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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.

The question being put on the bill amending the Judiciary System, passing a second reading,

(Continued from our last.)

Mr. CAMERON was not disposed to doubt the joyful expectation which the gentleman from Anson entertained on account of the result of the present question. But before the vote was taken, he must take leave to submit a few considerations to the house.

Though the gentlemen in favour of the bill had called upon those opposed to it to meet them in argument on the principles of the bill yet have they studiously avoided giving any answer to their arguments, but depend upon their majority to carry their point. They say a few district towns get all the benefits of the present system. Will gentlemen, on this account, destroy the present system? Do they make the administration of justice a *pecuniary matter* merely? By the proposed system, it is said that other parts of the State will come in for a share of these benefits. And how will this advance the *Administration of Justice?* Yet this is the ground which the friends of the bill have taken. They tell you the profits derived from the courts by the district towns must be divided amongst them.

The gentleman from Anson, said Mr. C. has brought the example of S. Carolina to his support. While he turns his attention to the southward, let him also look to the north, to our parent state, Virginia, from which many of our maxims of policy are drawn. What is the Judiciary of that State? Have they prostrated their county courts, and sent their Judges galloping round the country to hold courts in every county? No!—they have established the *district principle*—no feature of it is changed, so dearly do they cherish it. Yet gentlemen tell us we must close our eyes on that quarter, and open them wholly to the south. He prayed gentlemen to look where there was something worthy of imitation. Virginia was certainly as respectable an authority as S. Carolina; but unfortunately, we are too apt to copy her vices and not her virtues.

The gentleman has hailed the expected passage of this bill as the "second political regeneration of the State." Little did I expect (said Mr. C.) that any gentleman of this house would have attempted to enlist the political prejudices of members in his favour. He had hoped the gentle hand of Time had worn out the divisions which marked political parties. If matters of policy were to be tested by political opinion, we should introduce the second reign of Robespierre. He deprecated such language as unparliamentary and unworthy to be used in that house. If our Judiciary was to be effected by political opinion, it would be constantly variant. Whereas that ought to be permanent, whatever political opinion may be uppermost. It should ever be the rock of our temporal salvation; upon the present system it might rest with security, as the anchor of our Safety; yet the gentleman calls upon this house, under the influence of Republican principles, to destroy it.

Mr. Troy explained.

Mr. C. said he was unwilling to attribute any sentiment to the gentleman which he disavows; but why hail the Reign of Republicanism if he did not mean it to have an effect on the house?

Mr. C. called upon the house to recollect, that the gentleman said that the United States has set us an example in the alteration which they had made in their Judiciary, though the reasoning does not apply, as the constitution of the U. States and the constitution of this State are different in respect to the Judiciary establishments. [Mr. C. read an extract from each].

He was astonished to learn that the gentleman from Anson attributed a belief to the friends of the present system, that there was nothing valuable in the constitution but what secured the rights of the district owns. Was not this attributing motives to gentlemen which would dishonor them? No, sir, (said Mr. C.) we do not value the constitution, or the present Judiciary system, because it grants benefits to the district towns, but because it gives us *constitutional courts* and *constitutional juries*, which equally protect the weak and the strong—a blessing which nothing but the arbitrary hand of power can ever destroy.

Mr. C. proposed making a few observations respecting the trial by jury, both in respect to criminal and civil cases.

It is necessary for the security of criminals, that they should be confined in substantial jails. In this bill it is contemplated, that all criminal trials shall take place in the counties where the offence is committed, except sufficient reason can be assigned to the court for a removal of the trial to an adjacent county.

Suppose a man commits the enormous offence described by the gentleman from Salisbury, or any other of a capital nature and is confined in a paltry insecure jail in the bosom of his friends. Can it be expected that this man will come to trial? No, his friends will liberate him and he will go unpunished. This cannot be the case when a criminal is confined in an effective jail in a district town, inhabited by persons unconnected with him and not disposed to procure his escape.

The gentleman from Anson has said, that the same event might be as likely to take place under the present arrangement, as under that proposed, in respect to a criminal being tried by his friends. But look into this matter. The sheriff of a county is generally chosen from one of the most opulent families. When one of his friends is brought before the court, does he not know who to return most likely to give a favorable judgment? He has, perhaps, received benefits from the accused, and returns them in this way. Would this be the case in a district court? It would not, the sheriff would summon the most eligible citizens for jurors, without any knowledge of their connection or partialities for or against any person upon whose trial they would have to sit. Is it not, then, very important that this trial by jury should be preserved in its purity? But if the present bill pass, it will be putting it in the power of the violent to frustrate the ends of justice and trample on the laws with impunity.

With respect to civil cases, it is the *substance* and not the form of a jury trial that is valuable. We say this bill preserves the form of the trial by jury, but that it cuts up the principle by the roots. Why do parties appeal from the decisions of the county courts at present? Because they expect their cause to be judged with impartiality in a superior court; but under the proposed system, you would appeal from the same persons to the same.

