

DEBATE

ON THE

Divorce and Alimony Bill.

HOUSE OF COMMONS.

Monday, Dec. 2.

The House went into a committee of the whole on this bill, and made sundry amendments therein. The debate which took place in the committee we did not hear. After the Committee rose, we were present when some observations were made on the principle of the bill, which appear with others made on the following day.

Tuesday, Dec. 3.

The house took up the amendments made in the committee of the whole, and agreed to some and rejected others. The most material observations made upon any of the amendments were upon one made by Mr. Love and another by Colonel Moore.

The one made by Mr. Love went to that part of the bill which allowed both the parties, after a marriage was dissolved, to marry again, by confining the privilege to the innocent person only.

Mr. SLADE objected to this amendment, as being unequal. If a marriage was dissolved, both parties ought to stand on the same ground. The contract of marriage, he said, was a civil contract of the highest nature, but it was like other contracts, both parties are equally bound; and if that contract is nullified, both parties ought to enjoy the same liberties, and privileges. Were it otherwise, the depriving a person of this liberty, would be an infringement on the constitution, by which every man is secured in his life, liberty and property.

Mr. LOWRIE was in favor of the amendment. He thought that it was one of the best that had been proposed to the bill. It was true, as the gentleman from Edenton had stated it, that marriage was a solemn civil contract. But the provision in this bill supposes a dissolution of this contract to take place; and fears are entertained by many with respect to this bill that persons may be driven to commit the actions mentioned in it upon which a divorce may be founded, in order to be released from the bonds of matrimony, and obtain the privilege of marrying again. This amendment is calculated to guard against such an abuse of the law; since it confines the privilege of marrying again to the innocent and injured party, which only it is the intention of the law to relieve. The offending party he thought should by all means be debarred from marrying again—it would be a punishment which he or she ought in justice to suffer for their criminality.

Mr. NASH was opposed to the amendment. His reasons for being so, he said, were few. Punishments of every kind ought rather to be calculated to correct the morals of society, than for the punishment of the party offending. He considered, that if the proposed amendment was carried, it would have a tendency to injure the morals of society. If the wife should have committed an act of Adultery, it might have been occasioned by some peculiar circumstances, which would never again occur. And after she is separated from her husband, would you prevent her from retrieving her character by marrying again, and discharging the duties of a faithful wife? By doing so, you would forever hold her up to public notice, and prevent her from becoming, what she might otherwise become, a useful member of society. Contrary from this, he thought every door ought to be opened to such an offender, by which she might return to her duty. The interests of society require this, he hoped it would be allowed.

Mr. CHERRY wished to know, as the gentlemen from Mecklenburg allowed that Marriage was a civil contract, upon what principles of law, after the contract was set aside, he continued to bind one of the parties? Certainly if one of the parties be released from the obligation, the other ought upon every principle of

justice, to be placed on equal terms. But suppose the amendment should prevail, he would ask the gentleman how it would appear which of the parties was innocent and which guilty. Does the decree of the Court go to shew this? Certainly not. It would be necessary, therefore, to go into a farther inquiry in Court, to discover which was the innocent party.

Mr. LOWRIE said, that the answer to the gentleman from Newbern (Mr. Nash) would be easy and short. The inconvenience which that gentleman has supposed the offending party to labour under, is suffered on account of an act which he or she actually knew the consequences of previous to committing it. They had therefore no right to complain. He readily agreed with the gentleman from Bertie (Mr. Cherry) that when two persons enter into a contract, and one of them violates it, the other, in most cases is released from the obligation. But in the way in which the paragraph in the bill now stands, one of the parties wishing to set aside the marriage contract without any good reason whatever, might take such steps to injure the other, as would oblige him or her, to apply for relief under this act. And every person doing this, knowing the penalty consequent of such a conduct, ought to suffer some inconveniences which might prevent a course of this kind. But it is said, that if this amendment were to pass, it could not be ascertained which of the parties was guilty and which innocent. He saw no difficulty in this. The party praying for a divorce must exhibit his complaint on oath. If found true, the Court will dissolve the marriage. Does it not then stand on the record of the Court who is guilty? Most certainly it does. There can then, be no difficulty on this head. He hoped, therefore, this amendment would pass.

