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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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General Assembly.

BANK BILL.

This bill underwent considerable discussion in the Senate; but having already given the debate in the House of Commons on this subject at considerable length, we fear our readers would think we dwelt too long upon it, were we to give a detailed report of what took place in the Senate, more especially as the arguments would appear, in most cases, to be a repetition of those which have already appeared. We shall, therefore, briefly state the course which the business took in the Senate, only, and by whom the different motions were supported or opposed.

A motion was made by Gen. Welborn to strike out of the bill that part which directed the burning of the paper currency redeemed from the Banks, for the purpose of leaving the Legislature to act upon it as they thought proper at the succeeding session. This motion was supported by Messrs. Welborn and Mebane and opposed by Mr. Slade.—Carried.

Mr. Toole moved to strike out that part of the bill which spoke of redeeming the paper money in the Banks. The amount of the tax would come into the Treasury as other taxes, and the Legislature would burn such part of the money as they thought proper.—Carried.

Gen. Welborn moved, for the sake of making the tax uniform on both Banks, to make it one-8th of the clear dividend of each, instead of one per cent. on the stock; but this motion was opposed by Mr. Fitts, as being too uncertain, and was negatived.

Mr. Fitts moved an amendment to prevent the Banks from issuing notes on temporary deposits. This motion was supported by Messrs. Fitts, Welborn & Mebane, and opposed by Messrs. Slade and Pickens. It was carried. 34 to 20.

On the third reading of the Bill, in the House of Commons, a modification was made in the prohibition against issuing notes on Deposits, by adding the following words: "that is to say, they shall not issue Notes on the faith of deposits, to an amount exceeding the smallest amount of deposits which have been held by said Banks at any time within the year next immediately preceding."

DEBATE
on the
DIVORCE AND ALIMONY BILL.

The above bill being read for amendment preparatory to its second reading, in the Senate of this State,

Mr. Welborn moved to strike out that part of the first section of the bill which specified that *impotency* should be a cause of divorce, because of the difficulty that would attend the proof in such cases.—After considerable conversation, this motion was negatived.

The bill was then gone through, and the question was put, "Shall this bill pass its second reading?"

Mr. Welborn said, before the question was taken, as he deemed the subject important, he would take the liberty of giving his reasons for voting against the passage of this bill. If he understood rightly the objects of the Legislature in convening annually, one of the most principal was to pass laws to discountenance vice and to support morality. If this were the case, he wished to enquire whether this bill would not, [illegible] a law, have a contrary effect—whether it would not encrease [illegible] immorality, and lessen that solemnity which ought to attend the marriage contract?

Mr. W. took notice of the different causes assigned in this bill for which divorces might be obtained. The first [illegible] impotency. As a good deal of [illegible] had passed already on this [illegible] the bill, he would not add to [illegible] been said. The next cause [illegible]. And would it not, Mr W. [illegible] be an easy matter for any man [illegible] desirous of obtaining a divorce [illegible] to commit this infamous [illegible] in the presence of witnesses? [illegible] discretion left for the Judge. [illegible] to grant a divorce, if the [illegible] He did not think the [illegible] could have devised any easier [illegible] a vicious man to obtain [illegible]. The next cause is, where [illegible] from the other for [illegible] this would not [illegible] temptation to vicious advances of dissolute men to corrupt the morals of women in such a situation?

These, he believed, were the only causes mentioned in the bill for which divorces should be granted. He had frequently heard it said in favor of passing a bill of this kind, that other countries had similar laws. But, in England, where they have a law on this subject, divorces are not granted upon the easy terms which are here proposed. After the business has been thoroughly investigated and decided in Court, the decree of divorce must be ratified by Parliament.

If a law of this kind were to be passed, it ought to be better guarded; the obtainment of a divorce ought to be attended with more difficulty: for a bill like the present would open a door to all kinds of immorality, by holding out a temptation to vicious propensities; and he thought it unbecoming in this Legislature to pass a law which would in any manner lessen the obligation and solemnity of the marriage contract.

In what situation asked Mr. W. would an act of this kind place our Courts of Records? It was stated by the gentlemen of the Bar, that they had now scarcely time sufficient to do the ordinary business of the Courts. So that if the Legislature were to give them this business of granting Divorces, it would exclude all honest clients from a chance of having their causes decided.

