



AND

NORTH-CAROLINA GAZETTE.

Quarry the plans of fair, delightful Peace, Unwar'd by party rage, to live like Brothers.

FRIDAY, OCTOBER 23, 1818.

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VOL. XIX.

THE SHAKERS.

We do not recollect to have seen published in any of the papers, the following Opinion of the Council of Revision of the State of New-York on a bill passed by the Legislature of that State for the relief of Eunice Chapman, &c.

IN COUNCIL.

February 27, 1818.

Resolved, That it appears improper to the Council that the bill entitled "an act for the relief of Eunice Chapman, and for other purposes," should become a law of this State.

When a former bill for the relief of the same party was before the Council, it was not deemed necessary to go further into the consideration of the bill, than to notice the two most obvious objections which then appeared to arise.

First. Because, by the first section of the said bill, "the marriage contract between the said Eunice Chapman and her husband, James Chapman, is declared to be dissolved."

The institution of marriage, by legalizing and regulating sexual intercourse, has greatly multiplied the sources of rational enjoyment, and exalted the human character. It is the only basis of domestic happiness, and the firm foundation of social order.

Regarding that institution, therefore, as the greatest of earthly blessings, the Council feel the solemnity of their obligation to guard it with scrupulous fidelity.

The recital of the bill states, that "Eunice Chapman, in the year 1804, was lawfully married to Jas. Chapman, by whom she had three children, and with whom she lived until the year 1811, when the said James Chapman abandoned his said wife, without leaving her any means of support, and soon after joined the society of Shakers, in Niskayuna, in the county of Albany; that the said James Chapman since joining the society of Shakers, has taken from his wife her children, & now keeps them concealed from her, and insists that the marriage contract between him and his said wife is annulled; & that he is not bound to support her, and has publicly forbid all persons from harboring her, and declared that he would not be responsible for her debts."

In the opinion of the Council, it would be unwise and unsafe to dissolve the contract of marriage for the causes stated in that recital.

The principal facts contained in the recital, and which are assigned as the reasons for the divorce, are 1st, that the husband has abandoned his wife, without provision for her support, and refuses to pay any debts contracted by her; 2d, that he has taken the children of that marriage into his own charge and custody; and 3d, that he has joined the society of Shakers.

As to the first ground, it does not appear by the recital, whether the omission on the part of the husband to furnish necessities for his wife, was a wilful neglect of duty, or the effect of poverty and inability.

If such an abandonment and neglect were wilful, and without justifiable cause, then there is ample redress already provided for her support, by the existing law, entitled "an act concerning divorces, and for other purposes," passed the 13th of April, 1813; and if the neglect to maintain the wife was occasioned by her own misconduct, or by the inability of the husband, then such omission is no crime; and much less is it a just ground of divorce.

Upon the second ground, to wit, that the husband has taken his infant children under his own exclusive guardianship and control, the Council perceive nothing more than the exercise of a right which the law confers on every father; and whether the mode of exercising that parental authority, in this case, has been discreet and proper, or otherwise, does not appear. If this right has been abused, the remedy is already provided, in the powers of the Chancellor, as superintending guardian of the rights of all infants.

The third and only other reason assigned for the divorce is, that the husband has become a member of the religious sect called Shakers.

It is notorious, and the Council therefore recognize the fact, that a distinguishing tenet of that society is, that sexual intercourse, even between man and wife, is sinful and unlawful.

The profession of this article of faith may be a mere pretext, in order to obtain

an unqualified divorce, as is granted by this bill; or if such profession be sincere to-day, the free conscience of the professor may renounce it to-morrow.

It is, then, no more than a present determination of the will in James Chapman, not to cohabit with his wife, revocable at his own pleasure; and the Council can perceive no solid distinction between this case, and the ordinary cases of wilful abandonment, for which the existing laws have provided a suitable and adequate remedy, by affording alimony to the wife from the estate of the delinquent husband.

If cruel treatment be complained of, the same existing law affords a shield, by allowing a separation or divorce from bed and board so long as the cause exists.

If, then, maintenance or protection be the object desired in this case, the remedy is already provided; and if the mere privation of sexual intercourse is the real subject of complaint on the part of this woman, the Council feel constrained to remark, that such an application is offensive to public decency.

Anxiously aware of the evils which threaten the dearest interests of society, by increasing the causes or facilities of divorces, the Council feel it to be their solemn and indispensable duty to oppose the dissolution of the marriage contract, for any other than the single cause already provided for by the general law of this state.

