

## NORTH-CAROLINA GAZETTE.

With the latest ADVICES, FOREIGN and DOMESTIC.

To the PRINTER,

S I R, HALIFAX, October 29, 1778.

**I**BEG the attention of the public to the following hints on a subject, which, however chimerical the grounds of it are generally thought to be, often becomes a matter of serious consequence, and deeply affects the order and well-being of society. This is the practice of *duelling*. The world seems to be much divided in opinion upon this subject. Your men of moderation and temper esteem it highly presumptuous and unjustifiable, to risque their lives merely to repair an imaginary injury done to their honour; whilst your men of *nicer* feelings, and fewer scruples, not only think it incumbent on them to vindicate their honour at the risque of their lives, but deem this mode of chastisement the only means to discourage impertinence, and preserve good breeding.

It seems, however, to be generally agreed, and that by men of the greatest spirit, that the practice of *duelling* is naturally pernicious to the peace and happiness of society. And upon this ground, a royal author of the present age, whose courage to fight was never doubted, has recommended to the well disposed part of mankind, to agree to hold all fighting of duels infamous, in order to prevent the mischiefs of such a practice, and finally to banish it out of the world. But nothing can be more visionary and fruitless, than to attempt to render that infamous, which the men of spirit in many cases conceive to be the only means of supporting their honour, and saving them from infamy and disgrace.

A man who will dispense with satisfaction for an actual injury, where the law has provided him a remedy, will commonly be esteemed a good natured man; but will not for that cause be deemed a poltron, nor degraded from the rank of a gentleman: Whereas on the contrary, in some cases, a man who will put up with a mere ideal injury, without satisfaction, where the laws of the land have given him no remedy at all, must submit to be held an infamous coward, and quit his title to the rank of a gentleman.

Men whose honour has not been used to be rubbed and galled, and whose feelings in this respect, are consequently not so delicate and tender, can hardly perceive the reason of this difference. But facts will be facts, whether their causes are understood or not. I am apt to think however, that the reason of this difference arises from the *consequences* of the injuries a man receives: The damages sustained in his property may be easily repaired; the injuries he may sustain in his dress, and the ornaments of his person, may be quickly redressed, and even a wound in his flesh may be soon healed up, without any reparation or amends from the author of those wrongs; but a wound in a man's honour is not so easily cured. Nothing short of ample satisfaction from the aggressor, can do this; and sometimes even *that* will hardly do the business to effectually as might be wished.

By *satisfaction* in this case, is meant either the aggressor's acknowledging his fault, and asking the injured gentleman's pardon, in terms properly submissive and unequivocal, or accepting a challenge from him, and thereupon fighting him like a gentleman. I say, *like a gentleman*. For in this case, fighting at fifty-cuffs, kicking, stamping, biting, or gouging, is not understood. Nor could such a fighting at all settle a point of honour, or give the desired satisfaction; unless the combatants be supposed to be equally matched, both in bodily prowess, and skill in that kind of fighting; and neither of them should take any dishonourable advantage of the other in the time of combat.

But such an equality as *this*, may but very seldom happen; and therefore for deciding such contests in a more reciprocal and gentleman like manner, recourse is usually had to fire arms; where each combatant stands upon equal ground, and is supposed to have an equal chance with the other. For if the chance be not equal, the point of honour may still remain undecided; and the stain in a gentleman's honour, who has any such advantage of the chance, may notwithstanding his having fought, continue as far from being rubbed out, as it was when he began the combat.

As to any observations respecting the antiquity of this mode of decision, the people from whom it derives its origin, and by whom it has been handed down to the present times, the alterations and improvements it has undergone since the invention of fire arms, and the modern rules of conducting it, they are both unnecessary and foreign to my present design. I shall therefore content myself with only considering the nature of those things which principally relate, as well as those that generally contribute, to this kind of contention.

And here it may be laid down as a certain and invariable maxim, that no individual of the human race ever received, or can receive, an injury, without having a right either natural or civil, to revenge or repair it. In a state of nature this right individually and amply resided in every human creature. But the obvious inconvenience of every man's being left under the influence of prejudice, partiality and resentment, to revenge the wrongs, and redress the injuries he had sustained, induced men to form themselves into societies, under such modes of government, and rules of living, as they judged most effectual for securing to every one his natural rights, or substituting civil rights in the room of such of them as were inconvenient to be exercised in a state of society; in order to prevent as much as possible, the necessity of a state of war-fare, as well as to obviate the unfitness of a man's being a judge and executioner in his own cause.

But notwithstanding this general design of forming societies, civil remedies for injuries sustained, have been provided by the laws of society, and especially in this country, only in part; and not in all cases, nor even in all *species*, of injury. It therefore seems absurd, to suppose that men should have given up, or that their entering into a state of society should have annihilated, their natural rights of redressing injuries, in any degree beyond, or prior to, the substitution of civil remedies in their room.

But if any one will attempt to prove, that natural rights to redress injuries are annihilated by entering into a state of society, without the substitution of civil remedies in their room, he must also prove (against every day's experience) that by the habitation of mankind in a state of society, injuries themselves unremedied by the laws of the land, are *ipso facto* annihilated, or rendered impossible to exist; or else such a doctrine can by no means be admitted; because otherwise it would infringe the maxim before laid down.

It therefore necessarily follows, that where ever civil rights have not been substituted by the laws of society, in the room of natural ones, adequate to the obtaining redress for any injury sustained, there, and in every such case without exception, such natural rights still remain. And every man in that case, till an adequate remedy by provision of the civil power, becomes attainable, ought to be considered as in a state of nature. For otherwise there might be an injury without the right of redress; contrary to the principle of the abovementioned maxim.

It will likewise be allowed as a maxim by every lawyer that when and where ever a man has a right to redress an injury, he has also a right to make use of the necessary means for that purpose. It will therefore be in vain to say, that civil remedies are generally provided by the laws of society, for the redress of *real* injuries; but that it matters not whether *ideal* or *imaginary* injuries are remedied at all or no. For injuries that subsist only in opinion, are sometimes as really hurtful, as those which subsist in fact. Besides, men have a natural and unalienable right to be satisfied, as well where the injury is only imaginary, as where it is real. And if no civil jurisdiction has cognizance to judge of the nature of the injury, it must of course, however inconvenient, be left to the private judgment of the injured person.

I am clearly of opinion, that the equitable extension of the civil action upon the case, to redress the vast number and variety of real injuries, to which modern practice has made it subservient, has prevented numberless mischiefs, which otherwise would have happened, through the necessity of repairing those injuries by force of private combat. And for that reason, far from discouraging