RALEIGH REGISTER,

AND

North-Carolina State Gazette.

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

VOL. VIII. MONDAY, DECEMBER 22, 1806. NO. 378.

DEBATE
on the
JUDICIARY BILL,

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

Mr. Troy's Speech concluded.

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 not only had 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 discussion of the principles of the bill. They expected the opposition which had appeared. They knew that any change of the present system, would be opposed by all the force of those whose interest 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 by our sister state S. 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 improbement of their inland navigation, to their patronage of the arts and sciences, to every department of internal policy, 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 their system. He had been present in their courts and never saw justice better administered any where, nor courts possess more becoming dignity. The Judges, 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 & 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 extension of their cares beyond the narrow circle of self interest 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—nor was he one of those mad reformers, who wished to pull down every thing ancient, and prostrate all establishments before a wild and visionary spirit of innovatinn. But whenever it could be made appear by rational and fair argument, that alterations in existing systems are necessary, he was always willing to change them.

There is nothing very different, said Mr. T. between the habits and manners of the people of this state and those of South-Carolina; if the principle now proposed to be established in our court system, has had a good effect there, it may fairly be presumed it will have the same good effect here.

The gentleman from Orange (Mr. Cameron) has attempted to defend the old system by rescuing it from the imputation of corruption. Mr. T. never heard before, that it had been insinuated that our courts were corrupt. He thought the observation of the gentleman imprudent.—For his own part, 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, which could 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 of this bill had sufficiently panegyrized it; and he was disposed to give his full assent to every thing they had said in its favour, and more need not be added. But the proposed bill does not only preserve the Trial by Jury in the fullest manner, but in a much more convenient way than at present established. Indeed, were the Trial by Jury assailed or contravened 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 only. 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 will the gentleman shew 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 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 his statements, that very little business is done in some of them. Taking the gentleman on this ground, if a judge be 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 imputation. For himself he disdained any such unworthy motive, no man had more personal respect than he had for the present Judges, nor any who would be more ready to make their situation comfortable. But because he regarded them, and because they filled their offices with honor to themselves, and usefulness to their country, was that any reason why the State should not have a more convenient System of Jurisprudence than the present? Accordingto the arguments of gentlemen, we could, at no future period, change our Court System. We must forever go on in the same course.

Mr. T. said he would draw another argument in favour of the proposed change in our System, from the example of S. Carolina. It will have a beneficial effect upon the morals of the community. In S. Carolina the petty offences of assault and battery, &c. offences which are most frequent amongst the lower class of citizens, are now scarcely heard of; because the people of that country have been taught to reverence the laws and to respect the Courts, having no other Courts amongst them but those that will inforce one and command the other; every transgression of the law is there properly punished; instead of being brought before a court, as in this State, for which they have no reverence, and where they are generally discharged by payment of a frivolous fine, which does not deter them from future commissions of the same offences.

But the gentleman from Salisbury had attempted to oppose the passage of this bill, on very high ground—on a ground, which if he could sustain, he would readily agree with him that it ought not to pass, viz. that it was unconstitutional. It appeared to him however, that the usual candour or intelligence of that gentleman had left him on this occasion. He looked upon the objections made on this ground as entirely without foundation; but as they had been gravely advanced, they were entitled to a reply.

The 1st section of the constitution which he had noticed was the 4th of the bill of rights, which directs that the different branches of the Government shall be kept distinct. Why this section had been quoted, he could not tell, for there certainly was nothing in the bill which conflicted with it in the least. If the gentleman shewed any connection between them, his remarks had made no impression on his mind.

Mr. Steele, explained.

The gentleman produced next the 9th article of the bill of rights, which declares, "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;" and endeavoured to shew, that this had a reference to the mode of selecting the Jury; whereas it certainly was not the mode of selecting Juries, but the Trial of Jury itself, which the framers of the Bill of Rights had in view; and, according to the common rules of construction, this is the plain and obvious meaning of the words. This bill certainly does not therefore encroach on this section.

The gentleman's argument, that the Legislature ought to have consulted the Judge before they attempted to make any change in the Judiciary System, was quite a novel and strange doctrine to him. It never occurred to him, that it was necessary for the Legislature to consult any authority with respect to the expediency of any of their measures. This Assembly he hoped, on the contrary would be too jealous of its rights, to allow the interference of any branch of the Government with its measures. But the gentleman had said that the Judges had a constitutional right to be consulted on such occasions. It appeared to him that such a consultation would really be confounding the legislative and judicial branches of the Government.

Something had been said about expence. He would not take up the time of the House with calculations on this subject. We shall never have a good system, if we estimate its value by its cheapness, or if we incline to let our Offices to the lowest bidder. Though he should always be favorable to public economy; he abhorred public parsimony, and he would alike avoid an idle profusion of public monies and that wretched policy which is calculated to destroy every liberal establishment amongst us. Let us, therefore, not consider whether the proposed system will cost more or less, by a few thousands of dollars, but let us have a good system. It is from a niggardly parsimony in our Public Councils, that more improvement does not take place in our State, that we are left behind our sister States in all the imbellishments of social life. Taking every thing into view, however, he had no doubt but the new system would be less expensive than the old. But this consideration had no weight with him.

Upon the whole, Mr. T. was for rejecting the proposed amendment, and for establishing Superior Courts in every county. This opinion was formed on much reflection; had he not been friendly to this change in principle, he should not have been a Member of the present Assembly. He represented a part of the country which had experienced the evils of the present system and his constituents were anxious for the proposed change. and unless his wishes and sentiments had been congenial with theirs he should have disdained to have been seen their representative on this floor, he should therefore, give his negative to the motion before the House.

