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AND

North-Carolina State Gazette.

Ours are the plans of fair delightful peace,
Unwarp'd by party rage, to live like brothers

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DEBATE
on the
JUDICIARY BILL,

Mr. Cameron's Amendment for extending the Districts being under consideration.

Continued from our last.

Mr. STEELE observed, that those gentlemen who were in favor of preserving the district principle in our court system, were, of course opposed to the principle of the bill on the table, and were disposed to discuss the subject in a fair and open manner.

Before he proceeded to take notice of the proposed amendment, he would make a remark on some insinuations which had been made use of in the house, but more frequently out of doors, that the friends of the amendment are not sincere in their wish to extend the district principle, but that their object is to defeat the bill. This, he declared was not his motive. He was in favor of the district principle, and in favor of its extension as far as it could be extended conveniently, without imposing too great a burthen upon our Judges, and so as not to make the system too unwieldy.

It had also been insinuated, that opposition was to be expected from gentlemen coming from the district towns, and from the counties in which they were situated; and that as they were operated upon by local and selfish considerations, whatever observations might come from them were not entitled to any weight. His opinion of the relation which exists between a Representative and his Constituents, he would state in a few words. There is, said he, a particular and a general relation between them. In every thing of a local nature, and which concerns his Constituents alone, a Representative is bound in duty to attend to their wishes, so far as they do not interfere with the injunctions of the constitution; but in every measure of a general nature, a Representative ought not to consider himself as representing any particular town or county, but as a Representative of the people at large.

With respect to himself, and those in favor of the proposed amendment, he might venture to say, that they considered themselves, on this question, as Representatives of the whole People, and not of the particular spot alone from which they came; and he hoped it would be believed, that they not only considered themselves in that light, but advocates of the constitution, and advocates of the rights and liberties of the People. For, believing as he did, that the rights and liberties of the People of North-Carolina are deeply interested in the decision of this question, he had determined to support the district principle, which, in his opinion, was our only security for a pure and impartial trial by jury.

No subject of greater importance could come before that house, than a proposition to change the mode of administering justice. This subject comes under the head of that general relation which exists between a Representative and his Constituents, on which every member ought to lose sight of all local and selfish considerations, and deliberate and act as a Representative of the whole, and not of the narrow spot from which he comes. The administration of justice is important, because it concerns every man more permanently and more deeply than any other subject; because every right, every privilege which we possess, every hope which we have in life, we hold under the guardianship of Trial by Jury. Our Juries are a part of our court system, and any thing which has a tendency to undermine their purity, has a tendency to undermine our rights and privileges. Jury Trial, we may be told, is only a single privilege; but it is a privilege derived from our ancestors, whose value consists not only in rendering justice between man and man in private suits, but is a security for the attainment of justice in criminal trials. It is like the fence which protects your crop—impair or remove that protection and you impair the value of the thing protected. The Trial by Jury secures to us every other right. There can be no distinction between the security and the rights intended to be secured. It is the shield which the constitution has given us, and we trust that no step will be hastily taken which may put it to hazard. It is for this reason that we cling to the present constitution of our courts. We are willing to extend it as far as we can; but we cannot give up the principle; because we believe, in that is our only security for a correct administration of justice.

Liberty, is a general word, which comprizes all our rights. This is possessed in the highest degree when every man feels a tranquility of mind from the full enjoyment of his privileges, accompanied by a conviction that they are secured to him by permanent institutions. And as the trial by jury is better calculated to give to the people that tranquility of mind, is more favorable to the security of our liberties than any of our other institutions, it ought to be guarded with extreme caution. It gives security to every class of citizens, but to none is it so valuable, as to the poor man. The poor man with a large family has nothing to attach him to government but the security which it affords him. This security, Mr. S. said, had been experienced under the the present establisment of the judiciary; Take it away, and you take away one of the choicest blessings which the poor man enjoys, and leave him to be trodden under foot by the rich and powerful. The rich can protect themselves—but the poor cannot. He was therefore in favor of retaining the district principle, and opposed the bill on the table.

In addition to what had been said concerning the liberty and rights of the people, he would make another observation. This is a government of opinion. The great bulwark of of this and of every other free country, consists in opinion; the opinion which the people entertain of their safety, their happiness, their security, and above all, the opinion which they entertain of the excellence of their civil institutions, and particularly of those which relate to the administration of justice—undermine that and the destruction of your liberties is more than half accomplished—destroy that opinion, and you destroy the liberty of the country and bring its best interests into hazard.

Means, Mr. S. observed, had been used to unsettle the opinion of the country with respect to the present administration of justice; it had been said that justice was delayed—that it had not been administered with sufficient dispatch. Indeed the language used in the preamble of the bill was not warranted by fact. It is there stated, "the delays and expences inseperable from the present constitution of the courts of this State do often amount to a denial of justice, the ruin of suitors, and render a change in the administration thereof indispensably necessary". This is the language of the bill, and it is the language held out in the country, and the people are led to believe it. Though he knew that in the part of the country from which he came, circumstances did not warrant this representation. Indeed were the proposed system to take place, it would subject the people to an expence they were little aware of:—But this, with him, was of little moment, compared with the objectionable principle of the measure.

