RALEIGH REGISTER,

AND

North-Carolina State Gazette.

Ours are the plans of fair delightful Peace,
Unwarp'd by party rage, to live like Brothers.

Vol. XII. THURSDAY, DECEMBER 13, 1810. No. 586

DEBATES
IN THE
GENERAL ASSEMBLY.

HOUSE OF COMMONS—*December 6.*

EQUITY BILL.

The bill to establish Courts of Equity separate and distinct from the Courts of Law, having been read a second time, and being open for amendment—

A motion was made that the bill lie on the table indefinitely, and without order.

Mr. H. G. BURTON hoped this motion would be withdrawn. Though the bill might be objectionable in its present shape, perhaps such amendments might be made to it, as would render it more generally acceptable. He trusted that the friends of the bill might be permitted to make it as perfect as they could.

Messrs. Cameron, Glisson and Seawell all spoke to the same effect; and the motion to lay it over was withdrawn.

The blanks in the bill being filled; and having been amended by laying a tax of five pounds on every suit, and by confining the operation of the law to two years, at which time the salary and commission of the two Chancellors were to cease, the bill was put upon its passage, when

Mr. J. A. CAMERON said, he was certain there was no member of that house who was not convinced of the necessity of establishing a Court of Equity, separate and distinct from our Courts of Law. It is well known that every individual has unalienable rights which cannot be accorded to him in a Court of Law, but in a Court of Equity. The necessity of a Court of this kind, was therefore perceived in every stage of our Government. The General Assembly had hitherto endeavoured to provide for the trial of suits in Equity, by connecting Courts of Chancery with our Courts of Law. This connection seems to have resulted from the infancy of the Country and its inability to defray the expence of a separate establishment. The great inconvenience attending this connection has long been perceived; and the difficulty of procuring the establishment of a separate Court of Equity, had not been because its necessity had not become evident, but because the General Assembly had never been able to agree upon the most eligible mode of carrying the system into effect. Upon our present establishment, our Judges of Law, are Judges of Equity also. From the late change in our Judiciary System, great inconvenience had arisen to suitors in Equity. The time allotted for the superior courts, in counties where there is much business, is too short even for the law docket; and where there are a number of suits at law, there are generally the most suits in Equity, which, of course, cannot be heard; for, from some cause or other, with which he was unacquainted, the Judges always seem more disposed to transact Law business than to hear suits in Equity. They therefore go through the former, before they attend to the Equity docket at all. At many Courts, consequently no Equity suits are tried. Yet no person will deny but that those citizens who have Equity rights have a claim to have them enquired into. The State is bound to provide a tribunal in which they can be heard. If the present system be incompetent for the purpose, another ought to be formed. He would not say that the bill before the house embraced a perfect system; he could not say that he was altogether satisfied with it; but, perhaps, it is the best which can at present, be carried into effect, as a more correct system would call for greater pecuniary resources than we could conveniently appropriate for the purpose.

This bill provides for two Chancellors and eight Courts, to be held twice a year. If it be passed into a law, we shall probably be able, in two years, the period to which the law is limited, to get thro' most of the old Equity business. Should this be the case, we might then, if it were thought best, return to our present system. This bill cannot be objected to on the ground of expence, as the tax proposed of five pounds on every suit, will, by a calculation which he had made, raise about £3000, to be paid into the Public Treasury, which would, within £200 pay the two years salary of the Chancellors. But, if there was no provision of this kind, as guardians of the people's rights, the General Assembly ought not longer to delay the establishment of the proposed Equity System.—Under the present arrangement, it is become almost impossible to get an Equity suit tried; and many persons are deterred from seeking a remedy in a Court of Equity, from the apprehension that their suits will never be determined. Many of these suits, it had been stated on a former occasion by a Gentleman who was well acquainted with the fact, had been hanging up for 20 years, and stand in no fairer way of being tried, than they did 18 years ago. This grievance calls loudly for redress; and he hoped that this Legislature, impressed with the necessity of the case, would not be deterred, by the trifling expence of a few hundred dollars, from passing the bill upon the table.

Mr. T. BROWN would add his voice to that of the gentleman from Fayetteville in behalf of the bill before the house. Long before he became a member of this house had he heard complaints against our present Equity system, which had convinced him of the propriety of the proposed change. When the present Judiciary System was established, he was convinced it was intended to render easy the attainment of justice to every man. No gentleman, however, at the time of passing it, was convinced that it was a perfect system; but probably supposed that it would from time to time undergo amendments. Some time has now passed since it went into effect, and an amendment is evidently necessary to enable many of our citizens to come at their just and equal rights.

