THE NORTH-CAROLINA MINERVA.

RALEIGH:—PUBLISHED EVERY MONDAY BY HODGE & BOYLAN.

Twenty-five Shillings per Year.] MONDAY EVENING, MAY 17, 1802. VOL. VII. NUMB. 319

NEW JUDICIAL SYSTEM.

The following is the substance of the debate which took place in the house of representatives, on Thursday, the 22d ult. as received by a letter from a gentleman at Washington. The whole proceedings upon this subject shew how much easier it is for the minisserialists to pull down a good system than to build up even a bad one. [*Gaz. U. S*

The bill from the senate to amend the judicial system of the United States being under consideration, the committee to whom was referred the 6th section of the bill reported a new section to be inserted in lieu of it, in the words following, viz.

"Sec. 6. *And be it further enacted*, That whenever any question shall occur before a circuit court, upon which the opinions of the judges shall be opposed, the point upon which the disagreement shall happen shall, during the same term, upon the request of either party or their counsel, be stated under the direction of the judges, and certified under the seal of the court, to the supreme court at their next session to be held thereafter, and shall by the said court be finally decided. And the decision of the supreme court and their order in the premises shall be remitted to the circuit court, & be there entered of record, and shall have effect according to the nature of the said judgment and order. *Provided*, that nothing herein contained shall prevent the causes from proceeding, if in the opinion of the court, farther proceedings can be had without prejudice to the merits. *And provided also*, that imprisonment shall not be allowed, nor punishment in any case be inflicted, where the judges of the said court are divided in opinion upon the question touching the said imprisonment or punishment."

Mr. Henderson called for a division of the question, so as first to take a vote upon striking out the 6th section, and secondly upon inserting the new section.

Mr. S Smith and Mr. Nicholson contended that the question was not divisible

Mr. *Griswold* said the question certainly was divisible. There were two distinct propositions. He wished to strike out the 6th section, because he deemed the provisions of it very improper; but he could not vote to insert the section reported by the committee. He deemed the provisions of this still more imperfect. They would tend to produce endless litigation. Questions might arise as to the admissibility of testimony. The Judges would divide in opinion. The cause must stop; a record must be trasmitted to the supreme court, and there wait a year before a decision can be had; it must then go back to the circuit court; another disagreement may take place; the same course must again be pursured, and thus endless delay be produced.

Mr. *Speaker* decided that the question was divisible, and the question on striking out the 6th section was taken and carried without a division. On the question for inserting the section reported by the committee.

Mr. *Henderson* said, he hoped the section would not be inserted. (He read the section.) Gentlemen will perceive that by the provisions, every question arising on a cause where the judges differ in opinion, will arrest the progress of the suit, until a decision is had upon it by the supreme court. It is immaterial how trifling the point may be upon which this difference of opinion arises. The effect will be to suspend further proceedings until a decision. Suppose a witness is offered to prove the execution of a bond, and the defendant objects to his being admitted; the court divide in opinion on his admissibility. The question must be sent to the supreme court to have this point determined. The question is decided in favor of the plaintiff—upon the case being submitted to the jury, one of the parties object to the legality of a juror; and here a difference arises in the judgment of the court as to the validity of the objection. The same proceedings must be had as in the case of the witness. After a decision in the supreme court, the cause comes on again to be heard. A record is introduced. A question arises, whether it can be received, either as not being certified according to act of Congress, or as not being between the same parties. The court divide again, and the suit must be delayed until this difficulty can be settled. Two or three years are spent, and the cause remains in the same situation as when it was commenced. I ask gentlemen if they are prepared to send forth a system to the people of America thus defective, which purports to amend the organization of the courts of the United States? You have abolished a system, sir, which ensured the prompt administration of justice, against which there was no reasonable complaint, and for it you substitute this miserable piece of patch work. It is an abuse of the term to call it a *system*. There is nothing like fitness in it. It is a snare to entrap suitors, and is calculated to entangle justice in a net of forms. It is in vain to say that the judges will not differ unless upon questions which decide the merits of the cause. They are under the obligations of duty and of oath, and they must be governed by the dictates of their judgment, however remote the bearing of the objection taken may be upon the ultimate determination of the cause. It is not for men to forbear to do what their conscience tells them is right, because your laws are imperfect

This section is an innovation upon all the rules of practice that I know any thing about. It is worse, if possible, than Brickell out. That only authorised a delay of a cause where the judges could not agree in certain specific cases. This enjoins it on every difference of opinion, upon any question occurring before the circuit court if either party requests it. It is the constant practice of courts, if upon offering a witness, there is an opposition of opinion as to his admissibility, to reject him. So, upon a motion for a new trial it is lost, unless the court grant it. Where there are two judges they must agree, or you cannot have the object of the motion. But by this section, a disagreement of the court puts an end to the trial of the cause until the supreme court shall have decided upon the question.