The house divided upon it; when there appeared but 44 for it 72 against it.

This amendment being disagreed to, Mr. PORTER expressed a desire to introduce an amendment into the bill, which should give the General Assembly a power somewhat similar to that possessed by the English Parliament with respect to divorces. In that country, a divorce cannot be completely obtained but by an act of Parliament. If an amendment of this kind was introduced, he believed it would do away many prejudices which at present exist against the bill, both in this house and out of doors. Mr. Porter read the amendment he proposed; when

Mr. J. MOORE observed, that he was in favor of the principle mentioned by the gentleman from Rutherford; and if he would wait until the bill was gone through, he had an amendment prepared, which he thought would answer the purpose proposed. He read his amendment, and Mr. Porter consented to waive the one he had offered.

The bill being gone through, Mr. MOORE said, that though he was in favor of passing a law on this subject, in order to bring the investigation of facts before the Courts, yet he did not wish the Legislature to part with all her powers of interference in cases of Divorce. He proposed, therefore, a new section to the bill, providing that before any divorce should be finally made, it should receive the ratification of the General Assembly.

Mr. SLADE was opposed to this amendment. It was a principal reason with him for wishing the present law to pass, that the General Assembly might not in future be troubled with the investigation of business of this kind. But if this amendment was to pass, he did not think the Assembly would be relieved at all; as it might consume as much time to revise the decisions of the Courts, as was now employed in receiving and acting upon the petitions which crowded the house. It is a principle, he observed, in our constitution, that the executive, legislative and judicial powers should be kept separate; but if this amendment passed, the Legislature would have to revise the decisions of the Courts, and either approve or reverse them.

If the Assembly must continue to legislate on this subject, it might as well remain as it is. He thought it would be an infringement made upon the Constitution for this house to pass a law, and then sit upon cases that had been adjudged under it. There would be a conflicting jurisdiction between the General Assembly and the Courts; and it was the first instance he had heard of a Legislature revising the proceedings of the Courts. It was true that the House of Lords in England had cognizance of Divorces; but that body is the highest Court of appeals in that country. Our Legislature had no such power, and he was therefore against introducing this principle into the bill.

Mr. J. G. WRIGHT did not see the inconvenience from the proposed amendment which struck the gentleman from Edenton. There would be no conflict of authorities between the Courts and the Legislature. The object of the law in transferring the investigation of this business from the Assembly to the county, is, that the facts on both sides might have a proper and impartial hearing. This would be a very important end answered. Then, when a person wished to obtain a divorce, he or she must file his or her libel, and the opposite party will make his or her defence, and a fair hearing will be had, and a decision made. All the Legislature will have to do, will be to carry the decree into effect, by saying, without going into any investigation of the facts, whether it is expedient to grant the proposed divorce or not. It has been said that this would be the first instance in which Legislatures had been invested with a power of this kind. In this the gentleman is mistaken. In England, the Ecclesiastical Courts dissolve a marriage, so far as a separation of bed and board; but a complete divorce can only be obtained by an act of Parliament. As this is the practice in that country from whence we draw most of our maxims in law, it cannot here be improper to reserve the proposed power in the Legislature, especially as this amendment would certainly remove many objections to this law. Mr. W. did not apprehend much trouble to the General Assembly from the power here proposed to be given. When applications for divorce were to be first made to a Court, there would not be as many as now come to this house. A sense of shame, from a public exposure of facts of this kind in a court where they would be fully investigated, would be a check upon them; and probably but a small part of those few would ever reach the Legislature. He therefore thought the amendment a very proper one, as it went to guard, in a most effectual manner, the power proposed to be lodged with the courts on this subject. It would not be in the power of any Judge to say a Divorce should take place. He could only make his decree, which would be confirmed or annulled by the Legislature. He hoped this amendment would do away every objection that could exist in the mind of any member, or in the mind of any of his constituents to this bill.