On the present system, our Judges and Chancellors are hurried from Court to Court with great celerity. As soon as they arrive, they take up the Law docket. One case of importance will occupy a whole day; ten cases would probably take up the whole of the week, so that no time is left for Equity business. The cases are taken up and continued under the old rules, and they are so old as to go to the denial of justice. Indeed, Courts of Equity are so different from Courts of Law that the duties of the two Courts cannot well be performed by the same persons. Courts of Equity being governed entirely by Equity maxims and good conscience, influenced in some degree, indeed, by those who have gone before them, but not bound down by any written law. Mr. B. said it was impossible that any man, fatigued with constant travelling from Court to Court, and perplexed with law business for four or five days in the week, could enter on the fifth or sixth upon tedious Equity suits, where he would have to attend to long Bills and Answers and arguments, and then make up an opinion, without time to consult the proper authorities. Opinions thus formed could not always be correct. After this hurried week, instead of resting on the Sabbath, the Judge has to travel to his next Court. If any man could admire this system, he could not.

Mr. B. said, the proposed change in the Equity system was loudly called for. There are suits now pending which were instituted in the year 1784—26 years ago. Is not this shameful procrastination, a denial of justice? For his own part, neither he nor his constituents felt pressure. In the county of Bladen there are but few Equity cases; but he knew there were citizens in other parts of the State who suffered great injury for the want of a better system of Equity, and he was desirous of doing them justice. There had been suitors from Virginia, and other States, who, tired out by the delay of our present Courts, had relinquished their cases, suffering rather the loss of their rights, than to continue to pursue them in so tedious and hopeless a manner.

Is not such a system, asked Mr. B, derogatory to the State? Our State ranks, in respect to population, as the fourth in the Union; but, in relation to our liberal institutions, be feared we must rank much lower on the scale.—Mr. B tho't the bill before the house, just and equitable, and such as would be relished by the people at large; and trusted, that whilst we so justly boasted of our Rights and Liberties in general, we should not, in this instance, from any narrow principles of policy, refuse to do that justice to a part of our fellow-citizens, to which they are so well entitled.

Mr. LOVE enquired if it would be in order further to amend the bill? The Speaker said it would not, as the bill had been put upon its passage. Mr. L. said, he would then move to commit the bill to a Committee of the whole House, in order to introduce an amendment which he thought would render the bill more palatable to many members, by inserting *one Chancellor*, instead of *two*,

The question for going into a Committee of the Whole was negatived; and the passage of the bill was decided by Yeas and Nays. as follow:

YEAS—Mess Avery, Allen, Bunch, Brittain, Boyd, Brown, Barringer, Burton, J. G. Bryan, Culverson, Caldwell, Caldcleugh, Camp, Cameron, Chambers, Carthy, G L. Davidson, G. W. Davidson, Folson, Glisson, Gold, Goodman, Gilchrist, Henderson, Hoke, Hoyle, Hulme Horton, Dan. Jones, W W. Jones, W. Johnson, W. R Johnson, Lenoir, Leonard, Love, Lamb, M'Guire, M'Dowell, Moody, Mebane, Mumford, W. Miller, D. Miller, J. S. Nelson, Owen, Phifer, Pride, Reid, Russ, Seawell, M.E Sawyer, J Thompson, H. Thompson, Ward, H. G. Williams, Wilson.—56.

NAYS—Messrs Adams, T. Bell, Barnard, Christ. Bryan, B Bell, Bynum, Barber, Buie, Bateman, Blount, Hugh Brown, Ballard, Blackman, Clark, Copeland, Carr, Carter, Collins, Douglas, Deans, Edmunds, Evans, Felton, H. Flowers, Frink, J Flower, Gamble, Gilmore, Guy, Gandy, Gentry, Hudgins, Hannah, Hassell, Horn, Hughes, K. Jones, A. Jones, Kilpatrick, Lanier, Lindon, Moseley, Matthews, Nance, Norsworthy, Isaac Nelson, Pinkham, Peebles, Paine, Parsons, Relf, Ryan, Roberts, Rainey, Speller, Stedman, Scott, H Smith, N Smith, D Sawyer, Thomas, Vanhook, James Williams, N Williams, Webb, Wright, Jonas Williams, Edward Williams—68

So the bill was lost: but it has since been re-considered and is now before the Legislature.

SUPPRESSION OF GAMING.
(The same day.)