Like all other great benefits, matrimony, in its universal application, produces many partial evils and much individual suffering; but the Council are firmly convinced, that the sum of individual happiness, as well as the peace and order of society, requires that the nuptial tie should be indissoluble, except for the cause of adultery.

While the partial evils of indissoluble matrimony are sometimes witnessed and deplored, we ought to be consoled by the reflection, that the peace and character of many thousands of families are preserved by the mutual forbearance and concessions between husband and wife, which are induced by the ever impressive consideration, that the voluntary tie which binds them can never be dissolved.

History and experience unite to confirm the belief, that the measure of purity, or of profanity, in all countries and under every form of government, is essentially graduated according to the degree of sanctity and stability of the marriage contract.

Secondly. The Council object to this bill, because it absolutely & unconditionally dissolves the contract of marriage, by statute authority, without any previous judicial inquiry and trial by jury, as to the truth of the facts on which the divorce is founded.

This is the first instance of such an exercise of Legislative power, not only since the adoption of our state constitution, but since the formation of the colony of New-York; and the Council deem this innovation to be unsound in principle, and highly dangerous in its tendency.

In the recital of a statute, entitled "an act directing a mode of trial, and allowing of divorces in cases of adultery," passed the 30th day of March, 1797, the Legislature of this state declared, "that it was more advisable for the Legislature to make some general provision in such cases, than to afford relief to individuals upon their partial representations, without a just and constitutional trial of the facts."

With great respect, the Council now advert to the principle thus early established in that recital, and firmly believe, that the genius and spirit of the constitution require, that this principle should be steadily maintained.

Thirdly. The Council object to this bill because they deem it inconsistent with the 38th article of the Constitution of this state, which ordains "that the free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever hereafter be allowed within this state to all mankind; Provided, That the liberty of conscience shall not be so construed, as to excuse acts of licentiousness, or justify practices inconsistent with the peace and safety of this state."

By the second section of the bill now under consideration, it is enacted, "that in all cases where any husband or wife, having any child or children by the marriage, shall hereafter separate, the one from the other, and shall have attached him or herself to the said Shakers, and shall also take or have taken with him or her, such child or children, being under age, the Chancellor, or any judge of the Supreme Court, may award the charge and custody of such child or children to that parent who shall not have joined the said Society of Shakers."

By the existing general law of this state, applicable alike to all classes of men, excepting slaves, the guardianship, custody and control of infant children, belong exclusively to the father; who, by the same general law, is also entitled to the services of his infant children, without accountability.

Under the provisions of this bill, the father may be divested of these precious

and important rights, for the sole and avowed cause, that he has become a member of the Society of Shakers.

This special regulation is in the nature of a penalty; and in the opinion of the Council, it is practically making a "discrimination," and giving a "preference," whereby the equality of civil rights (as between persons of different religious professions) is essentially impaired.

If the Legislature can constitutionally deprive a man of his parental rights, merely because he is a Shaker, they have an equal right, for the same cause, to disfranchise him of every other privilege, or to banish him, or even to put him to death. If the principle be admitted, it must rest in discretion alone how far it shall be carried in the measure of punishment.

There is no evidence that the Society of Shakers are guilty of any "acts of licentiousness," or of any "practices inconsistent with the peace and safety of this state;" and although we may lament, what to us appear absurd errors in their religious creed, yet so long as they preserve the character which they now possess, for sobriety, industry and peaceful habits, the Council cannot regard them as having forfeited the protection secured by that article of the constitution. To justify such an act of denunciation, the danger to "the peace and safety of this state," must be not merely speculative, remote and possible, but immediate and certain.

To condemn a religious tenet, by legislative authority, is to assume a power hitherto unknown in our statute book; and upon the most mature reflection, the Council are of opinion, that it would be not only unprecedented in the annals of our state, but highly dangerous and alarming in its consequences.

In regard to the people called Shakers, the only possible apprehension of danger to the state, on account of their religious faith and practice, arises from the tenet, that sexual intercourse is sinful; and it is worthy of remark, that if they practice according to that belief, the very cause from which danger is apprehended, to wit, celibacy, is the very reason why that sect cannot be propagated to any dangerous extent. The supposed evil, therefore, carries along with it an effectual remedy.

The absurdity of that tenet is so plain and obvious, as to prove an antidote security against any serious danger of its prevalence, provided the excitement of persecution be not added to that of fanaticism. It may be pited as a delusion, but it ought not to be regarded as a crime.

Ordered, that the Secretary deliver a copy of the preceding resolution and objections, together with the said bill, to the Honorable the Senate.

CHARLES D. COOPER, Sec'y.

BY AUTHORITY.