The motion was carried.

Mr. DAVIDSON moved a new section to the bill, providing that Counsel in no case be employed in any suit brought under this law; but that all cases should be decided under the direction of the Courts alone. This motion was negatived 60 to 57.

The bill thus amended, was put upon its second reading; when

Mr. HAY rose in favor of the bill. It had become necessary, he said, for the Legislature to pass a law on this subject. The General Assembly was every year crowded with petitions for relief in cases of this kind, the prayers of some of which were granted and others rejected; but all of which were heard *ex parte*. These applications are become so numerous, as to become a serious evil, with respect to the time of the Legislature which they annually occupy. There are no less than sixty petitions at present on the table praying for relief in cases of this kind. Were this business placed in the Courts, where it ought to be, and where the facts would be fully investigated,

these cases would be greatly lessened. But here the application is made without expence, and the house is constantly hearing the unsupported allegations of husbands against their wives and wives against their husbands.

Mr. H. spoke of the practice of other countries, and of those States in the Union, where laws of this kind were in force, shewing that no evils arise from its operation; but on the contrary, that few instances occur in which it is called into exercise.

Mr. LOWRIE declared himself in favor of the bill. In addition to the reasons given by the gentleman from Fayette, in favor of it, which he thought just, he would mention the enormous expence with which the investigation of this business by the Legislature was attended by consuming so much of the time of the house, which would be entirely avoided by placing the business in the Courts. It would also have this farther desirable effect—it would lessen the number of applications for divorces. This was the operation a similar law had produced in other States. This law, he had no doubt, would operate favorably on the morals of society. It would be far better, in cases where grievances are intolerable, and there is no prospect of reconciliation between a husband and wife, that they should be set at liberty from each other—for they will live separate, and not being allowed the privilege of a 2^d marriage, both perhaps commit offences which would have an injurious effect upon the morals of the community.

Mr. PRANSON confessed, that previous to his becoming a member of the Legislature, he was not convinced of the necessity of a bill of this kind. It was equally true that his imagination had not then conceived the complicated misery which exists in this State, from unfortunate matrimonial connections. He had hoped, from the extreme calmness of the committee of the whole yesterday, and the desire which there appeared to amend the bill, that it would have met with the general concurrence of the house. But when he heard the frequent calls for the Yeas and Nays, without any argument offered against the bill, he began to fear there was a secret enmity against the provisions of it, which were not to be overcome. He had already seen that many bills of a public nature, which contained the best principles, had received their flat in this manner, without a word said against them. He feared that such a conduct as this was not correct. Members, he apprehended, were too much afraid of popular influence; their opinions are therefore not to be affected by any argument produced in that house. Gentlemen ought to consider, that they come here to think for the people, and should give their vote according to their own convictions, and not with a view to please their constituents only.

Mr. P. said, there were some general principles on which this bill ought to pass. It could not be contended with propriety that the marriage contract is not a civil and political contract, and the obligations arising therefrom are those of policy and nothing more. There was no more of *jure divino* in this contract, than there was of *jure divino* attending the rights of Kings. He admitted that it is one of the most solemn obligations that human beings could enter into, but still it is a civil contract; and when that contract is broken in the most base and flagrant manner, and one of the parties is thereby sunk in the deepest abyss of misery, it is surely consistent with policy and justice, and the duty of the Legislature, to grant relief—which could only be effectually done by passing a law of this kind.

