



Outs are the plans of fair delightful peace,  
Unwar'd by party rage, to live like Brothers.

THURSDAY, DECEMBER 17, 1807.

No. 429.

### DEBATE

On the bill to amend the laws now in force granting to Creditors the right of suing out attachments against their Debtors, being upon its second reading

[CONTINUED.]

Mr. E. HARRIS was at all times averse to making alterations in the common law, except called for by imperious necessity. Such alterations were generally attended with unforeseen inconveniences. If this bill passed, he believed it would produce a plentiful crop of mischief. It was not only a mischievous, but an unnecessary measure, contrary to sound reason and policy, and never yet adopted in any country. Does not every man know, that when he makes a bargain with another, that his debtor is a freeman, and may go wherever he pleases. If he be afraid of losing his debt, if he be a prudent man, will he not guard himself against such a contingency as is provided for in this bill? Is it not in his power to take ample security? Can he not take a mortgage of real property? All this is within his power at the time. Why, then, pass an act to do for a man, what he can do for himself. Something had been said about Judgment Bonds. But these the party stipulated for. Men frequently go into court and confess judgment; but this bill gives to the creditor a power over the debtor which was neither stipulated nor intended when the contract was made.

It was said, that the passing of this bill would not be impairing contracts. But if making a man give additional security which was not stipulated for, was not altering for impairing a contract, he did not know what it was.

Let us see, said Mr. H. what is to be done. If a man, after he has entered into a contract to pay at some distant day, makes known his intention of removing out of the State, he is to be dragged into a court, and his property seized, if not taken away. If a debtor were to be thus confined in the State, he might as well take the prison bounds at once; for there, though his person were confined, his property would be free. In the one case, he was limited to six acres, in the other to the State. But in both cases, he would be in confinement. Can a debtor have no rights? Are creditors to be at liberty to do what they please with their debtors? He hoped, as no law like this had ever existed in any country, it would not have an existence in this.

Mr. CAMERON thought the principle contained in this bill truly important. It points out a cheap and easy remedy, in the place of an expensive and difficult one, to be taken by a creditor against his debtor about to remove out this State. But one gentleman has called this bill unconstitutional, an other inexpedient, another impolitic and unnecessary. If either of these objections to the bill be founded, then he should himself be opposed to the passage of it. But he viewed it in a very different light from these gentlemen. He thought it a perfectly harmless and unoffending bill, calculated to do that justice to an honest creditor to which he was entitled against a dishonest Debtor about to deprive him of his property.

Let us see, said Mr. C. if the bill be unconstitutional, because if it is, there will be an end of it. No one could be in favour of a bill which violated either the Constitution of U. States or of this State.

The gentleman from Salisbury has quoted that article of the Constitution of the U. States, which forbids the making of any law which shall impair the obligation of contracts. What, he asked, is the plain meaning of this article? What would a member of the Convention which formed that article say, if he were asked, was intended by it? He thought the plain answer would be, "you shall enact no law making money of less value than silver or gold a tender in payment of debts, you shall not increase the creditors claim, or diminish the obligation of the debtor." This provision had relation entirely to the quantum of payment.

But the gentleman says, though this bill may not be a direct violation of the constitution, yet it adds

a clog to contracts. He would shew that this apprehension was entirely without foundation.

Whenever a contract was entered into, and the day of payment was a distant one, there was an implied obligation understood, that the debtor would not remove away before that time. If this was a correct view of the situation of parties at the time of entering into a contract, this bill, so far from impairing any such obligation, only puts it in the power of the creditor to prevent the debtor from breaking his obligation.

It has been said, that this is an improper law, because no legislature ever passed a similar one. He supposed gentlemen knew this assertion was correct. He himself had no evidence before him of what had been done by other Legislatures. He deemed it to be a sound maxim that laws ought to be calculated to suit the condition of those for whom they are made. This State may be considered, in some measure as a Mother Country, from which our citizens are constantly emigrating to Tennessee, Kentucky, Ohio and the Mississippi. A law of the kind now proposed may therefore be necessary here, though a similar provision may not be wanted in States differently circumstanced.

The measure had been called impolitic. He could not see how a bill which proposed a cheap, easy & effectual way of enforcing the observance of contracts, could be impolitic. He was willing to allow debtors had rights, but creditors had rights also.

He always looked upon a man who had parted with his property, on the faith of another who had disappointed him with a favorable eye. But he would deal equally between them; so long as the debtor remains here; but if he attempts to remove himself and property, he would give the creditor the remedy proposed by this bill.

The gentleman from Salisbury puts an extreme case, by supposing a man to enter into a contract to be discharged many years hence; who, by a removal, would be obliged to comply with the terms of this bill. Mr. C. said, if a debtor, after a contract was made, resolved to quit the State, this change ought not to operate to the prejudice of his creditor. Let him, before he takes his departure, make his creditor secure; he ought not in reason to object to it.

