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Debate
ON THE JUDICIARY BILL.

[CONTINUED.]

Mr. TROY wiſhed nothing more than a fair and candid diſcuſſion of this ſubject.—He, however, could not forbear to remark that he expected to meet the gentlemen oppoſed to the principle of the bill on the table, on that principle alone, unembarraſſed by any new queſtion or ſubject whatever. He could not but ſay that the introduction of this amendment appeared to him at firſt as it did to the gentleman from Rutherford, (Mr. Walker) an attempt to evade the fair diſcuſſion of the main queſtion before us; but as both the gentlemen from Orange, (Mr. Cameron) and the gentleman from Saliſbury, (Mr. Steele) have diſclaimed any ſuch intentions, he felt himſelf diſpoſed to accredit them; for he was willing to attribute every action of thoſe gentlemen to fair and honourable motives. But while we extend this liberality of opinion towards the gentlemen, they ſhould remember that is equally expected from them to forbear to impute improper motives to the conduct of thoſe who were the friends and ſupporters of the bill.—They ſhould recollect that they themſelves lie at leaſt equally open to the charge of ſelfiſh and intereſted views.—But he would forbear recrimination, and proceed to examine the obſervations which had been urged to the propoſed change in the judiciary. It was not his intention nor his wiſh to follow the gentlemen through the wide fields which they had allowed their fancy and imaginations to traverſe. He was not diſpoſed to decay the merits which the gentlemen had attributed to the patriots of '76. He was willing to allow them to have been the enlightened and venerable ſages which the gentleman have deſcribed them to have been. He wiſhed not to take any thing from the high panegyrick which they have beſtowed on the trial by jury; nor from the value which they ſeem to place on the ſecurity of our rights, and the preſervation of our liberties.—Nor did he deny the ſacred obligations we are under to obey the injunctions of the conſtitution: In theſe things we are all agreed. And having now paid the tribute of his reſpect to the heroes and ſtateſmen of '76; having joined the gentlemen in their eulogy on the trial by jury; having admitted that there is nothing ſo valuable in life, or ſo worthy of preſervation as liberty; and having yielded every thing that can be ſaid in favor of the inviolability and ſoundneſs of the conſtitution, he ſhould proceed to examine the queſtion before the Houſe with this ſingle remark, that in no one thing would the bill before the Houſe derogate from the memory of thoſe illuſtrious patriots, render leſs ſecure the ineſtimable trial by jury, nor infringe a ſingle article of our invaluable conſtitution.

He would inquire in the firſt place, is the preſent court ſyſtem defective?—If it be defective, (and he believed this would be generally allowed) will the ſyſtem propoſed to be ſubſtituted in its place, afford a more fair and impartial adminiſtration of juſtice? The preſent ſuperior court ſyſtem appeared to him radically defective. It affords by no means an equal and fair participation of benefits to the community at large. A great portion of the advantages derived from it is confined to a narrow circle, and an extention of the preſent eſtabliſhment would be improper, as it would not afford that general relief and convenience which are contemplated by the bill on the table. The preſent Superior Court Diſtricts are compoſed of from five to ten counties; ſome of the counties are from ſixty to one hundred & twenty miles from the ſeat of the Superior Court—The town in which the Diſtrict Court is held derives all the advantages ariſing from it; money is brought from various quarters and left there. Its commerce and its manufactures flouriſh from the tribute that is paid by the ſurrounding counties. The county in which the town is ſituated has juſtice adminiſtered at home, while the citizens of other counties of the diſtrict have to travel to a diſtant court at conſiderable coſt and loſs of time, and leave the money incurred in neceſſary expences in the diſtrict towns. The expence occaſioned in obtaining a legal adjudication of cauſes in our preſent Superior Courts, is another conſiderable objection to them.—The client who is compelled to attend a diſtant Superior Court, has not only his own loſs of time and expences to bear, but thoſe alſo of all the witneſſes neceſſary to ſupport his claim or to ſubſtantiate his defence. In many inſtances this expence is enormous, and often bankrupts the unſucceſsful ſuitor.—It is alſo hard upon jurors who are compelled to attend at a great diſtance from home, for a conſiderable time, and often at a ſeaſon when their attention is much wanted at home. It is not only the loſs of their own time; they ſuffer a much heavier loſs by the neglect which their buſineſs ſuſtains in their abſence from home. The ſame may be ſaid with reſpect to witneſſes.—Their expences are unavoidable, as the attendance of theſe perſons at court is involuntary. Theſe obſervations Mr. T. ſuppoſed, ought to go in ſupport of the preamble of the bill, which the gentleman from Saliſbury (not, to be ſure, in the moſt courtly ſtyle) had termed "falſe and deluſive." He would aſk thoſe who live far removed from diſtrict towns, whether thoſe evils of the preſent ſyſtem exiſt in fancy or in fact? He would aſk thoſe who live at a diſtance from Superior Courts, whether the aſſertion in the preamble of the bill be "falſe and deluſive?" Whether they have not witneſſed the hardſhips to which perſons have been put by attending theſe Superior Courts? The gentlemen from Saliſbury and Hillſborough know nothing of this diſtreſs—they bask in the genial funſhine of district towns where no complaint of the kind is ever heard. Mr. T. would aſk, on what principle of fair and diſtributive juſtice, theſe diſtrict towns have a right to have Superior Courts held in them in excluſion of others? Upon what principle of juſtice or common right ought eight or ten counties continue to contribute to their wealth? Why ſhould fifty-two counties in the ſtate remain tributary to eight?

