JUDICIAL BILL.

HOUSE OF REPRESENTATIVES.

January 24.

Mr. KERR, of Maryland, rose and declared his intention to express his opinions on the subject of the important bill now before the house, with all possible brevity. It struck him yesterday as being a most unfavourable time to endeavour to address the House, immediately after it had been enchained by the eloquent speech of the gentleman from Rhode Island He should now, however, enter on the subject without offering any other apology than that which had been offered by the learned gentleman from Pennsylvania, who addressed the House on Saturday, namely: whenever subjects of great importance are before the House every one feels an inclination to express his own sentiments in his own way. Could he hope to succeed, as well as it was the general opinion that that gentleman had succeeded, and to bring as much efficiency to the aid of the bill, as that gentleman had brought in opposition, he should proceed with great satisfaction. While the object was before the committee, he had not intended to say any thing on the subject of the bill.

But since the question to recommit the bill had been impending, it had assumed a new form, presenting new aspects, and involving new considerations—proposing nothing less than to pull down one of the most important branches of the government, and to build it anew, in a different form, and of different materials. He had now, but not without the greatest reluctance, come to a determination to offer himself to the attention of the House, and to give his views on the subject. He was disposed to advocate the bill, in all its parts, as it had been reported by the Committee on the Judiciary. He considered it not only as the best remedy which could be devised for the evils which are now prevalent in the West, but as the best mode of forming and fixing the Judical institutions of our country on principles important to its vital interests. As a remedy for the evils which had been described, he highly approved of the bill; and also as containing the vital principles of our Judicial system. He would endeavour to sustain these opinions, by discussing, as far as he was able, the objections which had been offered against the bill, and to illustrate a few of its prominent features.

With regard to the existing evils which have been so forcibly and repeatedly described by different gentlemen, as oppressing those States which lie to the west and to the south, to which the benefits of our Judicial System have not hitherto reached; he thought the bill afforded the best remedy which could be provided. He had wondered, indeed, how a question could be raised on this point, after the gentleman from Massachusetts had, in his cool, deliberate and statesmanlike manner, given a description of these evils, and of their operation on the interests of that section of the country, and after the various statements which had been made from personal observation and knowledge, by the gentlemen from the west. All the arguments which had succeeded, especially those with which the gentlemen who compose the Judiciary Committee had so ably developed the views of the Committee in reporting the bill, had tended to the perfect confirmation of his opinion, that we are bound to give an extension of the system to those states in which the evils complained of were understood to prevail.

These states come to us, not in the attitude of supplication—not as asking favors at our hands, but as demanding those rights to which they are entitled under our constitution. It was unnecessary for him to go back to the various arguments which had been brought forward, to show that we are bound. He considered the statements and arguments of the members from the West, who had the best opportunities of information, as conclusive on the subject.—He would go still further—and this was the principal object for which he rose—he wished to regard these States as placed in every point of view on an equality with ourselves.—The States of the West have arrived at maturity, and ought no longer to be shut out from the enjoyment of those rights which equally belong to every member of our Union. They have a right to a full participation in all powers conferred by the constitution and the laws framed under it: they are entitled not only to temporary but to full and permanent participation in that system which will secure the lives and property of their citizens—which are the legitimate objects of judicial protection. Political rights they now possess; but they require a share in that system by which civil rights are secured—that system which throws a rampart round our property, and a shield before our persons

The full, wise, and equal administration of the laws, be considered to be the greatest blessing which could result from our Union. Deprived of this, the laws themselves are checked in their salutary operation, and are rendered comparatively of little value. We have no right, with the power in our hands, to deal out justice to the East, and to deny it to the West; nor to give a partial direction to those benefits & blessings in which all are equally interested, and to which all are equally entitled. He must, however, consider that the question of extending this system to the West had been settled by the vote given in the Committee. But under the question which had since arisen, it became a question—what shall that system be? On the decision of this question hung, in his opinion, the destiny of that great co-ordinate branch of our Government—the Judiciary.