Mr. W. concluded with expressing the difficulties under which he labored, from not having received the advantage of education; but said he felt it a duty which he owed himself and his constituents to make the few remarks which he had submitted. The bill, he said, was an old acquaintance. Ten years ago, it found very few supporters, but of late years it seemed to have gained ground, from the many petitions which, he believed, were brought forward to the Legislature for relief. But he did not think these ought to have any influence. He had presented some of these petitions himself; but always stated that he did not think they deserved attention. He hoped the bill, as heretofore, would be ejected.

Mr. Pickens said, were the body in which he now stood, a Convention, and the question before it was the propriety of giving power to grant Divorces to any department of the Government, he should be opposed to it; for though it be generally held right to grant relief in extreme cases, he would vote against any proposition of the kind. But, said he, we are not placed in this situation. Divorces are occasionally granted—every session of the Legislature has its committee on this subject—and the only question is, in what hands the authority should rest; whether it may most safely be trusted in the hands of the Legislature, whose decisions are made *ex parte*, or in our Courts of Justice, where the witnesses on both sides would be impartially heard. We justly boast, said Mr. P. of our free constitution, which provides that none of our rights can be affected but by the law of the land, and by a trial by jury, where both parties have an opportunity of confronting each other. This is far from being the case in the General Assembly. Every day evinces the contrary. A few gentlemen from different parts of the State are appointed a committee. A petition is laid before them, in which the petitioner has an opportunity of painting his case in the strongest manner. The other party knows nothing of what is going on, and the Legislature decide from hearing one side of the question, on a case which, perhaps, affects the happiness of an individual for life; though it is declared by our Constitution that neither our rights or property shall be affected but by trial by jury. The bill now before the Senate provides for such a trial. Here is afforded an opportunity of investigating the subject, and knowing the truth of it. This is not the case in the General Assembly. Suppose, said Mr. P. we were to attempt to try a man for his life, would not every man start at it? And yet in a case equally important, the Legislature has heretofore acted in a judicial capacity. Were we about to decide between two persons on a right of property, every gentleman would say, we have not the testimony on both sides, we will therefore vest this right in our Courts of Justice—they will hear the evidence of both parties. Why, then, exclude this particular case from the cognizance of a court and jury? It is said, that it would be easy for a vicious character to obtain a divorce were the Courts of Justice vested with the power of granting them. He would not suppose that the Courts of Justice would be more likely to be imposed upon in a case of this kind than in many others referred to their decision. Besides, there would be a much better chance of doing justice to the parties in their own neighborhood than there would be any where else. No divorce could be unjustly obtained, because the question would be tried by the neighbors of the parties who would see that justice was done.

The experience of other States, Mr. P. said, proved the propriety of placing this business in the Courts. In Pennsylvania, they have had a law of his kind for the last twenty years, and the consequence is, that few applications are made for divorces. He had resided in that State for several years, and he never heard of any application made. A man chuses to have a very good cause there before he comes forward; because if he fails, he is saddled with heavy costs; but here in applying to the Legislature, a man is at no cost. If he gets a divorce, it is well; if not, nothing is lost.

It has also been stated, that the proposed mode of granting divorces, would lessen the solemnity of the marriage contract. Mr. Pickens felt no disposition to do this; but it might as well be said that the sacredness of any other right might be lessened by referring its decision to a Court of Justice. When we examine the Journals of the General Assembly, and see that fifty or sixty applications for divorces are made, in the course of a session; and we learn that in larger States, where the business is in the hands of the courts, instances of this kind are rare, we cannot help seeing in which case the solemnity of the marriage contract is most respected.

These, Mr. P. said, were some of the reasons which would induce him to vote in favor of the bill; for tho' opposed altogether to the principle of granting divorces, since Divorces would be had, he was in favor of vesting the power in the Judiciary, where each party might have justice done them at their own expence, rather than trouble the Legislature with it, where only one side of the question could be heard, and this at the expence of the State.

