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

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DEBATE
on the
JUDICIARY BILL.

(Continued from our last.)

The question being put on the bill amending the Judiciary System, passing a second reading.

Mr. STEELE was afraid it would be useless to offer any farther observations against the passage of this bill; as there appeared a fixed determination in a majority of the house to pass it at all events, and with all its defects in principle and in detail.

The objections urged against the bill on the score of principle, ought to be fatal to it, because it lays the axe to the root of our security, and at one blow will deprive us of some of the best fruits of the Revolution—of a judiciary that had secured to us, and would if continued secure to our posterity, the full enjoyment of all those rights which we had flattered ourselves were placed by the revolution on imperishable foundations.

We object to this bill, said Mr S. because it alters essentially the balance of our government, by frittering away the judicial part of it.—Whilst gentlemen are advocating it, they are following the example of the states which had been referred to, in one respect, and not in another. If gentlemen succeeded in passing this bill, and they are not prepared to give more permanency to the Executive and Senate, they will not act according to the precedents which had been adduced by them. If they are for the whole plan, it is to be hoped the legislature will not support them in it; if for a part only, we must be permitted to say their conduct is inconsistent and without plan. Mr. S. hoped, however, that this bill would not finally pass. Though its progress could not be arrested in this house, it had to undergo consideration in another branch of the Legislature, where, he trusted, there would be found a majority against it, and that its rejection in that house would illustrate the advantage and propriety of dividing a Legislature into two branches. Mr. S. was opposed to changes in the powers of government, and said he would rather have permanency in the Judiciary, than in the Legislature or Executive; because the former acted according to forms and precedents, in the presence of a vigilant and enlightened bar, and liable at all times to be controlled by the virtue and independence of Juries. But take away the stability of this part of the system, and another sort of power and permanency must be given to the government, which he did not believe the Legislature or the People were prepared to give. Yet the passing of this bill would make such changes in some degree unavoidable. There must be power and permanency in some part of the government; and the people who do not now dream of such a consequence necessarily following this innovation, will be called upon ere long to restore the balance of the constitution by vesting them in other departments, where they cannot be so safely trusted or so well exercised, because not held under responsibility by rules and usages so well defined.

The constitution of '79 has fixed the balance of our government, and we want no innovations on what was then established. We revere the institutions of that day, and would therefore stay the hand of innovation. This is the day of innovation and experiment. Every free government which is not on its guard, is in danger of having its best institutions destroyed. In proportion as our governments are free, our institutions for the preservation of that freedom are liable to be assailed.—These attacks are among the effects of that freedom, and being so, those who are anxious for the preservation of our liberties, should be careful how they countenance attempts upon established systems. But this is not the only reason for opposing the passage of this bill. We have stated it to be an attack upon our security—upon that security by which we hold every right in society; for though trial by jury be but a single privilege, yet it is that precious one which guarantees the continuance and secure enjoyment of every other. And if you take away this security, you in effect deprive us of the rights themselves which were intended to be secured.

The gentlemen have attempted to answer our arguments on this subject, by supposing that we had said this bill would take away the trial by jury altogether. We have said no such thing, but that it takes away all that is valuable in the trial by jury—the chance of impartiality and purity—and taking away this, they might as well take the right itself. He has always understood that a juryman ought to be free from all manner of interest or prejudice, perfectly indifferent between the parties. And is it possible that there is so good a chance to get men of this description from a single county, as from a plurality of counties? No member of this house thinks so.—This is one of our strong objections to the bill. An impartial jury is an essential part of a court—it is the best part of it. When a man is brought into court to be tried for a capital offence, he does not look to the bench but the jury-box for life or death. The office, or rather the power of a jury is judicial by a general verdict of guilty or not guilty, they do completely resolve both the law and the fact. This being the case, is it not of the utmost importance that they should go into court free from every prejudice or bias that might prevent an impartial decision?

But it is replied, that if injustice be done, the Judge can grant a new trial. Will this be attended with no inconvenience? Is there no uncertainty, no hazard in leaving it on this ground? Gentlemen will do well to recollect, that it has been the policy of our laws to preserve the jury unbiassed as much as possible from the bench. The Judges have been prohibited from giving an opinion on a trial, whether a fact be proved or not. See the act of 1796. It is improper to allow, and the Judges cannot grant a new trial except for legal causes. This is a clear principle of law. Here Mr. S. enumerated the causes for which he believed a new trial might be granted in civil cases, & said it was absurd to suppose new trials could be granted at the discretion of the Judges, when they could not before the jury had retired, even give an opinion whether a fact had been proved or not.

