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State Legislature.

DEBATE ON THE JUDICIARY.

The bill to amend the Judiciary Laws being under consideration, after considerable discussion respecting amendments to the section which went to give the superior and county courts concurrent jurisdiction, Doctor Jones moved to strike it out altogether.

Col. Porter said, as he conceived the provision so just and proper, he did not expect to have heard such a motion and from such a quarter, but since the motion had been made, he hoped the gentleman would not suffer the vote to be silently taken, but would give the House his reasons for it and state his objections to a concurrent jurisdiction being given.

Dr. Jones said he did not expect to be called on for his reasons and therefore was not prepared for discussion, even if he had the ability to do the subject justice, which he did not pretend to have, and that it was with regret he perceived all the law characters of the House ranged on the opposite side of the question, who only were qualified to point out fully the effect such a measure would produce. But since no person seemed inclined to say any thing and as he had been personally called on, he would endeavor as well as he was able, to state his objections to the section.—He felt a firm conviction of its bad tendency, and though he might not be able fully to communicate his impressions to the House, he hoped the further progress of innovation might be stayed by such an imperfect statement of reasons as he should be able to offer.

The effect of a concurrent jurisdiction would be to abolish the county courts. It was true some gentlemen had denied that to be their intention, but others had avowed it. But let the *motives* be what they will, the *effect* will be the same. It will destroy them in an indirect manner by undermining them. They already totter to their base, and if this section is retained, they will inevitably fall. Perhaps, said Dr. J. I shall be told that this is an event *devoutly to be wished* for. Yes, this is the language which some gentlemen hold, and I expect is the secret wish of many who do not openly avow their sentiments. I do not impeach their motives, they are no doubt pure: They may look down with contempt upon our honest yeomanry on the bench, who are not skilled in the law: But though these courts are not perfect they are very good ones notwithstanding: and besides, the services of these magistrates cost the state nothing. Admitting then that these courts are not the best that can be devised, are we to hope for any thing better? Let us take a view of the consequences that will follow an abolition of them.

In the first place you may calculate that Courts of Errors and Appeals will be established in the old districts, and that the present superior courts will be degraded to the situation of your county courts as they stand at present—to courts of original jurisdiction. It is true a bill for eight courts of errors and appeals that was brought in has been rejected; but the object will not be lost sight of; care will be taken to procure a necessity for them. The section in question if retained will do much towards it—and when the county courts are put down we shall hear loud clamours for courts of errors and appeals. They will indeed become necessary, and let it be remembered that the very gentlemen who are now in favor of this bill, were the same who were in favour of a court of errors and appeals. Lately when the new judiciary system was proposed we were told much of the evils of district courts and of the cheapness of the present system. But what are we likely to gain? We are in one respect travelling round to the same point again from which we set out with this unfavorable difference, that our present county courts cost the state nothing, administer justice quarterly, whereas we are to have them replaced by courts held semi-annually, encumbered with never ending equity suits and held at a great expence to the state. The present superior courts are held by six judges but all complain the duties are insupportable, two more at least will sooner or later be added—We shall have six more to hold the courts of errors and appeals, and by and by when we have learned to couch well to our burthens we shall probably be laden with a supreme court and one or more chancery courts. All this will inevitably follow if we suffer ourselves to be tamely led on step by step in this manner. Lately we were told we were going to have a cheap system. This was bait for gulls to catch at and it was unfortunately too greedily swallowed. Now we are no sooner blessed with this *cheap system* than we are told it wants perfecting. "Never mind the expence" say gentlemen "let us have a good court system cost what it will" and without the spirit of prophecy I will predict the consequences. In place of our late and present simple and unexpensive system we shall have a complex and costly one imposed upon us. We shall be overwhelmed by an army of judges which if not of mid night produce will be no better if spoken into existence under a noon day sun. Oppressive expences will and must attend them. It is time to stop, to look back upon the effects of the last year's change. It would probably be wise to measure some of our steps back again and establish courts in small districts, as has been proposed; but every advance forwards in innovation will produce an increase of difficulty and expence.

Another evil that would attend the retaining the section, would be a clashing of jurisdiction. Dr. J. said he was not much versed in the practice of courts, but he remembered always to have heard those who were, speak of this inconvenience. Suppose said he, a man is prosecuted for an assault and battery in the county court—and as one court is not obliged to know the proceedings of another, he might also be prosecuted in the superior court. It was true he would not be convicted in both, for the one which started first in the race would soonest arrive at the goal. But though he might not be twice convicted, the circumstance of being twice prosecuted would be no inconsiderable grievance; he would be compelled to attend two courts, to plead twice and probably twice to fee counsel.

