SPEECHES

OF

WAITMAN T. WILLEY,

OF

MONONGALIA COUNTY,

BEFORE THE

STATE CONVENTION OF VIRGINIA,

ON THE

BASIS OF REPRESENTATION;

ON

COUNTY COURTS & COUNTY ORGANIZATION,

AND ON THE

ELECTION OF JUDGES BY THE PEOPLE.

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BASIS OF REPRESENTATION.

In Convention, February 24, 1851.

Mr. WILLEY. I feel that some apology is due to this committee for the eagerness with which I have sought the floor. I assure you that it was not with the vain hope of being able to entertain this committee, or to enlighten it, nor indeed to influence the opinion of a solitary member of the committee. I entertain no such vain hope as that; I stand here, coming from the still, small, quiet circle of private life, and find myself, for the first time in my life—not very extended indeed—in the presence of a deliberative assembly, in the attitude of a member of that assembly, without experience, without ability, without anything to recommend me to the consideration of the committee. I, therefore, entirely and most respectfully cast myself upon the charitable indulgence of the committee, while I attempt to address it for a few moments. I have found since I came here that it has been necessary, at least common, to define one's position, even one's political position. I feel that my position is too humble to need definition. But if it were not, in that respect, I would still decline to do it. I shall address myself to the subject to-day without reference to political questions; and I hope that while I shall have the honor to be a member of this body, no action of mine will indicate to which of the two great political parties I belong. I shall address myself to the question to-day without reference to sect or section. I shall not address you as an East or West Virginian, but as a Virginian; and I hope it will not be presumption in me to assume still broader ground. Standing upon the broad platform of American republican equality, I shall address myself to the question in the light of this great fundamental principle. We are engaged in no new controversy. This controversy commenced long prior to the agitation of public sentiment which convened this body. This controversy commenced long prior to the Convention of 1829–30. It is as old as the lust of power. It is the old contest between the few and the many. It is the same struggling effort continued through centuries past, to centralize power in the hands of the few against the antagonistic struggle of the many to have it diffused abroad in the community. It is the same old contest that has been convulsing the world ever since the world was populated—the struggle between the money power and the many power. For a while, and indeed most generally, since the history of the world commenced, the contest has been adverse to liberty. Our own birth as a nation is an exception—or an approximation to it—to the general rule. We came into existence as a people upon different principles from the money principle—from the principle that would concentrate the government in the hands of the few. We came into existence under the auspices of the great doctrine of popular supremacy. Under the operation of that principle, we have flourished for three-fourths of a century in a manner which, it seems to me, ought to have vindicated it and silenced all opposition to it. But it seems that even here in the good old commonwealth of Virginia, the same battle is to be fought again; at least the proclamation of war has been issued. I invite the attention of the committee to it for a moment. The same old contest between the power of wealth and the power of the people is started here,

and it is insisted that we shall establish the legislative power of our government upon the following principles:

"Representation in both legislative bodies shall be apportioned among the counties, cities and towns, according to the number of white inhabitants contained, and the amount of all taxes paid in each; deducting from such taxes all taxes paid on licenses and law process." This is a part of the proclamation of war against the friends of popular government.

This is the proposition now before the committee. It has frequently been remarked during these dicussions in this body—it was even remarked by the distinguished gentleman from Fauquier (Mr. SCOTT,) prior to our adjournment—that our forefathers had repudiated the doctrine of democratic government in its purity, and had discovered a new principle of government which, I believe, was denominated the true principle of republican government, namely, a majority of interests, as the legitimate source of the legislative power of government; and the same assertion has been renewed since the re-assembling of the Convention. During the progress of the discussion before this committee on the present amendment of the gentleman from Fauquier, the principle on which the western portion of the committee on the basis of representation propose to predicate the legislative power has been denounced as an innovation. It has been stigmatized as an innovation upon the true principles of government as recognized in this country. May I not be allowed to ask the attention of the committee for a very few moments to see whether that is the fact. What is the predominating principle in regard to the basis of government recognized throughout the United States? The principle of the amendment is just as much of an innovation upon the existing constitutional law of Virginia as the principle of the suffrage basis can be, for representation in Virginia is now based neither upon the one nor the other, but solely upon an arbitrary arrangement. What, then, is the American doctrine on this subject? I have taken the trouble to examine the several constitutions of the States in this respect; and the result of this examination will show that the suffrage basis is by no means obnoxious to the charge of novelty. I have not had access to the constitution of California, This State is still so far out of the Union, that it may be doubted whether it is fairly in at all. I will not then adduce that as authority, but begin at the last of the other States and travel backwards.

In Wisconsin the basis of representation is white inhabitants; in Iowa white inhabitants; in Texas free population; in Arkansas free white male inhabitants; in Michigan white inhabitants; in Florida federal population; in Missouri free white males; in Alabama white inhabitants; in Illinois white inhabitants; in Mississippi free white inhabitants; in Louisiana qualified voters; in Kentucky ditto; in Indiana white male inhabitants; in Ohio white male inhabitants; in Tennessee qualified voters; in Georgia senators by districts, lower house free white inhabitants; in N. Carolina, senate taxation, house of representatives federal population. We have come now to a sprinkling of the mixed basis principle. In Virginia we have arbitrary districts without reference to any principle, based upon the mere caprice of an arbitrary will. Maryland is in a state of abeyance. The basis of representation is indefinite. It is, however, not the mixed basis. Pennsylvania taxable inhabitants; New Jersey, Senate by counties, and House of Representatives upon "inhabitants;" New York population; Connecticut, by towns, &c.; Rhode Island population and towns; Vermont taxable

inhabitants; New Hampshire, Senate on taxes, and House of Representatives on ratable polls; Massachusetts the same; Maine on inhabitants.

Now, I suppose that all the preceding instances are to have no effect. The principle, it seems, upon which we are to arrive at a conclusion that the suffrage basis is an innovation upon the constitutional policy of the United States is, because it does not accord with the constitution of South Carolina; for within the broad limits of this confederacy, that is the only State that recognises the very identical principle that is set forth in the amendment to this proposition. Well, this would probably be enough for me to say on this subject. I have shown that it is no innovation, and I have shown from fact that the well recognized constitutional principle—American constitutional principle at least—is that of population in some form or other; and consequently it would throw the burden of proof and argument upon the gentleman from Fauquier, and upon those who think with him, to show the propriety of their scheme, which I may more properly call an innovation upon the constitutional policy of this country. But the doctrine of the basis of representation on suffrage has been made obnoxious to another malediction by the gentleman from Buckingham, (Mr. FUQUA,) who pronounces it an "arrant abstraction." Let us look at that "arrant abstraction" for a moment. Suppose it were an abstraction. I will admit that the principle upon which suffrage is based is an abstract principle.—But does it follow that because it is abstract in its character, that it is to be totally excluded from all consideration in framing a constitution? Every truth is in some sort an abstract idea. Therefore to exclude a principle in the establishment of government because it is abstract in its character, would be to exclude all truth. Nor do I perceive that these principles are so abstract as to be incapable of being reduced to practical application in the structure and administration of government. What are these principles which gentlemen would deny and exclude from all practical effect in the establishment of our constitution? I remark in regard to them, in the first place, that they are not new; they are indeed no novelty; they are as old as society itself; they are as old as man, for when God made man he endowed him with these principles, and has stamped upon them the seal that they are natural and inalienable and indefeasible. And our forefathers have laid them at the foundation of our government; they have laid them at its very threshold, and we must trample them under our feet and disregard them before we can found a government upon the principles of the mixed basis. But although they have ever been the natural birth-right of mankind, it was reserved for the earlier history of the country—for those who participated largely in the earlier events of our history—to give them a definition and reduce them to a practical form. There is still another name that has been given to this principle, which more appropriately attaches to those who advocate popular sovereignty. We have been called radicals, and I do not know that this is peculiar to our location at the west; for I understand that you have some radicalism in the east as well as in the west. I believe my friend from Accomac claims to be an "infinite radical." But let us look at this matter. Gentlemen warn us against the revolutionary tendencies of the times. We are admonished to adhere to the principles of our forefathers; we are warned against destroying the old landmarks that they laid down. Now, I take upon myself to say, that we are not desiring to depart from those great American doctrines—from the principles of our forefathers; but we are desiring to build up a government upon those very principles; we are not seeking to cut loose from the shore

and drift away upon the uncertain current of speculative experiment. Fortunately for us, those principles have been recorded in solemn form, and in language so explicit as to admit of neither misconception nor prevarication. One of them is as follows: "all power is vested in and derived from the people." If adherence to this maxim entitles me to the cognomen of "radical" or "revolutionist," I cordially accept the name. But, my radicalism—my retrogradation, stop there. I will not go further back. I am no great admirer of speculative theories. I am not particularly given to abstractions. But, I am willing to go back to this principle; but I am determined to stop there. I will not consent to go behind the revolution which established this great political truth, and exhume the discarded principles of English aristocracy, and fill our halls of legislation with the representatives of wealth. I will never consent to revive odious distinctions and privileged classes, founding claims to superior political power upon the possession of property; but I will stop where I find the principle declared that "all men are by nature equally free and independent." I will adhere to the rule that "no men, or set of men, are entitled to exclusive or separate emoluments or privileges from the community, but in consideration of public services." And I call upon gentlemen distinctly to say whether they will subscribe to these doctrines of our fathers, whose wisdom and virtues we are so often and so vehemently admonished to revere and to cherish, or whether they will repudiate and reject them. I fear that the admiration of our eastern brethren for the principles and wisdom of our fathers is rather an "abstraction"—I will not say an "arrant abstraction." I call upon gentlemen to give practical evidence of *their own* veneration for the wisdom of our ancestors, by giving practical existence and effect to the principles that "all power belongs to the people."