If you intend that new trials shall be granted as has been suggested, you must give more power to your Judges. This will scarcely be done, as it has been the policy of the state, and it is always good policy to make juries as independent as possible.—No evil can result from this, while they are composed, as heretofore, of intelligent, virtuous, and dispassionate men. But how does the rule concerning new trials, apply to criminal cases? Suppose an individual rich, powerful and influential wilfully commits violence upon a poor and helpless, though virtuous female, and he is brought to trial to answer for his crime; admit that the county court has taken pains to have thirty men summoned as jurors, who are above all exception. Half of these would be required for the grand jury. Suppose the grand jury unanimously find the bill—There remains of the original venire only fifteen jurors to try him, and they are all liable to be challenged. And suppose the court-house be crouded with the friends of the accused, determined if possible to acquit him. Could he not set aside all the jurymen belonging to the original venire by peremptory challenges, and have talesmen called, who, being his friends, would be certain to acquit him. Can the offender be tried again? No! It is a clear principle of the common law which has descended to us from our English ancestors, and is secured to us by an amendment to the federal constitution, "That no freeman shall for the same offence be twice put in jeopardy for life or member." If he be once acquitted by a jury—he is acquitted forever.

This is stating the case on a supposition that the thirty jurors appointed by the county court are all good and virtuous men; yet it is obvious from the privilege of challenging, the whole may be set aside and the result be as had been stated, without the possibility of a new trial, and that such cases may occur under the proposed system, no reflecting mind can for a moment doubt.

Would a criminal have the same chance of escaping, if tried upon the present establishment of our courts? Certainly not; the jury being selected from a plurality of counties, would be free from any bias on their minds, and if talismen were called, the probability would be, that they would be persons unconnected with the prisoner. This is the kind of system worth preserving, this is the system which has hitherto tended so much to our happiness and security. But it is about to be broken to pieces, in order to make way for a most hazardous experiment.

It has been admitted by the gentlemen in favor of the bill, that some inconveniences must attend all material changes in our judiciary establishments. Let us, said Mr. S. examine some of the inconveniencies which will attend the proposed change. Some of these inconveniencies have already been felt.—The people have been argued and teazed into a dissatisfaction with the present system. This house has been agitated by the subject. The legislature is called on to appoint Judges, and send them into the several counties of the state to hunt up business, where there is none at present. The same plan extended a little further, might oblige the Judges to ride to every man's door, and ask him if he had any business for them to do—any controversy with his neighbors to be adjudged.—This would be carrying justice literally to the doors of the people.—Another inconvenience is that it will put each of the counties to the expence of calling out juries twice a year; and instead of sending three or four to a superior court, as at present, they will be called upon to send thirty to the county superior courts.

What is to be done with all the records and papers now lying in the different superior courts? They are to be sent into the different counties. The gentlemen who now have the care of them will have to travel with them from one court to another throughout the several districts.—Is this not an inconvenience which merits consideration? Is it of no moment that the judicial records of the state should be put in motion, and made liable to be squandered and lost?

Another inconvenience will be, the trouble, delay and expence which this change will give those persons who have suits on the present superior court dockets. They have employed their council, gentlemen of the bar in whose talents and fidelity they have full confidence, they have made them acquainted with their cases, and have probably paid them high fees. But now they will have to look elsewhere for council, as the probability is, that the gentlemen whom they have heretofore engaged will not attend the courts in which these causes are to be tried under the new arrangement, having been separated from their clients and their business by an act of the legislature, they will stand released from their engagement both in a legal and moral point of view, and the unfortunate clients will be driven to the expence and trouble of employing new counsel. This effect upon suitors, both in relation to expence and delay, is so inconsistent with the canting professions contained in the preamble, that it could not but have weight with the house.

Mr. S. said he would forbear to say any thing on the subject of the present county courts; but there were strong reasons to believe, that if they are not now abolished, that this will be their fate hereafter.—There will not be business for two courts in a county. These cannot be two suns in the same hemisphere. Gentlemen who admire the constitution of our county courts, and have an attachment for them for the great services they have rendered, he hoped would bear it in mind, that if this bill passed into a law, they would be destroyed, if not now it would follow in a year or two as an inevitable consequence.

Mr. S. said, he must again reiterate to the house, that this bill is greatly objectionable, as it regards the constitution. The 21st article of the constitution secures to the Judges "Adequate salaries during their continuance in office." This provision of the constitution may be violated either by diminishing the compensation, or by increasing the duties. If the salaries are only adequate at present, and being so when the Judges attended four courts in the year, they must certainly be *inadequate* when they are required to attend twenty. The bill now on its passage more than doubles the labor and duty without adding a single dollar to the compensation. Taking the salary as at present, therefore to be but an inadequate compensation for attending the district superior courts, it must be clearly inadequate for attending the county superior courts. In this point of view, the bill is so unquestionably unconstitutional, that no candid man of ordinary intellect will or can dispute it. [Mr. S. here repeated the other heads of his former argument on the unconstitutionality of the bill] and said, that he solemnly believed, that to pass the bill would be a violation of the best principles of the constitution; and hoped that every friend of a free representative government, would, with him, vote against it.