Suppose the case of a poor man oppressed by his rich neighbour, who, by means of his influence, gets a verdict in the county court. What can the poor man do? If he appeals, he has no prospect but that of doubling his costs, without a chance of redress. If, then, the right of trial by jury be not well secured, will the house make an experiment with precipitancy? To do so, would be acting like a man who should discard a servant who faithfully served him for thirty years, and take a stranger into his house in his stead.

The friends of this bill have accused those opposed to its principle with attempting indirectly to defeat their view. We say they have never given us an argument in support of it. We oppose it, because we see in it principles injurious to the community—and, in doing this, we make no attempt to enlist any prejudices against it.

With respect to the unconstitutionality of this bill, from its provision to appoint illegal Judges, he should say nothing upon it, supposing that that part of the constitution which directs the manner of appointing Judges was well understood. He did not suppose it would have been contended in this house, that any other Judges than constitutional Judges could be appointed; but the bill on the table contemplates the appointment of Judges for three years—at the end of which time, if the law be not re-enacted, you will have to tell the Judges to descend from the bench, and mix again with the people. This would be unconstitutional; for, if once a Judge is appointed, he is always a Judge, except he be removed from office by impeachment. And if the Judges appointed under this law are unconstitutional Judges, how can we answer to the people for the decisions which they shall make? We might, said Mr. C. as well select two members from this house to go out and try causes.

Mr. C. begged the serious attention of the house to this important question, and entreated members to lay aside all narrow prejudices which might hang about them in respect to it. He wished each man to examine for himself, and to lay his hand upon his heart, before he gives his vote upon it, disregarding the attempts which are made to carry this bill by a majority at all events, without answering the objections which are urged against it. Let every member recollect the responsibility which he owes to the constitution and to his country, before he parts with an old friend for the embraces of a stranger, whose only recommendation is, that he comes from S. Carolina!

He did not wish to be thought sceptical; but he must be excused if he did not believe that the bill before the house contained the whole of the system of its friends. He considered it merely as a stepping-stone to a plan which the people of this country are not prepared to receive. If we take this step (said Mr. C.) the whole political fabric of this State will be destroyed. And will gentlemen say, that our system is so imperfect, that it ought to be altogether abrogated? It is in vain to suppose that the government can progress in parts. The whole was made to fit and work together, and if you take away any of its parts, you destroy the whole machine.

Mr. C. concluded, by observing, that those opposed to this bill had offered, what they conceived a good substitute for it. Many gentlemen voted against that, because they were determined to vote against the whole. We must now, said he, vote upon the bill itself as it stands and he felt himself bound to give it his decided negative.

Mr. LOWRIE rose in support of the bill, and observed that all the objections urged against the mode of selecting the jury proposed, were grounded on the turpitude of the human heart, and on the supposition that the justices who appointed the jurors, and the jurors themselves would act corruptly. Mr. L. again remarked on the constitutional objections made to the bill, and represented them as having no foundation.

Mr. NORWOOD agreed with the gentlemen opposed to the principle of the bill, that it is unconstitutional, the constitution having provided in express terms, that Judges shall hold their offices during good behaviour, and the bill contemplating their appointment for three years only.—before gentlemen take this step, they ought well to consider the important nature of the constitution, and that the smallest breach of it might be brought into precedent from time to time, until that valuable instrument, which is the security of every thing we possess in life, be totally annihilated.

On the subject of jurors, he had only one remark to add to what had fallen from the gentleman from Orange. Under the act of '77 jurors to the superior courts, were directed to be appointed by the county courts; experience evinced that corruption might be practised under that regulation, and therefore that act was amended, and jurors were directed to be appointed by the courts by ballot. This method is abandoned by the bill under consideration. It is known, said Mr. N. in what manner jurors are appointed, and that it is easy for a designing man to appoint such a jury as he pleases.

It has been said by the gentleman from Mecklenburg, that most of our arguments are founded on the corruption of human nature. That it is greatly corrupt must be admitted or why so many acts to punish crimes and prevent frauds; and tho' he had the highest opinion of the great body of the Justices of this country, yet he had no doubt that there are many in that body who act corruptly.

This bill is objectional (said Mr N.) on another ground. It will have the effect of destroying private contracts. The contracts at present subsisting between the councillors of the supreme courts and their clients. This law will exonerate a councillor from a contract entered into with his client, as the case will now be tried where he cannot attend. And this alone would sacrifice to the citizens of this country from 20 to 30,000 dollars.

He objected to another clause in the bill. It was that which respected the removal of suits. The bill has provided, when either party shall state, on oath that they have good grounds to believe they cannot have justice in the court of the county in which they reside, that the cause shall be removed. The cause of removal rests in the opinion and belief of the party, he is not required to state the grounds of that opinion and belief in his affidavit; and this will afford another opportunity to the wealthy to oppress the poor.—For when a man of this description is not prepared for his trial, or may have reason to suppose he will lose his cause, he will, on some pretence remove it to another county.

