

cit in its statements, and as they regard it as a matter of the utmost moment, that not only the members of this House, but also the citizens of this state, should be apprised of the extent to which official negligence has heretofore prevailed amongst our judicial and executive officers of high grades, they determined to submit to the legislature a brief yet perspicuous view of the full extent of the grievances to which the order and resolution relate. By some it may be deemed an improper interference with a subject put to rest by the report of the late committee, and by others as raking up the ashes of the dead, and as dwelling too fondly upon official misconduct, already sufficiently disclosed.

Your committee cannot however, regard it in this light. In the course of their investigations they have ascertained the subject matter of complaint to be an abiding grievance, in no degree diminished by the resolution of the last session, and a grievance which will in a greater or less degree affect every citizen of the state; and which might have jeopardised the titles to an immense amount of property within it. Convinced of this, had they remained silent from false notions of delicacy, had they forbore to renovate the subject and to refresh the memories of those officers upon whom it is enjoined by the resolution of the last session to use compulsory measures after a certain period, they would have been wanting in duty to themselves, they would have betrayed the trust confided to them by this House. They have but too much reason to fear that fancied delicacy has already too often precluded, and will always preclude, a manly and candid exposure of official misbehaviour; and your committee deem it full time to resist this propensity to veil or extenuate. They only regret that they cannot perpetuate a knowledge of the facts which they are about to disclose, that they may awaken all after citizens to a more vigilant observance of official conduct, and that they may serve as a beacon to warn after officers against the commission of like improprieties.

The public attention does not seem to have been properly and efficiently directed to the state of the records in the several judicial offices of this state until the year 1817; at which period, if we may judge from the extent of similar deficiencies in the court of chancery, the unrecorded papers in most of the offices were the accumulation of twenty or thirty years of uninterrupted neglect. The law passed during that year for the redress of the grievance, of itself abundantly evinces the long continuance of the grievance, and the size to which it had swollen. Although it was undoubtedly the duty of the clerks and registers to have made out full and complete records of all cases in their respective courts, and although they had charged their fees for recording in all cases, yet the legislature seems very wisely to have concluded that by requiring utter performance, they might perhaps fail in effecting any thing; and they therefore deemed it proper to discriminate between actions in any manner affecting the title to real property, and mere personal actions, and only to exact in express terms completion of the records in the first mentioned cases. The single fact of discrimination serves to show how great was the mass of unrecorded papers.

The act of 1817, chap. 119, is an act both of prospective and of retrospective operation. It was designed to compel the completion of the records in all of a certain class of judicial proceedings had before its passage, and at the same time to keep them up for the future in a perfect state, in part by diminishing the labour in dispensing with recording in mere personal actions, and in part by the periodical supervision of the judges in whose courts the proceedings are had. But it must be observed, that the act of 1817 in its retrospective operation, although it relates only to real and mixed actions, does yet in no degree exonerate the officer from the performance of his duty, in personal actions. It only selects the neglect to record in the first actions as the most prominent part of the grievance, and although it imposes no legal, it yet in no degree impairs the previous moral or even legal obligation to record the same. Before the passage of the law of 1817 it was the duty of the registers and clerks to have completed their records in all actions whatsoever, and they were entitled to their fees in all cases for so doing, nor can any thing express be seen in that law to exonerate them from the duty of recording in mere personal actions, but more especially in all such actions when the fees for recording had been charged and received. These remarks are deemed necessary to elucidate the report made by the present register in chancery to the late general assembly.

The law of 1817 having selected the actions affecting the title to real property as those in which the grievance was most prominent and most likely to result in serious injury to the citizens of the state, endeavoured to provide for the immediate completion of the records in these cases, by enjoining it upon the chancellor and the judges of the county courts, in their respective courts, to inspect the records thereof, and in all instances where such deficiency was discovered, to require completion of them at the hands of the officer or his security or personal representatives, in the event of his decease, and to prescribe the periods within which they should be completed. In the event of a failure to comply with their order to complete, the attorney for the state prosecuting in the court in which the records were thus deficient, was required to put in suit the bond of the officer to whom such default might be imputed.

This provision appears to have produced the desired effect in the several county courts of this state; but as it regards the registers in chancery, the cynical declaration, that "laws are mere spiders' webs in which the weak are caught, whilst the strong break through and escape," has been amply verified. Your committee have reason to believe, that whilst the strong arm of the judge was menacingly stretched over the head of every defaulting county clerk within your state, the yet more culpable registers in chancery who had enjoyed whilst in office before the year 1815, the enormous annual salary of six or seven thousand dollars, were permitted to repose undisturbed in their negligence, and unreminded or at least heedless of their duty. Why this crying grievance should have remained unredressed and even unnoticed for five years after the passage of the law of 1817, and why it became necessary to call in a second time the aid of the legislature, your committee cannot determine nor will they venture to say to whom such neglect is imputable. One fact, however, seems uncontroverted, that the law of 1817 was not carried into effect in relation to these officers, although their deficiencies were of a character infinitely more important.

At length in 1822, the attention of the legislature was a second time directed to the defaults of the registers, and a resolution was passed at December session 1822-23, which, after reciting that many papers remained unrecorded during the time that Samuel H. Howard, Nicholas Brewer, James P. Heath, and Thomas H. Bowie, acted as registers, which ought to have been recorded, and for recording which

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