils they are intended to obviate. The limits within which an attachment so restrained can only operate, are too confined to render that process beneficial; the oath prescribed as a tainable by every one who is not a stranger to the pleasing influence of truth, and horror of perjury. To swear that a man absconds to avoid payment of his debt, is to pry into the secret movements of the human heart, and to assume a province not short of inspiration. That you approve the bill is by no means obligatory upon our assent; and whatever may ensue from this difference of opinion, it will not be difficult to decide whether the calamity is to be charged on this House, contending for a right which the inhabitants of this province have for a long time exercised beneficially, or to those who urge an innovation in the constitution of this province, which must deprive its inhabitants of what it has so long enjoyed unimpeached.

This House, for themselves and their constituents, heartily acknowledge the necessity of court laws; and without anticipating the horrors of a desertion of the inhabitants of this colony, and the extinguishment of its name and political existence, they experience in the present unhappy state of this province sufficient to induce them to with a change upon legal constitutional principles. The rules of right and wrong, the limits of the prerogative of the crown, and of the privileges of the people, are in the present refined age well known and ascertained: To exceed either of them is highly unjustifiable. Were the attachment law, as formerly enjoyed by us, as small an advantage compared with that of having court laws as you contend it is, the right we possess to that is equal to the right to a more important object. In the smallest, it is bartering the rights of a people for a private advantage. We observe, with surprize, that a doctrine maintained by a former House of Assembly, is now adopted by you; and that you disclose as your opinion, that attachments are not known to the common or statute laws of England. What then did government tender to this people, in lieu of their former mode, when it proffered to the last assembly A MODE OF ATTACHMENT AGREEABLE TO THE LAWS OF ENGLAND.

This House, upon all occasions, will avow the necessity of attachments, in the manner we lately enjoyed it, in point of expedience as well as right, and viewed upon the scale of relation to the private dealings between subject and subject, it has every advantage that can be reasonably sought, as the trade of this colony and its neighbours is principally confined to that private mutual intercourse which you mention.

With respect to the allowance to the Chief Justice

and Attorney General, inserted by you in the bill for constituting a superior court, &c. and referred to in your message, we answer, that it is the undoubted privilege of the people, and of their representatives, to make a disposition of their own moneys. The metropolitan of the Council, with respect to such disposition, is an infringement upon the rights of the people, and an open subversion of a fundamental principle in our constitution. Sensitive of the importance of the judicial character, and desirous to provide for those to whom government may think it to intrust that department, in a manner worthy the acceptance of men of integrity and eminence, we conceive the bill for regulating the fees of the Chief Justice, to be a mode of provision not adapted to the circumstances of this province, or to the dignity of that office. A dependence upon the precarious increase or diminution of fees, and the uncertainty which attend the collection of the fees accruing from them, create an inconvenience which this House are desirous to obviate. And when his Majesty shall be pleased to appoint the Judges during good behaviour, we will then the more sincere gratitude for such an appointment, both in our profession and practice; and will give a perpetual salary to such officer, that will amply honour to the appointment. In the mean time, till he shall, by a temporary law, make such provision for the Chief Justice, Associate Judges, and Attorney General, as shall be suitable to the circumstances of this province.

These are the motives which have ruled the conduct of this House. They are submitted to you as circumstances which, if they do not induce you to alter your determinations, will to you and the world accord the fullest conviction, that we are sincere and determined in the measures we have adopted; and that we are convinced, that we cannot in the smallest degree depart from them, without a breach of faith to the public, and without debasing our legislative character. Of course we cannot consent to the alterations you propose in the bill.

JOHN HARVEY, Speaker.

To the FREEHOLDERS of CRAVEN COUNTY.

Gentlemen,

We send for your perusal, the Assembly's reply to the Governor's speech, and answer to the Council's message respecting court laws, wherein the reasons for not admitting any material alterations in those laws are expressed, and will perhaps meet your approbation. Your advice to direct our future conduct on this most important subject, will be highly agreeable.

With an account of the principal bills prepared in the Assembly, and prevented from passing into laws by a prorogation, we send lists of balances due from the Sheriff of the Southern district, as they stand stated in the Treasurers books for the year 1772, exclusive of all other arrears for public and parish taxes; the Northern Treasurer not coming to the Assembly, has prevented sending the balances from that quarter.

our last election, accept the tribute of our grateful thanks; and be assured, Gentlemen, that to merit a continuance of those favours, by observing your directions, and strictly adhering to the rights and liberties of the province in general, and of this county in particular, shall be our constant care.

Newbern, Jan. 3, 1774. } LEMUEL HATCH,
JAMES COOR.

An Account of the principal Bills prepared in the last Assembly, and prevented from passing into Laws by a prorogation.

- A Bill for establishing six Superior Courts.
- A Bill for establishing inferior Courts.
- A Bill for establishing triennial Assemblies.
- A Bill to prevent counterfeiting in money.
- A Bill to prevent hunting by fire light.
- A Bill to prevent horse stealing.
- A Bill to prevent malicious and frivolous prosecutions.
- A Bill to prevent the wilful killing of slaves.
- A Bill to prevent sheriffs collecting insolvent taxables.
- A Bill to continue the five pound act.
- A Bill to continue the verry act.
- A Bill to continue the militia act.
- A Bill to discontinue the one shilling tax.

A List of balances due from the Sheriff in the Southern District for the Year 1772, exclusive of all other arrears for Public and Parish Taxes.

Sheriff of	Brunswick County,	-	-	£. 566	10	8
	Cumberland County,	-	-	565	16	8
	Dobbs County,	-	-	108	2	4
	Johnston County,	-	-	155	13	4
	Mecklenburgh County,	-	-	610	16	8
	Onslow County,	-	-	277	13	4
	Perquimans County,	-	-	529	3	4
	Surry County,	-	-	411	3	4
	Tryon County,	-	-	325	6	8
	Wake County,	-	-	479	5	10
	Rowan County,	-	-	1364	11	8
	Craven County,	-	-	1335	11	8

£. 8165 8 6

On Saturday last was married here, LANCELOT CRAVE BERRY, Esq; Collector of this Port, and only Son of the late Hon. CHARLES BERRY, Esq; Chief Justice of this Province, to Miss SALLY CUTLERIDGE, only Daughter of the late Capt. CUTLERIDGE, of this Town; a most amiable young Lady, of great good Nature, and pleasing Affability; whose happy Disposition and Equanimity of Temper will ever bar out those late Salutes of Iniquity that too often break in upon, and interrupt Human Felicity.