Mr. Toole.—I lament that my state of health does not enable me to take such a view of this subject as its importance merits; but, illy qualified as I feel to deliver the whole of my sentiments on the question, I cannot permit it to pass by without some animadversion. I feel, sir, an unqualified aversion to the Bill now before us: this hostility, is excited by a conviction that neither the letter nor the spirit of the Constitution, which we are bound by every consideration, even by our solemn oaths to respect and not to violate, will justify its passage: I believe too that it is useless; that it is even worse than useless; that it is dangerous and inexpedient.

It is a position, to the truth of which none will be ready to withhold their assent, that where the meaning of any instrument can be collected by a literal construction of the language used, nothing like a liberal interpretation can be allowed; for to violate, by a perversion of language, or by open and evident misconstruction, a charter so sacred and invaluable as our Constitution, are crimes of such equal atrocity, that no distinction can be necessary. When therefore this instrument defines with as much precision as the English language will permit the meaning, of the Framers thereof, it cannot be argued, that it does not intend what it expresses, or, which would be equally absurd, that it intends any thing else.

I am well aware that the doctrine which I am about to advance, will be held by many, perhaps by all, to be novel and unprecedented; but I will be pardoned for introducing it, especially when I have serious doubts whether it is not on this subject conclusive.

The XVIIIth Section of the Bill of Rights expressly recognizes the right of the People to petition the Legislature for a redress of grievances. From this right in the People, it necessarily follows that it must be the duty of the Legislature to hear; for, otherwise, their complaints would be as successfully addressed to the winds, as to those who ought to be the Guardians of their rights and privileges. If then, the misconduct of a wife or a husband be a grievance, of which the party injured has a right to complain, that complaint must be made, if made at all, to the Legislature, for that alone is clothed by the Constitution with competent authority to hear and redress it. If the Legislature possesses this power, no other branch of Government can exercise it; for this would be placing equal and the same power in two different departments, and would of course come directly in conflict with the clearly expressed & obvious meaning of the 4th section of the Bill of Rights, which declares, "That the Legislative, Executive and Supreme Judicial authorities shall forever remain separate & distinct." But, sir, it may be asked, cannot the Legislature transfer this right? I answer that they cannot; because no such power is any where given to them, and that which is not delegated, is withheld and remains with the People. If they possess the power to transfer any one of their privileges, they have the same to make a compliment of the whole, and thereby become the mere engine of Judicial supremacy: and, if without the sanction of the Constitution, they can extend the powers of the Judiciary beyond the Constitutional limits, they can with as much propriety and under the same colour of right, delegate power to a body of their own creation, thus becoming the source of power which was not intended. The question, in a word, comes to this—The Courts have, under the Constitution, the right to act on cases of infidelity in married life, or they have not—In either case an act of the Legislature would be idle. Possessing it, they could not be deprived of it, and wanting it, no act of the Legislature could come to their aid. But sir, what ever right it may be thought the Courts have to determine on cases of this kind, a very little reflection must convince us that it would be unwise in the Legislature to enable them to exercise it. The Constitutional powers already possessed by the Judiciary must indeed be matter of concern and alarm to all. Among others of great consideration, is that of setting at nought any act of the Legislature, provided they believe or affect to believe, that it contravenes the principles of the Constitution. Corruption in a Legislature is easily and speedily checked by the constitutional mode of electing a successor whose virtues will blot out of the statute book any errors, which the crimes of his predecessor may have caused. Is this the case with a Judge? It is true that he is in the first place dependent on the Legislature for his office, but when once appointed he holds it for life, let his conduct be what it may, provided there should be wanting in the Legislature, that firmness and disregard of censure, necessary to institute an enquiry, which at least may possibly happen. I am far from making any allusion to the present Judiciary of North-Carolina, nor am I enquiring how properly this power was originally given, or whether discreetly exercised. I am only contending, that to powers already so formidable, it would be dangerous & unwise, to superadd others which can be elsewhere safely, conveniently & constitutionally exercised. The arguments principally relied on by the advocates of this Bill, are, first that it will save much time to the Legislature and thereby much expence to the State, and secondly that trials by Jury in Courts of Law, where all the evidence touching the cases may be had, will better insure just and correct decisions, than by the Legislature where they are determined for the most part, ex parte, and without much consideration. It is true that the Legislature is occupied at every Session, a portion, but it is a very inconsiderable portion of its time, in attending to applications for Divorces; but I have never been of opinion that the time thus occupied, has in any degree interfered with the important business of the Session. The usual practice is, I do not say it is a correct one, to refer the petitions to a Committee, the Chairman of which, towards the close of the Session makes a report on the several cases, and they are generally acted on in the course of one hour. But sir, admit that the sessions of the Legislature are lengthened by applications of this kind, and I am very far from believing it is a fact, it does not in any way prove the propriety of asking another branch of government, already crowded with business and daily becoming more so, to take the trouble off our hands: one part of our duty is to redress the grievances of our constituents, and it is one to which we are as much bound to attend as to any other. I regret that the second argument has been advanced, because I am certain that gentlemen on reflection will be induced to abandon it as being wholly untenable. It astonishes me, Mr. Speaker, that gentlemen should contend, that twelve men selected indiscriminately, and frequently possessing minds but moderately endowed, should be better able to settle correctly a question of difficulty and importance, than two hundred persons chosen for their wisdom and integrity. Is it possible that gentlemen are serious, when they argue that a Jury of twelve men, who may be interested in the event, who by previously knowing the circumstances of the case, may have in many instances prejudged it, can more correctly determine questions requiring all the powers of the mind, than the members of Assembly who are unknown to the parties, and utterly ignorant of the case, until by the evidence it is explained? Do we need a Jury? An impartial one is to be found in the Legislature. Do we want Council? A number of gentlemen learned in the law are to be found here, who have never been backward, as far as my experience goes, in giving their aid in the elucidation of any subject before the House. A Judge alone then is wanting to form a Court, and no one will pretend to say that we have not in the Assembly professional gentlemen, as well qualified as those already on the Bench to fill the office. A number, perhaps an equal number of applicants to the Legislature for relief, are Women and others in indigent situations. What relief does the bill now on your table, sir, promise to this class of sufferers. It informs them that the Courts of Law have cognizance of their cases—that if they have money they will obtain a hearing at least, and perhaps relief, but being poor, they are told that their case, although deplorable, is unalterable. And sir, what will be the consequence? These same people will continue to petition the Legislature, and the Legislature must hear them. It is true that the same persons who could erect a tribunal to which the prayers of the wealthy alone could ascend, could very consistently answer, that we have provided another way by which you may obtain redress, but sir, you must hear them; you must not, you cannot, you dare not refuse to hear them.