In criminal prosecutions, it is provided that imprisonment shall not be allowed, nor punishment, in any case, inflicted, when the judges are divided in opinion, touching the imprisonment or punishment. Then every other question producing a difference of opinion upon a criminal prosecution, necessarily stops the progress of that prosecution, upon the request of either party. A man is indicted for murder—an application is made to continue the cause—or, an objection is made to a juror or witness or a question is made whether the prisoner is entitled to challenge peremptorily, and what number of jurors is he entitled to object to, without giving any reason. A difference of opinion upon these, or a variety of other points which may arise on the trial of the indictment, sends the wretched prisoner to a goal, there to remain for twelve months, and when he is again brought to the bar of the country for tiral other objections are started, and the unhappy sufferer sees no end to his imprisonment, but by going to trial without those legal advantages which are the birth right of every American. He must either be buried in a prison for life, or wave the benefits which the *common law* of the country had given him. We have been taught to believe, that a man deprived of his liberty, is entitled to a speedy trial. The house will judge, whether this section is calculated to insure this. As much as I abhor a court composed of a single judge, I agree with my honorable friend from Connecticut (Mr. Griswold) that it is preferable to this system. You had better modify the bill so as to separate the district from the circuit judge. This would prevent the delay which must arise under this arrangement. It is a mockery of justice to send suitors into this court.

Mr. *Nicholson* said the committee who reported this amendment were unanimous. They had drawn it with care to meet every case. It had occured to the committee that some inconveniences would arise—but no system could exist without them. But from the knowledge which he had of courts, cases would seldom arise in which the judges would differ. In the courts where he had practised for eight years, where only two judges sat, he recollected but one case of disagreement and he was warranted in saying that cases provided for by this section could not be very numerous. It was to be recollected that this bill originated in the Senate—it had been here referred to a select committee, of which the gentleman from North Carolina (Mr Henderson) was one. He could not but regret that these objections did not there occur to that gentleman. And he now regretted that the gentleman from North Carolina and the gentleman from Connecticut (Mr. Griswold) should confine their talents to pointing out defects instead of illuminating the House by suggesting remedies. He did not approve the plan of one judge only deciding, nor of reducing the district judge to a mere cypher. He had always believed, that in the multiplicitly of counsel there is safety. He would give the benefit of the opinions of those wise judges, and could not approve of a different plan, however others may think. It was necessary to provide for cases of disagreement. The gentleman from North Carolina supposes the tendency of this measure will be to arrest proceedings. He was of a different opinion. The section provides that where a disagreement happens, the question shall be sent to the supreme court. But there is a further provision, that the cause shall proceed, provided, in the opinion of the judges, further proceedings may be had without prejudice to the merits.—Suppose a witness introduced to prove a bond, and the judges are divided as to his competency. The gentleman from N. Carolina supposes the testimony will be suspended. This is not so. Every witness is supposed to be competent until he is disqualified. A witness is objected to on the ground of his competency—what are the proceedings under the old law? why the witness would be admitted the party would state his objections in a bill of exceptions, and the supreme court would decide upon the competency of the witness. A. sues B. on a bond, and offers a witness to prove it whose testimony is objected to, but admitted B carries up this question by bill of exceptions, but the case still proceeds on the testimony of A's witness, and judgment is had. Now, unless the supreme court decide that A's witness was incompetent, the judgment is confirmed. If the court decide that the witness was not competent the progress is arrested. The party making a motion fails, *and if the court divide, or if the court refuse to decide you may have a bill of exceptions!!!* But the cause is not thereby arrested, but may go on to judgment. The inconveniences of delay would exist—it could not be remedied, and must be submitted to. Why have a supreme court, if you refuse the benefit of an appeal to it? The laws cannot fit every case, and this is the reason of the provision, viz. where the court is divided the cause may proceed without their decision, and the decision of the supreme court be final. A man challenges a juror for cause; the question is intricate; the judges differ—there may be 100,000 dollars depending. But, sir, according to the gentleman from North Carolina, when a man's property, his all, the subsistence of himself and his family are depending, you will not give him an opportunity of a decision of the supreme court. Every question need not be carried to that court. Counsel must think it of sufficient importance, & if so, where is the injustice of it? If the question is not of magnitude, counsel would not hazard his reputation in carrying it up. The judge, in trifling cases would be ashamed to have his opinion reviewed. The gentleman from North Carolina tells us of another case which may arise, whether a record is properly certified or is proper evidence. Is this a matter of so much importance and difficulty? Can judges think so lightly of their character as to disagree in such trifling questions—cases of difficulty, doubt and importance ought to go up—one judge ought not to decide when there sits a man by him equally capable with himself. As to the provisions respecting criminal cases he thought them unimportant.