Mr. S. was in favor of the district principle, and opposed to the county court plan for another reason, which he drew from the form of our government, with which he was well pleased. He venerated it as the work of the Heroes and Statesmen of the Revolution, which had procured happiness and freedom for themselves and transmitted them unimpaired to us their posterity. He could not, therefore see with indifference the hand of innovation destroy any part of the fabric which the spirit of '76 had framed. If there was any portion of the spirit of '76 in that house he would invoke it to stay the hand of innovation in favour of that time! He hoped it would be stayed, and that the good sense of this house would adopt the amendment proposed as a substitute for the bill.

The structure of our Government, said Mr. S. which has given us as great a degree of happiness as any people ever possessed, is such, as renders it indispensably necessary that there should be permanence in one of its branches. At present the Judiciary is that permanent branch It may be called the anchor or rudder of our government. Your Executive has but little patronage, and scarcely any power, except that of granting pardons—Your Legislature is renewed annually, so as to be in a constant state of fluctuation. If, then, you undermine the Judiciary, you unsettle the Government, and may produce a state of anarchy and confusion: and among the probable consequences, you may expect to see introduced into this State a permanent Senate, and a much more permanent and strong Executive.—This, he said, was an interesting consideration; for these States which have been instanced as having adopted this County Superior Court System, have all permanency in the other branches of their Government. In South-Carolina, the Senate is chosen for four years, the Executive for two; in Pennsylvania, the Executive is chosen for three years, eligible for nine—the Senate for four years; in Maryland the Senate is chosen for five years. Have the gentlemen who have thus assailed the only permanent branch of our government, considered what will be the consequence if their plan succeeds? If they have, and contemplate other changes in our government to correspond with this innovation, it is to be hoped their design will be defeated. Whilst other states, said he, have been amending and altering their Constitutions, the people of this State have adhered to the Constitution of '76, from a veneration for those great men who formed it; and he hoped the same veneration would still preserve it from innovation and destruction.

The constitution of our Court System, Mr. S. said, was intimately connected with the Constitution of the State. The same great men formed both. Yet this Judiciary, which has been considered as one of our choicest blessings, we are about to throw away for a new system.—The district principle, upon which the present system is founded, he observed, had been in use in this State for half a century. It was adopted long before the Revolution, and re-enacted after that event. The Patriots of '76 were attached to it, because it had been the favorite system of their Ancestors; and it was with difficulty they retained it before the revolution against the principle of consolidating all the courts into one. He considered it, therefore, as one of our ancient and fundamental laws, to which we ought to cling as to the work of our most venerable sages, with increasing affection and veneration.

If he might be permitted, he would state an historical fact to shew the veneration even of a tyrant for the laws of antiquity. When a great & famous city of the East had submitted to the all-conquering sword of Alexander the Great, he convened the chief men of the place, and asked them, with ostentation, to say what favor he should grant them and it should immediately be done. They demanded with one voice "that he would permit them to enjoy in tranquility the laws of their ancestors." The tyrant was touched with the piety and moderation of this request, and added the free exercise of their religion also.

This, said Mr S. is all we ask of this house. Let us enjoy the Judiciary establishment of our forefathers, which they left us as a legacy, and which we ought to preserve by all means in our power.

Mr. S. was in favor of the district principle for another reason. The court system, as at present established, is competent to meet any emergency that might arise in the country. Suppose any internal commotion should take place—and such an event may arise, commotions are incident to a state of freedom. In such a state of things, suppose a faction to be so predominant in one or two counties, perhaps increased by foreign intrigue, that juries could not be selected free from their influence. What security would there be if juries were drawn from such counties alone, as must be the case under the proposed system, for a pure administration of justice? The present system would be competent to meet such an event; because, if one part of a district was agitated another would be tranquil; and an implicated person might expect justice administered in mercy; whereas, under the proposed system he would sink in despair, if belonging to the weaker party, or be certain of an acquittal if belonging to the other.

He would now make some comments on the bill upon the table; but before he did this, he would take the liberty of reading a short paragraph from the Governor's message to the two houses at the opening of the session, as he considered it in point, and much better expressed than any thing he could say on the subject. Mr. S. read as follows:

"The public mind has for some time been considerably agitated by the contemplated change of our judiciary system. In consequence of the expanded population of our state, of the influence of commerce, and the gradual increase of wealth, and of the inevitable vicissitudes of human affairs, it is reasonable to expect that our jurisprudence requires modification. But in effecting any alteration, permit me to caution you against temporary expedients, for they will weaken rather than strengthen the arm of justice. Whatever imperfections are found to be interwoven in the existing system, injurious or burthensome, cause them to be amended with a respectful, though steady hand, and direct all your views to permanent measures. You must consider that you are placed in the responsible situation of framing laws for posterity, and not for yourselves alone."