Mr. TROY had no doubt that every member in the house had made up his mind on this question; and he did not expect any thing he could say on the subject would make a single proselyte to his opinion. He rose entirely out of respect to the gentleman from Salisbury and to the importance of the subject, and he would detain the house but a very few moments with his observations. He would have been willing, nay he was desirous to have passed over the subject in silence, because he found himself at all times unequal to meet the gentlemen who are arrayed against this bill in the field of argument. Much more was he inadequate to such a contest (indisposed as he was) and nothing would have brought him from his room to-day but the importance of this bill. He believed, with the gentleman from Salisbury, that a large majority of this house would be found in favor of the bill on the table; and it was somewhat strange, that that very circumstance which appeared to excite so much fear and apprehension in the gentlemen, should afford to him nothing but security and joy.—Yet he was willing to believe, that they had the same great end in view, the prosperity of their county and the happiness of the people.

Mr. T. said, he should not enter into a consideration of the principle and details of the bill; but make only a few remarks on what had fallen from the gentleman from Salisbury with respect to the policy and constitutionality of the proposed change in our judicial establishment.

The gentleman appeared to him to assume very erroneous grounds when he takes it for granted, because the friends of the bill propose making an alteration in the judiciary, that they are sapping its foundation;—because they are attemping to render more convenient the administration of justice, that they are undermining the very pillars on which our system of jurisprudence rested; and because they are for carrying a superior court into every county, that they are destroying the independence of an important and co-ordinate branch of the government.—Every change of measures is not a change of principle; and certainly if the convenience of the people requires a change in their judicial establishment, it is as much the duty of this legislature to provide for such convenience, as it would be in any other department of the government. Are the provisions which have been made relative to our judiciary permanent and immutable? Are they to yield to no time or to no circumstances? But, sir, this subject is not open for speculation, the highest and most solemn decisions have been had upon it, and as far as precedents can govern us, they are uniformly in favor of the doctrine contended for by the friends of the present bill. We have not only before us the precedents of several of our sister States, but we have also those of the general government, both under the late and the present administration. When a very material change was made in the judiciary of the United States under the late administration, were any of the objections which the gentlemen now make urged against the measure?—Did we hear any thing of the President or Congress consulting the Judges upon the advisability of the plan? Did we hear any thing of those Judges claiming it as a constitutional right to be so consulted or so advised? No, sir, we heard of no such thing; and he was sure that a precedent arrived from this source, and an example taken from those times, would have great weight on the minds of the gentlemen from Orange and Wilmington. He could not undertake to speak for the gentleman from Salisbury. He did not know in which school he formed his principles; but should not the doctrines of the late administration be orthodox with him, he would draw a precedent from the present administration. When Congress thought proper to repeal the judiciary law enacted by their predecessors, were any of the objections which we have heard against this bill then advanced, except that Congress had no right to destroy a judicial office once created? The question of constitutionality was therefore settled from the highest authority, and the gentleman must acquiese, whether he takes his principles from the old or the new school.

All that the gentleman has said with respect to the trial by jury, was said the other day. Our constitution and our law, said Mr. T. sanction the taking of a jury from the vicinity where an offence is committed; and for this reason, that persons from the neighbourhood, where an offence is committed, are best able to Judge of the credibility of the witnesses and of the character of the accused. The circumstances of the case, the witnesses, the crime, and the criminal are all weighed together, by those who are best acquainted with each, and as either preponderate their verdict is given. The instance which the gentleman had put, in which a criminal might be tried by his friends, might occur under the present, as well as under the proposed system. A prisoner had now a right to peremptory challenge as far as thirty five jurors, and the sheriff might then call upon talismen who are friends of the prisoner; but in a county superior court, if the sheriff is an honest man (and we are to presume him to be so) he would not take talismen either from the friends or enemies of the prisoner, for he would generally know them; but, in the present system, he does not know the persons upon whom he calls, and therefore cannot make the distinction. He therefore believed that the jurors provided under the proposed system, would be as good or better than they were under the present. And as this subject had already been fully discussed, he would not detain the house with further remarks upon it.

The Gentleman from Salisbury has again brought the patriots of '76 and the sages who formed the constitution to his aid. One might suppose, from the use he makes of them, the revolution had been effected and the constitution formed for the benefit of a few district towns alone.—Nothing appeared valuable in the one, or important in the other, but what goes to preserve the inviolability of the present districts. When these districts were formed, they were such as suited the then state of the country; but surely when circumstances change, when population, commerce, agriculture, and all the various objects of social intercourse are changed, the legislature had the right, and it is their duty to make alterations commensurate with the exigencies of society. For his own part, he thought the constitution had gone far enough in favor of the district towns, when it gave, by express provision, to each of them a [illegible] on this floor. The gentleman [illegible]