The bill for the suppression of Gaming (which authorizes a Magistrate with proper assistance, to break open the door of any room where he suspects Gambling to be carried on) being under consideration,

A motion was made to exclude Billiard tables from the operation of this bill; as they, being taxed, were sanctioned by the Legislature.

Mr. BARRINGER thought this amendment unnecessary, as the rooms in which Billiard Tables are kept, being tolerated by Law, are always open.

Mr. J. A. CAMERON was opposed to the adoption of the amendment; for if the rooms in which Billiard Tables are erected were to be excepted, it would be easy to place Gaming Tables in these rooms, and by this means elude the provisions of this bill.

The amendment was withdrawn.

A motion was made to impose a penalty of 20*l.* on officers refusing or neglecting to perform their duty when called upon. This motion was negatived.

Mr. H. G. BURTON called for the reading of the law as it now stands against Gaming and Gaming Tables. He thought Magistrates were by the present law authorized to enter any house in which such tables are kept; and if so, the evil would appear to be sufficiently provided for, and the present bill unnecessary.

[The several Acts on this subject were read.]

Mr. B. supposed the present law was sufficiently severe. The Magistrates, &c. are directed to break up the tables and seize any money or property staked; and persons obstructing them are made liable to a penalty of 500*l.*

Mr. PHIFER did not know whether the opinion of the gentleman from Mecklenburg was correct or not. The present law certainly did not go to the extent contemplated by the present bill. There was nothing in the present law which authorized an officer to break open a door that was locked. The object of this bill is to give this authority; and without this power, gamblers can easily evade the law, by locking themselves up.

Mr. H. G. BURTON said, it was true that the law does not expressly state that the proper officers shall break open any door which may be locked; but it says they shall seize and destroy these gaming tables by every means in their power; and if they could not effect their purpose in any other way, he presumed they might break open the door.

Mr. CAMERON said no officer had a right to break open a door to make an arrest, except they were authorized by an express law. He hoped the bill would pass.

The bill passed its second reading 61 to 53.

ON THE SUBJECT OF THE LAND TAX.

IN SENATE—December 5.

Gen. WELLBORN introduced a Resolution proposing to instruct the Committee of Finance to report a mode of taxing Land different from that which has heretofore been adopted in this State, by dividing it into three classes, viz. that of the first, second and third quality, to be designated by the owner at the time of giving it in for taxation. The General hoped this proposition would appear so reasonable, that no sound objection could be urged against it, as the land in every part of the State could readily be classed in this manner. And though it might be said that the tax on land was so low as not to be burthensome even on the holder of the poorest land, yet it must be acknowledged that it was altogether unjust that land of the *worst* quality should pay the same tax with land of the *best* quality; especially as it mostly happens that the poorest land is held by those who can least afford to pay the tax. Besides though the State tax is low, in many of the Counties, where they have to build Jails, or other public buildings there is frequently laid a pretty heavy county tax, which the owners of some of these poor lands find it difficult to pay. Whereas if the mode which he proposed was adopted, every owner of land would pay according to the quality of his land, and no more than his just proportion of tax either to the State, or to the County in which his land lay.—Gen. W. said he was so well persuaded of the justice of this mode, that if he should fail to carry it at the present session, he would never cease to bring it forward whilst he was honored with a seat in the Legislature.

Mr. SLADE was opposed to the proposed resolution. Had it gone to instruct the Committee of Finance to enquire into the expediency of the measure merely, he should not have objected to it; but if the resolution were agreed to in its present shape, it would be imperative on the committee to report a tax on land upon the principles which it contained, which he did not believe would be so generally satisfactory as the present mode. There would be different opinions as to the value of land, not only as to its quality but situation; and the present tax is so low, that no one could complain of any hardship under it. Besides it generally happens, that if a man holds poor lands, he also holds land of a good quality, so that the tax, upon the whole, falls tolerably equal on all,—The plan of the gentleman from Wilkes looked pretty well in *theory* but it would not answer so well in *practice*; and were it adopted more complaints would be heard of the inequality of the land tax than are heard at present.

Gen. WELLBORN said, the gentleman from Martin had misunderstood his motion, he did not propose to tax the land according to its real value (though that would be the most equitable way, but he was aware that gentlemen from the lower parts of the State would object to it, because their lands were the most valuable) but to class the land in every part of the State into three classes, and lay as high a tax upon the first class in the Western part of the State, as upon the first class in the Eastern. It was not always the case that a man who holds poor land, holds rich land also. It often happens that a poor man holds no land but of an inferior quality, and it is hard that he should pay as high a tax as his rich neighbor, who, perhaps, holds no land but of the first quality. He believed the mode of laying the tax on land which he proposed would operate equally on every part of the State—for in every part there are lands of the first, second and third quality. The gentleman himself acknowledges the plan looks well in *theory*, and if he would suffer it to be adopted, the General had no doubt it would be found to answer well in *practice*.