MR. F. X. MARTIN said, that whatever might be the bias on his mind in regard to the wishes of that part of the community, the interest of whom it was peculiarly his duty to be watchful of, he trusted he would do no injustice to them or the rest of the community, if, after a fair and mature consideration of the two Systems, on which the house was now deliberating, he yielded his feeble support to that which seemed to promise the greatest share of learning and integrity on the bench, of information and industry at the bar, and to exclude from the box the ignorant, dependent or party-man. In search of these advantages, he said, he considered œconomy and convenience as objects of minor consideration—he hoped the house would not count the pounds, the shillings and the pence.

Judging that the amendment proposed by the gentleman from Orange was better calculated to secure these benefits, he hoped it would be substituted for the bill.

The hardships of long, continued and fatiguing journies, the inconveniences of narrow, and noisy lodgings, the abandonment during a considerable portion of the year of all the comforts of his dwelling, the company of his family and the society of his friends, the reduction of the present scanty emoluments of office, were not considerations that were likely to insure the continuance in office of any of the gentlemen who now fill our bench, or to allure from the bar any of those whose talents procured a decent subsistence. A Judge was to be twenty weeks of each year on the circuit, the supreme court was also to be attended, he was to travel to the most distant parts of the State. During the half year which these services would consume, his expences added to the incidental ones which the office would occasion during the rest of the year, would reduce to one half of his salary the meagre pittance on which his family were to be supported. He never could hope of ever securing any provision for them after his continuance in office. His straightened circumstances would render him irritable and peevish; care and anxiety would ever intrude on his thoughts and deprive him of that tranquility and composure of mind, so necessary in the discharge of the arduous duties of his office.

He observed that a miserable expedient had been resorted to, to render the original bill supportable The legal fee of counsel had been reduced to two fifths of the present rates, &no alternative was left to gentlemen, but a choice of a breach of the laws of their country or a renunciation of the best part of the rewards of their labours. Attendance on courts was rendered more and more irksome & unprofitable. Our best lawyers, would certainly carry their industry and wealth into such of our sister States, in which the price of their services was left to be settled by the gratitude of the client or the agreement of those who require and those who render them. The remainder would soon cease to be respected and perhaps to respect themselves.

Narrowing the circle within which jurors were to be summoned, would certainly lessen the number of independent and intelligent men (already too small) which attend on our juries. It would often happen, or be believed that ignorance or partiality dictated their verdict.

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justice, these evils, he added, would be most sensibly felt. The number of law officers which the new system called for would leave but few able and learned men to be employed for the defence of the lives and reputation of our citizens; and if able counsel reserved themselves for this lucrative part of a counsel's practice, the interest of the State must be entrusted to very unskilful hands Men of talents and information in the crown law were scarce—and Mr. Martin asked from what quarter the necessary supply which the bill called for was expected? They would not spring up like mushrooms of a morning under the prolific dew of the bill.

Little care had been taken of any provision for the dispatch of Equity business—the subject was merely glanced at. Clerks and masters in equity were not even named, while provision was made for the election of officers of this kind in the law department. Indeed it was rumoured out of doors that, the jurisdiction of county superior courts was intended by a bill, now in the pocket of a gentleman, for the appointment of a chancellor, and the establishment of a court of chancery, which was to be always open at the City of Raleigh.

Mr. M. asked whether the gentlemen were ready to swallow this monstrous pill. Whether the convenience of the people, or the circumstances of the poor, were consulted in a plan which would demand the attendance of citizens from all parts of the State to a place inconvenient to all—to the increase of the expence already enormous, which attends the determination of a suit in equity. Each party would have to employ two sets of solicitors, one at home to consult with, to draw the bill or the answer, and attend to the service of process; another at the seat of government to procure order, argue pleas and attend the hearing. In case of a reference, the parties and their witnesses would have to attend the master from the extremities to the corner of the State.

If œconomy was to influence the vote of the house, had the gentlemen calculated the expences of erecting fifty-two jails, and supporting a civil army twice a year of eighteen hundred jurymen?

Would the convenience of the people be consulted in providing a system which would send every case of the least importance to be determined in the supreme court of the State? Would the interest of the State be said to have been sufficiently attended to in a bill, which enabled a powerful individual to defy at home the justice of his country, if he could influence the sheriff and consequently the jury, and array the industry and learning of the bar against a judge, assisted only by a *twenty dollar lackey*!

The aristocracy of the district towns was held out as a bugbear.—Mr. M. asked whether the people were less free under the monarchy of one city in legislative matters, than when the General Assembly, under the royal government, visited in a kind of alternate progression, most of the chief towns of the country? The people of Wake did not appear to him more the object of legislative attention than those of Buncombe or Carteret.

Neither are, continued Mr. M. large & commercial populous towns without their advantages to the State. They drew an influx of travellers, they were the nurseries of learning, they favoured the progress of arts, civilization and our urbanity. They afforded convenient marts.—Without them our tradesmen must remain bunglers, our physicians quacks, our lawyers, pettyfoggers, and our divines ranting fanatics.

A system which brought together at periodical intervals, the principal inhabitants of a county to the court house, and some of them at less frequent intervals to the district town, and a fewer number annually at the seat of government, seemed better calculated to advance the interest of the people, by giving them frequent opportunities to meet and consult, than one which kept them aloof.—He considered towns as the muscles of the political body.

(The Debate to be continued.)