The gentleman from Saliſbury has taken a great deal of pains to inform the Houſe of the quanty of buſineſs done in Morgan, Saliſbury, Hillſborough, and Fayetteville Diſtrict Courts. He ſuppoſed, nay he took it for granted, that the gentleman's ſtatement was a correct one; he had, however, only read ſuch parts of his documents as he thought would anſwer his purpoſe. [Mr. Steele ſaid the ſtatement was open for the examination of any gentleman who wiſhed to examine it.] Mr. Troy ſaid he ſuppoſed it was: it was, however a matter of little conſequence what the number of ſuits is which any County Court furniſhes to a Superior Court. If the people of that county find it a hardſhip to attend, they have a right to demand a more convenient adminiſtration of juſtice. If ſuch perſons have leſs matters of litigation, they are the better for it; but they are equally entitled to convenience with others. It may, however, be well remarked that the reaſon why there is not more buſineſs from many of the counties in the Superior Court is, that the citizens find it inconvenient, nay almoſt impoſſible, to proſecute ſuits at ſo great a diſtance from home. There was no man, he apprehended, who would not rather have his cauſe decided in a Superior Court, where a Judge well ſkilled in the law preſides, than in the County Courts before Juſtices of the Peace, if he could as conveniently attend the one as the other.—But as the courts are conſtituted at preſent it is more than a ſmall matter of litigation is worth, to undergo the trouble and expence. Does it follow then, that theſe counties do not feel the oppreſſion becauſe they have but little buſineſs in the Superior Courts as at preſent eſtabliſhed? It does not.—They are deprived of all the advantages of the Superior Court ſyſtem; they participate in none of its benefits. But the gentleman from Saliſbury ſays that perſons aggrieved in the County Court, have the right of appeal. Will not all the arguments of expence apply equally to this courſe? The gentleman from Saliſbury talks a great deal about the rights of the poor; of which no man was more regardful than himſelf.—But if the gentleman would recur to the exiſting ſtate of things, he will find that if a poor man was ever ſo much diſſatisfied with the deciſion of a County Court, and was ever ſo deſirous of an appeal, in many caſes he could not get ſecurity for an appeal; for the perſon who becomes ſecurity in ſuch caſes is bound to do and perform the judgment of the Superior Court, and not barely for the appearance of his principal, as in the caſe of arreſt upon original proceſs; and many a poor man has been deprived of an acknowledged right becauſe he could not give ſecurity for the proſecution of it; & when this does not happen, he is deterred from an appeal by the inevitable expence and almoſt certain ruin that attends it. So much for the preſent court ſyſtem—a ſyſtem which is calculated to benefit and aggrandize the few, to the injury and oppreſſion of the many—a ſyſtem which forms a ſtrong ariſtocracy in the ſtate. Mr. T. obſerved that the friends of the bill before the Houſe met its opponents on unequal ground; they had not only great talents arrayed againſt them; they had alſo to contend againſt the fixed and immovable prejudices of all the members from diſtrict towns and diſtrict counties, and all thoſe who were under their influence and controul. Nor did they expect a fair and candid diſcuſſion of the principles of the bill—But they did expect, and in that expectation they have not been deceived, that they would be oppoſed at every turn by all the means that ingenuity and talents could deviſe; they knew that any charge of the preſent ſyſtem would be deprecated by all thoſe whoſe intereſts it is to preſerve things as they are. The friends of the bill would nevertheleſs do all in their power to ſupport it. It is a bill, ſaid he, which ſuits us, and which we believe will afford a remedy to the injuries complained of under the preſent ſyſtem. We are for a full participation of the advantages accruing from Superior courts, or we are for nothing—no temporiſing meaſures will now ſatisfy us; we are embarked on the ſame bottom, and we will ſink or ſwim together.

