RAEIGH 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 29, 1806. No. 379.

DEBATE
on the
JUDICIARY BILL,
Mr. Cameron's Amendment for extending the Districts being under consideration.

(Continued from our last.)

Mr. J. COCHRAN observed, that by the present superior court system only eight counties out of sixty were accommodated, the proposed bill contemplates an equal accommodation to every part of the State. Much had been said in opposition to this change by gentlemen who came from district towns, and whose interests will be materially affected by the proposed alteration. This opposition therefore was expected.

The greatest objection which had been made to the bill before the house, had been with respect to juries. It had been said impartial jurors could not be got in the counties, that though these jurors are good men when serving in the county courts, yet when they shall be called into a superior court, they cannot be trusted. For his part, he could see no force in this reasoning, nor did he belive better jurors could be got in any other county than in that which they resided. If jurors were base and corrupt while in their own county, could it be expected or shall it be said, that so soon as they get in sight of a district court-house, they will become entirely changed? And again, he asked, if any gentleman was prepared to say, his constituents were so base and corrupt, that a jury of honest men could not be had in their county? Besides, it would not be denied that any person attending the court from an adjacent county, would be as eligible a juror as he would be if living in the same county; and in extraordinary cases there was a clause in the bill for removing the cause to an adjacent county. If this provision, on experience, should not be found sufficient, it can be altered and made so.

Something had been said with respect to the little business done in the present superior courts from some of the counties. This, he thought, was a good reason for carrying these courts into the several counties. Because, at present, though a county may not have a single cause to try at these courts, it is taxed from 40 to 50l. per year for the pay of jurors, which it is obliged to send to try the causes of litigious men from other counties. Besides, one of the reasons why there are so few causes from some of the counties is, that many poor men are not able to find securities to carry up their appeals, and on which account, justice may be said to be denied them. Not more than one tenth of the people were benefitted by the present system. He himself had known causes in the county court, where the part has been cast, and where the attornies on both sides, have allowed that justice had not been done, yet the party dreading the expence of an appeal, has given up this right. He knew a cause brought up from Granville county, to the superior court, where the debt was only sixpence and the costs in the event, amounted to 20 or 30l.

In the district in which he lived, citizens often had to attend the superior court six days at a time, when they ought to be putting their crop in the ground. Whereas, if the business could be done in their own county, one day would be sufficient, and persons might return home to their families in the evening.

Mr. C. said our present Judges would not be less wise when presiding in a superior court, than they are now in the district courts, and if a jury should at any time give a verdict contrary to evidence, a new trial would doubtless be granted, which is frequently the case under the present sytem of the districts.

With respect to the Juges not being able to perform the duty prescribed for them in the new system, he thought they might ride a circuit of ten counties twice a year very well; when they would sit about long enough to rest themselves, and ride enough to amuse themselves; consequently, always be prepared to enter upon the business of the court, and not be tired out by sitting so long at one time and place, which is so much complained of under the present system. Therefore equity business could be much better attended to than at present.

As to establishing a court of equity at Raleigh for the whole State, if gentlemen had been in the last Assembly, they would have known the opinion which was then entertained of that plan, and he did not expect it would now meet with more countenance than it did then.

Mr. C. said it had been observed by the gentlemen from Orange, that the bill before the house would leave it in the power of the wealthy to harrass the poor man—he thought it would have the contrary effect. For, said Mr. C. if there was a court established at the seat of government, where all persons in the State were compelled to resort for justice would not this leave it completely in the power of a wealthy man to harrass his poor neighbours? Surely it would. Then, by the same rule of reasoning, it has the same effect in a certain degree, where 8 or 10 counties are all bound to one spot.

Upon the whole, as the bill was calculated to accommodate the people at large, and the proposed amendment only a few, he hoped the bill would be preferred, and the amendment proposed by the gentleman from Orange, rejected.

Mr. NORWOOD was in favour of the amendment; but before he entered into a discussion of the merits of that amendment, or of the bill, he wished to take notice of a reason which had been assigned in favour of the bill, that it is the will of the people, the wish of the community. He was disposed to pay as much respect as any other member of that house to the will of the people, when he was convinced that will had been formed from full information on the subject on which it was expressed; but when he was convinced the opinion of his constituents had been formed, without having the necessary facts before them on which to found a correct judgment, he should not be disposed to pay the smallest attention to their wishes.

How, said he, am I to know what influence might have been had upon the minds of the people by interested lawyers, who might wish to exclude from their circuits men of superior talents, or by men who possess property at the seat of the county court-houses? It seemed extraordinary that some of the counties in favour of this system, have not a single suit in the Superior Court of their district. He could not conceive how people thus situated could complain of oppression from the present system. He could not believe they has been correctly informed on the subject. Such counties must certainly have been deceived, or they could never wish to pay their part of the expence of carrying a superior court into their counties.