There is another doctrine or maxim of popular government to which I wish to advert for a moment. I mean the *jus majoris*, or right of the majority. This right has been denounced by the gentleman from Halifax, (Mr. PURKINS,) as an "absurdity." He has argued to show that the idea intended to be conveyed by the framers of the Bill of Rights, by the terms "majority of the community," meant a political majority; and that a political majority is a majority of interests, embracing therein every imaginable species of interests, both of property and persons. I do not know that I distinctly understood what that gentleman meant by denominating the right of the majority, as understood by western gentlemen, as an absurdity. But it seems to me that if his interpretation of the purport of our Bill of Rights be a correct one, it will involve himself in something of a dilemma, for he distinctly admitted in the course of his remarks, that the maxim was true that the people were the source of all political power. Let us test his position. "All power"—not a part, but "all power is vested in the people"—not in property, but in "people." If, therefore, those interests of property which he declares are constituent elements of the "political community, or majority," have no power in them, and all power resides in, and is in fact inherent in, the people, how can it be true that the majority he speaks of is a majority of interests? I think that the gentleman's position is an absurdity, that it presents as complete a *reductio ad absurdum* as can be found in Playfair's Euclid.

When considered with reference to himself alone, every man would be entitled to the unrestricted enjoyment of his own opinions, and to conform his conduct to the dictates of his own judgment. But men think differently, act differently, and are influenced by different motives. They are

not, indeed, always guided by their judgment, fallible and fluctuating as it is, but are too often influenced by corrupt considerations. Now, man is a social being; and in a state of society, differences and difficulties would necessarily ensue. Conflicts and collisions, moral, physical and political, would necessarily result in the community. To preserve society, therefore, and by preserving society, preserve mankind, we must look for authority somewhere to adjust these difficulties and harmonise these differences. Where shall it be found? In the unthinking horse?—in the stupid mule?—in lowing herds?—in bleating folds?—in the vaults of the banker?—or the fields of the farmer? No, sir, no. Such things would fail you in the hour of need. Like the gods described by the ancient prophet, they have "eyes, but they see not; ears, but they hear not; hands, but they handle not; feet they have, but they walk not." I do not intend to continue the reference, and say, that they who put their trust in them, are like unto them; but I do mean to say, that such things cannot properly be considered the true and legitimate source of true and legitimate political power.

I will repeat the maxim, "all power is vested in the people." Now, what portion of the people, who are by "by nature equally free and independent," shall be clothed with the proud prerogative of determining and administering the rights of the community? Constituted as society is, and must continue to be, differences will arise among the members of the society, of varied and vital importance. Who shall settle them? Where all cannot or will not agree, whose opinions ought to prevail? Common sense answers—the majority. Necessity answers—the majority. The Bill of Rights declares that this power rightfully belongs to the majority—inalienably and indefeasibly belongs to the majority. If not in the majority, in how many less? I propound that question; and I respectfully ask the attention of the committee to it. If the majority have not this right, in how many less than a majority does this right exist? And, moreover, of whom shall this favored minority consist? Answer me that question. Who, in the first place, shall have the right to select this minority? I demand to know that. Is it a divine right, a self-existing, self-demonstrating right? Will gentlemen inform me on this point? I repeat the question again. In a community of men who, by nature, are equally free and independent, who do constitute the minority who is to govern the majority?

We have been living under the existing constitution for some twenty years. How was that constitution established? What gave it being and authority? Was it your lands, your slaves, your property? No. It was the voice and the will of the majority of the community—at least of the qualified voters. Now, I hope we shall succeed in our labors here, and before long prepare an amended constitution. What will be done with it? You will present it to the people irrespective, too, of their property, or the taxes paid by them. What for? To ascertain whether it is the will of the majority that it should be adopted. If it should, unfortunately, contain the mixed basis of representation, and should, therefore, fail to receive a majority of the votes of the qualified electors, it will be rejected; even though it should receive the votes of persons who paid two-thirds of the taxes of the commonwealth. And yet this *jus majoris*—this right of the majority is denounced as a "political absurdity." Why, gentlemen cannot get their mixed basis without it.

If some process could be adopted by which the intelligence and integrity of the community could be certainly ascertained, and graduated

so as to bring these qualities and qualifications to bear on political action, there might be some propriety in confining political power to less than a majority of the people, provided such minority possessed the greater amount of virtue and capacity. But I do not understand eastern gentlemen to predicate their claims for superior legislative power on any such premises. They do not arrogate to themselves such superiority. They say that they possess more property, and pay more taxes, and are, therefore, entitled to greater political power.

I propose to consider, briefly, this assumption. I wish to know how it is that wealth confers any such authority. Does it, necessarily, improve the mind or the heart? Does the mere fact that a man possesses a great amount of goods and chattels necessarily quality him, either mentally or morally, for the faithful and efficient discharge of the duties of a good citizen? Is property the source of patriotism? Is love of country no higher principle than love of money? I understand the characteristics of the good citizen to be a of a very different nature. But, aside from the fact, that the possession of property has no inherent efficiency to impart virtue and wisdom to its possessor, so as to enhance his qualifications for the discharge of his civil or political duties; it might not be unavailing to inquire what its usual incidental effects are upon the public morals and integrity. And here, I think I may appeal to universal history to attest the truth that the due administration of justice, and the civil liberties of mankind, have suffered less from the rapacity of the poor than from the encroachments and corrupting tendencies of wealth. Wealth itself is power, and its possession by masses, like its possession by individuals, has been often made the instrumentality of oppression. Whether we may not find an apt illustration of the verity of this assertion in the history of our own commonwealth, I shall not now stop to inquire. It is said that "power is always stealing from the many to the few." And I feel assured that the reason of this, to a great extent, has been that this favored few were the proprietaries of wealth. A reference to the oligarchies and aristocracies of all time will confirm this position. Wheresoever there have existed privileged orders or classes, from the patrician at Rome down to the nobleman in England, there, it will be found, that they have controlled the wealth of the country to a predominating extent. Now, of all kinds of aristocracy, that is the meanest, and, usually, the most despotic, which derives its authority from property. Birth and lineage, rendered illustrious by a long succession of honorable ancestors and noble deeds, challenge our homage with some color of apology; but that upstart pretension to superior political authority, founded upon the simple possession of lands and tenements, goods and chattles, is abhorrent, not only to the spirit of liberty, but also to the spirit of a man. It is downright presumption, wrong in principle, disastrous in its practical effects, and anti-republican in its nature.

And thus an examination of the actual consequences of a departure from the true theory of a free government admonishes us of the impropriety of discarding all abstract principles as "arrant abstractions," and justifies us, I think, in regulating the important matter occupying the attention of this committee, in insisting upon giving practical effect, in our organic law, to the great political maxim, that the majority of the people is the only fountain of political power.

But it may be alleged, perhaps, that although in organizing the government in the first place, the will of a majority may be necessary and

proper, yet the majority may will, in order to protect the rights of the minority, to place the legislative power of the government in the hands of the minority. I shall not stop to discuss this proposition. *Gratia argumenti*—suppose it were so. I ask what is the will of the majority representing the present question? Is the majority of the community in favor of the mixed basis, or of the suffrage basis? I propound that question to gentlemen. You know—this committee knows, there is a majority of at least one hundred and fifty thousand of the people of Virginia—a majority of at least fifteen thousand of the qualified electors of Virginia, in favor of distributing the legislative power according to suffrage. I will repeat the fact. I wish it to be thought of by the people. I want the world to understand it. More than one half of the people of Virginia, by at least one hundred and fifty thousand—more than one half of the voters of Virginia by at least fifteen thousand—are standing this day knocking at the doors of this hall, after long years of delay, after mature deliberation and a quarter of a century's discussion, and patient endurance of their grievances, they are now, to-day, at this moment, knocking at the doors of this hall, demanding their proper political power, and an apportionment of representation upon the principles of the declaration of rights. Shall we resist their suit? You know that such is the fact. We all know it. And yet the gentleman from Fauquier, (Mr. SCOTT,) in the presence of this popular array, and in answer to this solemn appeal, exclaims, "How long shall our patience be abused by the eternal clamoring of the West, to get its hands upon eastern purse strings?" I have long admired that distinguished gentleman. I heard that expression with profound regret. Does the gentleman from Fauquier mean to say, that the western people are corruptly influenced by the spirit of plunder? Does he mean to say that their delegates on this floor are actuated—

Mr. SCOTT. I expressed no such sentiment.

Mr. WILLEY. I understood the gentleman from Fauquier to say distinctly, the other day, in response to some remarks of the gentleman from Kanawha, (Mr. SUMMERS,) and in a manner most emphatic, "how long shall our patience be abused by the eternal clamoring of the West to get its hands on the eastern purse strings?"

Mr. SCOTT. Yes, sir.

Mr. WILLEY. I am glad, however, to understand that the gentleman did not mean any impeachment of our motives; and glad that I have afforded him an opportunity of making the disavowal.