The question being put, the resolution was negatived, 30 to 26.

PENITENTIARY BILL.

IN SENATE—Dec. 8.

The bill to amend the Penal Laws of this State being on its second reading, the Senate proceeded to fill the blanks. When they came to the section which provides for the expence of erecting the Penitentiary by a Tax,

Mr. TOOLE moved, an amendment, providing that the amount of our 6 per cent. stock in the funds of the U. S. which would be redeemable on the 1st of Jan. next, amounting to $13,000, should be appropriated towards the building of the Penitentiary. Mr. T. supposed that considerable aid would be got from voluntary contributions. He thought at least $300 from every County in the State might be calculated upon.

Mr. SLADE opposed this motion. He said that he hoped that the Stock owned by the State in the United States Funds would be considered as a sacred deposit, ready to be subscribed towards the Stock of a National Bank, whenever it shall be proposed, in order to obtain for this State a Branch of such Bank, which would prove a great convenience to the citizens at large; as the Notes of such a Bank would pass currently in every part of the U. States. Mr. S. said he was friendly to the principle of the bill; but if it were in order, he could offer reasons which at least convinced him, that the bill ought not, at the present time, to be passed into a law.

Mr. TOOLE did not think it would be proper to reserve our Stock in the U. States Funds for the purpose mentioned by the gentleman from Martin, as he had now no expectation that a National Bank would be established. He thought the loan lately obtained from the Bank of the U. States by the General Government, evinced pretty clearly that it is, at least, the opinion of the Secretary of the Treasury that the present charter will be renewed; and if so, there will be no opportunity of obtaining any part of its Stock, or of getting a branch of that Bank established in this State.

The motion was negatived.

The section laying the tax, was then filled up with 6*d.* on every poll, 6*d.* on every 100*l.* of town property, and 2*d.* on every 100 acres of land; and the section which provides that whenever the Governor shall issue his proclamation stating that the Penitentiary is fit to receive convicts, every part of the act shall be in force, was filled with 25.

The blank for fixing the situation of the Penitentiary was not filled on this reading.

The question being put on the passage of the bill,

Mr. WELLBORN observed, that when he said, *not pass*, he wished it not to be considered that he was unfriendly to the principle of the bill. The gentleman who has brought forward this bill deserves well of his country: it embraces a Penal Code consistent with humanity and good policy: but, at this time, he thought the bill ought not to pass.—It was well known, that in many parts of the State, the Counties have at present expensive undertakings on hand—and, in his part of the country, money had not been so scarce for twenty years. Sufficient could scarcely be raised to defray the ordinary taxes. Besides this, the present mode of taxation (as he had stated on a former occasion) is so unequal on a part of the property proposed to be taxed, as to make it the more objectionable. If the revenue of this country was collected from the people according to their wealth, the taxes would not be felt. Whenever this equalization shall take place, there would be no difficulty in carrying the proposed plan into effect.

But, said Mr. W. if the bill were to pass, it could not be supposed that so trifling a tax as is now proposed, would more than lay the foundation of the Penitentiary. At the lowest calculation, the building would cost 40,000 dollars. The tax now fixed would only be like a drop in the bucket. The day, he trusted, would arrive, when the people would be better able to bear a tax which should be equal to the expence. He had voted in favor of the motion for appropriating the $13,000 of U. States stock towards the expence; but he could not consent to tax his constituents at this time for this purpose, however much he might wish to see the plan carried into effect.

Mr. TOOLE said, having had the honour to introduce this bill, it might be expected that he would rise in support of it. But when he heard, *not pass, not pass!* resounding from different parts of the house, and when he heard the gentleman from Wilkes in opposition to the bill, when he had expected him to have supported it—he despaired of its success, and therefore would not trouble the Senate with any arguments on the subject. The gentleman from Wilkes says the tax proposed will be no more than a drop in the bucket. He would tell him, that trifling as it might appear, it would raise $20,000 in one year, and this added to the donations of 300 dollars, which he supposed might be got from each county, would make a sum of $28,600, Some of the counties might not contribute so much as $300, but others would raise much more.

Gentlemen on all hands, Mr. T. said, professed themselves friendly to the principles of the bill; and if the necessary Building could be obtained without expence, there would be no objection to