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General Assembly.

HOUSE OF COMMONS.

DEBATES

on the PENITENTIARY BILL.

Monday, Nov. 23.

The House went into a committee of the whole on this bill, filled up in a blank, and discussed some of the system, but the principle of the measure was not touched. This, it is expected, will be examined on its second reading, which was fixed for Wednesday, but was on that day, on motion, further postponed to Monday the 27th. We shall therefore defer making use of any notes taken in the committee of the whole, until a view of the whole proceedings upon the bill are given.

ON THE

Divorce and Alimony Bill.

Tuesday, Dec. 1.

The House having resolved itself into a committee of the whole on the above bill, Mr. Matthews in the chair, and the bill having been read,
Mr. COTTER, who introduced the bill, said he regretted when the subject was before under consideration, he had not been permitted to bring forward the amendment he had mentioned, as he trusted it would have done away many of the objections which existed against the bill in its present form. He rose now to move the amendment, which he hoped would be adopted. [The amendment was read, and was inserted in a new bill.]

Mr. E. ALEXANDER said, if the gentleman who proposed this amendment, would point out the advantages which it possessed over the original bill, to which it was proposed as a substitute, he supposed it would not be objected to. He had before him a printed copy of the bill which had been brought forward every session for five or six years past, and which had been taken from a law passed in the year '51 or '52, now in existence in the State of Pennsylvania, of which the bill now under consideration was a literal copy. This law he believed, had been drawn by men of very superior talents, with great deliberation. He had attended to the reading of the proposed substitute, and could not see any great difference between the two bills. In all the substantial parts they were the same. They differed only in respect to arrangement; and instead of there being any superiority in the method, he thought the amendment rather worse in that respect than the original. He did indeed observe two things now in the amendment: the first was an extension of the ground on which divorces might be obtained, which he thought improper. The other objectionable part, only having heard it transiently, he could not at that moment recollect. The clause relating to the duration of the act for two years he would call attention to; but as to the rest, the alterations proposed were rather for the worse, and the method of arrangement not being so good as the original, he was in favour of retaining the original bill.

Mr. COTTER was sorry the gentlemen from Salisbury could see nothing in his amendment to approve. He thought the clause requiring the husband at the same time that he petitioned for a divorce, to deliver in a Schedule of his property on oath, was an improvement to the original bill, which makes no provision of the kind; and a man after he had obtained a divorce, might go to another part of the county, & take his property with him. He thought there were other improvements on the original bill; but they were before the house, and would be judged of. As to his abilities, they were not to be here, extraordinary, and the criticism made on his language by the gentleman last up, might be just; but though he had not had the benefit of a liberal education as that gentleman, he hoped he was able to express himself so as to be understood.

Mr. ALEXANDER replied that it was very far from him to censure the gentleman's motives or talents; he believed his motives pure, and had a very respectable opinion of his talents; but he did not think that a departure from the original philosophy of the bill had rendered it any better. He had reliance on the wisdom of the Legislature of Pennsylvania, though he did not observe any want of official parity in the language of the substitute. The very clause which the mover had mentioned as an improvement to the bill, was the objectionable part which he had marked when the amendment was read, but which had escaped his recollection when he last rose. It appeared to him that such a regulation would be too rigid and severe, and he thought it unnecessary. Hence, in the original bill the Court had sufficient power given them to make such an allowance to the woman as they deemed proper, not exceeding one third of the husband's income, and to call for a schedule of the man's property, if they deem it necessary; or on refusal to do so, the fact would be dismissed.

Mr. COTTER thought the provision he proposed was very different from that in the bill. His design, when he married a woman with a handsome property, the wife in suing for redress could only recover one third of it. This he did not think sufficient, where a man had married a woman's property, and not the woman.

The question being put on receiving the amendment, it was rejected. The committee then rose and adjourned the bill without amendment.

The bill being returned and the bill section of the bill read,

Mr. COTTER observed that as the committee of the whole had thought proper to reject the amendment which he had proposed to the bill, he had nothing more to say upon it. If any other gentleman of great talents than himself, would bring forward any amendments to the bill, they were at liberty to do so. He had an objection to the bill in its present form, and should vote against it, though he had no doubt it had been drawn by gentlemen of great abilities, both natural and acquired.

The bill being gone through, Mr. Alexander moved an additional section, limiting its duration to two years which was agreed to.