In regard to this question of western majority, allow me to submit a few statistics. In 1790 the eastern majority of white population was 185,932 In 1800, it was 159,903. In 1810, it was 126,114. In 1820, it was 94.964. In 1830 it was 57,012. In 1840, the scale was turned, and there was a western majority of 2,172. In 1850, the western majority was 90,392. At the same rate of progression, what will it be in 1860? in 1870? It will no doubt be 300,000, Our taxation will increase in equal ratio; so that it will be but a few years, until we will be entitled to a majority of representation even upon the mixed basis. And yet the gentleman from Halifax, (Mr. PURKINS,) speaks of the mighty voice of 100,000, which is to begin to swell on the ocean shore and roll up to the Piedmont country, and there be increased in its volume by the voice of another 100,000; and then this voice is to rush over the Blue Ridge, sweep across the Valley, and over the Alleghanies,

and then it is to begin to thunder and lighten, and shake the earth unless the mixed basis prevail. Let me tell that gentleman that he will find a spirit there which will set our hills and mountains on fire; and we'll meet his voice with earthquakes and volcanoes. He had better look out. [Great laughter.]

One of the principal objections relied on by eastern gentlemen, against trusting the West with the political power which we claim, is the selfishness of human nature. But I would inquire whether the minority are not just as selfish as the majority?—whether power in the hands of the many is not as safe as power in the hands of the few? It must be lodged somewhere, and expediency, as well as principle, requires that it should be vested where it rightfully belongs—in the majority of the community. The best exponent of expediency is truth. Whatsoever is abstractly right, is usually practically expedient.

I have listened with no small degree of amazement to the utterance of certain opinions on this floor. It may be owing to my inexperience. Having mingled little with the world, it may be worse than I suppose. But I think I know something of the people of West Virginia. They are not cut-throats—they are not robbers. They are not actuated by a "spirit of plunder," as the gentleman from Fauquier, (Mr. Scott,) seems to suppose. They are not corruptly "clamoring to get their hands on eastern purse strings." I cast back the imputation. The western people are at least as virtuous and patriotic and trust-worthy as the people of East Virginia.

I entertain no utopian ideas of human perfectibility. But I had supposed that the anglo American race was capable of self-government. I had supposed that this fact was here admitted. If so, men must be trusted with the administration of the powers of government. If political power is only vested in, and only derivable from the people, it is equally vested there, and equally derivable therefrom. Men must be trusted, and they must be trusted alike, or there is an end to republican equality.

Our own glorious history triumphantly confutes this plea of distrust against the popular integrity. It amply vindicates the patriotism of the masses. It shows that reliance may be placed upon the non-property holder, as well as upon the wealthy. Without any foolish desire to embellish a period, or to appeal to the passions, I may yet be allowed to refer to the proud annals of our past history—prouder and brighter and more illustrious on account of the practical agency which they exhibit of the popular fidelity. I ask gentlemen who it was who shed their blood most freely in our revolutionary struggle for independence? Whom did the "father of his country" lead to victory? Upon whom did he rely in the dark "days which tried the souls of men"? Was it upon the slave owner, the land owner, the man of merchandize, the wealthy? I will venture the assertion that seven-tenths of those noble men had no title to a foot of the soil which they enriched by their blood, shed in defence of it. And when they shouldered their knapsacks, they carried on their backs their entire stock of goods and chattles. Yet we confided in them. We placed in their keeping "our lives, our fortunes, and our sacred honor;" and we were not betrayed. And this day, the star-spangled banner, floating yonder from the flag-staff on the capitol, is the immortal memorial of their integrity. Why, the shouts of the victories of Chapultepec and Buena Vista are still echoing in our mountains, and floating across your lowlands. Who fought those brilliant achievements? Who

successfully carried our arms through the Mexican war and planted the standard of our country upon the palaces of the Montezumas? Was it our landlords, our slave owners, or the wealthy proprietaries of the country? No, sir, no. I hazard nothing in saying that few, very few of the common soldiery were property holders of any kind to any considerable extent. And yet they were true to the death.

Now, I demand to know, why men similarly situated and similarly interested in the welfare of the community, may not securely be entrusted with an equal participation with the whole community, in the administration and exercise of the ordinary powers and duties of government. We have more to fear from withholding from the people their just and equal privileges and political authority, than from granting to them the full enjoyment of all their natural rights.

But I am given to understand that gentlemen predicate their claim to representation upon the basis of property and taxation, not merely upon the ground of expediency, but as a matter of political right. It is alleged that he who contributes most to the support of the government, should enjoy most authority in the government—that taxation and representation, are correlative terms, and should exist in equal ratio. I will avail myself of the present occasion to declare that I understand, and unequivocally admit, that one of the first and great duties of government is to secure the citizen in the perfect enjoyment of his property. I wish this to be explicitly understood. But I cannot conceive, how it is necessary or proper that in order to secure the rights of property in one portion of the community, it is also necessary and proper to invade the personal rights of the other portion of the community. In other words, I deny that property can be the proper and legitimate source of legislative power, or that taxation can be the legitimate rule by which to apportion the legislative power; because, to grant this, would in the matter now the subject of discussion, necessarily infringe the indefeasible, unalienable rights of a majority of the community.

I repeat that the West does not oppose just and equal protection to property. I repel the insinuation that the western people are actuated by any sinister purposes. It is true, we are seeking for power, but it is because it belongs to us; it is because that it is right that we should have it. Let me tell eastern gentlemen that such inuendoes come from them with a bad grace, whilst they claim for themselves, in open violation of the principles of popular sovereignty, the very same power which they are unwilling to entrust to us. Do not gentlemen perceive, that they, a mere, a decided minority of the people, are assuming to themselves the right to control, as far as legislation can, the property of the majority of the people? You say the case is different. You say that the minority possesses the most property, pays the greater amount of taxes, and, therefore, an arbitrary exercise of power by the majority would affect you more than an arbitrary exercise of power by the minority could affect us. Allow such to be the fact. The effect is the same in principle and character, differing only in extent. So that you are denouncing as wrong, the exercise of a power by us, whilst you are claiming the right, even though in the minority, to exercise the very same power yourselves. I would be authorized to refer here, I think, to the farmer and the judge, and the ox that was gored.

The protection afforded to property by means of allowing it representation in the legislative department of government is wrong, because the principles by which it is regulated must necessarily operate unequally and partially. The mixed basis does not and cannot operate alike on all sec-

tions, and more especially it cannot operate with equality on individuals. The principle is, therefore, radically wrong, and practically anti-republican; because it inevitably produces inequality. I think I can demonstrate such to be the fact.

What is the object of constitutional law? I acknowledge that it is, in part, to protect the minority. Its great object, however, is to protect individual rights. How shall this protection be secured? Not by giving each individual the control of legislation. That would be an absurdity. But it is almost as absurd to give any number of individuals less than the majority such control. If any number less than a majority, why not ten, five or one? But individual rights cannot be secured by any legislative majority, whose will is unrestrained by positive law and fixed limitations of power. The will of legislative bodies like the will of individuals is changeful, variable and fluctuating. Hence the propriety of written constitutional law, by which the people, in their original sovereign capacity, restrict and regulate the action of their legislative agents and all others, by definite principles and rules which cannot be transgressed without their consent. This is the reason of written constitutions, and when these organic rules are well defined, the interests of individuals as well as of sections must be secure. If gentlemen fear to entrust the taxing power in the hands of a western majority, let them provide a constitutional limitation. Will it be said that having the power, we will disregard any such limitation? Let me ask what becomes of western interests in the hands of an eastern majority? You will say that the undue exercise of arbitrary power over our property, lives and liberties, will be prevented by the unchanging and unchangeable rules of constitutional law. I hope so. But if constitutional limitations are potent enough to protect the West from the East, why should they not be strong enough to protect the East from the West? It is said that it is a "bad rule which don't work both ways." Do gentlemen seek to establish the principle that the irresponsible, fluctuating will of a legislative majority, representing a minority of the people, will secure either the East or the West, either the welfare of the majority or the minority? Surely not. Therefore, if constitutional limitations of power are necessary and adequate to the protection of western rights, so I think they will be adequate to protect eastern rights. And hence a legislative majority is not only unjust, but unnecessary.

Before I proceed to show more minutely the partial and unequal operation of the mixed basis of representation, allow me to refer to the principle of taxation discussed the other day by the gentleman from Augusta, (Mr. SHEFFEY,) and to express to him my obligations for the able, elegant and eloquent argument with which he entertained the committee. I allude to *ad valorem* taxation. Now, I do not now mean to commit myself irrevocably to that principle. I will wait for further discussion. At present I can see nothing objectionable in it. What better security against discriminating and oppressive taxation could gentlemen desire? Let every species of property be taxed according to its value—let no one species of property be taxed higher than any other species of equal value—and what ground can there be for complaint or alarm? And what pretext can gentlemen urge for property representation, in order to protect it from undue taxation? This *ad valorem* principle now seems to me to be just, and of easy and equal application. With such a just and plain limitation of the taxing power, why, how is the rich man entitled to more legislative power than his neighbor, who, though less wealthy, is entirely equal in virtue and in-

telligence, and every other characteristic of a good citizen? It is true, he pays more taxes. He contributes more to the support of the government. But ought he not to do so? One of the great objects of the government, is the protection of property. Well, the citizens property is protected, and he is secured in the enjoyment of it. What more is he entitled to? Being more wealthy than his neighbor, he derives more advantage from the government, and ought in justice to contribute more to its support.