These said Dr. J. are the principal reasons which the reflection of the moment had suggested to him, for wishing to expunge the section. They were sufficient to govern him for voting against it. He might be mistaken in the evils he feared would result from retaining it, and if it was retained he sincerely hoped he might be mistaken. He acknowledged that jurisprudence was a subject of which he was not well qualified to judge; but his situation required him to vote and he should be guided by his best judgment. His predilection in favor of our courts had in a great measure arisen from a comparison with the courts of several states with which he was acquainted, and it was the pride and boast of Carolina that there was not one in which justice was administered so impartially, expeditiously and with so little expence to clients and to the public. And with a knowledge of these facts he felt more than suspicion that any change contemplated would not be an improvement. Let us, said he, at least proceed with caution. Our new judiciary system is not yet fairly in operation. Circumstances peculiar to two districts had much retarded business in them, and in none could it be said to be yet in a regular channel. Let us wait another year and see the effect of one alteration before we make another; and let us not in this hasty and unpremeditated manner sacrifice our good old court system, a victim to experiment.

Mr. Gaston said he had listened to the gentleman with much attention, & his observations served to show how an ingenious mind could raise plausible objections to a measure of the plainest utility, for such he should be able to convince, the house would be the effect of that section, upon which it was attempted to excite such fearful apprehensions.

Among all the objections that could be raised against the measure of giving a concurrent jurisdiction, there was but one which had any effect on his mind, and that was, it would permanently rivet upon us our present county superior court system, a system towards which he felt the strongest dislike. But since it was improbable that it would be changed, he was desirous of seeing it improved and rendered in some degree tolerable, and as having that tendency he was in favour of retaining this section.

At present the business of the two courts is very unequally divided. In the county court of Craven, there were at the last term 160 causes on the appearance Docket, while on that of the superior court of the same county there was only eleven. In Hyde & all the counties in the eastern part of the state with which he was acquainted, there was the same or nearly the same disproportion. The gentleman from Ashe, in a former discussion on amendments, has said the same inequality exists in the Western counties. Shall we not then adopt a measure that will tend to equalize the business. Your judges are well paid for their services, but why send them travelling over the country without giving them business to perform. At present they visited court-houses to answer no other valuable purpose than that of making themselves better acquainted with the geography of the country.

Every man the least conversant with the business of county courts, must have seen the jobbing that is often carried on there to answer particular purposes. Several justices are selected to go upon the Bench to effect a particular measure—sometimes a fine is imposed by one set of justices, & another set are bro't upon the Bench to remit it—and in all prosecutions for State offences, particularly those of assault and battery, there is always too much lenity shown to the offenders to repress them. In the superior courts where the law would be administered by a man learned in it—where all sentences would be steadily carried into effect, the important ends for which courts were instituted would certainly be much better answered.

Another objection, and one which Mr. G. said he had not expected to hear made, to giving the superior courts a concurrent jurisdiction, was, that it took away the right of appeal. He said he had never before heard it stated as a grievance, that a party could not at pleasure appeal. But the gentleman from Wake seems desirous to put the parties at issue upon a race, which should not only try their speed but also their bottom, where a cause would be decided not by its justice, but by the length of the litigants purse. The only good reason for an appeal ever being had, was that justice had not been done in the court below.—But if we have an able court to decide a cause once, there could be no necessity for its being tried again. Besides it is not clear that it is now legal to admit of appeals from the county courts in cases or Petit Larceny or other state prosecutions. If it was, it had been seldom if ever practised, and he believed the law and the opinions of the Judges were against it.

He did not know that the retaining this section would go to abolish the county courts. That would depend on the opinion which was entertained of their utility.—If it was thought best to originate business in them they would be preserved.—If they were without confidence and were deserted, they would probably fall.

It has also been said that a concurrent jurisdiction would produce a clashing of business, and that as one court was not obliged to know what the other court did—a person might be prosecuted in both for the same offence. It was true one court was not obliged to know the business of the other, but the party prosecuted in both would discover it, and by producing from one court the record of his prosecutions it would discharge him in the other, and no evils would ensue.

Mr. G. said he had now gone through all the objections made to the section by the gentleman from Wake, and he trusted the house would concur with him in believing that it was not pregnant with the mischiefs which had been represented as being inherent in it.—But that it was salutary and proper, and as such he hoped it would be retained in the bill.

Mr. W. W. Jones and Col. Porter also spoke against striking out.

Dr. Jones said, he felt with increased force the disadvantage of standing alone in this discussion, when he found Law stated, and the practice of the courts delineated which his knowledge of either did not enable him to controvert or disprove, but as he had entered as a volunteer in the discussion, he would not shrink from his post, but would defend it as well as he was able; though he was confident his cause meritted a much better defence.