He would venture to assert his opinion, if we change the system according to the views of the gentlemen from Virginia, we shall endanger the Constitution, in the very manner in which it has been said, by the opponents of the bill, it will be endangered if the present bill should pass. The present question is not between the House and the people of the West, claiming an extension of the Judicial system to clear their dockets, but, what shall hereafter be the form and character of our Judical system? We cannot at this late hour fulfil the injunctions of the constitution—we cannot obtain the great object of doing justice equally to all, without extending this system, as provided in the bill before the House. The question is, therefore, no longer, whether the interests of the Western States require the passage of this bill—whether they shall have a greater or less share of the benefits of the system given to them; but whether it is not necessary, and the bounden duty of the legislature, while calm and composed, to establish the permanent system of this co-ordinate branch of the government? With a view to these enquiries, he was induced to offer the present remarks.

In the first place he would enquire, if the present system can be so extended as to insure the objects in view? He had reference now to particular extension with a view to meet present exigencies. The Chairman of the Judiciary Committee had stated, in the clearest manner, that the Western and Southern States could not be satisfied without an extension of the present number of Judges to ten. And it had been said, that, with that number of Judges, we might go on for twenty, or fifty years. With great defference, he would express his conviction that if the bill was passed in a shape to satisfy the wants of the country at this moment; if it was enacted so as to be proportioned to our present population; it would answer all the purposes of the country, for many years to come. He had no hesitation in giving his opinion, that if the number of Judges now allotted shall be answerable to our own exigencies, it will be found adequate to those of the next age; & that by an addition of 2 more Judges, making a total of twelve, the wants of the country, with all its accession of population, and territory, and resources, and relations, would be provided against for a hundred years to come. The chairman of the Judiciary committee had stated, that from views similar to those to which he referred, the Committee had determined to report a plan to meet our present exigencies. This, then, is the true plan: it provides for our present exigencies, and places our Judicial system on a permanent footing.

The motion which had been made to recommit, was founded on two objections to the present system, as contained in the bill. It was objected, in the 1st place, That the court would be too numerous; and, 2dly, That it was dangerous to keep it united with the circuit courts. In relation to the 1st objection, he was aware of the theory which had been advanced, that tumult was a characteristic of large assemblies. It was also urged, that when the number of a court was too large, the members would divide the shame of all improper decisions, and take shelter from responsibility behind each other; and that they ought to be made personally responsible. He was aware that these principles constituted the theoretical grounds on which the system has been discussed by writers. But he was of opinion that the practical results of this bill would be found directly in opposition to those who had opposed it on the ground of its tendency to create tumult and irresponsibility. He saw nothing in the habits or pursuits of the judicial character, which was not allrectly at variance with tumult. A body of judges, separated from the world, exploring the voluminous records of law, and acting from the lights which they discover, is not likely to be a tumultuous body, whether composed of ten or of five individuals. Each judge forms his own opinion from the sources around him; there is no inducement to passion, no invitation to tumult, no danger of those collisions of opinion, which we see in bodies differently constituted, and composed of different materials. When a judge takes up a subject, he hears the evidence before him, and decides according to his own knowledge of the law and the fact; he decides coolly, and with dignity; and there is no more danger of intemperance if ten judges are seated on the bench, than if the number were smaller.

One bench of ten or twelve Judges, each is as conspicuous in the public eye, and as obnoxious to public observation, as if there were only five or six. If you desire to ensure responsibility, you have only to make each Judge deliver his opinion; he is then before the public view, and must be held responsible for his decision. There is no particular number in which the exact aggregate of knowledge can be supposed to reside: the only question then is, whether tumult would be likely to creep into a body of ten individuals. Try this by the test of reason, and you will find that in a larger number of Judges, each member may as readily be made responsible for his opinions, as in a smaller number. There is no magic in any particular number; there is no more danger of spells and incantations against the public good in ten or twelve than in five or six. On the other hand, we ought to concentrate as much learning on the Bench as possible; and in defining the exact limit, we must be guided by experience and common sense.

Reason and common sense forbid the apprehension of tumult in ten or twelve Judges; and he had heard nothing in all the arguments of the other side to shake his opinion. Experience, on the other hand, teaches us that the provisions of this bill are calculated to establish a permanent system. In England, the twelve Judges adjourn into the Exchequer Chamber, decide on important questions of law after a full and patient examination. They deliberate and discuss, but no tumult is apprehended. But we have been asked—where will you stop? Where danger commences. But we should extend the system, so as to enable the Judges to give full effect to all objects of jurisdiction which they embrace. If we extend the number to ten or twelve, experience proves that this number is not too great. He had referred to the Judicial system of England, where twelve Judges are in the habit of deciding important questions satisfactorily, and without tumult. He understood that the Judiciary system of Scotland was entitled to admiration, and was highly approved of, there and in England; yet on the Scotch Bench there are fifteen Judges.