Allow me to illustrate the equal operation of equal, or *ad valorem* taxation. A citizen East of the Blue Ridge is worth $10,000. A citizen West of the Blue Ridge is worth $1,000. According to existing rates of taxation, which are ten cents on every $100, the eastern man would pay ten dollars and the western man would pay one dollar. The former would, therefore, pay ten times the amount of the latter. But he is ten times as able to pay, and is ten times as much interested in paying it, for he derives ten times as much advantage from paying it. There is, therefore, no injustice or hardship in the operation of the principle. Thus citizens are equally burthened and equally benefited.

Now, contrast this mode of taxation with the practical effects of the mixed basis plan of distributing the legislative power of the government according to taxation, by which it is proposed to secure the property of the minority by conferring the legislative power on the minority. Do this fairly, and it will be seen that this mixed basis system is partial and unequal in its operation and effects, both sectionally and personally. Why, there are thousands of the citizens living in the Trans-Alleghany district, who possess more property and pay more taxes than thousands of the citizens living in the cismontane districts; and yet because your aggregate wealth is greater than ours, these same eastern citizens are to be vested with more political power than western citizens who pay twice the amount of taxes. I will venture to say that there may be found West of the Blue Ridge at least twenty-five thousand tax payers, who pay a greater amount of taxes than twenty-five thousand eastern tax-payers who might be selected, and yet these latter have more weight and are to be clothed with more power than the former. Is this justice? Is this consonant with the spirit and requirements of republican equality? How does it happen that a man paying one dollar of public revenue, by living in the vicinity of wealthy neighbors, is entitled to more weight in the government than the man paying twenty dollars, who resides in the midst of a community that is not wealthy? If property be really and rightfully the source of representation, should it not be every where equally represented? Should not those who actually possess the property and pay the taxes, enjoy the benefit of the political authority connected therewith? Certainly no principle can be sound which operates so partially. I will further illustrate this idea. Monongalia county has a population of something above 12,000; and at the late election for delegate to this body, cast above 1,200 votes. That county, under the present distribution of the legislative power, sends one member to the House of Delegates—under the proposed apportionment it would send two members. Now, John Jacob Astor when living was worth thrice the assessed value of all the taxable property of Monongalia county. Apply the mixed basis impartially, and Mr. Astor, if he were living and a citizen of this commonwealth, would be entitled to one or two representatives in the General Assembly. But apply the principle as it is proposed in the report of the committee on the basis to apply it, and if John Jacob Astor were now living in Monongalia county, he would be entitled

to no more political power than the poorest qualified voter in it, and not so much as any head of a family in Richmond or Norfolk, who had paid twelve and a half cents tax on a Yankee clock! How can such inconsistency be defended? And if the principle be wrong when applied to individuals, how can it be right when applied to communities of individuals?

With the leave of the committee, I will briefly advert to one or two other considerations in this connection. It is urged, that if the legislative power be transferred to the West, the revenue of the East would be liable to be absorbed in western improvements. Do gentlemen forget, that whilst the same power remains on this side of the mountains, the revenues of the West are liable to be absorbed in eastern improvements? May I not ask, has not such been the case? It may be answered, that the burden of taxation falling more heavily upon the eastern tax payer, because he has more taxable property, there is, on that account, no danger of such an abuse of power. Let us see. If I wish to improve my estate, there is no hardship in levying a contribution on that estate which I am to receive back again in the form of improvement on that estate. So that if I am taxed two dollars and my neighbor only one dollar, I am at last a gainer, if the whole three dollars be expended for my benefit. The fallacy, therefore, of such an argument is obvious, since an eastern majority can control the application of the entire revenues. But we are told that the legislative power has been in eastern hands ever since the organization of the commonwealth, and has never been abused. When gentlemen are driven to such a dilemma, they seem to forget another proposition or principle much insisted on by some of them—I mean the selfishness of mankind justifying constant guaranties and distrust. But I would simply inquire, are not the western people as virtuous and patriotic as the eastern people? Do gentlemen pretend to say they are not? Then why not give us the power? You have enjoyed it a reasonable length of time. You ought to be satisfied and not complain, if we are willing to relieve you of its responsibilities and its burdens.

Still referring to the lust of power and the plea of selfishness, allow me to suppose a case. Suppose the East retain the legislative power in the hands of the minority; and suppose that in the course of time, western population and wealth should so increase, as by the principles of apportionment on the mixed basis, the West should be entitled to a majority of representation, might not a selfish minority, prompted by the love of power, refuse to make that apportionment? Would it exceed the eastern idea of the selfishness of mankind to imagine it possible that this minority, under such circumstances, might be induced so to modify and multiply taxation on eastern property, as to keep the mixed basis always above the popular standard, so as to retain the power, especially since this minority would always have it in its power to appropriate this increased revenue to its own benefit?

But the great source of apprehension is your slave property. I take it upon myself to say, that there is no ground for any alarm that any western majority would or could oppress the eastern slave holder by exhorbitant taxation, or by any enactment affecting slave property. Look at the condition of the Valley. To say nothing of the counties of Wythe and Kanawha in the Trans-Alleghany district, let me invite the attention of the committee to the following facts: The county of Augusta pays tax on 2,801 slaves; the county of Berkeley on 1,099; the county of Botetourt on 2,019; the county of Clarke on 1,034; the county of Frederick on

1,401; Jefferson on 2,419; Roanoke on 1,346; Rockbridge on 2,428; Rockingham on 1,288. These nine counties would be entitled to 18 delegates, on the basis of suffrage in a house of one hundred and fifty-six members Cannot any body see, that in all questions affecting slavery or slave property, all these counties would unite with the East? In such a case the whole Valley would unite with the East.

Let me ask, where all this time are the lives and the liberties, the souls and the bodies of the western people? I desire to repeat this interrogation. Where all this time are western life and personal rights? Are they not to be considered in organizing the government? How is it? Constituting as we do a majority of near 100 000 souls. we are asked, modestly asked to surrender our lives, liberties and persons, so far as they can be affected by the legislative power of the government, to a minority. Disguise it as you may, you are regarding your goods and chattels with higher distinction, than you are the life and liberty of the western citizen. Are you not? Are you not demanding that your property shall, virtually, have place and power in the legislative department of the government to the exclusion of the free men of the West. Is it right? Is it tolerable? Is there a man below the Blue Ridge who. if transferred beyond the Alleghanies, would submit to it? Not one! Not one!

I beg leave to say that a considerable portion of the little personal estate which I possess, consists of a family of slaves. I am a slave holder, and I regard the title to this property, as to all other property, as sacred, equally sacred. But I cannot allow my interest, in this respect to override the natural rights and liberties of one hundred thousand of my fellow citizens. No! You, a mere minority of the people, claim authority to legislate for the majority—to control their interests, civil, religious, political, even life itself. You have no right to such control. I speak with all due deference to the opinions of others, and with the diffidence which my humble position on this floor ought to inspire me. I impute none but the purest motives to any gentleman, but I speak the sentiments of my heart; and when I remember that I speak the sentiments of my constituency too, I am emboldened to declare, here in my place, that such assumptions, if carried into effect and made a part of the organic law, would be monstrous oppression, utterly subversive of the dearest principles of political liberty and republican equality.

I am weary of this cry of selfishness—this inferential impeachment of western integrity. It has been ringing in our ears for the last quarter of a century—the stereotyped decree against every petition we have preferred for political equality. When we ask for our natural liberties, we are told that we are clamoring for abstractions—arrant abstractions; when we sue for an equal and just participation in the administration of the government, we are answered that men are selfish. The distinguished gentleman from Fauquier, (Mr. Scott,) cries out—"How long shall our patience be abused by this eternal clamoring of the West to get their hands on our purse-strings?" The fears of eastern gentlemen are idle What is there to justify them in the history of the past? Upon what facts do gentlemen predicate their apprehensions of our integrity? There are no facts to justify them. These apprehensions are the mere bugbears of an excited imagination—mere speculative assumptions, having their origin in their theories of human selfishness.

I appeal to the record. The gentleman from Halifax, (Mr. Purkins,) has made it necessary. I do so with reluctance. Self-commendation is

hardly ever in good taste. But the gentleman's remarks in reply to the remarks of the venerable gentleman from Greenbrier, (Mr. WILLIAM SMITH,) require some notice. Besides, I feel myself in some sense compelled to refer to those events of which gentlemen have spoken, to offset the constant reference of eastern members to the moderation and justice with which they have exercised the power in their hands, and to repel the imputations against western fidelity and patriotism. I confess I feel some pride, withal, in making this reference. I appeal then to the record. How was it some forty years ago, when the invader was enticing away your negroes, burning your villages, pillaging your property, and driving your families into the interior? How was it then, with an enemy in your midst, who, when you sought to repel the invader from before you, might recall you by the midnight glare of your own dwellings in flames? You called for help. And the echo of your call had hardly returned from our mountains till the roll of the western drum was heard on your capitol square. Where were your ideas of selfishness then? Where was your distrust, when you were arming us for your defence? We came at your call. The district which I, in part, have the honor to represent, sent down her men, her Haymonds, her Morgans, her Tennants, her Hurrys, her Staffords, and others equally worthy. But they did not all come back. No. Many a desolated western fireside—many a bereaved family attested the fidelity of the western heart that day. And now the gentleman from Halifax (Mr. PURKINS) tells us that we received our wages—we were duly paid off—"we had our reward and ought to be content." Yes, the bones of some of these brave men now lie bleaching on your pine hills and pine barrens, along your sea coast, to reproach you for your ungenerous distrust; and the gentleman from Halifax (Mr. PURKINS) cries out from the midst of these affecting mementoes of western fidelity—"I am tired of hearing these things—you have had your reward—be content."