If, said Mr. N. we were to admit that the will of the people should govern us in all cases, the principle would be destructive to our constitution and dangerous to our liberties. The Sages who formed our constitution found it necessary to guard the people against themselves; but for this we had no need of a constitution. The Representatives of the People might have been left to make laws, agreeably to the will of their constituents, without control. But those who formed the constitution foresaw that Representatives might sacrifice public good at the shrine of private interest, they therefore laid down a rule for their government. We ought to respect this rule, rather than what may be asserted in this house to be the public will. We ought, said he, to examine whether the step proposed to be taken in the present case, is a constitutional one. He thought it had been ably shewn by the gentleman from Salisbury that it was not.

With respect to the expediency of the measure, Mr. N. said he would make a few observations. The great benefits derived from impartial and enlightened jurors, whose minds have not been prepossessed by either party, had been already shewn. The chance of procuring such juries is greatly lessened by the proposed change.

By the bill on the table, every lawyer will be located to some particular district. He will have no inducement to apply himself to the acquirement of further law-learning—all emulation with his brethren of the bar will be cut off—the respectability of the bar will of course decline. From this bar our future Judges must be taken. Our Judges will therefore be men of less respectability and their decisions less sound and wise. Our Judiciary will no longer remain that dignified department of government, that bulwark of our liberties, which it now is—it will sink into almost nothing.

It has been said, that the expence of juries is not to be considered. But this expence is at present 12,000 dollars a year, and it will be much greater under the proposed system. Whether the jurors are paid by the public or not is immaterial. It is more burthensome if the jurors are not paid. At present, many of the counties do not send more than three jurors to their superior court; by the proposed bill, they are to call out thirty-two a year. Surely this will be a heavy service.

Another inconvenience which will arise from the proposed system is, that many of the court houses there are no accommodations fit to entertain your Judge. The Judge, gentlemen of the bar, suitors and witnesses, will probably all be crowded into one small room. But it was said, that people who owned property at the different court-houses would make improvements so as to be able to entertain the company that might attend these courts. But when it is seen how those persons are served who have made improvements for this purpose in the district towns, will any one have confidence enough in the stability of the new system to do this?

It has been urged against the present system, that the benefits derived from it are unequal; and he perfectly agreed with gentlemen that so far as the nature of our government would admit, the benefits ought to be equal. But this cannot be. Suppose a superior court carried to every court-house, the people living about the court-house will be more benefitted by it, than those who live in the extreme parts of the county. Every benefit cannot be extended equally to every citizen. We ought to consider whether the community at large will receive the most benefit from this or that system, and not whether this or that particular neighbourhood will be accommodated by it.

It has been said, that the present system is oppressive to the poor; for if a decision goes against a poor man at a county court, he has it not in his power to prosecute an appeal for want of sureties. He supposed security for an appeal would be required under the proposed system equally with the present, with much less chance of justice. It would be easy for a man of influence to make an impression on the public mind in his favour. When a suit in a county, the subject of it is soon talked about. The poor man is obliged to labour at home, whilst the wealthy one can mix with the people at every public place, and make an impression on the public favourable to his cause. And out of this public, the jurors are to be drawn to try the cause. On the part of the argument, he would call upon the gentleman last up, and ask him if the county from which he came (Person) had not been at one time so divided by faction, that justice could not be obtained in a well known case. The Sheriff, being an honest man, and well acquainted with the parties, was in the habit of summoning an equal number of each side, and no verdict could ever be got, till the suit was brought to the Superior Court. If that county should be again divided in such a way, what would be done under the new system? Mr. N. believed that in some of the counties, there were families of such influence, that justice could not be had against them.

The court-system of S. Carolina has been frequently mentioned. He professed not to be acquainted with that system; but if the gentleman from Anson (Mr. Troy) be acquainted with it, and he had rightly understood him, all cases of pleas are confined to their superior courts, and that, on that account, assaults and batteries have, in a great degree, subsided. But, according to the bill before the house cognizance of these misdemeanors still remain with our county courts. There is, therefore, no similarity between the system of S. Carolina and that now proposed for this State, except that the courts are held in small districts.

The proposed system will be oppressive in another point of view. Not more than two or three lawyers will attend these superior courts. It will be easy for a wealthy man to engage all these lawyers. Suppose this not the case, that one of these gentlemen is unengaged. Does it not put it in the power of that man to demand what fee he pleases for his services? And will not the party be obliged to give it? For when a man has considerable property at stake, he will give any fee that may be asked, rather than risk the loss of his suit for want of counsel. And the lawyers will be compelled to ask these large fees; for having but two or three causes at a court, they must be well paid for them.

The gentleman from Person, had spoke of paying 40 or 50l. a year for jurors to the superior court; as that county sends but three jurors, the expence cannot be so great. In future they will have to call out 30 twice a year.