Another objection to the extension of the number, is this—by increasing the number of Judges to be appointed by the Executive, you lessen the caution of the appointing power. It was the solemn duty of the Executive to weigh well the qualifications of individuals: and to suppose he would not do this because he had three Judges to appoint together, is to suppose him neglectful of the true interests of the country. You will not always have the same Judges who are now on the Bench. They are advanced in life, and when they are taken from the Bench, some successors should be found worthy to fill their seats. It is not likely, therefore, that increasing the number will tend to make the Executive less cautious in his selections.

If, in theory, 10 or 12 Judges are not too many, and that number will be sufficient to effect all present purposes, you ought not to regard any suggestions as to danger from the increased number, when an important purpose is to be answered. In relation to the Judicial system, he considered the itinerary duties of judges, the life-blood of it, as it gave them opportunities of intercourse with different States. By circuit duties, they are qualified to understand the local laws, and their mental faculties are kept in continual exercise.—The practical construction of local laws is difficult to acquire: it is necessary to obtain a knowledge of French and Spanish laws—and of the civil law, to enable him who presumes to take his seat on the Supreme Bench to acquit himself so as to obtain public approbation. How are these parts of knowledge to be acquired? By attending circuits, and deciding causes in the different sections of the Union.—Without these practical duties, it is scarcely possible for a judge to acquire the information which is necessary.

There is, however, another advantage, and that not the least. In a government which is founded on the people, it is necessary that the people should be satisfied with your decisions. Coming from all parts of the Union, the judges bring with them a fund of local knowledge, which enables them to decide with confidence and to the public satisfaction. It is necessary also, that the judges should stand pure and upright before the people, if they would have their decisions received with respect. If a judge makes odious and corrupt decisions, he is answerable to the people for his errors. If, on the contrary, he decides according to principles, the estimation of his character in the eyes of the people, gives weight to his decisions. It is the constant intercourse of the English judges with the people, that makes their courts held in such high respect. Our judges cannot obtain a perfect knowledge of the systems of States from books; they may find, indeed, the outlines in the books of constitutions, but the changes which they have undergone from time to time, render them but doubtful authorities. In the State of Maryland, 20 years ago, the Courts were separate, each consisting of small numbers. But when the subject was brought into full view, it was determined, not only that every man should have justice, but that it should be brought to his own door; and that the judges should have opportunities for intercourse, and the communication of knowledge. Thus the judges, when they have decided causes, have an opportunity on returning to the Supreme Court, of explaining to the Bench the grounds of their decision. It has been the practice in England, for the judges of the inferior Courts to give their opinions *seriatim*, with the rest of the 12 judges. This also, he understood to be now the practice of the Supreme Court of the United States, where the judge is allowed to give his reasons for his decision in the Court below.

A Constitutional objection has been raised to the union of the Judges. It was said not to have been in the view of the Constitution that the Supreme Judges should perform Circuit duties; nay, it is said to have been contrary to the Constitution. He held an opinion directly the reverse of this, believing that the Constitution intended that the Supreme Judges should perform Circuit duties.

He had no doubt that the framers of the Constitution took the hint, and adopted the itinerary character of the Judges from the English practice. If it was necessary in that country for the Judges to have Circuit duties, it was still more important in this country. The same reason for it operates here as in England, but with much greater force. It is deemed important there to keep them employed. The principle seems to be acted on, that "a Judge should be altogether a Judge." He perfectly concurred in the opinion, that if the Circuit duties were taken from the Supreme Judges, they would become indolent; and if they were to be confined to Washington, where they would never be seen but by a few lawyers and spectators, they would lose their dignity and influence in the eyes of the nation. We shall not always enjoy the present Judges of the Supreme Court. Younger men will be placed on the Bench, practised indeed in the inferior Courts, but having much to learn before they will be competent to take on themselves the arduous and important responsibilities of Supreme Judges—before they will be able to make their decisions so that they will be received by the people with confidence and satisfaction. It is also here, that when the Judges shall have become sunk in indolence, they will become objects of suspicion. While they go abroad among the people, they are constantly objects of admiration and esteem.