I must pause here to pay a tribute to the memory of a great, good man. Under whose banner did those true-hearted western soldiers rally? It was that of a man as true-hearted as they, or any man that ever lived—the noble General Robert B. Taylor. There and then it was he learned our character, our fidelity, our devotion to the State, without regard to section or locality. It was fitting, that afterwards, in the hour of our extremity, he should be the first to unfurl the flag of the suffrage basis in the Convention of 1829–'30. But the same unmitigated, unrelaxing spirit of the money power which is here now, was here then, and drove him from the councils of the Convention. His voice ceased to be heard in our defence. His name ceased to be recorded with the friends of republican liberty. But his name lives for all that. It has found a more enduring record in the hearts of Western freemen; and it shall continue to live, and to be cherished whilst a freeman remains on our mountains. I acknowledge the weakness of the moment. The unbidden tear has revealed (wiping one from his cheek) the homage of a grateful heart, and in that tear, here in the presence of the Convention, I baptize the memory of that great man.

But I am not done with the record. I claim to say a word respecting your "peculiar rights," in connection with the question now under consideration. I have ever regarded the present as a most unpropitious time for a calm and judicious adjustment of the Constitution. As in time of an epidemic, so now, all questions, of whatsoever character, become involved in the prevalent excitement on the subject of slavery. Alarmed, and, I may say justly alarmed, at the encroachments and menaces of Northern fanati-

cism, the slave-holder of the East seems to suspect all whose circumstances and interests are not identical with his own; and hence, however faithful the West has been, and is in its principles and in its conduct, respecting the rights to property, it is looked on with distrust, simply because it is not so extensively interested in slave property. I will not say that such apprehensions are entirely unnatural; but I do say, that they are not justifiable in fact. Look to the records. Look to the journals of the Legislature. There are some "abstractions" besides those in the bill of rights. I think you may find a few on the journals of our Assembly. And if the distinguished gentleman from Accomac (Mr. WISE) will allow me, I would suggest that it is here, where that grand "roost of abstractions," of which he spake some time since, may be found. Every year is our political horison darkened with clattering broods from this prolific rookery. [Laughter.]

It has been deemed necessary to forewarn fanatics of the determination of Virginia to defend her "peculiar institutions." We have defined, and re-defined our position. We have declared and re-declared our rights in this behalf—published and re-published them, session after session, till the archives of State are groaning beneath the accumulating mass of preambles, resolutions and laws on the subject of slavery. How are western votes recorded here? We have sometimes thought there was no necessity for so much ado. We have doubted the expediency of such legislation. We have sometimes thought these preceedings were better calculated to excite and feed the flames of fanaticism, than to allay and quench them. I believe the gentleman from Fauquier (Mr. SCOTT) has some reason to remember that he thought so too on one occasion. [Laughter.] But we were willing that the East should direct in a matter so interesting and peculiar to that section of the State. Our votes are generally found recorded with eastern votes on such occasions. If there be exceptions, it was not because we were not with you in sentiment and principle. The legislative proceedings growing out of the Southampton insurrection, forms no just exception to this assertion; for, although Western members of the Legislature favored emancipation measures, so, likewise, did the two leading public journals in the city of Richmond, and so did Eastern gentlemen. Indeed, those measures themselves were, I believe, principally introduced into the Legislature by Eastern members. It was not a strictly sectional question.

Time after time, have we united with you in your pledges and declarations. We have tendered you our hands. You have always had our hearts —you have them still. You know this. You cannot contradict the record. But now—now when we only ask to be elevated from our political degradation, and placed by your side, on the great platform of republican equality, we are met with the miserable repulse that mankind are selfish, and bidden to cease our "eternal clamoring to get our hands on your purse strings."

I will not say that anything can destroy Western fidelity and allegiance. But referring to those principles of selfishness, on which gentlemen base their resistance to our claim for popular power, how can it be reasonably expected that Western fealty should not be diminished, while that very slave property which we have heretofore done all that was ever required at our hands to protect, is made, in the shape of taxation, the instrumentality of our political degradation, virtually giving goods and chattels power in the government, whence we are excluded?

Do gentlemen suppose that the West is so craven, that it will always, like the dog, lick the lash with which it is beaten?

But I will not allow myself to speculate upon a contingency so seriously impugning the moral sense of my Eastern brethren. Standing in the midst of scenes, hallowed by the lives and labors of the mighty men who first defined, and afterwards achieved, our American independence, many of whom consecrated with their blood the glorious principles of man's political equality, I will not anticipate here, in "Old Virginia," that those great principles can be sacrificed on the altar of a miserable sectional jealousy.—Surely, the descendants of sires who pledged their "lives, their fortunes and their sacred honor," in resisting foreign tyranny, will not persist in fastening the fetters of a galling and degrading bondage on their own brethren at home.

The West desires no advantage—she asks only to be recognized as entitled to political equality. Can there be any danger in granting this? No! We may well dread to do wrong, but never to do right. Give us this.—Give us our natural rights—our's by the laws of nature and of nature's God. Do this, and you secure our fidelity forever. You will bind us to your interests and your fortunes, by ties ten-fold stronger than any which a legislative majority can devise. Do this—and then should ever the dark demon of insurrection show its hideous head in your midst—should ever the fiery fiend of Northern fanaticism plant its robber feet on Southern soil, or lay its leprous hand on a single slave within your borders, I feel in my heart authorized to pledge you, that the hardy sons of our Western mountains will come to your rescue,—they will come, not by units, but by thousands,—they will all come, not by constraint, reluctantly, but promptly and cordially, with hands as strong and hearts as true as ever defied the tyrant, and died in defence of liberty and honor.

Before I resume my seat, I would make a further remark. I do so with some hesitation, for I have observed a sensitiveness on the part of gentlemen, to construe mere expressions of opinion, respecting the probable results of our actions here, into threats or menaces. I trust I have too much self-respect—too much respect for this body—and too high a regard for the Virginia character, to be guilty of such an indignity or of such an indiscretion. Nevertheless, I believe it to be within the scope of legitimate debate, and quite within the demands of wisdom and prudence, to consider the results of any measure in contemplation. Nay, the propriety of a principle is best tested by observing its practical results. And now, should we present an amended constitution to the people, containing the mixed basis, would it be adopted? This is at the least very questionable. But if adopted, what follows? Agitation! agitation! Still further tumult and alienation of fraternal feelings. That peace and concord so essential to the prosperity of the Commonwealth would be destroyed, by constant criminations and recriminations. Can a principle be correct which would produce so great popular dissatisfaction?

Heretofore the agitation of this subject has principally been political in its aspects and relations. Hereafter, if the mixed basis be thrust upon us, it will assume a mere personal character. For the operation of that basis will be personal degradation as well as political. The wealthy will have privileges and power that poor men cannot possess, simply because they are poor. Western men will be over-ridden by Eastern goods and chattels. The odium of the principle will naturally transfer itself to the person of him who vindicates and applies it. I should regret such a state of affairs ex-

ceedingly. No man deprecates these evils more than I. I dislike even now to allude to them. But we ought not to shut our eyes upon the consequences of our action here But the question *will* arise, when you make your slaves, as the subject of taxation, the instrumentality of political and personal inequality in the government, can it be expected that men will ardently and cordially support negro slavery, when by so doing they are virtually cherishing the property which is making slaves of themselves? What will be the result? It is impossible that the morbid, pseudo-philanthropic spirit of northern abolitionism should ever find a resting place in Virginia. But will not a hostility to slavery be engendered by the incorporation of such a principle into the constitution? Your slaves, by this principle, drive us from the common platform of equal rights, and usurp our place. Will the spirit of freemen endure it? Never! Either the principle must be abolished, or you will excite a species of political abolition against property itself. You will compel us to assume an attitude of antagonsm towards you, or towards the slave, and like the man driven to the wall, we shall be forced to destroy our assailants, to save our own liberty.

I will bring my remarks to a conclusion by referring the committee to a fact—a great fact, attested on every page of man's political history. It is this, whensoever the personal liberties of any people have been most securely protected, then has property to the same extent been secure. And it is equally true, that where the rights of person have been insecure, the rights to property have in like manner been insecure. That is the verdict of universal history. Reasoning, therefore, from effect to cause, we arrive at this result: that if we desire to fortify property against the undue encroachments of power, by the wisest, safest, strongest guaranty ever devised, we must extend and secure to every citizen his just, true and full political equality. Will the government, community, or man that denies to the citizen his personal rights, have any very scrupulous regard to his property? I tell you, that he who refuses to recognize and cherish my superior rights and interests, ever challenges my distrust against his fidelity to my inferior and secondary rights and interests.

