

PROTEST.

The genius and the policy of Republican institutions alike indicate the wisdom and the necessity of a frequent appeal to the people. It is thus, and thus only that the misconduct of their Representatives may be rebuked, and when the guards of our Constitution, and the sacred rights of minorities are trampled under foot, the time has arrived for the appeal and the decision.

The undersigned, members of the present General Assembly, have witnessed with regret and indignation, the passage of the law for the re-organization of the Judiciary. Their earnest and repeated efforts to defeat it have been unavailing, and already the din of the degrading contest for its offices and emoluments, sounds mournfully in the ear of patriotism.

To the majority of a Legislature whose idol is party supremacy, we have addressed our reasons in vain. Announced as a party measure for party purposes, it has been strengthened by the startling admission, and it only remains for us to present to the people and the country, the causes of our opposition, and our opinion of the results.

Our great objection to this bill is, that it is uncalled for by public opinion, or public convenience. The bill provides for the repeal of all the circuit courts, and for the election of five additional Supreme Judges, who, together with the present Supreme Judges, are required to hold circuit courts.

This is an entire change in our Judiciary system. By what necessity is it justified, or by what emergency is it required? Does it cause more courts to be held, or more causes to be decided? Will delays of justice be obviated, or justice brought nearer to any man's door? To all these questions, the answer must be, no. There are still but nine circuit judges.— They at least can perform no more duty by being Supreme Judges. They can travel no further, endure no more, sleep no less; for at best they are but men; and whoever for a moment examines, will see, that this bill, so far from aiding the speedy administration of justice, must, by imposing new and increased duties upon the judges presiding on the circuits, most materially delay and impede it.

Since the adoption of the circuit system in 1834, the need of additional circuits has been constantly increasing, and gradually supplied. Our population has doubled, our business has increased in a still greater proportion, and the creation of new circuits, so as to keep pace with this advance, has been demanded by the people, and performed by the Legislature.— There can be no doubt that a continuance in this course would have proved for the future, as it has done for the past, convenient, economical, and satisfactory.

But if this change has not been called for by public convenience, still less has it been demanded by public opinion. When the Legislature assembled in advance of the usual time, the public mind was turned with feverish anxiety to the condition of the State, and the course of its rulers; an increased debt; an empty treasury. Our internal improvement system a wretched skeleton, railroads half finished, or half decayed; iron without roads, and roads without iron; the canal so surrounded with difficulties that even its truest friends were almost found "to stop, too fearful, and too faint to go." Our scrip, issued on the faith of the State, spreading like leaves, every where, and like leaves almost valueless. These were some of the difficulties of our condition, and these it was supposed, required our utmost wisdom and patriotism. But while thus surrounded by clouds of misfortune, there was one part of the State administration against which there was no complaint, and in which almost alone, no change was required. Need we say this was our system of circuit courts, established after various trials, conforming itself to the condition and increase of our population, and approved by the experience of all the surrounding States. How strange, how unaccountable must it appear, that while all the rest of these great interests remaining unprotected, almost untouched, this system of circuit courts has been attacked and destroyed. Yet, if unjust and unwise as we believe it to be, public opinion, the great moving principle of free government, had indicated this change, we would have yielded obedience to its dictates, or at least bowed in submission to its authority. But this was not the case. In the canvass preceding the late election, excited and heated as it was, the subject was undiscussed, the change was not proposed, and even when it was known that there was a large majority of Van Buren men in either branch of the Legislature. Up to this moment, no petition, no complaint upon this subject has invited the attention of this body, or asked for its Legislation to destroy our Judiciary system.

Thus unasked, unrequired, the bill has been ushered into existence, not merely in advance, but in defiance of that public will for which its supporters always profess such profound respect.

Nor is the manner in which this bill has been sustained, less remarkable. It was preceded by the statement that the destruction of the existing system was to be followed by the creation of inferior tribunals, by which the public interests would be advanced. Their jurisdiction, their judges, their location, were left to the imaginations of those whose votes were necessary; and if visions of judicial dignity burst upon their excited fancy, and furnished powerful reasons in support of the bill they were called upon to pass, it might well be called a master stroke of policy, if not of morals, to suggest the idea. Nor were the spoils of victory to be disregarded.—Scattered in every county of the State, the new clerkships might tempt avarice, and excite ambition, or at least afford a safe, if not honorable retreat from the indignation of the people.

But, as if these reasons were still insufficient, the genius of its friends were called into brilliant exercise in rousing the spirit of party; and the dominant party were called to its support in the name of Democracy, as if the spirit of Democracy could animate a measure remarkable only for its supreme contempt for the popular will, or stern determination to usurp power. It was thus the Democracy were called on to rally to its support, and it was unblushingly avowed as its object, to obtain a Democratic majority in the Supreme Court, that they might decide questions of law according to the principles of Democracy, or in other words, according to the will of the party in power. It was by these and kindred means that the bare constitutional majority was obtained, and thus the independence of the Judiciary, the surest shield of public welfare and private right, has been brought to abject submission at the feet of Legislative authority.

