



AND

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Ours are the plans of fair and lawful peace,
Unwarp'd by party rage, to live like brothers.

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Mr. Gales,
WHEN we observe, in a republic where every thing relative to government abides ultimately in the great body of the people, laws and institutions which are manifestly oppressive to a great majority of the citizens, supported and cherished for any considerable length of time, we become curious to know from what cause this seeming inconsistency and absurdity proceeds. In a monarchy or aristocracy, where a single or a few individuals conduct every operation of government, the causes of tyranny and oppression, with the reason of their continuance, are more obvious. In these governments, the rulers, who do not owe their elevation to the election of the people, and who are not accountable to them for their conduct, are too apt to use that power which was perhaps at first acquired by fraud or force, or with which they may have originally been entrusted for the benefit of the people, to the oppression and ruin of the community. It is not a new remark, that governments of every species are upheld by public opinion. Hence in despotic governments, free enquiries and discussions of political subjects are strictly prohibited, that the people through ignorance of the nature of their condition, may be prevented from attempting innovations, and the more peaceably submit to the galling yoke that is imposed on them. Free governments like our own, where political discussion and enquiry are unrestrained, have in this, as in most other matters, eminent advantages over arbitrary ones. But from the imperfections of civil society, or rather of human nature, a small part only of every community can devote their time to study and reflection. The bulk of the community, from their necessary avocations which engross their time, cannot be expected to acquire an extensive knowledge of political affairs. Hence they are accustomed to be guided in their opinions and conduct (and I will not deny but with propriety in cases where the interest of their guides does not clash with their own) by those who have had better opportunities than themselves of gaining information. It is therefore unfortunate for the improvement of society and laws, that those who possess the greatest power, wealth, talents and influence, are generally those who are interested to preserve the present situation of political affairs, however injurious and vexatious that may be to the rest of the community: for it is to this situation of things that they are indebted for these advantages, and on this depends their continuance. Hence we see in every state, many men of the greatest power and influence who are strenuously opposed to every innovation in laws and government, although highly advantageous and useful to the people in general. Hence too we discover the cause why laws, not unfrequently even in republics, long continue to exist which evidently bear hard upon the greater part of the community. To confirm this observation, numberless examples might be deduced from history. But why have recourse to history so long as the proceedings relative to our present JUDICIAL SYSTEM remain imprinted in our memories? The inconveniences of the present system have long since been discovered and severely felt by the body of the people. The utility and necessity of a change is generally acknowledged, but all attempts which have been made by the friends of the people to introduce a reform have hitherto proved ineffectual. A bill was brought forward during the session of the last Assembly to

establish a judiciary upon principles more consistent than our present plan with the genius of a republican government. This bill proposed the abolition of our present district courts, and the erecting of superior courts in every county in the state; by which equitable arrangement the convenience and expence of obtaining justice would be greatly diminished and would be equal with all. Means were however found the last session to defeat its passage, but it will undoubtedly fall under the consideration of the next Assembly. The friends of reform must expect to meet (as they did with an exception or two the last assembly) with the firmest opposition from the representatives of towns and counties in which Superior Courts are held; for these are materially interested to preserve the present posture of things. As these places are the *foci* to which wealth and commerce and business of every kind are attracted, so they are the residence of men of the largest property and greatest abilities; among whom the lawyers who have engrossed the business of the Superior Courts (from among which class of citizens the representatives of towns are usually chosen) hold a pre-eminent rank. If the proposed plan takes effect, they know that their business and of course their fees must be greatly abridged; for when the business which is now transacted in our district courts, comes to be diffused into every county in the state, they will find it impossible to transact more than half the business they do at present. I would not be understood to impeach the motives of any one; but we all know that self interest seldom fails to give a bias to the judgment, so that we may calculate on having (perhaps with some exceptions) the representatives of the above mentioned places firmly opposed to the proposed system. Although doubtless very great talents will be displayed in opposition to an alteration of our present system, yet the influence derived from those extrinsic advantages before noticed; the advantage that will be taken of our natural prejudices and prepossessions, and the divisions that may be effected among the friends of reform themselves, will be likely to effect more (and therefore ought to be feared and guarded against) than the intrinsic weight of their arguments.