For the honor of the "Old Dominion," I pray that this mixed basis shall never darken her annals. Liberty, if not born on her soil, at least escaped from her bondage here, and first stood forth in all the graceful attitude of her mature proportions. Shall she be stabbed on the very arena of her original triumph? Shall she be wounded in the house of her friends? Why, what an unenviable position gentlemen are striving to place this proud old State in! Clinging to the relics of an exploded aristocracy, under the blazing splendor of American liberty. Star after star has been added to the glorious galaxy of American States, to increase the lustre of the great doctrine of popular sovereignty, undimmed by the faintest shadow of the dark dogma of property representation. One after another of the "old thirteen," have thrown off the livery of colonial vassalage, from which there was not an entire escape in the revolutionary struggle, till there is hardly a vestige of the mixed basis remaining in the Union. All over North America, where our banner is unfurled, it floats, with exceptions hardly worthy of being named, over a people not only by "nature equally free and independent" but so in fact. Nor is this all. The moral influences of the great American doctrine of political equality, and of its practical developement in the civil, social, moral, political and religious condition of the American citizen, have crossed the seas. They have reached Asia.—

They are recognized in Africa. They are felt and feared in Europe. Ancient dynasties and hoary thrones are crumbling away to naught, under the spreading and potent influences of the doctrine of popular sovereignty.—The pampered minions of monied aristocracy—the proscriptive children of a haughty oligarchy, are trembling for the tenure of their privileges and their power, under the influence of the doctrine of popular sovereignty.—The great mighty popular heart of the world has received an impulse. The masses are moving. The divine right of kings has been exploded, and the millions groping in the dark labyrinths of despotism are being quickened and enlightened by the great doctrine of popular sovereignty.

And yet, in the midst of all this, in the middle of the nineteenth century, beneath the noontide effulgence of this great principle of popular supremacy, a voice is heard in old Virginia, rising from almost the spot where the clarion voice of Henry awoke a nation to freedom when he exclaimed, "give me liberty or give me death"—even here, where we should take off our shoes, for the earth on which we walk is holy—bearing in its consecrated bosom the remains of George Mason and Thomas Jefferson, the one the author of the declaration of independence, the other of the Virginia bill of rights—even here, a demand is made by honorable gentlemen to give superior political power to the property-holder, and virtually invest goods and chattels with the prerogative of legislating upon the rights and liberties of a vast majority of the people of this Commonwealth! I trust this can never take place.

I cannot take my seat without tendering to the committee my most grateful acknowledgments, for its long, late and most flattering attention to the very poor remarks which I have been able to submit. I will trouble you but seldom hereafter.

and COUNTY COURTS & COUNTY ORGANIZATION.

In Convention, June 5, 1851.

Mr. WILLEY said: I regret very much to occupy the time of the committee upon this occasion. I suppose, however, it is at last admitted that it is in order to discuss this question, and that I am entitled to the floor. If so, I respectfully solicit the attention of the committee for a very short time, whilst I attempt to explain the leading principles of the proposition which I had the honor to submit on yesterday, as an amendment to the amendment proposed by the gentleman from Jefferson. Allow me to say, that however much indisposition gentlemen may manifest to have the subject of County Courts discussed, there is no subject that has occupied, or will occupy, the attention of the Convention, that will come home so continually, so closely, and so interestingly, to the feelings, at the firesides and homesteads, of the people of this Commonwealth, as the regulation of our County Courts, and our general County organization. Allow me to say further, that there was no subject before the people, that conduced more to the call of this Convention than the reformation of the County Courts and County organization. And it behooves us to consider this matter well, both upon its principles and upon its details, before we pass finally upon it, lest we shall not answer the demands of public expectation in relation to this important question.

Now, before any evil can be intelligently remedied, it must be well understood; and before we can propose and adopt a proper remedy for the deficiences of our present system of County Courts, it will be necessary to be satisfied that we understand the evils of that system as at present existing.

The first objection to our County system is one of a very fundamental character. But if we adopt either of the propositions, the one which I had the honor to submit, or the one proposed by the gentleman from the county of Jefferson, or the proposition of the majority of the committee, that fundamental objection will be obviated. I allude to the mode of organization of our County Courts, and the irresponsible tenure by which they hold their offices—to their self-creating, self-perpetuating and self-controlling power. But, as I remarked just now, *this* evil will be obviated by the adoption of the committee's report; for, according to every plan I have seen submitted, for the consideration of this Convention, the Justices of the Peace, composing our County Courts, are to be elected by the people, and for a short term of years.

The report of the majority of the committee, however, is obnoxious to the objection, that the County Courts, thus composed, are still to retain the power of supplying vacancies in office. But if this were the only objection to that report, I should not have risen to oppose it, or submitted any amendment to it.

The second objection—for I do not deem it necessary to argue the one just offered—I take it for granted, there is no member of the Convention that is, in anywise, favorable to the present mode of appointing Justices, and of forming our County Courts. I pass it then, and invite the attention of the committee, for a short time, to the consideration of a *second objection* to our County Courts. That objection is, their *total incompetenty as judicial tribunals*. They are usually composed of men that have no knowledge of the laws they pretend to expound. They are composed of men

selected without any reference to their legal acquirements or legal abilities; men utterly unacquainted with the elementary principles of law—utterly unacquainted with the statutes of the State—utterly unacquainted with the rules and forms of judicial proceeding.

Now, does the plan reported by the committee remedy this fundamental defect in the organization of the County Courts? It does not: for it is proposed still to organize those Courts of the same materials. It is proposed still to organize these Courts, by selecting men who never devoted an hour to legal studies; men selected from the various pursuits of life, honest and intelligent it may be but without any knowledge whatever of the constitutional law of the State, or of general elementary principles of law; of men utterly unacquainted with the forms of proceeding in the Courts over which they are called to preside. Allow me to say, that no pursuit, no profession, no calling in life, can be successfully prosecuted without skill, without experience, without ability. Why, the most common mechanical pursuit is always preceded by an apprenticeship of greater or less duration. Now, I wish to know what there is in the duties of the Bench that is to exempt it from a similar necessity of preparation. Certainly no ground for such exemption can be predicated upon the trivial or little importance of the interests that are involved in the correct exposition and proper adjudication of the laws of the country; for there is nothing, allow me to say, that more peculiarly and vitally involves all the interests of society than the correct adjudication of the laws—laws involving our highest interests of character, property, life, and all that we have. No such exemption can be properly based upon the facility with which unskilled and unlearned men can expound the laws; because, within the wide range of universal science or human action, there is nothing more difficult to accomplish, efficiently and correctly, than the duties of the Bench. If skill, if competency, ability, enlarged experience, and the highest degree of intellectual cultivation, are necessary in any pursuit or profession, they are still more required upon the Bench. And yet, strange to say, the report of the committee on County Courts, as well as the amendment offered by the very intelligent and distinguished gentleman from Jefferson (Mr. HUNTER) proposes to confer the adjudication of the laws, thus involving the highest interests of society—those laws which secure us in the enjoyment of our property, life and liberty, to men absolutely disqualified for any such duties, by the pursuits in which they are daily engaged, and the circumstances in which they placed in society. A court of justice, and more especially a court of law, required to pass upon legal questions involving the highest rights of man—a court of justice for such a purpose, composed of men unacquainted with the laws they expound – is a perfect solecism. What!—a court of law and justice who know nothing about law, however correct their opinions may be about the abstract principles of justice? The thing is ridiculous.

Let me draw the attention of the committee to this matter still further, and ask their candid consideration of it. I propound this question: How would we act—how would we proceed, in the discharge of the ordinary duties of life? How would we proceed in the selection of an agent to transact business of the most ordinary kind—of the most unimportant character? I ask every member of this committee to say, whether he would employ a man even to work in his garden, or to make a hob-nail, unless he came certified to him, that he had the necessary skill and experience to perform that service? No, sir! he would not. And then I ask, if it is seriously and absolutely proposed, upon the part of this committee, to de-

part, in a matter of more importance than anything else which can be presented for our consideration, so far from the dictates of ordinary prudence and experience? I am very willing to admit, that Justices of the Peace are honest men, in general; that they have a common degree of intelligence. I make no objection to the present County Court system upon such grounds as this. But these characteristics of a good citizen do not necessarily constitute a good lawyer or a good judge. They may stand high in the community in which they live, enjoy the perfect respect and confidence of their neighborhood as good citizens. But transfer them from the ordinary business of life into the new, high and difficult sphere of judges, and they will be completely and absolutely at fault.

If you had a suit to prosecute for the sum of $25, and it was disputable, I ask you, whom would you employ to prosecute that suit? A farmer? No, you would not, however successful as an agriculturist that farmer might be. A merchant? No!—no matter how successful in trade he might be. A physician? No—no matter how skilful in his profession he might be. A statesman? No, not even a statesman—no matter how extended his fame. What would you do? Why, follow the dictates of common sense and experience, and look to your own interests, by employing an attorney at law. And why? Because he understands that business, and the farmer, physician, merchant and statesman do not. And I, therefore, ask, if you are going to confer the judicial powers, that are proposed to be vested by the report of the majority of the committee on County Courts, under such circumstances as these, on men who have not qualified themselves to comprehend the laws of their country, much less to expound those laws? If you would not submit to any member of the County Courts, or at least of a majority of the County Courts as they now exist throughout the length and breadth of this Commonwealth an interest of only $25, to be prosecuted by him as counsellor or attorney at law, then I ask, how is it that you would be justified in placing these very men upon the Bench to adjudicate the laws, upon the correct exposition of which the recovery of your $25 depended? There is not a member of this committee that would do it. There are, I imagine, few members of the County Courts in this State that would be employed for that purpose: not because the Justices are not intelligent and honest men, but because they know nothing about such business, being unacquainted with the laws and the rules of judicial proceedings.