We have not been neglectful of our duty in warning the majority of the dangers of these violations of the spirit of the Constitution. We have pointed to the care with which the Constitution has guarded the rights of the Judiciary. We have remonstrated against this evasive mode of removing Judges who are expressly required by the Constitution to be commissioned during good behaviour. We have asked that if criminal or incompetent, they should be removed by address or impeachment, the only modes known to the Constitution; and we have deprecated in earnest but respectful terms, an arbitrary exercise of power which may soon become the precedent for still more flagrant violations of right and justice. But we have striven in vain; the torrent of party prejudices has borne down our objections, and we can only hope that in the majesty of the popular will it may find a barrier sufficient to impede its course and stay its mischief.

We desire to say also that we consider this a fit occasion to express our conviction of the great injury this bill will cause to our character as a State. We have arrived at a critical period in our history; we seem to be surrounded by adverse circumstances well fitted to try our public faith and individual virtue. It would be the greatest, as we trust it may be the last evil we could endure, to lose our rank among States, and stand disgraced amid the fair sisters of our confederacy. But if, to the calamities to which we are already subject, and which direct painful attention to our course, is to be added a party Judiciary, made by one party, and for one party, and of one party, who that loves his country does not painfully perceive the deep but certain degradation which awaits us.

Nor do we think the influence of this bill less pernicious in its more immediate results; that there will be a lamentable want of confidence in our courts, we firmly believe; nor indeed can it be otherwise. Whoever may be selected as Judges under this bill must feel that they receive their offices from party domination, for party purposes, and the lofty independence so becoming to a judge cannot exist; the will of the party and the success of the party must be in their thoughts, and if it were possible to suppose it otherwise, how will they stand with the community? Will they not be subject to the galling but continual imputation, to the burden of a suspicion, justified, if not by their conduct, at least by their position; baneful and miserable must the tendencies of this measure be, since our courts, if not corrupt, must be suspected, and the streams of justice tinged, if not by the impurity of the fountain, by the jaundiced vision of the beholder.

There are some of the undersigned who witnessed in another State the fearful consequences of a similar interference with the courts by the Legislative authority. They saw there a contest thus produced which for bitterness and ferocity has seldom been equalled; they witnessed the whole framework of society shaken, justice denied, delayed, and brought into disrepute; crime stalking unrebuked and unpunished, and the best interests of a community shattered or crushed, and they cannot remain silent when an attempt is made which being intended for similar purposes, may produce similar results.

For the reasons thus presented, and for others no less apparent, the undersigned cannot assent to the passage of the bill, or permit it to become a law without this evidence of their disapproval; and they now protest against the passage of a bill for the re-organization of the Judiciary; because,

First. It violates the great principles of the government by subjecting the Judiciary to the Legislature;

Second. It is a fatal blow at the independence of the Judges, and the constitutional term of their office;

Third. It is a measure not asked for, or wished for by the people;

Fourth. It will greatly increase the expense of our courts, or else greatly diminish their utility;

Fifth. It will give our courts a political and partizan character, thereby impairing public confidence in their decisions;

Sixth. It will impair our standing in the opinion of other States, and the world;

Seventh. It is a party measure, for party purposes, from which no practical good to the people can possibly arise, but which may be the source of innumerable evils.

The undersigned are well aware that this protest will be altogether unavailing with the majority of this body. The blow has already fallen, and we are compelled to stand by the mournful spectators of the ruin it will cause. But we cannot do otherwise than point out the danger of this measure, its impolicy and its usurpation, in order, at least, that the despotism of a momentary majority may not become a precedent for succeeding enormities, or future crimes.

We have thus accomplished our only remaining duty on this painful subject, and we commit the final decision of this great question to the judgment and justice of the people. We have struggled ineffectually to guard

the principles of our government from unhallowed innovation, and we now submit this great question to our constituents, and the country. As Representatives, we can do no more; as citizens, we shall be found where we have ever been, contending for the supremacy of the Constitution.

Nor are we without our great consolation; there is a spirit in the people, sometimes slumbering, but never extinct, which, when thoroughly aroused by usurpation or tyranny, will overwhelm the usurper and his devices in an undistinguished ruin; nor can they long escape this generous indignation, who prostitute the power bestowed by the people to unworthy ends or selfish purposes. When that spirit shall kindle in its might, and rebuke the authors and abettors of this plan, we may rely upon this protest as a proof of our fidelity to the cause of the country, and a shield against the indignation of the people.

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