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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
NEW JUDICIARY
in the
SENATE of N CAROLINA.

The Bill for the more uniform and convenient administration of Justice, being read a second time, and open for amendment:

Gen. Smith's Speech concluded

The sages who formed the constitution perhaps thought it best to continue the practice of selecting jurors, as it had been practised before the revolution, and they were wise in avoiding as much as possible, any changes that were not actually necessary until they had secured the power of making laws with a certainty of their being permanent — Even, however, allowing that they then considered the old mode best, by Dr. Franklin's calculation, this country doubles its population every 20 years. It is now near 30 since the adoption of the constitution, and from the increase of population and change of circumstances, an alteration that would not have been proper then, might now be very necessary.

The third objection is raised from the great danger attending innovations on the work of the heroes and statesmen of the revolution The act of 1777 for establishing courts of law and regulating the proceedings thereiu, is ranked as such, and stiled "one of our antient and fundamental laws, made by the same great men who formed the constitution of the State," the patriots of 1776, and we are called to "cling to it as the work of our most venerable sages, with increasing affection and veneration."— No man deprecated a wild system of innovation more than he did. It had been the scourge of Europe, and caused destruction to thousands.— But without rational innovation old errors would always remain. There would never have been any improvement either in systems of religion or government, nor would the revolution, accomplished by the patriots of 1776, ever have been attempted. The feudal system would have continued in all its abominations, and we should now be the humble subjects of a king instead of the free citizens of a great republic, envied and admired by all the world. He had as much veneration for those heroes as any gentleman whatever, and was willing to follow their footsteps, for they shewed by their own examples in passing other laws amending the act of 1777, that they did not consider it in the solemn point of view presented to us, as "the constitution of our court system." So far from it, the very expressions used in the 2d section of that law, which designates the duties of the Judges, proves that the act it self was meant for a temporory regulation only. At that time their grand object was to rescue the country from tyranny and oppression by glorious struggles in the field, "*Inter arma sil nt leges*" But as soon as victory crowned their noble efforts and meek-eyed Peare extended the olive branch to our happy land, with liberty and independence in her train, these very patriots, throwing by their swords, employed their thoughts in devising the best means to secure the blessings they had so gallantly won, by passing wise and wholesome laws for governing the country and amending those made in the hurry and bustle of the revolution. Instead of considering the act of 1777 in the sacred or inviolable point of view supposed, and that alterations or improvements of it were dangerous innovations, they soon discovered by cool and mature examination, that the law was defective, and that the increase of population made alterations necessary. Turn to your statute book; look at the marginal references of this very act. Do they not shew that no less than fourteen alterations or modifications were thought necessary from April, 1782, when the country began to enjoy some tranquility, to the latter part of 1788, being about six years and a half, and averaging at least 2 alterations for each year. Can it be denied that these were made by the patriots of 1776. If so, will it not assist the most disgraceful objection to republics; must you not in such case admit that North-Carolina rewarded her heroes of 1776 with the vilest ingratitude by banishing them from her councils ——The heart of every good man must revolt at the falsehood and injustice of such an idea. One of the earliest alterations of the act of '77, was one of the greatest improvements, that of 1782, giving an equity jurisdiction to the superior courts. A second act was passed the same year, dividing the district of Salisbury into two. A case so far in point, as it increased the duties of the Judges without increasing their pay in proportion to the extra trouble or inconvenience.— The act of 1785 is one still more strong in point; in fact it furnishes a complete precedent in favor of the present bill, for it *in contradiction to the district principle* it *establishes a superior court of law and equity in the* COUNTY *of Davidson*. In examining the laws of the state, he found that nearly fifty acts had been passed from time to time, altering, amending, &c. one of them in express terms repealing parts of this act, so impressively termed the constitution of our courts. These alterations have been considered improvements. Some of them very essential, and he was of opinion that none of them were more salutary than the one proposed.