Mr. W. W. JONES observed that when the legisla-

ture attempted to grant to any particular persons relief from such connections which they may have formed, it ought to be careful that it did not plunge a greater number of persons in the deepest misery and distress. He believed it this bill were passed into a law it would have this effect. The evil, said he, a numerous class of men, known by the name of fortune-hunters, which is chiefly composed of gamblers and persons of base character. These men are always prepared to take every advantage in their power to seduce and delude girls, and would doubtless lay hold of the advantages held out in this bill. It may be said that these girls have parents to defend them against such deluding men. But have we not many instances of the ill of God deluding girls of their parents? And that frequently such girls are left with large fortunes, which are committed to the care of guardians; and these guardians are compelled, whenever their wards make a contract of marriage, to pay over their fortunes to their husbands? If this bill be passed those men who have married for the purpose of obtaining fortunes, will no doubt place their property in such a situation that it cannot be come at by the friends of the wife; they may place it in the hands of a friend, and after a divorce is obtained, get possession of it again, and by this means become securely possessed of what they had so unwearably obtained. But it may be said, that a man may be compelled by a Court of Justice to surrender such relief to the wife as the Court may think proper; and exceeding one third part of his income; not granting that such part of the property be allowed the wife, if the husband be a gambler or profligate (as is likely to be the case) it is probable that his property might be lost. And if the property be expended, then the unfortunate wife is left in a situation which multiplies the tender mercies of every man.

In other instances, the granting of a divorce to a wife, might defraud the children of her husband. A larger property might be given in this way to her; and the wife having got one third of the property to her own right, will probably become a prey to some deluding person; for there are not wanting men who would not hesitate to bear an imputation of fraud, when they can gain considerably by the act; men who are always ready to take advantage of unsuspecting innocence.

There is another situation which pierces the measure in a very important view. Suppose a man dies, leaving a wife, for whom he had the most tender affection, and to whom he was willing to leave the care of his children and the disposal of his fortune; if some infamous man might take advantage of her, for the sake of her money, and deprive the children of their just rights. He is immediately put in possession of her personal property; and by his influence over her, gets her to join in a conveyance of the land to a friend, who would then dare to convey it to him. He has it then in his power not only to cheat the children, but the widow of her inheritance.

But this bill has been amended by limiting its duration to two years. In the course of this time, Mr. J. believed greater mischief would be committed under its operation than would be remedied by the law. To be proposed as a lawyer, he has no doubt, were this bill to pass into a law, he should reap advantages from it; but while he continued a Legislator, in performing his public duty, he trusted he should always lose sight of his private interest. He hoped therefore the bill would not pass.

Mr. COTTER said, it was true, he had introduced the bill; but it was from a belief that the necessary amendment would be made to it. He thought such a law wanted, but had objections to some parts of the present bill. He mentioned in particular that part which requires a residence only of one year in the State to entitle a man to sue for a divorce, which, he said, might encourage men in other States to come and reside a year in this State for the purpose. If the bill was not amended, he should vote against it.

Mr. BLOODWORTH believed there was little occasion to spend the time of the House on this bill. He thought the gentleman from Fayetteville had given some very substantial reasons against the passing of it. It would certainly open a door to the greatest villainy; advantages would be taken of the law, in spite of all the provisions against them, ruinous to the fair sex, depriving them of their fortunes and of their virtue in the most unwarrantable manner. He hoped gentlemen would seriously consider the consequences of passing this law, and that it would fall to the ground; he hoped such advantages would not be offered to speculators, to obtain fortunes at the expense of innocence and virtue.

The question on the bill's passing its second reading was then taken, and there appearing only 18 votes in favour of it, it was of course lost. Those in favour of the measure, were Messrs Alexander, Bradshaw, Collins, Guyther, Harwell, McLennox, Matthews, Moore, Robert Smith, Sturwick, Tatam, and J. G. Wright.

On the Bill for taking Lists of Taxable Property.

Same day as the foregoing.

The Bill "to fix an uniform time for taking the lists of taxable property throughout the State, and for enforcing the collection of taxes," being on its second reading, and the time of taking the list having been fixed for the last ten working days in April, in each year, and some other amendments made.

Mr. F. WALKER moved to amend the bill, in the part where it is directed "that every person falling to deliver in a list of his taxable property, shall pay a two-fold tax." He thought this provision ought not to extend to persons living out of the country. There was a great deal of property in this situation, Mr. W. observed, and the owners of it might have no knowledge of this law. The taxes ought to be equal to all, and if the State got a single tax paid, it was all that it contemplated. He hoped therefore such persons as lived out of the country might only be obliged to pay the single tax.

Mr. W. W. JONES saw no reason why a man liv-

ing out of the county where his property lay, should not pay a double tax, as well as those who lived in the county; because the law has wisely provided that he may deliver in his list by himself, or by his agent. He hoped the amendment would not be agreed to.