Are we, therefore, justified in conferring these high duties upon such men? I beg the attention of the committee to consider the jurisdiction it is proposed to confer upon these County Courts. "The jurisdiction of these Courts (says the report) shall extend to *all* causes and matters of controversy, whether in law or equity, where the demand or subject of controversy, exclusive of interest, exceeds the sum of $25." "*All causes in law and equity*"—a jurisdiction *ad infinitum*, without restraint—embracing every imaginable interest—involving our lives, liberty, property, and character—all, all to be conferred upon men absolutely unacquainted with, and disqualified by their pursuits for the discharge of, the duties proposed thus to be conferred upon them!

Before an attorney at law is allowed to practice in the courts, it is required of him that he shall make previous preparation, and that he shall go before three Circuit Judges in the State, and get from them a certificate that he is qualified to practise. And yet you propose to place upon the Bench, to adjudicate the arguments of that attorney, thus qualified and

certified, gentlemen who know nothing of the law that is discussed. There is an obvious inconsistency in this. How is it? In our superior courts, men of the highest learning, largest experience, greatest abilities, and most extensive information, are required to go upon the Bench. Why? Because these qualifications are necessary to enable them to give a correct exposition of the laws of the country.

Now, look at the jurisdiction to be conferred upon these County Courts. It is as wide and as great as that conferred upon the Circuit Courts; and yet you are giving to men not qualified at all, a power equal to that of the Judges of the Circuit Courts. Now, if it is important that our Judges of the Circuit Courts should be skilled and learned in the law, I hold that it is equally necessary that our County Courts should have Judges equally qualified, since they are to decide upon questions equally large and important. But the report of the committee makes no distinction.

It is said that Justice is blind. I suppose she ought to be, so far as impartiality is concerned. But gentlemen seem disposed to destroy the figurative sense of the maxim, and give it a literal application, and to say that our County Courts, as well as this Convention, should "go it blind:" For, whatever qualifications they may have in regard to impartiality, it is true that, if we adopt the report of the committee, the County Courts will have the blindness of ignorance, so far as the laws of the country are concerned. And not satisfied with having one man ignorant of the laws on the Bench, the report provides that there shall be five—upon the principle, I suppose, that "misery loves company."

I believe it was my Lord Coke—it has been a long time since I looked into a law book, and I may be mistaken—who said that "certainty was the mother of repose." And this is a very important maxim to be observed in the construction of government, and especially in the organization of the Judiciary department. *Certainty*, so far as the Judiciary is involved, *is* the mother of repose. But how are you to obtain certainty in the interpretation of the laws? By submitting questions of law to men who are unable to expound the law? —who are unacquainted with the principles of law? Why, if you establish County Courts upon this principle, it will be hereafter, as it has been heretofore, that every step a suitor takes in these courts will be taken in darkness—a mere game of chance: the whole results of such a system must necessarily be as uncertain as the tossing of a copper.

But I will not detain the committee farther upon this point. It seems to me that we ought to pause long before we constitute a court, possessing such jurisdiction as is proposed to be conferred by the report of the committee, of men who are not lawyers. It is difficult sometimes to get one good Judge in a Circuit of six or seven counties. But the report of the committee pre-supposes that four or five—nay, twenty good Judges—can be found in every county.

But I make *another objection* to these County Courts, and ask the attention of the committee to it. I say that there is an *utter want of responsibility* on the part of our County Courts, as now organized. Nor does this want of responsibility result altogether from the manner of appointing the Justices of the Peace or the fact that their tenure of office is for life; but it grows out of the mixed, multitudinous, fluctuating and tumultuous character of our County Courts—ever shifting, and veering as frequently, and more uncertainly than the weather-cock upon the court-house. Why, how often has it been the case, that an entirely different set of Justices was sitting on the Bench, at the conclusion of a cause, from those who occupied

the bench at the time the trial commenced. The Justice who opens the court to-day, when the trial commences, will to-morrow be in his cornfield when it is concluded; and the Justice who will be on the bench to-morrow, is now at home in his cornfield, when the trial is commenced. Sometimes, there are, perhaps ten—perhaps five—perhaps four, and sometimes under the necessity of the case, and by the consent of the parties, only one justice will be upon the bench. The result of this is, "confusion, worse confounded"—confusion, disorder, uncertainty, distress and ruin to many poor suitors before these tribunals. Any valuable sense of responsibility cannot be fixed upon a multitude, thus ever fluctuating and changing; because the responsibility will be neither felt nor feared when it is indefinitely attached to many, but definitely to none in particular. It is diffused over the mass of the many, and you cannot trace it home to any. A sense of responsibility, sir! in a judicial tribunal properly organized is a matter of the highest importance. If there be any officer in any department of the government, who, more than another, should feel constantly, a fixed and definite sense of responsibility in the discharge of his duties, it is the Judge upon the bench. His duty should be so regulated, so defined, that he should realise his responsibility continually. He should feel it personally. It should have immediate and perpetual operation upon him.

Now, does the report of the committee on County Courts accomplish this object? I think it does not. It may tend towards the accomplishment of it; but it does not fully, or nearly accomplish it. It is true that it provides that there shall not be more than five Justices on the bench at one time. The result will be, that you will never have a very large multitude sitting on the bench as heretofore, and it may be, that the Justices opening the court one day, shall be required to sit every day in the term. But there cannot be less than three Justices sitting at the same time, to diffuse and divide the responsibility.

And here let me invite the attention of the committee to the fact that the ignorance—the necessary, inevitable ignorance of law, on the part of these County Courts as at present existing, or as it is proposed to organize them, will be, as it has been, used as a subterfuge beneath which wicked and corrupt men have accomplished, and will accomplish their base purposes. It will be used as a subterfuge to cover up official corruption. Charge a member of a County Court with malfeasance—say that he has corruptly decided the law incorrectly, and that in consequence of his incorrect decision, injury has been done to the suiter—and he will reply—"How can you expect anything better from me! I am no lawyer. Every body knows that. I decided according to the best of my skill and judgment." Thus, the fact that you cannot hold the County Courts to a correct interpretation of the law, because they are organized without any reference to legal qualifications, will be a source of corruption, which will serve to defeat the great object in view, in the establishment of any such tribunal. It will lead to negligence as well as fraud.

The *fourth objection* I shall mention, applying to these County Courts is this—that they cannot be free from prejudice. They cannot be, and are not impartial judicial tribunals. How is it proposed to constitute these courts? The Justices are to be classified, it is true. But where are they to come from? They are to come from the various sections of the county—from the social relations—from the neighborhoods

—from business relations with the parties litigant in their court; and it will be impossible, however honest in purpose, for them to avoid the natural warping tendency of such influences; or that their minds should be unprejudiced and unaffected by these considerations—unaffected by party feelings—unaffected by neighborhood influences.

Now sir! this is a very important matter. If any tribunal should be pure, if any tribunal should be impartial, if any tribunal should be above and beyond the reach of partizan influences and prejudices, from any source whatever, it should be our judicial tribunals. So of our County Courts, however limited their sphere of operation, or unpretending the character of their duties.

And here let me propound an inquiry to gentlemen. Who has not seen the vile demon of party spirit go upon the bench in our County Courts, and, regardless of the oath of office, jostle justice from her seat, and seizing her sceptre in its leprous hands, in her pure name, and upon her pure altar, prostitute the legitimate functions of office, by dispensing the paltry patronage at command to partizan favorites and personal friends? Who has not seen this? And if such has been the effect heretofore, how will it be hereafter? Heretofore Justices of the Peace have been under obligations to nobody. They felt no sense of responsibility to any body—neither to man, and I fear I may say of some of them, nor to God himself. How will it be now, when the Justices of the Peace come from their various townships of the county, fresh from the party conflict, the party victors, reeking with party triumphs, and thus go upon the bench with party passions all on fire? I beg gentlemen of the committee to let these considerations have due weight upon their minds.

I will mention a *fifth objection*. Courts constituted as our County Courts now are, or as it is proposed to re-organize them, can never command the *public confidence*. And what is a judiciary worth that does not enjoy the confidence of the community? Public confidence in the judiciary adds to legal proceedings, a moral influence beyond their intrinsic excellence, which magnifies the majesty of the law, and imparts to it additional authority and power; and thus enhances the welfare and security of the citizen, in proportion as it increases his respect for the law, through his respect for the ministers of the law. Now, how is it in monarchical governments? There, the ready and cheerful obedience of the subject to the laws of the realm, depends very materially on the respect and reverence which he entertains for the sovereign. But in this country, as in all free countries, the only sovereign of the land, is the law itself. Let the law be magnified, then, by being administered by men of competent knowledge and skill, and of high character.

Now, to bring this idea down to a practical point of view—who has not seen and felt the dignity, majesty, and power of the law in this country, when administered by a learned and competent tribunal, whose skill and competency commanded the confidence of the people? A respected law is the standing army of this country. Confidence in the law—respect for the law—adherence to the law—submission to the law—occupy the place of the standing armies of Europe; and the law here is more terrible to wrong doers than the bayonets of monarchs, or than an "army with banners." Why is it so? Because the learning, the dignity, and the competency of its ministers magnify it and make it honorable. But who has not seen that same law, before the same people, administered by incompetent County Courts, become the object of

jeers, and sneers, and contempt, and derision? Every government derives its most valuable authority, its strongest and best influences, from the manner in which it is administered. I tell you, you never can clothe the law with such authority and respect, unless you clothe your Judges of the law with capacity and skill. Thus will the County Courts, as you propose to organize them, not only fail to answer the purposes designed by their establishment—the proper interpretation, adjudication and administration of the law—but they will have a deleterious incidental influence upon the community; because the contempt and derision of the people for, and want of confidence in, the ministers of the law, will be transferred to the law itself, as a necessary consequence. This is a very important view of the subject. If I had time, I should like to elaborate a little. But I hope that other gentlemen, who have more ability, and more experience than myself, will supply my lack of service.