Many arguments had been urged against the expediency of the measure. In answering those he would be under the necessity of using the words republic, republicanism or republican, but he desired to be explicitly understood, that these terms were not intended "*ad captandum*" or as watch words of party; he meant the distinction of republican to embrace every good citizen who is averse to royalty, who is inimical to aristocracy, and sincerely attached to the rights, liberties and happiness of his country and its free constitution —It had been said that the bill before you, if passed into a law, would destroy with the district principle, our only security for a pure and impartial trial by jury. The high authorities here tofore quoted prove, that in the opinion of our ancestors, jurors from the vicinage or county were considered the best judges af the facts alledged in evidence, by knowing before hand the characters of the parties and witnesses, and for centuries past it was deemed an "intolerable burthen to compel the parties, witnesses & jurors to come from Westmoreland or Cornwall to try an action of assault at Westminster," that is to say, to come from a great distance to attend courts. Besides the impartial trial by jury is particularly well secured in this state; perhaps better than in an any other, by the 4th chapter of the acts of 1796, forbidding the judges to give any opinion in their charges as to the facts tried, and allowing parties even in civil cases to challenge peremptorily two jurors upon the pannel without shewing any special cause therefor.—— Moreover the 12th clause of the present bill carefully provides a remedy in cases where either party doubts the impartiality of the jury in any county, by authorising "a removal of the cause to some adjacent county for trial." Notwithstanding all these guards, however, the present district courts have had partial juries imposed upon them. Experience has so fully proved this, that in a casual conversation of only three members of this house during the present session, all from different districts, they each had heard of and believed the information just, that men went corruptly in the way to be summoned as talesmen, by whose addition to the jury justice had been prevented; and such is the deplorable fallibility of human nature, that he had heard from the highest authority, that it was scarcely possible to obtain a verdict in one of the district courts of a large and respectable part of the state, where any prominent character of two contending parties had a cause for trial, were it ever so plain. Granting the possibility of destroying the impartiality of a jury trial, by prejudiced talesmen being summoned in a case where the cause of a rich or popular character, inhabiting a district town or county is to be tried—how much more probable is it that talesmen of that town or county will be easier found, than men from a distance? Does not this then shew that the poor man, after travelling many miles to obtain justice, stands less chance of receiving an impartial verdict from the jury, supplied by such talesmen, than the rich man, who is better and more generally known, or he who lives in the district town or county, & is surrounded by his friends. Is not this an advantage of 8 counties over the remainining 52—Of the few over the many? The gentleman last up observed that this system gave the rich advantages over the poor. It is very fortunate that the poor have many friends. Poor as they are, they are so powerful that all parties endeavour to enlist them on their side. They are made the hack horse of every popular argument, and although claimed by both sides on the present occasion—he had no doubt but time and experience would convince them which of the two were their real friends, if they could not immediately comprehend the vast advantage of the present system in their favor. The mass of oratory and talent is certainly against those who advocate the bill, but he doubted whether any opposer of the bill even if he possessed the persuasive tongue of Cicero, or the thundering eloquence of Dimosthenes could convince a poor man of the most common understanding, that it was better for him to go to court 60 or 100 miles from home and attend it for a fortnight or more, at a considerable expence in a district town, than travel to a superior court in his own county, to which the distance was not half so far, the term not half so long, nor the expences half so great It was the maxim of the venerable sage of America heretofore mentioned, Dr. Franklin that 'time is money.' No one experiences the truth of this more than the poor man, the father of a numerous young family, whether as juror, party or witness, being under the present system obliged to attend a court of the spring circuit must leave his farm soon after the crop is planted. By the useless waste of time, which we wish to lessen, he is obliged to be so long absent, that if much rain has intervened, having no slaves to cultivate that crop, which was intended to furnish his family with bread, he finds it on his return nearly or quite ruined; whereas, under the proposed alteration, his absence will be so much shorter that he may save his crop. Which then must he believe to be his friends— the supporters of the old system, fraught with ruinous delays and expences—or those who wish to remedy these great evils. The rich man having slaves, does not suffer in a like degree by the long absence necessarily required in attending the district courts He leaves hands at home to clean his crop from the grass and his overseer to superintend his business. There is also such a jealousy of the few rich men we have amongst us, and such a generosity in human nature to take the part of the weak against the strong that if a rich man be of a disposition to treat a poor one with injustice oppression and attempts it in his own county, his character, hated and despised, will soon and justly rouse the jealousy before mentioned, and there will always be independent men sufficient to turn the popular current against him, and to defeat his tyrannical purpose. Besides, by the bill proposed the rich man is deprived of one of the most powerful weapons of oppression, that of dragging a poor man from his county by an appeal to the superior court. Rather than encounter the difficulties, loss of time and heavy expences of which, he would submit to some imposition rather than suffer absolute ruin. In thinking on this subject, the inconveniences of the present system were more stongly impressed on his mind by contemplating the situation of the counties in Edenton district, than that of any other in the state. He held a plan or map of the district in his hand, from good authority. Thence it plainly appeared, that so many considerable water courses intersected the district, that it was frequently impossible for persons from the distant counties to get to the superior court in due time. Particular days of the term being appointed for each county, those persons who have business at the district court, might leave their dwellings with punctuality and in full time to accomplish the distance; but when they come to the water courses, finding the elements wind and waves forbidding their passage, delays of justice would happen in spite of all human efforts under the district system.