There was so much good sense in this part of the Governor's message, which must have been intended to meet this question, that he could not help hoping that it would have weight with the house.

Mr. S. said, he would undertake to shew that the bill before the house was a temporary expedient. In the first place, in order to make the bill more acceptable, it is limited for three years. The gentleman from Mecklenburg has used this as an argument in favor of the bill. This is the language of expedience. But this limitation is subject to this objection. You must appoint your Judges, during good behaviour; you cannot put up and take down these Judges at pleasure like a Board of Accounts; and in this view, the bill is unconstitutional. [Here Mr. Steele read the 13th clause of the constitution which provides that Judges, &c. shall hold their offices during *good behaviour*] and added that any law passed for appointing Judges different from the mode pointed out by the constitution, must be void.—Where, asked Mr. S. is your authority for appointing Judges by any other tenure than such as the constitution directs? Yet here is a bill which says that Judges, &c. shall be appointed for three years. Perhaps the gentlemen will say, we can amend the bill, by striking out the limitation. But why hold out the limitation to the people, and invite them to countenance an experiment which it was known the constitution does not permit them to make.

But this system is defective in another respect. It is delusive to hold out the idea that six Judges can do the business of 120 courts in a year. It is impossible. You cannot expect that the Judges can perform impossibilities; and the constitution secures them against having more business laid upon them than they can perform, and that their salaries shall be adequate. He trusted the house would not attempt to run down & legislate the present Judges out of office, by laying more business upon them than they can perform, and at the same time providing for no increase of compensation. He would not say this was intended by the supporters of the bill, but whether intended or not, the effect would be the same. The Judges will be driven out of office; and at the next session, the gentlemen will come forward with a proposition to support ten or twelve new Judges.—These gentlemen have resigned, they will say, it was their voluntary act, and we care nothing about it. Is this legislating with due regard to that clause in our bill of rights, which says, "that the legislative, executive and supreme judicial powers of government ought to be forever separate and distinct from each other?" It is legislating in opposition to its obvious meaning and spirit.

The observations which he had made, Mr. S. said, had been founded chiefly on the policy and expediency of the proposed measure. He trusted that these considerations alone would be sufficient to insure the reception of the proposed amendment, and to reject the bill. But, fortunately for the country, and fortunately for the members of this house, there are objections to this bill of another kind—objections which are radical and fatal. It is not in the power of this house to pass this bill. He did not mean to say, there were not numbers enough, or physical force sufficient to do it; but he meant to say, that house was restrained from doing it by considerations of moral rectitude, and obligations of the most sacred kind. He would venture to pronounce the bill unconstitutional, and therefore the house could not pass it. If he could shew this, he presumed there would be an end of the bill.

Mr. S. said he he would call the attention of the house to a few sections of that instrument from which they derived all the authority they possessed. Gentlemen, said he, who may suppose they possess all power as legislators, are restrained by a sense of right and wrong, and by the constitution.

The 44th section of the constitution declares the bill of rights to form a part of the constitution; and the 4th article of that bill is in the words above quoted, separating the different branches of the Government. It would have been proper, he said, before the Legislature had attempted to change the principle upon which the present constitution of the courts is established, to have called upon the Judges, who represent the people in the Judicial Department of the Government, by a resolution, to report any alteration which they might deem necessary in their department for the due administration of justice. This would have been acting with proper respect towards that body, and the Judges would have come forward, and given you the information required. But this has not been done, and gentlemen by legislating in this manner, will run the risk of acting disrespectfully toward the Judges, and without the information which that department might have afforded.

If the Judges had been called upon, information would have been received from all parts of the state, as to the necessity for an alteration of the present system. Mr. S. said he had in his possession official papers which shewed the situation of the business in the several superior courts in the western parts of this state. These papers he read and commented upon; and from the small number of suits upon the several dockets (some counties having none, and others very few suits) he concluded there was no necessity for carrying a superior court into counties, where there was no business, or next to none, to be done.

After having made this statement to the house, Mr. S. said he would undertake to shew another article of the constitution which is against the principle of this bill. This was the 9th article of the bill of rights, which is in these words:

"That no free man shall be convicted of any *crime* but by the unanimous verdict of a jury of good and lawful men, in open court, as heretofore used."

If he shewed, that at the time this bill of rights was adopted, the trial by jury was composed upon the district principle, he would then shew that a criminal could not be convicted by a jury formed in any other manner.

It would be necessary, before he proceeded, to give his understanding of two words in that section, viz. *crime* and *heretofore*. The word heretofore, meant any portion of pre-