More, a great deal more, might be said, Mr. Speaker, on this subject, but I feel unable to proceed. Before I take my seat however, I will make one other observation. The most eminent writers, and common reason assert the principle, that all laws must yield to those of divine origin—That the laws of the land cease to bind the citizen, the instant they contradict those of his God. A man would in vain spend his time in search of a passage in all that valuable and voluminous code of divine law, which would tally with the features of this Bill.

If, Mr. Speaker, we pass this Bill, we shall pass a law not only unauthorised by the Constitution, not merely dangerous and unnecessary; but sir, we shall pass a law amendatory of the laws of God—we shall enact a statute supplementary to the statutes of Heaven. To this length I feel unprepared to go, and I entertain a hope, sir, that it is a point which a majority of the Senate will never reach.

Mr. Slade was ready to admit that this was a question of great importance, and that time ought to be taken to deliberate well upon it before gentlemen were called upon for their decision.—But, considering this question in every point of view, and having paid attention to the arguments of those gentlemen who had spoken upon it, he had found nothing which had altered his mind, so as to induce him to change the vote which he intended to give in favor of the bill.

The gentleman from Wilkes objected to the passage of this bill, because the crime of Adultery was one of the offences for which a divorce might be obtained, stating that if this bill should pass, it would have the effect of aiding and assisting persons, lost to all sense of duty, in obtaining divorces, and in making a speculation in the business, by being himself guilty of Adultery, and by that means obtain a divorce.—This, Mr. S. said, was to him strange doctrine. The bill contemplates giving the person aggrieved the right of application for a divorce, and not the person offending. Would it not be strange indeed, for a man to come into court, call witnesses to prove that he had been guilty of Adultery, and then pray for a