

VOTES AND PROCEEDINGS, NOVEMBER, 1781. 21

It was then moved, that a message be prepared to inform the house of delegates of the objections to the amendment, and Thomas Stone, Esq; was appointed to prepare the same.

The bill, entitled, An act for holding special elections in Cæcil county, &c. was read the second time by especial order, passed, and sent to the house of delegates by Thomas Stone, Esq;

Messieurs Burges and Caufin, from the house of delegates, deliver to the president a bill, entitled, An act directing the proceedings against persons guilty of fornication, endorsed; "By the house of delegates, December 18, 1781: Read the first time and ordered to lie on the table.

" By order, F. GREEN, clk.

" By the house of delegates, January 4, 1782: Read the second time and committed for amendments.

" By order, F. GREEN, clk.

" By the house of delegates, January 9, 1782: Read the second time and will pass.

" By order, F. GREEN, clk."

The senate adjourns till to-morrow morning 9 o'clock.

T H U R S D A Y, January 10, 1782.

THE senate met. Present as on yesterday. The proceedings of yesterday were read.

Messieurs Sprigg and Seney, from the house of delegates, deliver to the president a bill, entitled, An act concerning nonjurors, endorsed; "By the house of delegates, January 8, 1782:

" Read the first time and ordered to lie on the table.

" By order, F. GREEN, clk.

" By the house of delegates, January 10, 1782: Read the second time and will pass.

" By order, F. GREEN, clk."

Which was read the first time and ordered to lie on the table.

Thomas Stone, Esq; brings in and delivers to the president the following message:

BY THE SENATE, JANUARY 10, 1782.

GENTLEMEN,

THIS house has agreed to all the amendments proposed by you to the bill relating to costs in criminal cases, except that which subjects the party acquitted by a jury to payment of costs upon an entry of the court, that there was probable cause for the prosecution; to this we cannot accede, because we conceive it may be attended with more injurious consequences to the party accused and acquitted, than he is subject to by the law as it now stands, as it exposes him to the hazard of an examination, by which his reputation may be destroyed, though he is acquitted by his peers of the crime laid to his charge; and we are apprehensive this second trial may not always be made without prepossession and prejudice. A trial by jury is the only criterion known in our law to fix the guilt and innocence of the party accused, and we are not inclined to subject it to a revision by the court, so as in any manner to affect the party acquitted; there may be instances, where the party accused, though acquitted by the jury, is thought guilty by the court and bystanders; but these instances are rare, and even when they happen we are inclined to think, that the verdict of men sworn to try the truth of the fact, and whose particular duty it is to attend to and weigh every circumstance, will more generally be found to be right; than the opinion of others, who are not so particularly engaged to attend to the evidence; and even should a few cases happen where the jury may be mistaken, yet we do not think this a sufficient reason for a regulation under which any innocent person may be stigmatised. We beg leave further to suggest, that there may be probable cause for a prosecution, and yet the party accused be perfectly innocent of the crime charged; the persons who instituted such prosecution may be acquainted with but part of the case, from which, without knowing the other circumstances, there may be a probable cause of prosecution; and yet when the fact with all its circumstances is examined, and the whole evidence heard, the party accused is found to be altogether innocent. We wish you to consider the objections to your proposed amendment, and if they are satisfactory, that you may recede from it and pass the bill; whereby we shall take from our system of laws, a principle which is esteemed unjust by all men of sentiment and humanity, without fettering the alteration, by a power, in the exercise of which injury may be done.

By order, J. MACCUBBIN, clk.

Which was read, and, with the bill, entitled, An act relating to costs in criminal cases, sent to the house of delegates by Charles Carroll, of Carrollton, Esq;

The bill, entitled, An act directing the proceedings against persons guilty of fornication, was read the first time and ordered to lie on the table.

The senate adjourns till to-morrow morning 9 o'clock.