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Cameron Collection

THE NORTH-CAROLINA MINERVA,

AND

RALEIGH ADVERTISER.

RALEIGH.—PUBLISHED EVERY TUESDAY, BY HODGE AND BOYLAN, PRINTERS TO THE STATE.

Vol. IV.

TUESDAY, DECEMBER 3, 1799.

NUMB. 199.

Messrs HODGE & BOYLAN,

Iredell, November 1, 1799.

THERE is no subject which calls more urgently for revision and amendment than the laws relating to the judiciary. They vest in one or two men at most, the absolute disposal of our lives and fortunes, without any superintending tribunal to curb their excesses, or to correct their mistakes. No means are provided against the abuse of this power; our only reliance is in the forbearance of those who exercise it. What is the dread of public censure? Its sting soon passes away, and being often employed against improper as well as proper objects, it is too equivocal at any time to have the desired effect: and if to this be added, that bystanders in general are not sufficiently attentive to all that passes, nor sufficiently qualified to perceive a departure from legal principles where but a moderate share of plausibility is used: and moreover that mankind, when not under the pressure of affliction themselves are but little regardful of the sufferings of others, it will be apparent that many acts of the greatest oppression and injustice may be committed under our present system from the pretext of administering the law of the country, not only without incurring public censure, but even without attracting public notice. Nothing is more apt to lead men astray from this duty, than a too great plenitude of power. The calmest spirits are oftentimes not proof against its seductions. What then are we not to apprehend should the present system continue, and should there at some future time be promoted to the bench, men of high pretensions and strong prejudices, joined to implacability of temper; or only one such man, with address enough to inspire some of his associates, who are almost continually in his company, with passions correspondent to his own? He may then sacrifice, without the least controul, upon the altar of his resentments, the dearest rights of the best citizens we have. The law and the constitution will be moulded at pleasure into shapes coincident with his purposes, and every right we are entitled to, lie prostrate at his mercy. The directions of a single Judge may now determine the event of the most weighty causes, and with the co-operation of one associate, he may do whatsoever he pleases.

As to the gentlemen of the profession, their situation disables them to oppose any solid obstacles to the undue exertion of the exorbitant power these laws confer, and they themselves are made peculiarly liable to feel their effects.—Will one of the profession, for the sake of acquiring and maintaining his practice, submit to condescensions he ought not to make? He may be admitted to favour, his business prospered, and himself instructed in the conduct proper for his station.—Is he of a different complexion, and does he aspire to independence—he may be stripped of his business, and the weight of character connected with it, by an uniform train of adverse decisions. These circumstances may render it very imprudent in any of them to exclaim loudly against misconduct of any kind, when to do so is not likely to produce any useful end. As to the checks to be opposed to this power by juries—it is to be observed, that in very many cases juries are not called on at all; and in those cases where they are necessary, they only have such evidence as the court pleases; and not knowing the secret motives of a Judge, are but too apt to give credit to his directions upon the evidence he has permitted them to hear. It is their duty to receive the law from him, and if he mistakes it, their verdict will of course be wrong. Let it not be supposed that instances of misconduct and oppression, like those above hinted at, have not happened—were it necessary to produce them in order to effect a change in the system, and could that change be otherwise be brought about, instances in abundance, with proofs to substantiate them, may be had. But as it is evident to every reflecting mind, that such instances may happen under this system, and if they may, we may certainly expect them at some time or other, this circumstance alone, it is hoped, will be a sufficient argument for the alteration contended for.

The unintentional errors of one or two Judges, committed through inadvertence or haste, or from wrong notions of the object or extent of a law, are as completely binding upon us as the most genuine constructions of the law would be. These errors may and do happen in very numerous cases; and when they do happen prove as mischievous in their consequences as if they were intended—yet there is not under the present system any relief to be obtained against them, and thus the opinions of one or two Judges, however arbitrary or ill founded, and not any established law of the country, are the regulators and deciders of all the rights we claim—and these opinions not being conformable to any fixed standard, must and do vary with the variation of times, places and persons, so that no man can divine what judgment is to be given upon his

case till the Judge has declared it. It is notorious that numerous complaints are made, of decisions supposed to be unsupported by law, and a great proportion of these complaints are countenanced and supported by respectable and learned characters. If any of them are well founded (and it cannot be doubted but there are many of them)—some of our citizens have been deprived of their rights, without the possibility of ever regaining them; and consequently every other citizen in like manner is liable, in his turn, to experience the incompetency of the law to protect them. Surely such evils are too serious to be viewed with indifference, nor can our Legislature be so regardless of the welfare of their constituents, as to suffer a system so pregnant with tyranny and oppression, and so destructive of their rights, any longer to remain. What is the boasted freedom of their constituents, if they are subject to the changeable, and forever changing, opinions of Judges, instead of steady and fixed laws, dealing out justice to all with the same equal hand; and if they must bow with reverence to the opinions of those Judges, however destructive to their just rights, and contrary to the laws that are intended to secure them? Not a moment should be lost by every friend of his country, in using his best endeavours to procure an alteration. Events may happen to render this change very difficult, should public commotions arise, and the spirit of party intermix in our councils (circumstances in no wise improbable) the mischief a judiciary, thus conducted, in conjunction with the reigning party, might do, are incalculable—as also are the effects of the measures that might be taken for the continuance of their power. Another court, composed of men altogether distinct from the present Judges, having no connexion with them, nor any similarity of duties to perform, nor of pursuits to follow, whose duty it shall be to correct the errors of the latter, is the only expedient that promises a removal of the existing evils, and that is one which will undoubtedly remove both the power and the temptation to do amiss. For no one will venture to entertain an oppressive purpose, where it cannot be effectuated, because liable in a few weeks at furthest, to undergo public examination and exposure; nor be disposed, under such circumstances, even to risk any hasty opinion not capable of bearing a strict scrutiny.