Mr. F. WALKER said, he must contend for the property of his motion. A man who lives in the county has it always in his power to enter his property; but he who lives at a distance may neglect to follow his directions, and some casualty might prevent the entry from being made. He did not think it right for the State to take advantage of the delinquency of such persons, and to make it a condition that they should be required to be present.

Mr. W. W. JONES said, the reason why it was proposed that a man who did not give in a list of his property should pay a double tax, was that the State should not be defrauded; without this provision, owners would not give in their property, and the State would lose two thirds of its taxes, as it was notorious that in every county considerable quantities of land were at present unregistered, and escaped taxation altogether.

Mr. TATOM observed, it was one of the purposes of this bill to make non-residents pay their taxes. At least one-sixth of the land in the State, had heretofore escaped taxation; but the proposed double tax, it was expected, would induce the owners of property, who live at a distance from it, to see that it is duly entered.

Mr. F. WALKER said, that at present, if land was not entered, the taxes upon it were not lost to the State, Gentlemen need only look into the State Gazette, and they would constantly see a long list of the advertisements of Sheriffs for the sale of unregistered land, for the taxes due on them. He did not mean to excuse any property from tax; what he wished, was, that the tax should be equal to all.

Mr. ALEXANDER believed sufficient had been said, to convince the house that the bill was proper as now amended. If an objection could be made to a double tax being laid in any instance, it would be in cases where owners were not residents within the State. There might be some reason in exempting from the double tax such persons as resided in another State, or in a foreign country; but surely it could be no hardship on any citizen residing within the State; because every citizen is supposed to be acquainted with the laws of the government under which he lives. If the gentleman from Rutland would confine his amendment in this way, he should not object to it.

Mr. BLOODWORTH said, that it was the intention of this bill to guard against that evil which was at present sustained by the revenue, owing to persons living out of the county where their property lay, not giving it in. It was well known, that in the western counties, not one half of the land would be given in, except this double tax was laid. Those who were not acquainted with the laws in force where their property lay, and he hoped the amendment would not pass.

The motion was put and negatived.

The question was now on the bill passing its second reading, and the yeas and nays were called by Mr. F. Walker.

Mr. BLOODWORTH hoped the yeas and nays would be called with care on this reading; and taken on the final passage of the bill. During part of the discussion on this bill, he had been necessarily absent, and there were some parts of it which he thought needed amendment. The amendments might be introduced on the third reading; and the yeas and nays then properly taken; but if he were called upon for his vote, in the present stage of the bill, he should vote against it, though he might be for it ultimately.

Mr. TATOM said, this bill was before the house three years ago, and it was necessary it should be passed, if gentlemen wished the revenue of the State to be duly collected. One-sixth, it is not one-sixth part of the revenue was at present lost, for want of some such regulation as the present. In looking over the records in Orange county, where it would be acknowledged the public business was as well managed as in any other county in the State, he was convinced one-fourth part of the black polls were not entered, and the whites were constantly diminishing. Two years ago there were 1,614 black polls when taken for the direct tax, and now only 1,109, and he believed one-fourth part of the land was not entered. He had no doubt there were ten thousand polls in the State not given in; if Gentlemen wished the bill to amend the bill, they might do so on the third reading, and not, because it was not altogether what they wished it, vote against its passing a second reading.

Mr. ALEXANDER was clearly in favour of the bill, and hoped if any gentleman had objections to it he would now state them. He trusted, because Gentlemen could not have every amendment they proposed received, they would not vote against the present passage of the bill. If the principles of the bill were good, every member ought to support it; all must confess that there are great deficiencies in the present collection of the revenue. If nothing more was obtained by the bill than the establishment of an uniform time of taking the lists, it would be a desirable measure. At present, every county regulates its own time for appointing justices to take the lists of taxable property, &c. By the time being uniform throughout the State, the situation of the people will be generally drawn to it, as the entries can be made at no other time. The provision for collecting the taxes of persons absent to move away, he still thought a good regulation. Heretofore, Mr. A. observed, our Treasury had been filled from resources which were now nearly exhausted; and it was therefore necessary to introduce greater strictness into the collection of the revenue, than had hitherto been observed; what one man gains, another loses, every man who is equal liable, ought to pay.

Mr. BLOODWORTH added, all he had required was, that the gentleman who had called the Yeas & Nays, would withdraw his motion, and let them be taken on the final reading of the bill. He wished every

necessary regulation to be adopted; but he did not wish to give his vote in the dark. He saw something in the bill which did not meet his approbation, and he thought it would be no disadvantage to it, to suffer to pass at present in the usual way.