But the gentleman has said, it is unnecessary to provide by law for what may be provided for by contract; but a condition in case of removal, would be a new kind of obligation. He asked gentlemen whether it would not be deemed an insult for one neighbor to suppose that another might remove, when he was about to make a bargain with him, and when he had no such idea?

The gentleman from Craven had cautioned the house against making encroachments on the common law. It ought, said Mr. C. to be altered whenever necessary. What, he asked, is common law? It is made up of the usages and customs of G. Britain, from whence our laws are principally derived; and whenever this common law does not suit our circumstances, it becomes necessary to alter it, and make it applicable to our actual situation.

It was asked if debtors had no rights? Yes; but they ought not to have the right of running away from their creditors. If these were the rights which the gentleman wished to secure, he could not agree with him. He could see no analogy between the case of a debtor being prevented from leaving the state until he had secured the debt due to his creditor, and a man being within prison bounds. No creditor puts his debtor in prison until his property is exhausted. This bill will not operate against a man who means to act honestly; it will only affect those who wish to avoid paying their just debts.

This bill will operate very favorably for securities. A man would not become security for his neighbor if he knew that he would remove from the country before his debt became due. On the contrary there was an implicit promise in such cases,

that the debtor would remain to pay his debt. This bill will provide a remedy for cases where the securities would be involved, and often times ruined.

It has been said, inconveniences of this kind might be guarded by taking mortgages on real Estates. But in cases of sales by Executors or Administrators, how could this be done? These sales are always on a credit of six or twelve months. A man purchases at one of these sales and his neighbor becomes his security. Before the time of payment the purchaser goes off, and the Executor or Administrator could not, by any precaution of his, under the present laws, secure the debt.

This bill is calculated to prevent collusion between the creditor and his debtor to the injury of a security. It often happens that creditors connive at the debtors, and afterwards compel securities to pay the debt. This bill entitles the security to have the same remedy with the principal creditor.

It was said the other day that this was an attempt to provide by statute, what might at present be obtained from a Court of Equity. But he believed it was the duty of the Legislature to provide for grievances by law where we can, and not drive our citizens into Courts of Equity. He supposed Courts of Equity would allow relief; if so, why not put in the power of Courts of Law to do so. The gentleman had said that Courts of Equity did not grant writs of Habeat Regno before the debt became due. In this he differed in opinion with the gentleman, though he did it with great deference.

It will be recollected what difficulty was experienced some years ago in preventing actions from abating by the death of either party. But we find the difficulty has been removed by a simple act providing that they shall be carried on by their Representatives. Cases now go on, notwithstanding the death of the parties. He thought a remedy for an evil which had been much complained of, would be found in this bill, should it pass into a law.

Mr. C. concluded by saying he had endeavoured to answer the objections which had been made against the bill. If it was imperfect, he would be glad of the assistance of gentlemen to make it more perfect; and when properly amended, he hoped it would meet with the approbation of a majority of the house.

Mr. E. HARRIS rose to remark upon an assertion of the gentleman from Orange, that when two persons enter into a contract, there is an implied obligation on the part of the debtor, that he will not remove out of the State until the debt is discharged. He never heard of such an obligation before. On the contrary, it was well known at the time of making of any contract, that either party was allowed to go where he pleased. So far from there being any implied contract of this kind, the bill now before the house is an attempt to make one.

Mr. CAMERON explained. Mr. NORWOOD would not trouble the house with many observations on this subject. It has been said that this bill infringes the constitution of the U. States by impairing contracts. It appeared to him, on the contrary, that the present bill contemplates an enforcement of the same principle with the article of the constitution alluded to—both provide that contracts shall be faithfully performed. [Mr. N. explained the intention of the article of the Constitution, which he said was to prevent any payment of debts with anything but actual cash.]

It had been objected to this bill that it encroaches on the common law; but we should recollect that we derive our common law from the Kingdom of Great-Britain. Our Judges consider themselves as bound by the decisions of the English courts, and by the statutes of England, so far as they are applicable to our circumstances, as well as by the acts of this Legislature. Owing to the difference of the two countries, however, there are principles in force here, which are not in force in England, and many in force there which have not operation

here. Our courts cannot extend these principles; they can only be extended by the Legislature; and if we refuse to do so, on account of the danger of making alterations in the common law, no improvement in our policy will ever take place.

It has been said there is no implied contract between a creditor and his debtor. He believed it was understood at the time of the contract, that the debtor is under the moral obligation to attend on the creditor and pay him his money when it becomes due, or that he would be in the way of process being served upon him; but if, instead of this, he removed from the State, he looked upon it as a species of fraud, and it had that operation.

It was alleged that this bill was intended merely to provide for the neglect of parties to a contract. If this objection were to have weight, it would prevent any law against gaming, for the provisions were intended to protect the ignorant against the cunning of gamblers. The statute against usury is founded on the same principle—And this is right. The ignorant and incautious ought to be protected against the crafty and designing. Nine tenths of the inhabitants of this country would never think of asking for any security of a purchaser in case of removal. When people are settled and have no thought of removing, such a provision would not be made. This bill ought therefore to pass to remedy this evil.