It is natural to the human mind to entertain strong prejudices in favour of those regulations and usages to which it has been long accustomed. We choose to persevere in a beaten track, though rugged and unpleasant, rather than deviate into an untrodden path, however smooth & inviting. There are certain aphorisms that strongly concur with our prepossessions, which, however incongruously applied, we are apt to receive as indisputable political axioms. When any scheme of improvement is offered, hundreds will tell us that *to forsake long established customs is impolitic, and that innovations are dangerous*, for one who is capable of pointing out where the danger or impolicy lies. The late writers in favour of the old system have been sufficiently lavish of these and the like political dogmas. Should these principles prevail in the extent to which some are desirous to stretch them, our judicial system would indeed become like "the law of the Medes and Persians, that altereth not." But it ought to be remembered that this system was established at a time when the condition of our country with regard to wealth, commerce, population and in most other respects, was widely different from the present. The same reasonings cannot be applied to objects different in their natures, circumstan-

ces and degrees. If therefore the old system was established with wisdom (as we are told and have no inclination to deny, that it was) and adapted to the then existing circumstances of things; it necessarily follows that those reasons which formerly induced its establishment, now favour its abolition or amendment. Innovations when introduced with suitable caution, are then only dangerous, when they are not founded on reason and justice. How many revolutions have taken place by which society has been improved, which when they were first in agitation, were deemed Utopian and chimerical. Since therefore we sensibly feel the inconveniences and distresses connected with the present plan, and justice and reason point out the remedy, why hesitate in its application? If we are deterred from attempting innovations for fear of some uncertain danger in the experiment, we must be content to labour under all the mischiefs and inconveniences, which time and a change of circumstances, bring on almost every institution, however expedient and unexceptionable at its original establishment. As circumstances vary policy should undoubtedly accommodate its system to such a variation.

Let me caution the friends of the proposed reformation, to beware of division among themselves. The residents of towns and counties in which superior courts are held, will be extremely loath to quit the pre-eminent advantages they have hitherto enjoyed, and submit to an equality of privileges with the rest of their fellow-citizens. All positions, therefore, from them or their representatives, or any individual particularly interested in the continuance of the present system, which have a tendency to draw your attention from the true interests of your country; to check your exertions in carrying into effect the proposed amendment, or to create schisms among you, ought to be viewed with a distrustful and jealous eye. So obvious a means as the latter, will not be left untried by its enemies. The seeds of division are indeed already sown, and it is much to be feared that they will spring up, and at the next General Assembly, produce fruit fatal to the cause of the people. A publication in the shape of a bill, by an eminent lawyer, appeared some time ago in the newspapers, which proposed to divide the State into twelve superior court districts, instead of the eight into which it is now divided. It requires little reflection to discover the direct and pernicious tendency of this bill. It is eminently calculated to create a division among the former advocates for the system proposed to the last Assembly. The friends of the old system probably calculate, that the representatives of those counties in which new superior courts are proposed to be erected will be in favour of the bill, together with those whom influence, or the natural diversity of sentiment on such subjects, will add to the number; and hence, by uniformly siding with the opposition, they may prevent a majority from being obtained for either plan. But it is to be hoped, that those members will be more regardful of their own interests and the principles of justice, than to suffer themselves to be thus easily duped. It is however possible, that the former supporters of the old system, will give up a little to prevent losing all, and will join with the advocates of the lawyer's bill; in which case, there will be the greater necessity for unanimity among the representatives of those counties which are to be excluded from the benefits of a superior court, and who wish for an equal distribution of justice. If this bill, or one upon a similar prin-

ciple, is carried into operation, some of us will indeed be relieved of part of our burthens, while others will remain without any alleviation. Justice can then be obtained by a certain portion of us without travelling quite so far, by being absent from home and relinquishing all other concerns for a somewhat shorter space of time, and expending a little less money than formerly. But the erecting of the four superior courts which the bill contemplates, will be making an invidious distinction in favour of those counties in which they are to be erected. We are all equally entitled to the benefits of justice. No one by any superior or exclusive right can claim that justice should be brought home to his door, or that a superior court, with the immense advantages thence resulting, should be established in his county rather than in another. But why not wholly remove the evil complained of, by establishing superior courts in every county, and thereby make an equal diffusion of justice among all our citizens. Reason and justice and experience loudly call for and approve of the measure. The present system is attended with great expence and waste of time to the parties at law, who are so unfortunate as to live at a distance from the place where superior courts are held. Trade naturally centres in those counties, while others are deprived of many of its advantages; drained of their circulating specie, and subjected to the consequent distresses and inconveniences. It has been fully and clearly shown to the public, that the county system can be introduced without danger or difficulty attending it; and it is evident, on a bare view of the subject, that it is calculated to give the benefits of justice, of trade, and of a circulating medium, a more diffusive and equal spread. Besides the reasons drawn from the nature and circumstances of things, the example of several of our sister states has been cited, and particularly the example of South Carolina; in which State a judiciary on a plan exactly similar to the one under the consideration of our last Assembly has been adopted, which experience has shewn to be for the immense benefit, and with the unequivocal approbation of the bulk of the citizens. Since then reason and experience thus strongly recommend the adoption of the new system, is it just to deprive our citizens any longer of its advantages?