Nor ought the principles of economy to be overlooked in this question. Perhaps it would not be wandering from the truth, to say that one fifth or one sixth of every session of the Legislature is occupied by receiving and considering applications for divorce, for alimony, &c. If we calculate the amount of this expence it will be enormous. And after all nothing is done, except in a few of the most flagrant cases. Petition after petition, and remonstrance after remonstrance come forward, and af-

ter repeated applications, perhaps the prayer of a petitioner is granted. By the present bill, it is proposed that these cases shall be heard in the court of the district in which the parties reside; and by an important amendment made to this bill, which ought to silence every objection to it, the power of ratifying or annulling any divorce decreed by the Courts, is retained by the Legislature. It may be found that the power placed in the courts is abused, the General Assembly can always hold it in check, by putting their veto upon their decree. As it is admitted on all hands that the situation in which the business is placed at present is grievous, is it not best to make an experiment with the bill now before the house? When evils exist it is the duty of the Legislature to attempt their redress; the evil in this instance is great, and the remedy proposed appeared to him him well calculated to afford relief. He hoped therefore the bill would pass.

The question being called for

Mr. Molton moved for a call of the house; which being had, it was found that all the members except two or three who were indisposed were present.

The Yeas and Nays were then taken on the passage of the bill, and were as follow:

YEAS.—Messrs. J. Bryan, Drasher, E. Bryan, Bright, Boazman, Bower, Burroughs, Cherry, Colfield, Cooke, Dozier, Davidson, Farmer, Grist, Gilmour, Glisson, Goodman, Hill, Haggins, W. Hawkins, Hay, J. Jones, Ives, N. Jones, Lowrie, Lanier, Molton, Morgg, McNeil, Mobley, Mendenhall, Murfree, Nelsen, Nicholson, Nixon, Nash, Porter, Parson, Robards, Riddick, Slade, Sawyer, Sumner, Smart, Simmons, Whitaker, Withrow, S. Williams, Wright, Young.—50.

NAYS.—Messrs. Allen, Allison, Byler, Bullock, Bloodworth, Carson, Collins, Carter, Cochran, Clark, Campbell, Christopher, Dobson, Delton, Davis, Farrar, French, Hoyle, Harvey, Hines, Hunt, P. Hawkins, Hern, Hulse, Houbuckle, Jarvis, Jordan, E. Jones, Ingram, Koons, Klaparick, King, W. Lanier, Love, Leatherman, Morgan, McCarrie, Moody, Mouring, McFarland, Melrose, Mask, May, McLean, Mitchell, McMillin, Owens, O'Kelly, Parish, Pickett, Perkins, Pearce, Paifer, Richardson, Russell, Smith, Scott, Spruill, Sneed, Smith, Thomas, Turner, Thompson, R. Williams, W. Williams, J. Williams, Washington, Wayne, Yancey.—69.

THE HYCO ACADEMY.

THE Trustees of the Hyco Academy (in the lower end of Caswell County) with pleasure inform the Public, that they have contracted with the Rev. HUGH SHAW, as Teacher of the Languages, &c. and the Rev. THOMAS COTTRELL, as Teacher of English, Reading, Writing, &c. who will take charge of this Seminary on the 1st of January next; where will be taught the Latin and Greek Language, Geography, Philosophy, Astronomy, History, Euclid's Elements, English Grammar, Arithmetic, Reading, Writing, &c.

The Trustees are assured, they can recommend these Gentlemen to the Public, as they have been sometime in the habit of teaching, under their particular notice. They are also confident of their faithful attention to the Morals, as well as the Literary Improvements of those they may have under their care. The character of the Teachers, the high and healthy situation of the Academy, and the opportunity of Boarding in decent and respectable families, we presume are sufficient inducements to Parents and Guardians to send their Youth to this Seminary. Terms of Tuition, for Reading, Writing and the common Rules of Arithmetic, seven dollars; for English Grammar, and its application to the Language, also the higher branches of Arithmetic, ten dollars; for Latin, Greek, &c. sixteen dollars per annum, paid quarterly in advance.

Nov. 10.

THO. I. MOORE, Clk.

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