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DAILY SENTINEL.

"I WOULD RATHER BE RIGHT THAN BE PRESIDENT."—Henry Clay.

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REPORT OF THE COMMISSION,

Appointed by Gov. Holden, under an Ordinance of the Convention, to prepare a Code for the Freedmen of this State.

(CONCLUDED.)

The committee will proceed to give some of the reasons which have induced them to recommend the reception of the evidence of negroes, as provided in section 11.

First. The present helpless and unprotected condition of the race demands it. Their condition of personal security is greatly changed. Prior to emancipation, they were grouped on farms which they seldom left, and were overlooked by their masters or overseers, surrounded by families of white children.

They were not watched by the whites to preserve the discipline necessary for servitude, and to prevent spoliations, but were cared for and protected as property. It was the slaveholder's interest to prevent, and, when committed, to punish any injuries done to the persons of their slaves. The interest of one slaveholder was the interest of all; so that their security was guaranteed by the common interest of the wealthiest and most powerful men in the country, and, of course, of all their kindred and adherents, among whom, generally, were their poorer white neighbors. Thus the person of the slave (without reckoning the feelings of humanity which have generally characterized the slaveholders of this State) became the subject of general protection by every class of white men, and any outrage on his person a general cause for common vindication. With this shield for security, the white aggressor was checked in his violence; and, if not, his detection was almost sure. These sources of personal security are all removed by emancipation, and, without the capacity to bear evidence, he stands, in numerous cases, utterly defenceless, except by opposing force to force against every species of outrage offered to himself or to his family, whether in his presence alone, or under the eye of other colored persons. If he should submit to the violence, and suffer the most grievous wrongs, there is no one who can be heard in his behalf; and he could expect, from his submission, nothing less than a repetition of his unredressed wrongs.

If he should oppose force to force, in the justest cause, whatever might be the result, his mouth and the mouths of all colored witnesses would be closed.

It is a truth not less obvious than established by all experience, that breaches of the peace always decrease in proportion to the facility and impartiality with which the violater is brought to justice. Citizens will not readily avenge themselves when the sword of the law is at hand to do it for them. But when the law is powerless, from whatever cause, the hand of private violence will be sure to come to the aid of self-defence. It is, therefore, clear that by protecting the person of the negro, we shall most certainly protect the person of the white man. If the former may be outraged in his domicil, or in secret places, or along the highway in open day, with impunity, because he may be incompetent to testify to the wrong, he will turn from the door of the courthouse and seek his redress elsewhere, and in a way too that will likewise shut the mouth of him who may witness the fact. Let no one suppose such a result improbable, if the great and just lawgiver of the Jews has himself set the example to an enslaved people.

Secondly. The admission of such evidence is necessary to secure the colored people in their property.

While in slavery they had no property. What was set apart for their use belonged to their master, and was under his protection. In their new state they enter on the broad ground of citizenship, and become actors in all the departments of social life. They are allowed to trade with the white man in every article of property; to possess and cultivate lands, and, by all wise means, should be encouraged to habits of industry and a desire for honest acquisition.

The protection of a man's honest gains should ever be, after the protection of his person, the next great policy of a wise commonwealth. If the property which a negro shall own, his cattle, his money, may all be carried off, yea, his very house robbed of its furniture, and his person of his valuables by abandoned white men, and he shall be unable to bring the robbers to justice because the witnesses are colored, can the race feel any ardent disposition to labor for themselves? On the contrary, will they not feel doubly tempted by such want of security for their own property, to become depredators themselves especially, when they reflect that it is the white man's policy, which thus exposes them to licentious white men?

But, besides such glaring cases of public wrongs which would go unredressed by excluding their evidence, there are many of a more private nature, which depraved white men would perpetrate on them or procure to be done by their negro associates, as their instruments. Already the wicked white man and corrupt dependent negro have banded together in lawless thefts and frauds on industrious and peaceful citizens, both white and black; and the white associate, if negro evidence shall be excluded, will stand secure in his villiany behind his colored friend.