An act to enable the People of the Illinois Territory to form a Constitution and State Government, and for the admission of such State into the Union on an equal footing with the original States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of the territory of Illinois be, and they are hereby, authorized to form for themselves a constitution and state government, and to assume such name as they shall deem proper; and the said state, when formed, shall be admitted into the union upon the same footing with the original states, in all respects whatever.

Sec. 2. And be it further enacted, That the said state shall consist of all the territory included within the following boundaries, to wit: Beginning at the mouth of the Wabash river; thence, up the same, and with the line of Indiana, to the north-west corner of said state; thence, east with the line of the same state, to the middle of Lake Michigan; thence, north along the middle of said lake, to north latitude forty-two degrees thirty minutes; thence, west to the middle of the Mississippi river; and thence, down along the middle of that river, to its confluence with the Ohio river; and thence, up the latter river, along its northwestern shore, to the beginning: Provided, that the convention hereinafter provided for, when formed, shall ratify the boundaries aforesaid; otherwise they shall be and remain as now prescribed by the ordinance for the government of the territory northwest of the river Ohio: Provided also, that the said state shall have concurrent jurisdiction with the state of Indiana on the Wabash river, so far as said river shall form a common boundary to both, and also concurrent jurisdiction on the Mississippi river, with any state or states to be formed west thereof, so far as said river shall form a common boundary to both.

Sec. 3. And be it further enacted, That all white male citizens of the United States, who shall have arrived at the age of twenty-one years, and have resided in said territory six months previous to the day of election, and all persons having in other respects the legal qualifications to vote for Representatives in the General Assembly of the said territory, be, and they are hereby, authorized to choose Representatives to form a convention, who shall be apportioned amongst the several counties as follows:

From the county of Bond, two Representatives: from the county of Madison, three Representatives: from the county of St. Clair, three Representatives: from the county of Monroe, two Representatives: from the county of Randolph, two Representatives: from the county of Jackson, two Representatives: from the county of Johnson, two Representatives: from the county of Pope, two Representatives: from the county of Gallatin, three Representatives: from the county of White, two Representatives: from the county of Edwards, two Representatives: from the county of Crawford, two Representatives: from the county of Union, two Representatives: from the county of Washington, two Representatives: and from the county of Franklin, two Representatives.

And the election for the Representatives aforesaid shall be holden on the first Monday of July next, and the two following days, throughout the several counties in the said territory, and shall be conducted in the same manner, and under the same regulations, as prescribed by the laws of the said territory regulating elections therein, for members of the House of Representatives.

Sec. 4. And be it further enacted, That the members of the convention, thus duly elected, be, and they are hereby, authorized to meet at the seat of government of the said territory, on the first Monday of the month of August next, which convention, when met, shall first determine, by a majority of the whole number elected, whether it be, or be not, expedient at that time to form a constitution and state government for the people within the said territory, and if it be deemed more expedient, the said convention shall provide by ordinance for electing representatives to form a constitution and state government; which said representatives shall be chosen in such manner, and in such proportion, and shall meet at such time and place, as shall be prescribed by the said ordinance, and shall then form for the people of said territory a constitution and state government: Provided, that the same, whenever formed, shall be Republican, and not repugnant to the ordinance of the thirteenth of July, seventeen hundred and eighty-seven, between the original states and the people and states of the river northwest of the river Ohio; excepting so much of said articles as relate to the boundaries of the states therein to be formed: And provided also, that it shall appear, from the enumeration directed to be made by the legislature of the said territory, that there are, within the proposed state, not less than forty thousand inhabitants.

Sec. 5. And be it further enacted, That until the next general census shall be taken, the said state shall be entitled to one Representative in the House of Representatives of the United States.

Sec. 6. And be it further enacted, That the following propositions be, and the same are hereby, offered to the convention of the said territory of Illinois, when formed, for their free acceptance or rejection, which, if accepted by the convention, shall be obligatory upon the United States and the said state.

First. That section numbered sixteen, in every township, and, when such section has been sold or otherwise disposed of, other lands equivalent thereto, and as contiguous as may be, shall be granted to the state, for the use of the inhabitants of such township, for the use of schools.

Second. That all salt springs within such state, and the land reserved for the use of the same, shall be granted to the said state, for the use of the said state, & the same to be used under such terms and conditions, and regulations, as the legislature of the said state shall direct: Provided, the legislature shall never sell nor lease the same for a longer period than ten years, at any one time.