Mr. *Griswold* said that other difficulties would arise from the section which had not been alluded to. As the law now stands, no writ of error can be taken to the supreme court, where the matter in dispute does not exceed 2000 dollars, but if the section is agreed to, every cause may be removed from the circuit to the supreme courts, when the judges differ in opinion, and as the jurisdiction of the circuit court is extended to causes of 500 dollars consequence, those causes may be taken up to the supreme court, and a party living at the distance of eight or nine hundred miles from the seat of government may be sent not only once, but as often as the judges differ, to the seat of government, for a decision of his cause, and must be compelled either to carry his counsel from home, or employ new counsel, with whose talents an integrity he is unacquainted, at the expense of twice his debt to manage his cause at the supreme court. This was not only a hardship upon those who lived remote from the seat of government, but an absolute mockery of justice: that it would drive every suitor from the national courts, because no man would dare to come into a court for justice, where he was exposed to be driven, upon every difference of opinion in the judges. to the supreme court for decisions. He said, if gentlemen were determined to prostrate the courts, and furnish the president with a new cause for sending us his documents relating to the paucity of suits they could not adopt a more effectual plan.

Mr. G. said the judges differed in opinion upon collateral questions more frequently than upon those which finally decide the merits of the cause and upon every difference the cause must be referred to the supreme court, and the final decision postponed until the opinion of the supreme court should be known: for although the section provides that the cause may proceed, notwithstanding the differences of the judges, if such can be the course without prejudice to the merits, yet it is certain that these collateral points were generally connected with the merits: for instance, a witness is offered, and the judges are divided upon his competency, this will always affect the merits, and frequently the cause depends upon the testimony of a single witness: or a juror is objected to, and the judges do not agree upon that question, it will not be doubted but that this is a point which affects the final decision and merits of the cause, for nothing can be more important than questions which relate to the competence of jurors or the forum before which the party is to be tried.

He said that he doubted the correctness of the opinion of the gentleman from Maryland respecting the admission of a witness on whose competency the judges were divided. He said that the party who offered a witness in court necessarily took the affirmative of the question. It was a motion for admitting the witness, and unless the judges decided for his admission, he inclined to believe that he must be rejected. In the state to which he belonged no such cases could arise, because the law in that state directed that the presiding judge should have a casting vote in all cases where the judges were equally divided. He presumed, however, in those states where no such provision existed, the course of proceeding must be as he had stated.

The gentleman from Maryland, said Mr. G. complains that we have only found fault with the present bill, without proposing a substitute. He said that he would now propose a substitute, it was to revive the law which had been so lately repealed, and if gentlemen would not agree to that, he would propose again that the circuit courts shall be held by a single judge. and although he could say, with his friend from North Carolina, that he abhorred a court thus organized, with the extensive criminal and civil jurisdiction of the circuit court, yet as bad as it was, he fully believed that it was the least of the two evils. He said that he agreed with the gentleman from Maryland, that the maxim which declared that "in the multitude of counsel there was safety," was substantially correct, but he thought the gentleman from Maryland ought to have recollected this maxim when he gave his vote for repealing a law which organized the circuit courts with three judges, and reduced us to the necessity of reducing the court to a single judge, or leaving it with two judges without the power of deciding.

After Mr. Griswold sat down, Mr. Williams of North Carolina rose, and spoke to the following effect:

The gentleman from Connecticut (Mr. Griswold) has discovered to us the true reason of his opposition to this bill, viz. the act of last session has been repealed. Those who voted for that repeal are willing to take the responsibility upon themselves. It is much easier to find fault with a system than to make one. My colleague (Mr. Henderson) has said it would be better to have no section than the one proposed. Mr. Williams could not agree in that opinion—delays, he acknowledged, might be produced for one or two terms, under the provisions of this section, but the evil of delay would not be equal to that of having no decision. He thought these provisions preferable to those of the original section. Under that section causes must be suspend-