The only objection which has been urged against the new system, that wears even the appearance of plausibility, is, that jurors living in the county, and perhaps neighbourhood of the parties at issue, may sometimes be influenced by local prejudices or prepossessions in favour, or against one or the other party. But this objection will be found, I presume, when fully and fairly examined, to be more plausible than just. Jurors, living in the neighbourhood of the parties and witnesses, may be supposed in general to be acquainted with their characters, and therefore the better know what credit to give to the facts alleged in evidence. This is a great and indisputable advantage which the county system will have over the present. For jurors may now be drawn from a part of the district the most remote from the witnesses, concerning whom, in most instances, they have no knowledge at all. But this knowledge, in case the evidence be contradictory, which often happens, is absolutely necessary for a fair and equitable decision. And a knowledge of the parties in those instances, where their oath is allowed, is as necessary as that of the witnesses. But how is this knowledge to be obtained? Shall other witnesses be introduced from

the county and neighbourhood of the former, in order to establish their reputation? This is indeed often done which, as these witnesses must all be paid, is a great trouble and expence to the litigants that, among numberless other evils, would, under the new system, be entirely avoided. Besides, this does not remove the difficulty for these last witnesses will probably be as much unknown to the jurors as the former, so that no other means will be left but to number, not weigh, the testimony of the witnesses.

The advantages therefore of the new system over the old, with respect to jurors in this particular, are pre-eminent, nor are the prejudices of jurors under the new system, when we consider the prodigious multitude of challenges or exceptions that the law allows, so much to be apprehended as some would make us believe. Jurors are to be men of fair characters; freeholders in the county; free from the conviction of crime or misdemeanor, or if there be grounds of suspicion, either of malice or favour: as that the juror is of kin to the party, has an interest in the cause, that he has formerly been a juror in the same cause; that there is an action depending between him and the party, or that he is of the same society or corporation with him; the juror is in either of these cases, to be excluded from serving. And even when these marks of suspicion do not appear, if any plausible or probable circumstance be alleged against a juror, its validity must be left to two indifferent persons appointed by the court, who are to determine whether he be favourable or unfavourable. In civil causes also the parties, besides the above grounds of exclusion and a number of other which it is needless to mention, are allowed two peremptory challenges, and in criminal cases that are capital, the prisoner is allowed thirty-five. Add to these means of removing bias, the solemnity of a trial, and the sacred obligation of an oath; can there be any reasonable grounds left for suspecting partiality in the jury. And the parties will surely be relieved from even the apprehension of it, when they have made use of the numerous means in their power of procuring unprejudiced jurors. It may also be safely affirmed that decisions in our county courts have uniformly been as equitable and just as in our district courts, except in cases where new facts are disclosed which were unknown in the former, or jurors were better instructed concerning points of law by the judges in the latter. But the advantages that result from having able judges will be no less under the new system than under the old. Since therefore it is indisputably true that a knowledge of parties and particularly of witnesses, is necessary in order to obtain a just decision; and since the objection urged against the new system with respect to the partialities and prejudices of jurors, when brought to the test of reason and experience, appear unfounded or frivolous, who can hesitate in giving to the new system a decided superiority?

But we are told the proposed plan will have a tendency to increase litigation. It is probably true that many who are now deterred from prosecuting their just claims by the enormous expence and great vexations attending suits at law, will be induced under the new system to bring suit for the attainment of justice. But is this a reasonable objection to the new system? The attainment of justice, the settlement of disputes and contested claims, by means of courts of justice, are doubtless the greatest blessings derived from

VERY TIGHTLY BOUND