Third. That five per cent. of the nett proceeds of the lands lying within such state, and which shall be sold by Congress, from and after the first day of January, one thousand eight hundred and nineteen, after deducting all expenses incident to the same, shall be reserved for the purposes following, viz: two-fifths to be disbursed, under the direction of Congress, in making roads leading to the state; the residue to be appropriated, by the legislature of the state, for the encouragement of learning, of which one-sixth part shall be exclusively bestowed on a College or University.

Fourth. That thirty-six sections, or one entire township, which shall be designated by the President of the United States, together with the one heretofore reserved for that purpose, shall be reserved for the use of a seminary of learning, & vested in the Legislature of the said state, to be appropriated solely to the use of such seminary by the said Legislature: Provided always, that the four foregoing propositions, herein offered, are on the conditions that the convention of the said state shall provide, by an ordinance irrevocable without the consent of the United States, that every and each tract of land sold by the United States, from and after the first day of January, one thousand eight hundred and nineteen, shall remain exempt from and tax laid by order, any authority

of the state, whether for state, county, or township, or any other purpose whatever, for the term of five years from and after the day of sale: And further, that the bounty lands granted, or hereafter to be granted, for military services during the late war, shall, while they continue to be held by the patentees, or their heirs, remain exempt, as aforesaid, from all taxes, for the term of three years from and after the date of the patents respectively; and that all the lands belonging to the citizens of the United States, residing without the said state, shall never be taxed higher than lands belonging to persons residing therein.

Sec. 7. And be it further enacted, That all parts of the territory of the U States lying north of the state of Indiana, and which was included in the former Indiana territory, together with that part of the Illinois territory which is situated north of and not included within the boundaries prescribed by this act, to the state thereby authorized to be formed, shall be, and hereby is, attached to, and made a part of, the Michigan territory, from & after the formation of the said state, subject, nevertheless, to be hereafter disposed of by Congress, according to the right reserved in the 5th article of the ordinance aforesaid, and the inhabitants therein shall be entitled to the same privileges and immunities, and subject to the same rules and regulations, in all respects, with the other citizens of the Michigan Territory.

April 18, 1818.—Approved.

An act to increase the salaries of the Judges of the Circuit Court for the District of Columbia.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled, That in addition to the compensation heretofore allowed by law to the Judges of the Circuit Court for the District of Columbia, the sum of five hundred dollars per annum be paid to the Chief Justice of the said Court, and the same sum per annum to each of the Assistant Judges of said Court, payable quarterly yearly; the first quarterly payment to be made on the first day of April, one thousand eight hundred and eighteen.

April 20, 1818.—Approved.

An act authorizing a Subscription for the Statistical Annals of Adam Seybert, and the Purchase of Pitkin's Commercial Statistics.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary for the Department of State be, and he is hereby, authorized and directed to subscribe for, and receive, for the use and disposal of Congress, five hundred copies of the Statistical Annals proposed to be published by Adam Seybert, of Philadelphia; and that he also be directed to purchase, for the purpose aforesaid, two hundred and fifty copies of Pitkin's Commercial Statistics of the United States.

Sec. 2. And be it further enacted, That the sum or sums of money necessary to defray the cost of the subscription and purchase aforesaid, shall not exceed the sum of five thousand seven hundred and fifty dollars; and the same is hereby appropriated, to be paid out of any money in the Treasury not otherwise appropriated.

April 20, 1818.—Approved.

By the President of the United States.

WHEREAS, by an act of Congress, passed on the 17th of February, 1818, entitled "an act making provision for the establishment of additional Land Offices in the territory of Missouri," the President of the United States is authorized to direct the public lands, which have been surveyed in the said territory, to be offered for sale: Therefore, I, James Monroe, President of the United States, do hereby declare & make known, that public sales for the disposal (agreeably to law) of certain lands in the territory of Missouri, shall be held in Franklin, in said territory, viz:

On the first Monday in January next for the sale of Township No. 46 to 52 inclusive and fract'l township 53 } in range 19
48 to 52 and } 20
fract'l township 53 }
48 to 52 } 21, 22, 23

On the first Monday in March next, for the sale of Townships 48 to 55 inclusive, in ranges 24 & 25
48 to 50 } 26 & 27

On the first Monday in May next, for the sale of Townships 51 to 54 inclusive, in ranges 11 & 12
51 to 56 } 13
53 to 56 } 14 & 15

excepting the lands which have been, or may be, reserved by law, for the support of schools, and for other purposes.

Each sale shall continue as long as may be necessary to offer the lands for sale, and no longer, and the lands shall be offered in regular numerical order.

Given under my hand, at the city of Washington, this 17th day of July, one thousand eight hundred and eighteen.

JAMES MONROE, Commissioner of the General Land Office.