The calamity to public virtue and private rights will be incalculable, if those who were injured could not testify against the perpetrator of the crime. How shocked would every citizen of North Carolina feel, if the Legislature should enact that no person assaulted and beaten, no one whose property was stolen, and no one ravished, should bear evidence of the crime? The exclusion of negro evidence places that race in just such a condition.

The committee are of opinion that the protection of person and property imperiously demands that the evidence of colored persons be admitted for that purpose, unless it should be excluded upon some ground of public policy still higher than such as favors its introduction. We have heard but one that is plausible, and that is the *general falsity of such evidence.* No one pretends that it is *universally false.* It is urged, however, that, for the greater part, the evidence is not reliable, and, if universally believed, would produce far more wrong than right.

We are fully aware of the prevalence of this vice among the race. It is a natural offspring of their recent slavery and degradation.

Forced to an involuntary servitude, and required to do many things against their will, without any apparent profit to themselves, it was natural for them to disobey, if they found temporary ease in disobedience; and, to avoid correction, it was equally natural for them to endeavor to escape it by falsehood. The vice of lying, is and ever has been, common to all people in slavery. Universal and unvarying truth is the highest and purest of all virtues; and if the most veracious persons only were competent witnesses, there would be many cases of the highest interest to the public without a single witness. Such a rule, however, has never marked the policy of justice in its investigation of facts.

It has been said that in a by-gone age, the rules of evidence with us were framed rather to exclude falsehood than to admit truth; but even when these rules were administered in this spirit, all persons above seven years old, of sufficient understanding, not religiously insensible to the obligations of an oath, nor parties directly interested in the cause, were competent witnesses, unless they had been rendered infamous by conviction of some infamous crime, and judgment rendered thereon. These were English rules of the common law; and, so long as they prevailed, there was no nation on the earth whose inhabitants were excluded as witnesses from English courts. It mattered not what was their color, clime or religion. It is probable that at a very early period, after the introduction of African slavery in this State, the slave was forbidden to testify against a white person, and, it is probable also that the exclusion was soon extended to free persons of color. Slaves were not allowed to bear testimony against free persons of color until 1821.

The policy of excluding such testimony was founded on two considerations. First, The entire and absolute dependence of a slave on his master, and their social relation which rendered him unfit to bear witness for or against his master; or for or against any person to whom his master extended his favor or dislike. Besides this, the settled policy was to humble the slave and extinguish in him the pride of independence. This latter policy was extended in 1821, to the free negro, who, it was alleged, was greatly corrupting the slave by claiming superior privileges over him.

Emancipation having destroyed the distinction, all legislation concerning the colored race, must be the same.

The rules regulating the admissibility of the evidence of white persons, with a few exceptions, remain with us as they were a century since. But all at once the slave has disappeared, and upwards of 300,000 free persons of color are added to the population; these, with those before existing, constitute one-third of our entire people. Shall they be admitted to the witness stand? If it ever was, it is certainly not now, our policy to degrade them. On the contrary, our true policy is to elevate them in every way consistent with the safety and good government of the community. They must be educated out of their ignorance, and reformed out of their vicious habits.

If the admission of their evidence will not seriously endanger the administration of our laws, our manifest policy is to allow it, for nothing, in our opinion, tends more to inculcate a regard for truth than the almost unavoidable detection of falsehood, which occurs in judicial investigations before a jury, where the parties and witnesses are known, and their manner and conduct are scrutinized in the ordeal of trial.