Mr. GASTON observed, that it was not his intention to make a single remark on this bill; but as it had been deemed of so much importance as to be decided by the Yeas and Nays, he wished to assign the reasons for his vote, which he would do in as few words as possible.

It would be recollected, that when this bill first came before the house, he intimated some doubt as to the correctness of its principles. He had since considered it his duty to pay further attention to it. He had also listened to the arguments of gentlemen on the subject; and the result of his own reflections and these arguments, have not tended to remove, but to confirm those doubts.

In the warmth of discussion, both the advocates and opposers of this bill have gone farther than was necessary. He did not suppose the evils of the bill would be so great as its enemies represented them, and the advantages predicted from it by its friends, he believed were, in a great measure, imaginary.

The first circumstance which led him to doubt the correctness of the principle of this bill, was its novelty. Not only the country from which most of our laws are borrowed, not only our Sister States have not adopted the principle; but in no civilized nation has it been put in practice. With him, who was always doubtful of the correctness of his own understanding, and suspicious and jealous of any measure, when he found no country or age had ever adopted it, he thought it extraordinary that N. Carolina, that this Legislature, at this day, should have discovered an important principle for the preservation of civilized government, which had escaped the attention of all nations before. This suspicion was increased, when he recollected that the situation of North-Carolina was not different from other countries. Mankind all proceeded from one common stock, there have been always mother countries and countries to which persons migrated from the mother country. Before the Revolution, the people of G. Britain migrated to these colonies; they now migrate from G. Britain to the East and West-Indies. Is it not extraordinary, that in a country where the laws are not remarkable for favoring debtors, and where emigrations are so much greater than they are here, and where the people do not remove a few hundred miles only, but some thousands of miles across a vast ocean, that no such precedent is found in that country; but that it is first brought forward in a Republican Legislature.

Great-Britain is not the only country which has colonies. France had them in the East, and in the West; but we never heard of such a precedent as this in that country. We have also a number of Sister States,

from which migrations are constantly taking place. Are they dead to all their interests—are they dead to the rights of creditors? Is it left for us to give sanction to the attachment of a debtor before his debt becomes due.

Admitting these reasons have no weight, let us look at the principle itself.

It is not only a solemn injunction of the Constitution of the U. States; but it is a sacred principle in the heart of every man, that good faith is to be observed in all contracts. That neither more nor less is expected of a man than is stipulated in his contract.

Some answer had been attempted by the gentleman from Orange to the constitutional objection to this bill, by saying that the article in the Constitution only relates to the quantum of payment. He, however, could see no reason for this restriction of the words. He asked if a contract was not as much impaired by compelling a man to pay his debt before it is due, as by compelling him to pay more than is due.

Another and still more ingenious argument, was used by the same gentleman in favor of this bill. For a moment it seemed to satisfy him. It was, that there was an implied obligation in all contracts, that the debtor should not remove away—an obligation not binding in law, but binding in equity. That this bill was not intended to alter this obligation, but merely to give it effect.

Let us see, said Mr. G. whether this bill is such as merely to give effect to this implied obligation. The gentleman's idea is, that when a man stipulates to pay money, he engages to be there on the day, or leave property to pay it. But what does this but say? If the debtor leaves the state before the day of payment, his property may be attached; though there is nothing in the contract which binds the debtor to do more than pay the money on a certain day, which he may return and do, and thereby faithfully fulfil his contract.

But it has been stated also, that if a debtor means to be honest, no injury will be done to him by the bill. Let him remain and he is safe. He is safe if he remains in the State, but every man ought to be safe until he commits some act which is a violation of the laws of his country. Is the removal of a debtor out of one country to another, and from which he may intend to return, an offence against morality or law? Whence do you derive the power of fettering your citizens, and of inflicting punishments where no offence has been committed?

These were the objections to this bill which had struck him as being too strong to be got over. All considerations of expediency and considerations for the more easy collection of debts, must give way to constitutional objections, and to restrictions on the natural rights of man.

Mr. BAKER observed, that much stress had been laid upon this law being without precedent. No law of the kind, it had been said, had been passed either in Great-Britain or our Sister States. He did not pretend to a perfect knowledge of the laws of our Sister States. But, supposing this to be the fact, are we, he said, always to be behind hand in the improvement of our policy, and in correcting grievances. Perhaps the evils proposed to be remedied, may not be so great in other respects as it is in this. It is a grievance here and ought to be corrected if possible.

Mr. M'GIBNEY observed, that it was not his intention to say a single word in the present contest, but as it was a question of so much importance, wherein the public good is so highly interested, he would beg leave to make a few observations.

The great object of making laws he conceived to be to protect the rights of the citizens against injury and oppression. Then it surely requires the first degree of attention of this legislature, to view the advantages that would result from such a law, or the injuries that would arise to the citizens from carrying it into effect. And if the injuries which would arise from its operation, are greater than those it intended to