The objection of expence will vanish, if he who makes it will be at the trouble to apportion the amount of 16000000 (for the expence will not be greater) amongst all the citizens of the country, and then compare the share of any individual with the happiness he must derive from knowing that his personal safety and rights of every kind, are placed beyond the reach and danger of invasion, by the certainty of having the law administered as it really is. The superintending Judges having no part in any of the errors committed, nor any mutuality of interest to treat such errors with tenderness, will be free from any influence but that of duty, and not having to mix much with the citizens in travelling through the county, will be free from imbibing prejudices against individuals, and from hence results the highest probability that the law will be properly enforced, and consequently one uniformity of adjudication be produced throughout all the State.—The same rule of decision will be applied to every similar case, and no latitude be left to the arbitrary discretion of any set of men whatsoever.

To compose this court, as is contemplated by some, of the same persons who commit the errors complained of, would be imprudent in the highest degree. The complaint would be made against the concurrent judgment of two of them, who might always prevent the reversal or correction of it; and should there arise a mutual disposition to compound differences and conciliate opinions, or should some one obtain an ascendancy over the others, it will be as difficult to obtain redress against illegal determinations as it now is, when no court of errors is established, and the present uncertainty would remain with all its attendant evils.

It is believed the period is approaching, when a subject of so much importance as a court of errors, upon proper principles, will at length seriously engage the attention of the Legislature, and that there will be but one voice as to the propriety of the measure.

The following bill, containing some of the leading principles on which it is supposed a law should be framed and passed, is respectfully submitted to the Legislature. It is earnestly hoped, that they will bestow that attention the importance of the subject requires, and make necessary alterations or additions, or new model it entirely.

A BILL to revise and amend the Laws relative to the Judiciary.

BE. it enacted by the General Assembly of the State of North-Carolina, That this State shall be di-

vided into three ridings, the eastern, middle and western. The middle riding shall be composed of the districts of Fayetteville and Wilmington: and one Judge only shall hereafter hold the superior courts within each of the said ridings; and shall possess the same powers as two Judges heretofore possessed. One other Solicitor-General shall be elected by joint ballot of the General Assembly, to officiate in the middle riding, who shall have the same salary and perquisites as legally appertain to the present Solicitor-General. One of the four Judges of the superior courts, shall be elected by joint ballot of the General Assembly, a Judge of the court of errors hereby established; who together with two other persons, not of the present judiciary, to be elected in the same manner, shall compose a court for correcting all erroneous judgments, sentences and decrees, which shall be given or passed in the superior courts of law and equity, or other courts held by the Judges of the superior courts, or any of them, or which shall have been given or passed within the same at any time within last past. And the said court shall be styled the court of errors, and shall be held at Raleigh twice in each year, commencing on the fifth day after the expiration of the superior court that shall be last held in any of the said ridings; and shall continue to sit until all the business depending therein shall be disposed of. And whenever any Judge of the superior courts shall die or resign, or be unable from sickness or any other cause to attend the courts within his riding, then one of the Judges of the court of errors, residing within or nearest to the riding where such inability happens, shall hold the said courts, with the same powers as the Judge so unable to attend, died or resigned, lawfully possessed for that purpose previous to his said death or resignation.

And be it further enacted, That where any judgment; sentence or decree, shall be given or passed in any of the said courts, and the plaintiff or defendant shall be dissatisfied therewith, he may move the court giving or passing the same, to allow a writ of error thereon, he first entering into bond, with two sufficient securities, for prosecuting the same with effect, and for performing the judgment, sentence or decree which the court of errors shall pass or make thereon. Such bond to be in such sum as the court so moved, shall require, and made payable to the defendant in error. And the court so moved shall thereupon allow such motion, as if a writ of error were then and there produced from the court of errors or some Judge thereof: and the clerk of the court allowing such motion, shall as shortly afterwards as the same can be done, make and deliver to the plaintiff in error, a complete transcript of all the proceedings in the cause wherein such motion is allowed; which shall be filed in the office of the clerk of the court of errors one day before the commencement of the next term of the court of errors, otherwise such writ of error shall be dismissed, with double costs to be paid by the plaintiff in error, and execution shall issue on the said judgment, sentence or decree complained of from the court of errors, upon a transcript to be filed at any time by the defendant in error, with the addition of the double costs aforesaid. If the term of the court which rendered such judgment, sentence or decree shall be expired, then the party dissatisfied may give notice, in writing to the adverse party, or in case he be out of the State to his attorney at law, at least ten days before motion, of his intention to move some Judge of the court of errors for a writ of error, on a certain day then to come, and may make affidavit thereof before some of the Judges of the said court on that day, and may make an assignment of errors before the said Judge, and may give bond and sureties before the said Judge to his satisfaction, to abide by, perform and fulfil the judgment, sentence and decree which the court of errors shall make thereon; and thereupon such Judge shall cause the affidavit and assignment of errors to be filed in the clerk's office, together with an order in writing to the clerk of the court of errors, to issue a writ of error, returnable on the first day of the next ensuing term: and the plaintiff in error shall file a transcript of the record or proceedings one day before the commencement of the court of errors, in like manner, and under the same penalties as are herein before prescribed in cases where the writ of error is obtained upon motion in court. And in all criminal cases where a writ of error shall be moved for in court, upon a judgment for the inflicting of capital or infamous punishment, the court shall allow thereof without bond, and shall appoint a day for the execution of the sentence, which shall be twenty days at least after the commencement of the next term of the court of errors; on which day such sentence shall be exe-

[See the last page.]