Another objection which has been urged against the increase of the number of Supreme Judges, is that it will become dangerous as a political Court. Dangerous to the people, creating a Circuit Judge now and then to meet the exigencies of the country? How is this to happen? Judges as soon as they get their commissions, become independent of the Executive, independent of the Legislature, and even independent of the people. If they have peculiar opinions of local interests they cannot make them operate on the Bench; for if they bring them there, they are met by other feelings and opinions, of an opposite character, in the Judges of other sections, and thus these conflicting feelings only neutralize each other.

An idea of Judicial representation had been also thrown out. If such a representation could be formed, he would unite with the gentleman from North Carolina in pronouncing it abominable. The Judge on the Bench can only represent the majority of Law; he decides by the lights of his own mind; and according to his best judgment, aided by the information he has acquired from his reading and observation and the rules of Court. He derives his views and forms his judgment from the evidence before him. He keeps a single eye on the object before him, and his guides are the lights of law and evidence. If a judge were to go on the Supreme Bench, and say he represents there the feelings and interests of the people of the section whence he came, it would neither draw admiration on himself, nor on those who sent him. He admitted that sometimes the feelings of a Judge may have received a bias in spite of himself, if he has come from a section under a strong excitement on some particular subject, but the antidote follows the bane closely, as he is sure to meet conflicting opinions in those Judges who have come from a different section. Whatever feelings, however, may exist in the Supreme Court as individuals, as a Court, they rise above the atmosphere of passion, and decide correctly. Such he believed to be the respect with which the present Judges are viewed, that the new Judges would be proud to acquiesce in their decisions.

It is said the judges will form a Governmental court. How? Are they not independent? Do they not go forth free from all the apprehensions of the power by which they are appointed? They will see that their only chance for happiness in life, is by the preservation of their character, and will set at defiance all suspicion of infirmity. He can derive no benefit from the power which appointed him. As soon as he is created, he is equal to his creator; and need no longer to imitate the sunflower in turning to his god.

To say that these judges will be influenced by local or sectional views or feelings, and so get up a faction in the supreme tribunal of the judiciary, and at the same time to express alarm lest Executive influence should blast the wholesome character of the court, and lead it into plans of federal aggrandizement, and *consorted* power, involves an inconsistency which I cannot unravel nor understand. To show that the Judiciary Department itself, independently of the influences of different kinds which had been imputed, would not be likely to attempt encroachments of the legislative power, or on the *State Sovereignties*. Mr. K. read an appropriate passage from the "Federalist," a work, he said, which, with a prophetic spirit, foretold the operation of the constitution. The Judiciary, he said, had nothing but a strong moral power to support it in the exercise of its legitimate functions, as prescribed by the constitution. He likened its place in the constitution, to the steerage of the ship. The helm is admirably secured by rudder bands, admirably contrived. It was only requisite to keep up a succession of experienced pilots, and there would be no danger from the dashing of the wild-popular wave; and their steady watchfulness would equally well detect the secret approaches of the decoying fingers of the Executive corruption.

It has been said that the *administration* and its friends had rallied round this bill, for what purpose, or with what views, had not been clearly defined or stated. For his part, Mr. K. thought the exercise of the little patronage of making three distinguished men of the law at once *independent for life* could not, surely, make this bill an object of executive favor; and he thought that if there was any criterion to judge of the propriety of the intimation, it might be refuted by the checquered complexion of both the friends and opponents of the bill, which, like that administration itself—(he meant no offence by the allusion)—reminded one of the description once given by a celebrated parliamentary orator of England, of an existing administration in that country—"it was a cabinet curiously inlaid—a tasselated pavement of diversified mosaic" He would not, he said, pursue the quotation further, and attempt to say it was "*without cement.*" On the contrary, standing there in the capacity of a representative of the people, and equally fearless and regardless of any other consideration than that of their interests and happiness, he would humbly offer the expression of his hope, nay, of his sincere and ardent wish, that, in the further and full developement of its views and measures, that administration would prove itself both "sound to touch, and safe to stand upon."