Wherefore, said Mr. N. has the gentleman from Anson attempted to throw so much odium on the district towns? That they form a strong aristocracy in the state—an assertion, than which nothing could be more unfounded? Are district towns attempting to pull down the institutions of their ancestors, and prostrate the works of the patriots and sages of '76? No, it is that gentleman and those who accord with him in opinion. Might we not retort on him, that he is actuated by that mad spirit of innovation, which overthrew all the valuable institutions of the French Republic, destroyed the liberties of its citizens, and fixed on them the chains of slaves, by establishing over them the absolute government of Bonaparte.

Why has the same gentleman said so much about the profits in the district towns by a few inkeepers and merchants? How do their profits infringe the due administration of justice? Are these profits, under the proposed system, to be distributed among the people at large?—No, they are to go to the tavern keepers and merchants residing at the county court houses. Might we not retort on that gentleman, that he owns property at Anson court-house, and that the passage of this bill will have the effect of greatly increasing the value of that property? He had not advanced a single sound argument in favor of his darling bill, but had constantly exhausted the time of the house in attempting to throw odium upon the district towns and their representatives.

Upon the whole, he was [illegible] to the bill in principle and in detail.

Mr. F. WALKER said he did not intend to rise on this question, had any of the friends of the bill fully expressed his opinion; but some reasons occurred to his mind which has not been noticed in favor of the bill He would endeavour to state them to the house in a plain manner, and not go over the ground already beaten. He would first take a comparative view of the two systems—the present district system, which is so highly exalted, and the one on the table, which contemplates the extension of that system to every county in the state. Mr. W. said the state of North-Carolina, according to the last census, contained near half a million of people, a majority of whom he considered must be subjects of judicial authority, in which state there is eight superior courts to accommodate that number of people. These districts are the earliest institutions in the state, and when founded, were salutary and convenient, and adequate to answers all the necessities of the then existing state of society. He did not know of any new district being laid off except that of Morgan, which was made about 23 years ago, and he believed there was as many people now in that district, as there was in the state at the time the district courts were first constituted: and yet it is contended that the present district courts are a sufficient remedy for all the complaints of the multiplied people. It has been stated, sir, that the present district system was the result of the wisdom and policy of the patriots of the year 76, from which we ought not to depart, that a departure would be a direct innovation on the judicial system, unhinge the connected principles of that system, and dissolve the bonds by which they are united. If this position be true, that we ought not to depart from the institutions of the patriots of '76, it will be so at any future period, 20, 50 or 100 years hence; the same principle will lead the future as well as the present generation, and therefore no improvement can ever be made in our judicial system. This is certainly not correct reasoning; the nature and liberty of our government requires that every generation should legislate for itself. Gentlemen seem to mistake the object of the bill on your table; it is not to deform or alter the present principle, but to bring it home to the people, that is to say a superior court to every county. What is the language of the present superior court system, and what does it hold out to the citizens? It calls upon the suitor to come 20, 50 or 100 miles to court, through cold and heat, wet and dry, whether you have money or no money to bear your expences, you must come and you shall have justice impartially (no doubt you will get justice impartially, for we never doubted the purity of the system.) It calls upon witnesses in the same mandatory tone, "You must come, you shall have your dollar per day when you arrive at the court and for non-attendance you shall be fined according to act of Assembly." Jurors are also under the same penalties.

It was once considered a great privilege for the poor to have the gospel preached unto them; and is it not a privilege, although of an inferior nature, that the poor have justice administered unto them.

An honorable gentleman (Mr. Steele) read some documents yesterday in support of the present system. I will take the liberty of stating some facts, which, altho' not authorised by an officer of record, are not the less true. On my way from Rutherford to Morganton last superior court, I saw a waggon going up to court with a number of infirm and decrepid witnesses, who were unable as I supposed to go by any other means. I also heard a witness called and fined according to act of Assembly; I afterwards saw the same man in the frontier part of Buncombe county, where he lived, 100 miles from Morganton. I asked why he did not attend? He told me he could not.—These, sir, are some of the effects of the present boasted system.

I will now give some reasons why I think the present bill ought to pass into a law. First, I believe it is predicated on the will of a majority of the citizens, and has been supported in the class most highly interested in the government, and, according to the true principles and policy of our republican system, the will of the people ought to be the law of the land; were we to deny that principle, or deny the people the first right of dictating for themselves, we should become the tyrants and not the representatives the people. Again, sir, the bill on the table preserves all the powers, authorities, privileges and purity of the present district system, and so diffusive in its effects that it brings the highest tribunal of justice to every man's door, that is, within his county, remedies all the evils and inconveniencies in the present district system so highly complained of, and embrace all those objects of convenience and accomodation to the citizens, which they have a right to enjoy. We would find another reason for passing this bill, were we to examine [illegible] source of legal information [illegible]