He did not know how to reconcile the sentiments which the gentleman from Newbern had just now expressed, relative to appeals with what he had understood to be his opinion with respect to the Bill for establishing courts of errors and appeals, which the Senate had yesterday in the usual manner, disposed of. Nor could the opinions of gentlemen who unite in favour of the section, be reconciled with those variant ones respecting the utility of the county courts, (Mr. G. and Col. P.) and where there are such different views taken of the same subject, some must be in error; and it is sufficient to prevent our acting at all until there is a unity of views and opinions. All seem to favour a court of errors and appeals, and to throw out of view every thing that has been said to lead the mind astray from the subject, the whole is reduced to this single question. Shall our present superior cours be courts of appeal, or shall we degrade them & place others over their heads? For the reasons already given, the former is to be preferred.

It seems we have a parcel of useless courts on hand, with judges under pay, and that we must seek out business for them. Perhaps the judges are not the persons who feel the greatest anxiety on this head: but from what he had heard stated the other day by a gentleman of the bar, that there was a great many equity causes on the docket, the trial of a single one of which would occupy the whole term of a court, it would appear there was no want of business in them. This to is the first year of their existence and business will no doubt accumulate; If it did not, he said they had his free consent to consolidate the business of every three or four courts, throughout the state.

We are told that though a person may be twice prosecuted he need not be twice convicted. This is very true. But is it not a grievance that a person should be thus harrassed, and it is probable that the trouble is not the only evil; it must also be attended with expence; he would probably have to fee counsel in both courts, as both might claim the prosecution. This might be sport to some people, but it would be death to others.

He had been entertained by the observations of gentlemen, but he had not been convinced and he believed no member of the house had been convinced that the evils he apprehended from retaining the section would not ensue. It was a plain simple conviction of the understanding, that an expensive and burthensome judiciary must be the consequence—a consequence that no eloquence could divert the belief from, nor sophistry conceal. The measure of a concurrent jurisdiction if viewed by itself, appeared trifling, but its effects will be important: and if said he, gentlemen believe with me that it annihiliates our present county courts; that it will harrass our citizens; that it will rivet upon us a system that even the advocates of the section declare to be improper, that it will impose an expensive judiciary upon us, I call upon them to join with me now and strangle the infant Hercules in its cradle.

The motion to expunge was rejected by a majority of 12.

Foreign

LONDON, *Oct.* 11.

BY THE KING.

A PROCLAMATION,

For recalling and prohibiting Seamen from serving Foreign Princes and States.

GEORGE R.—Whereas it hath been represented to us, that great numbers of mariners and sea faring men, our natural born subjects, have been enticed to enter into the service of Foreign States, and are now actually serving as well on board the ships of war belonging to the said foreign states, as on board the merchant vessels belonging to their subjects, notwithstanding our former Proclamation recalling them, contrary to duty and allegiance which our said subjects owe unto us, and to the great disservice of their native country; we have therefore thought it necessary at the present moment, when our kingdom is menaced and endangered, and when the maritime rights, on which its power and greatness do mainly depend, are disputed and called in question, to publish by and with the advice of our Privy Council, this our Royal Proclamation:

We do hereby strictly charge and command all masters of ships, pilots, mariners, ship-wrights, and other sea faring men, being our natural born subjects, who may have been enticed into the pay or service of any foreign state, or do serve in any foreign ship or vessel, that, forthwith they and every of them do (according to their bounden duty and allegiance, and in consideration that their native country hath need of their services,) withdraw themselves, and depart from and quit such foreign services, and do return home to their native country; or do enter on board such of our ships of war as they may chance to fall in with, either on the high seas, or in any rivers, waters, havens, roads ports, or places whatsoever or wheresoever.

And, for the better execution of the purposes of this our Royal Proclamation, we do authorise and command all captains, masters and others commanding our ships and vessels of war, to stop and make stay of all and every such person or persons (being our natural born subjects) as shall endeavour to transport or enter themselves into the service of any foreign state, contrary to the intent and command of this our Royal Proclamation, and to seize upon, take, and bring away all such persons as aforesaid, who shall be found to be employed or serving in any foreign merchant ship or vessel as aforesaid:—but we do strictly enjoin all such our captains, masters and others, that they do permit no man to go on board such ships and vessels belonging to the states at amity with us for the purpose of so seizing upon, taking, and bringing away such persons as aforesaid, for whose discreet and orderly demeanor the said captains cannot answer: and that they do take especial care