Mr. K. professed not at that time to be enlightened enough to know how far, since the period of their meeting there, gentlemen had permitted themselves to be classed as the partisans or opponents of this administration. Old parties (he thanked God!) were done away, and the caution which had been attributed by the honorable gentleman from North Carolina, to the gentleman from Massachusetts—if, indeed, *the coil'd adder* lay in the ashes of the act of 1801—had been prudently observed by him. He expressed his hope that the bitter feelings of former conflicts would be allowed to repose forever; and he should be equally happy in seeing that the turbulence of new party feelings should be long repressed. It surely would not comport with the dignity of that House, because the ancient feuds of the Montagues and the Capulets had subsided, that they should manifest an impatience to place themselves in the humble attitude of either the retainers or the sworn enemies of the *new Prince upon the throne* (as gentlemen had been pleased to express it,) or that they should *set to biting o'thumbs*, for want of real causes of quarrel. The honorable gentleman from Pennsylvania, one of the most respectable champions of the old Federal faith, had given out to them, in a calm and dignified manner, his view of our present duties, in this new political crisis, as it was called, and of the fair ground of mutual conciliation, and that simply was—when the measures of government conform to the true interests of the nation, we should give it a steadfast support.

Mr. K. did not see the occasion for the direful forebodings thrown out the other day in debate—"that this nation must ere long be shaken to its centre." He thought that no nation had ever arrived at a period of so high and well founded anticipations of glorious prosperity and permanent happiness as the present generation have. They had every thing to hope, and, if they were true to themselves, but little to fear.

To the Judiciary Mr. K. looked for restraining every branch of the government, as well as the state sovereignties, within those orbits which by the common agreement and mutual concessions of this whole people, had been assigned to them. He prayed that it might be permitted to remain on that solid foundation on which the noble fabric had so long rested By the provisions of the bill upon the table, no demolition of it was intended. It would be preserved entire in its general plan and elevation, and a new arrangement only of some of its apartments was designed, to suit the increase of the great family. Its symmetry and the solidity of its foundations would be neither defaced nor disturbed.—He begged then that the House would reject the scheme of the fanciful and adventurous artist who would raze it to the ground and erect it anew.

Mr. K. concluded by thanking the Speaker and the House for their polite attention, being sensible that, from the embarrassment incident to his novel situation, he must have delivered a very disjointed argument.

CONGRESS.

[From the National Journal.]

MONDAY, Jan. 23.

In the House of Representatives on Saturday, Mr. Hemphill, of Penn. and Mr. Markell, of New York, both spoke against the bill to amend the Judicial system, as reported. Mr. Burgess, of Rhode Island, has the floor for to day. A bill was introduced to extend the limits of Georgetown. The resolution offered on Friday by Mr. Wickliffe, calling for information on the subject of Revolutionary Pensions, was further laid on the table, after some short discussion. The other resolutions offered on Friday by Mr. Davis, of Mass. and Mr. Scott, of Missouri, were agreed to. An unfavorable report on the memorial of Captain Isaac Phillips, of Baltimore, was made from the Committee on Naval Affairs, by Mr. Storrs, of New York. Resolutions were laid on the table, by Mr. Cook, of Illinois, inquiring of the War Department for the report on the subject of the road from Detroit to Chicago; by Mr. Cambreleng, of New York, asking of the same Department, if any arrangement has been made for the purchase of Throgs Point on Long Island Sound; by Mr. Dorsey, of Md. requiring of the same Department, information whether the Cadets at West Point can be increased, and to what number, without the expense of employing new Professors; and by Mr. Carter, of South Carolina, asking information from the Naval Department as to any experiments, which have been made in any of the United States vessels, as to the utility of cotton for cordage and sail cloth.

TUESDAY, Jan. 24.

In the Senate, the report of the Committee on Naval Affairs, asking to be discharged from the further consideration of the communication of Com. David Porter, asking for the expression of an opinion upon the charges of Thomas Randall and John Mountain, was called up, and after considerable debate, it was recommitted to the same Committee, with instructions to strike out that part of the report which pronounces the case of Com. Porter to be of the nature of an appeal from the Court of Enquiry. The bill relative to the school lands in Ohio was ordered to a third reading, after considerable discussion, without a division.

Mr. Forsyth, of Georgia, in the House of Representatives, yesterday reported a bill from the Committee on Foreign Relations, to provide for the apprehension and delivery of deserters. The report recently made by the Committee on Elections, on

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