Another objection to the expediency of adopting the proposed system was, that it tended to drive the present Judges from their seats on the bench. He would be very sorry that his duty compelled him to assist any measure that would produce such an effect. But thinking the one proposed beneficial and proper for the state at large, he could not be deterred from giving it his support, although the particular interest or convenience of the Judges, were they his dearest and best friends, in some degree suffered. He hoped, however, we should not experience the ill effects predicted. The duties under the new system would not be as burthensome as they had formerly been under the present, when the whole state was included in one circuit. The Judges then would ride vastly further, and to employ at least forty days more of the year than they have under the proposed plan. They performed this duty at much more advanced periods of life than the present Judges. He confidently trusted they also would continue to discharge their functions with advantage to the country and honor to themselves. He was perfectly disposed to grant them a liberal compensation for devoting their time and talents to the dispensation of justice, and to increase the salary generously in proportion to the extra trouble. But in any event, the convenience of the many ought to be considered and attended to in preference to that of the few. What were the great advantages of a republic over a monarchy or aristocracy, but such as were derived from this first principle. The benefits of the latter were calculated for a priviledged few—Those of the republic for the whole. The most prominent feature that distinguishes a royal from a representative republican goverement is, that the grandeur and convenience of kings and lords are predominant to the injury and oppression of the people; whereas, a republic is happily formed for the prosperity of the whole. Let us then as members representing a free republic, provide for the accommodation and interests of the people at large, by dividing the advantages and emoluments now enjoyed by the few, viz the eight district counties, amongst the many other counties of this widely extended and populous state, and pass into a law, for that amongst other purposes, the bill now under consideration.

The gentleman from Surry observed, that it was allowed *on all hands* that the present court system is imperfect." This did not appear from the proceedings of the House of Commons. A large vote had there been given in favor of it. He was himself, however, ready to grant that the proposed bill was not complete. The intention in passing it was merely to establish the principle, and the system would afterwards be matured by such amendments as appeared necessary and proper. The experience of other states is adverse to the gentleman's observation, and much more in favor of the proposed system, than that which we now live under. It was likewise said in another place of high respectability that the example of S. Carolina had been alone relied on.— He was prepared to shew that the judicial institutions of other state in the union encourages us to make the experiment in this. If the information he had received was correct, and he had just grounds for believing it so, in the commonwealth of Virginia a jury is always summoned in criminal cases from the vicinage where the fact was committed. In Maryland a law of 1805, provides for the trial of facts in the several counties of the state. A Judge and two associates sit in *each* of the counties to try all facts. In Delaware two Judges ride into *each* of the counties for the trial of all facts. In Pennsylvania a Judge and two associates try all facts in *each* of the counties. In New-Jersey a Judge goes into *each* of the counties for the trial of facts. In New-York one Judge goes into each of the counties and forms a court of Nisi Prius. In Connecticut, Massachusetts and New-Hampshire, *all facts* are tried in the counties; in Georgia all facts are tried in each of the counties. Allowing then the experience and examples of other states their due weight, they are perfectly in favor of those who advocate the proposed change.

Having heard objections to the present Judiciary System, repeated year after year, from many different parts of the State, and believing it to be the special duty of the Republican Representatives of a free People to listen with attention to their just complaints, and redress their real grievances, he considered it his duty to vote for a change; and viewing the subject as well as he was capable, in all its different bearings, he had so little doubt of the propriety of passing the bill proposed, that he should not hesitate to give it his vote, even if that vote decided the fate of it, willingly trusting to time and experience for the reward of that anxiety which must necessarily attend a state of so much responsibility—a reward, the greatest a good citizen can experience, next to the consciousness of rectitude, that of the approbation—of a free and enlightened People.

Mr. FRANKLIN observed, that most of what had fallen from the gentleman from Brunswick, was in answer to observations made in the other house, without noticing any arguments urged on this floor against the bill. Mr. F. remarked, that the jurors in the several states which had been instanced, were selected differently from the manner here proposed, and added some other objections to the bill.

Mr. B. SMITH said, the gentleman from Surry complained that he had answered arguments which had been used elsewhere, and not in that house, without attending to his. He assured the gentleman the neglect was not designed, and if his observations had not been sufficiently attended to, it was because he was unaccustomed to speak so much at length, and he was glad to hasten to a conclusion. He would now, however, make a few remarks on what had fallen from that gentleman.

He had stated, that if this bill passed, it would destroy the present county courts. Suppose this should ultimately be the case, it would not be accomplished without an act of the legislature; and if the people found they could have their business better done in the county superior courts than in the present courts of pleas & quarter sessions, it would be right and proper that they should have their choice.

His next objection to the bill was, that it provided no court of chancery. It does as much as the present court system, and to greater advantage. Agreeably to the proposed alteration, there would be generally much more time allowed at the end of each county superior court for the dispatch of equity business, than the three days allotted now for all the counties composing a district. The terms of the present superior courts are now so long, that by the time the judges had sat ten days on law business, they were too much fatigued to attend to the equity business for three days longer. Under the new system, the law business of a county may, perhaps, be finished in three days, and the remaining three will be left for equity causes, which he supposed would be sufficient, and in any event give vastly more time than was at present granted.

The gentleman had stated the county jails were insufficient. So are all the district jails in the State but one, according to the best in-