He would now make a few obſervations upon the correctneſs of the principle of the bill on the table. It had been properly obſerved by the gentleman from Mecklenburg, (Mr. Lowrie) that this is not a new experiment: the principle has been fully tried in our ſiſter ſtate, South-Carolina; a ſtate from which Mr. T. ſaid he was glad to draw a precedent, as it is a ſtate which has left us far behind in improvement and in the progreſs of a liberal and enlightened policy.—We may look not only to its ſyſtem of juriſprudence for an example worthy our imitation, but to the improvement of their inland navigation; to their patronage of the arts and ſciences; to every department of internal police—we may turn to it with advantage. He was well acquainted with South-Carolina, and with her ſyſtem of juriſprudence. He was well acquainted with many gentlemen of intelligence of that ſtate, and they all approved of their ſyſtem. He had been preſent in their courts, and never ſaw juſtice better adminiſtered any where; nor courts poſſeſs more becoming dignity;—the judge, the bar, and the people were all well ſatisfied with their ſyſtem, and ſpoke of it with a kind of ſtate pride, as being ſuperior to the ſyſtems of their ſiſter ſtates. Shall we then, ſaid Mr. T. from a narrow or timorous policy, or from a ſuperſtitious reverence for old eſtabliſhments, continue to grope in the dark, while our ſiſter and adjoining ſtate is thus enjoying the fruits of a liberal policy, ſhedding luſtre on her citizens, and aſſuming a proud pre-eminence in the union?—He thought there was no mark ſo unequivocal of the progreſs of mankind in civilization and intellectual excellence, as the extention of their cares beyond the narrow circle of ſelf intereſt, and directing them to the reform of thoſe ſyſtems of oppreſſion which the ignorance or inattention of mankind have ſuffered to receive the ſanction of time and the authority of law. For his part, he did not reverence any ſyſtem merely for its antiquity; he approached not with ſacred awe the hoary errors of our anceſtors: N[illegible] reformers wis he one of thoſe mad ry thing anciehed to pull down eve- liſhments beſoid proſtrate all eſtab- ſpirit of innova wild and viſionary could be made a but wherever it fair argument, t[illegible] by rational and ing ſyſtems are nece[illegible]rations in exiſt- willing to change th[illegible] he was always thing very different, fa[illegible] There is no- the habits and manners [illegible] between this ſtate and thoſe of So[illegible] people of if the principle now propo[illegible]arolina: liſhed in our court ſyſtem, [illegible]e eſtab- good effect, then it may be [illegible]had a ſumed it will have the ſame go[illegible] pre- here. [illegible]ect

The gentleman from Ora[illegible]e, (Mr. Cameron) has attempted to d[illegible]end th[illegible] old ſyſtem, by reſcuing it from [illegible]e im- putation of corruption. Mr. T. never heard before that it had ever been [illegible]m- puted that our courts were corr[illegible] He thought the obſervation of the g[illegible] tleman imprudent. For his own pa[illegible] no man was more diſpoſed than he was to pay the higheſt reſpect to the gentlemen who now fill our judicial offices. Becauſe our courts are not corrupt, are there no other evils in the ſyſtem which call for a remedy?—Did the gentleman attempt to deny that it was inconvenient for people in the diſtant counties to attend the Superior Courts as at preſent eſtabliſhed? Or did he attempt to refute any other of the objections which had been urged to the preſent eſtabliſhment? He had aſſumed grounds which had not been touched by the friends of the preſent bill, and which he hoped would not be conſidered as a defence of the diſtrict principle.

Mr. T. ſuppoſed it might be neceſſary to ſay ſomething on the ſubject of jury trial. The gentlemen oppoſed to the paſſage had ſufficiently panegyriſed it, and he was diſpoſed to give his full aſſent to every thing that they had ſaid in its favor, and more need not be added. But the propoſed bill does not only preſerve the trial by jury in the moſt ample manner, but in a much more convenient way than at preſent eſtabliſhed. Indeed were the trial by jury aſſailed or conſtrained in this bill, no perſon in this Houſe would be found ſo hardy as to ſupport it.—No ſuch thing was ever contemplated. Nothing, he truſted, would be taken for granted which depended upon bare aſſertion.—The gentleman from Orange had ſaid that there was no way of preſerving the trial by jury in its purity, but by retaining the diſtrict principle. This aſſertion will not be taken for fact. Does not the bill before the Houſe propoſe to preſerve the trial by jury in the moſt convenient manner? And how has the gentlemen ſhewn that it will not be preſerved in its purity? Did our anceſtors who formed the preſent court ſyſtem, graſp all knowledge? Was no other mode of collecting jurors than the one they formed, to be diſcovered? However diſpoſed he might be to venerate their characters, he could not be led to believe that all intellect, and all intelligence died with them.—He believed on the contrary, that the proviſions in the preſent bill were ſuch as would preſerve the jury trial pure, ſafe and unſullied. The gentleman from Saliſbury (Mr. Steele) has aſked if it would be expedient or proper to ſend a Judge twice a year into each county, when it appears from the ſtatement which he offered to the Houſe, that very little buſineſs is done in ſome of them. Taking the gentleman on this ground, if a Judge is paid for his ſervices, is it not more fitting that he ſhould go into the different counties to hold courts, than that all the people who have buſineſs in court, ſhould attend upon him at a great diſtance from their homes?

The ſame gentleman has alſo inſinuated that this is an attempt to legiſlate the preſent judges out of office. He believed the gentleman did qualify the inſinuation by ſaving the Members of the preſent Aſſembly from the impuation. For himſelf he diſdained any ſuch unworthy motives;—and even had the inſinuation reached him, he felt too indignant to reply.—No man had more perſonal reſpect than he had for the preſent Judges; nor any who would be more ready to make their ſituations comfortable. But becauſe he regarded them,