If it be true that either the negro race, or the negro in our midst, civilized as he is beyond his native condition, be so mendacious that he cannot be safely heard in our court of justice, it seems to us that it is one of your highest duties to exclude them as witnesses in all cases whatsoever, as well as those in which they are the sole parties, as those wherein one of the parties is a white man; and, above all things, not to allow persons of color to be convicted of capital felonies and deprived of life, on such unreliable evidence. If, to this suggestion, it may be truly replied, that he can be trusted when his own color is on trial, then it follows that he yet loves truth better than falsehood, unless he is seduced by his prejudices against the white man. Now, if this be so, this general characteristic of the race will soon develope itself, and thenceforth receive its just estimate at the hands of a white judge and a white jury. It is just to truth, however, for us to admit that neither during the wonderful and enduring conflict of arms, popularly announced, in their very midst, to be in behalf of their freedom, they did not exhibit, nor since its termination, have they exhibited any decided marks of prejudice against their late masters.

It must be conceded by the opponents of such evidence, that if strong prejudices be sufficient to exclude the testimony of witnesses, all experience teaches that public prosecutors, near kindred, and personal enemies to be set aside as incompetent; and, if general corruption be also sufficient cause for exclusion, the man whose character for truth on oath, is proved by all his acquaintances to be bad, ought no more to be heard in the ascertainment of facts, than a negro. Yet in all these cases the witness is heard, subject to so many "grains of allowance" on account of his established and admitted infirmity, as a jury may judge to be the proper measure. It is settled by our highest judicial tribunal, that the testimony of a witness who commits a perjury, apparent to the jury in the very case in which he is examined, must, nevertheless be weighed by the jury for what it is worth.

By the laws of all civilised Europe, regulating the competency of witnesses, none are excluded by reason of character, race, color, or religion. We, ourselves, admit the semi-barbarian of every continent and island; of every nation and tongue; of every religion, christian, heathen and pagan; and of every color and race, unless he may fall under the ethnological varieties of the human species, denominated *Negroes* and *Indians.*

We are not prepared to admit, nor indeed do we believe, that the colored man in North-Carolina is entitled to less *Christian* oath, than the colored Musselman, or heathen of Asia, or Egypt, or of other parts of Africa, is when sworn on his *Koran* or other *symbols* of religious reverence. And when we consider the many thousands in the State, who are in full fellowship as christians, though we are quite sensible of the general demoralization which pervades them as a class, we feel little dread for the consequences which may attend the admissibility of their evidence, as reported.

In offering our reasons for allowing the evidence, we have conceded the general demoralization of the colored population: but we should do great injustice to many of them, if we should close this report, without excepting from the stigma hundreds, who, throughout their lives, have conducted themselves in a manner altogether becoming the best of citizens, and deserving the highest praise. These are lights, indeed to all others; and the consideration of respect in which they are held, ought to stimulate and encourage others of their race to practice the virtues of honesty and truth, which have served to distinguish the few.

The committee hitherto have argued that, if the proposed evidence be admitted, subject to the rules long established among us, and derived from our English ancestors, the administration of justice will have little to apprehend from the depravity or prejudice of the witness. In proof of this, they beg leave to invoke the attention of your honorable body in the recent experiments on those rules, made in England, and in many of the United States. They will specially notice only those made in England within the last twenty-two years.

Up to the year 1843, like rules, for the most part, prevailed in this State and in England.—In that year a great innovation was made by statute 6 & 7 Vict. removing many disqualifications, because of interest in the witness. So beneficial to the ascertainment of truth (contrary to all previous theory) did this experiment prove, that, in 1852, the Parliament (St. 15 & 16 Vict.) took another and a very long step in the same direction, and allowed each party not only to put the other, but even himself, on the witness stand against his adversary. A proposition of this kind, made forty years ago in this country, would have been regarded as the vision of a disordered intellect; yet the daily practice under this law, has so illustrated its benefits that it is regarded as the most successful means towards perfecting the administration of justice in that country; a country which has no superior, if indeed, any equal on the globe, in ever exhibiting the most intelligent and careful solicitude to provide for the rights of person and property of every subject within its vast domains.

Respectfully submitted,

B. F. MOORE,
W. S. MASON,
R. S. DONNELL.

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