Mr. WALKER observed, that it was not less his desire, than that of other Gentlemen, to have the Revenue duly collected. He was not a friend to the bill, nor should he vote for it; but if the Gentleman from New-Ebor would further time to consider the bill, before he was called upon for his yeas or nays, he should not object to it, and withdraw his motion.

Mr. J. G. Wright, though the bill might not be completed, that Gentlemen would not vote against its passing a second reading on that account. He trusted the bill would pass at third reading, and that the Yeas and Nays would be now taken.

On putting the question, no objection to the passing appearing, Mr. E. withdrew his motion.

MINUTES.

Monday, Nov. 30.

Mr. J. G. Wright, from Wilmington, appeared, was questioned, and took his seat.

A message was sent to the Senate, informing that body, that General Davis, whom the Governor had appointed a Commissioner to adjust the contest respecting the boundary line between this State and S. Carolina, being present, and wishing to communicate with a confidential committee on this subject, a joint committee was proposed.

The Senate agreed to the appointment of a committee for this purpose; but not to its being called a confidential committee, or to its being invested with any power to withhold from either House any information that may be obtained on this subject; always relying on the puncture of the members of any committee not necessarily divulging to the public, matters proper only for the investigation of the Legislature.

Received from the Senate, a resolution requiring the Governor to demand from the executives of the Mississippi Territory, and of the State of Tennessee, the surrender of Wm. Tyrrel & Sio. Kelly Donaldson, to the end that they may be brought to trial for frauds.

The following bills were presented and read, viz. by Mr. Dabney, a bill to amend the several acts, granting separate elections in the county of Chatham; by Mr. Sturwick, a bill to amend the 19th section of an act for the better regulation of orphans and security and management of their estates; by Mr. Jas. McLean, a bill for the better regulation of taverns, ordinaries, stores, &c. by Mr. Ellis, a bill authorizing the treasurer of public buildings in Craven county, to call delinquent sheriffs and commissioners in the district of Newbern, to account for district monies; by Mr. J. Parker, a bill to amend an act passed in 1794, to prevent the future importation and bringing of slaves and indentured servants of colour into the State; by Mr. Ford, a bill to amend an act to regulate and fix the prices for inspecting and cupping tobacco, passed in 1793.

The committee of propositions, &c. reported a bill to authorize David Dickey to collect the arrears of taxes due him as treasurer for the county of Rutherford; also to establish two separate elections and a general matter, in Bladen county.

Resolved, that no bill of a private nature be introduced after Saturday.

The house went into a committee on the bill to amend the penal laws, as stated in the debates.

The Senate informed the house that they had rejected the bill to amend an act to prevent frauds in the sale of property therein mentioned, passed in 1794.

The Senate proposed that a bill which they sent to establish a Superior Court of Law and Equity at Smithfield, in Johnston county, be referred to a committee of the members from the districts of Newbern, Hillsborough and Halifax. Agreed.

Tuesday, Dec. 2.

The following bills were presented and read, viz. by Mr. McLennox, a bill to authorize the administrators of Nicholas M. Niell, late Sheriff of Moore county, to collect the tax due; by Mr. B. Smith, a bill to alter the mode of raising money to defray the expense of the jurors from Burke county to the courts, &c.

The question on the second reading of the divorce bill was taken by yeas and nays, and lost, as already stated.

Received from the Senate, a report of the select committee appointed to confer with Gen. Davis on the subject of the boundary line, which was concurred with.

Received also, a bill to repeal the 18th section of an act for appointing commissioners to extend the boundary line of this State, passed in '56.

Wednesday, Dec. 3.

Bill presented and read, viz. by Mr. Bonner, a bill to establish an inspection on Dan River, on the head of A. Salmon Bollick, in Stokes county; by Mr. Clarke, a bill to repeal part of an act passed last session, to prevent the working two mines at the same place on the Pedee, &c. so far as relates to a certain island therein mentioned; by Mr. Tatam, a bill respecting retailing spirituous liquors in the counties therein mentioned; by Mr. Knight, a bill to secure to Hannah Mason such estate as she may hereafter acquire; Mr. Small, a bill to empower the County Court of Chowan to appoint the duties of the Inspector, &c. by Mr. Gerrard, a bill to alter the place of holding the separate election in the county of Currituck; by Mr. Kennedy, a bill confirming the title to lands entered in Beaufort and Martin counties; and to ascertain the boundaries of said counties; and by Mr. Fisher, a bill directing the manner in which confiscated lands shall in future be disposed of.

The following message was received from the Governor:

(See the last page.)