Another inconvenience will arise in the proposed system. When a criminal is apprehended, he will be committed to the jail of the county, and in most instances the prisoner may obtain the affidavit required for removing the trial to an adjacent county; and this removal will probably afford the criminal an opportuty of making his escape.

Another inconvenience attending the proposed system. No books could be had in the several counties; and it would be impossible for the Bar or the Judge to decide important causes without the assistance of books. And can it be supposed that the Judge will make these decisions without such assistance? He will not, and the consequence will be that very many of these causes will be sent for decision to the Supreme Court in this city, and the parties will have to follow them.

The two last objections above are sufficient to shew the impropriety of adopting the proposed system.

Mr. DUFFY observed, that he was one of those who had the honor to represent the district towns, and might therefore be supposed to possess prejudices on this question.—But if he had any knowledge of himself, he was perfectly unprejudiced. He looked upon the general good of the community at large, as the great object of his enquiry. So far as the local interests of Fayetteville may be concerned, he said he would feel himself bound to attend them; but on every general question, whatever might be the consequences, he should think and act for himself.

That the present system of jurisprudence is imperfect, Mr. D. said must be acknowledged. It was the work of human beings, who are themselves imperfect, and whose offspring must be so. And therefore whatever system might be proposed would be found to have defects in its origin. To say because a system is defective, it ought to be abrogated, would be to preserve nothing; and to charge the present system with being very inconvenient in some respects, is certainly not sufficient reason for altering the principle on which it is founded.

Having promised that every system which can be devised will have defects, from its origin, we are now to enquire (said Mr. D.) whether we are to destroy this system, and accept of one which may have more defect, and which has not had the test of experience.

The inconveniencies which arise from the present system are all known. We have been under the operation of this system for upwards of 30 years, and have ascertained its value. The system proposed is a novel one, at least to us. He believed it was novel in all the States. It is one, in adopting which we must take a leap in the dark. The proposition of gentlemen is this, Here is a system which is defective, for which we offer you another, which in the view of the friends of the old system, appears still more defective.

It was not a good argument for the rejection of the old system, Mr. D. remarked, because it was inconvenient. It is not convenience alone that ought to recommend a court system, but that plan which will afford us a pure administration of justice—that which will secure to the people their rights and liberties—one under which every man may consider himself safe. Have we not at present such a system as this? It is not contended that the decisions of our courts are corrupt. They are pure and such as do honour to our bench, and this is a good reason against changing an established system, for one of experiment.

The question of convenience, Mr. D. said, ought not to be that which should decide this. But if justice is administered with ability and integrity, we ought to rest satisfied, and and reject all idea of a change of principle. If the present system can be modified, let it be done; but it would be making too rash an experiment to throw it away altogether.

Let us examine, said Mr. D. what are the inconveniences of the present system. It is said that citizens are obliged to attend the Superior Courts at a great distance from home, and at an expence that is oppressive to the poor man; and the proposed system it is alledged would afford relief in this respect, though he thought this appeared rather in argument than in fact.

This outcry about the poor man, said Mr. D. is a mere imagination, a line to decoy rather than any thing else. It is declared by law, that no suit shall originate in the superior court whose value is less than £100. And a man who had a suit to this amount could not be considered a very poor man, nor could he be ruined by going to a district superior court. The poor man has been provided for by the Legislature, his cause is tried in the county court; and if he be injured there, he may bring up his cause by appeal to the superior court.

The expence of the attendance of witnesses and jurors at the district superior courts, has been mentioned. Admitting these inconveniences to exist, he would ask whether greater would not arise from a change of the system. The very inconvenience of trying causes in the county where they originate, where every matter undergoes private discussion in the court-yard, and every juryman comes into the hall of justice prepared to give a decision which no reason or evidence can alter, is much greater. In the arrangement of the present superior courts, the same bias cannot take place.

It has been observed that the people from the distant counties in a district come to court, and leave their money in the district towns. What difference, Mr. D. asked, did it make to the community, whether the money was left in the district town, or at the different county court-houses? He believed it was of more real advantage to be left with the merchants in the district towns, more likely to circulate from thence. But at best how trifling was this consideration, when the important question of a change in the mode of administering justice was under contemplation.

The State of North-Carolina, Mr. D. observed, had prospered under the present system, the country had increased in population and wealth; and the inconveniencies complained of under it, consist more in fancy than in fact.

The gentleman from Anson had informed the house that the poor man is very frequently deprived of his right for want of security to carry up his appeal. He could say that though he had been in the practice of the law (and rather more extensively, he presumed, than that gentleman) for fourteen years in this State, he had never seen an instance of the kind. If the gentleman has seen such an instance, it must have been a single one, from which no general inference ought to be drawn