I pass to *another objection*, which, whatever you, sir! and the committee may think about it, I regard as a very important one: and that is, that our existing County Courts, and the County Courts that shall be organized on the plan proposed, have been, and will be, a *prolific source of petty-foggers and petty-fogging*. I have observed facts to very little advantage, if I have not come correctly to the conclusion that nothing has had such a deteriorating, debasing and depreciating influence upon the bar of the State as these self-same County Courts. Every man, of any professional experience, knows that hundreds of suits are brought in the County Courts, that never would find a place on the dockets of the Circuit Courts; not because the Circuit Courts have no jurisdiction in those cases, but because those who prosecute these suits did not choose to bring them, and would not dare to bring them in the Circuit Courts.

But, it is said that these County Courts have not any such demoralizing influence on the people, and that they are, in fact, one of the best educational institutions in the land; that they bring the people together once a month; that the people thus interchange views upon various subjects, get acquainted, and acquire friendly feelings towards each other. There might have been some propriety in ascribing such advantages as these to the County Courts before the days of railroads, steamboats, newspapers, and the various modern appliances and facilities for obtaining information. But, allow me to say, that my experience teaches me that these courts result in very different consequences now. There are more punch, and port-wine, and "Monongahela," (as we say west of the Alleghany mountains) discussed on such occasions, than literature and politics; and there are more assaults and batteries perpetrated sometimes, than there are new friends formed or old ones strengthened at these courts. They have a demoralizing influence, rather than an educational bearing; disturbing the industrial pursuits of the people, and often promoting discord in their social relations.

I will mention *another objection*, and the last, that I shall have time to make; for I want to explain my own plan a little.

It has been urged in favor of the County Courts, that they are a *cheap judiciary*. But let us examine this matter. Go to the dockets of your courts, especially of your quarterly courts, and what do you see at every term of those courts? The clerk has the docket to make, and how does he do it? Does he sit down and calculate the number of days it will take to try the causes ready for trial? No, sir! he must calculate the

number of days he supposes the Justices can be induced to sit in court. Now, what follows? A cause is placed on the docket, and the parties are present with their witnesses; but before the court arrives at it, the Justices leave and go home, and the cause is never reached. The parties have spent a great length of time, and a great amount of money; but the case put off from court to court, for want of a court, until poor suitors have been absolutely ruined, in thousands of instances, by the mere delay of these courts. But this is not all; for this protracted pursuit of justice is all the time accompanied with a dread, that when a judgment is obtained, it will be an erroneous one, and the parties will be subjected to further costs and further delay, before they can get their just demands. Many, indeed, who have had just claims, have never prosecuted them in consequence of these ruinous delays.

Now, does the plan of the committee obviate these difficulties? It may tend to do it, but it does not do so altogether. Let us look at it a moment. The justices are to be elected, and it is proposed to give them a compensation. This may secure their better attendance, and will, so far, lessen the objections I have urged. I yield this to the plan cheerfully. But it will never confer the necessary legal acquirements, or the necessary qualifications to enable them to discharge their duties promptly and correctly. And the same delays, costs, and vexations, in a limited degree, in consequence of erroneous decisions, will be the result hereafter, as have been heretofore.

I will now ask the attention of the committee for a very short time, while I explain my own plan. I propose to dispense with the County Courts altogether—to abolish them entirely. And the question arises, "what do you propose to substitute in their place?" Allow me most respectfully to solicit the attention of this committee, while I refer, not very much in detail, but simply refer, to the plan which I, in connection with my respected friend from Wood, (Mr. VAN WINKLE,) have had the honor to present.

We propose to abolish the County Courts. The question arises—what will you do with its jurisdiction? I will answer this question briefly. The first difficulty suggested to the eastern mind by proposing to abolish the County Courts entirely, will be in relation to matters of slave police. Without stopping to enquire, whether all matters of slave police might not be as wisely entrusted to other tribunals than our County Courts, I inform the committee, that we propose to authorize the Legislature to continue the existing system of slave police, if it shall be deemed advisable to do so. We propose to submit that question to the Legislature, and have reserved to the Legislature, accordingly, the power to organize courts, of Justices of the Peace, who shall have cognizance of such special matters as may be prescribed by law. This power is contained in the following clause of the plan which I submitted on yesterday: "*The General Assembly may authorize two or more Justices of the Peace to hold special courts for the examination on trial of persons charged with crime.*" Under this clause the General Assembly will have the power to confer on Justices of the Peace, all the jurisdiction necessary for courts of slave police—a jurisdiction ample on that subject as they now have. It may direct your Justices of the Peace to take cognizance of all matters connected with your slave police. They may make of the Justices, courts of Oyer and Terminer, or anything of that nature—I merely refer to this matter; for I have not time to explain it.

The County Courts as now organized have an extensive police jurisdiction; apart from their jurisdiction over slaves, they have all the police regulations of the county to attend to. Now, did it never occur to you, Mr. Chairman, that this jumbling together of legislative powers in your County Courts, as courts of police for the county, with their civil jurisdiction, is a very manifest infraction of the fundamental principle, that the various departments of government should be separate and distinct? But I will not discuss this idea now. I propose, however, to obviate all the difficulties of the case, arising from this fact, and to accomplish all the purposes which the County Courts as a board of police now accomplish, by organizing a board of police separate and independent. I provide, in my plan, that, "*the Justices of each county, whereof a majority shall be a quorum, shall constitute a board, which shall, under such regulations as shall be prescribed by law, have the administration of all the internal affairs of the county not of a judicial character, including the establishment and regulation of roads, public landings, ferries and mills, (except in the issue and trial of writs of quod danmum, which shall issue from the Circuit Courts,) the granting of ordinary and other licenses, and the laying and disbursement of the county levies.*

Now, sir! in regard to appropriations for roads and bridges, which have heretofore been made by the County Courts, I submit whether this board, which I propose, is not preferable in many respects to the present mode of proceeding in our County Courts? Suppose you want to lay a county levy for building a bridge—how do you do it now? Under the existing system, whatever number of Justices, from any section of the county, may be present on the bench, they may make the appropriation, and authorize the bridge to be built, when, if the Magistrates of the county had been generally in attendance, the appropriation might not, and often would not, be made. You will see, that by the existing mode of proceeding great fraud can be perpetrated. A justice who is interested in making the appropriation will gather around him, on the morning of a court day, a sufficient number of other Justices to accomplish his object, who direct the appropriation to be made, when a great majority of the Justices would have voted against it, if they had been on the bench. The plan I propose will obviate all these difficulties, because the Justices are required to meet for this special purpose from every township and every section of the county, and a quorum of all the Justices in the county is made necessary to transact any business at all. A majority of all is required to constitute a quorum. I would respectfully invite the attention of the committee to examine for themselves this provision in detail, for I have not time further to explain it.

There are other matters over which the County Courts, as courts of *probate*, have jurisdiction. They admit wills to record, grant letters testamentory and of administration, settle estates of decedents, appoint guardians, &c. For all such duties as these, my plan provides a court of probate, in the following language:—"A Judge, who shall hold the said court, (of probate) shall be elected by the qualified electors of each county," &c.—"The jurisdiction of said court shall extend to all matters relating to the probate of wills, the appointment and duties of executors, administrators, curators, and committees of insane persons, the partition of estates and the assignment of dower; and to such other matters of a like nature as may be prescribed by law." This court 'shall be always open for the appointment

and qualification of executors, administrators, &c., upon citation of all parties interested," &c., &c.

Thus I provide, as I think, a much more competent, convenient and efficient tribunal for all matters of probate. This court being open, too, in vacation, to grant letters of administration, &c., upon citation of the parties, will preserve the assets of deceased persons, from being wasted by fraud, embezzlement or neglect, in consequence of delays produced, by having to wait for the qualification of representatives until the court sits, as at present, is the case. The mode of dividing real estate in our Circuit Courts is not only a very protracted one, but also a very expensive one, when the parties might just as well, in agreed cases, where there is no contest, go before this court of probate, and have a partition made more speedily, and as correctly as if it were done in the Circuit Court, and at much less cost. I think all these purposes will be accomplished by the establishment of this probate court.

But the most important of all the functions exercised by the County Courts, is yet unprovided for—I mean their civil and criminal jurisdiction—I have proposed to transfer the whole of this to our Circuit Courts. The question at once arises, whether, by doing so, we will not so encumber those courts with business, as that they will be unable to transact it all. Now, if the committee will give me their attention for a little while, I will show that our Circuit Courts, as now organized, are competent to discharge all the business that may be conferred upon them, by the transfer of the jurisdiction of the County Courts in civil and criminal cases. Let us look at this matter. But before I enter upon this question, allow me to propound a proposition to gentlemen. If I can show, that with the same expense, and in the same time, the civil and criminal jurisdiction which has heretofore belonged to the County Courts, can be performed by the Circuit Courts, will they agree that the Circuit Courts shall have that jurisdiction? I am prepared to do so.

I have examined the reports of the Clerks of the House of Delegates, for the period commencing with the year 1840, and ending with the year 1849, being a period of ten years, and find the number of days during which our Circuit Courts were in session is as follows:

In 1840,	total No.	of days	1652, average of	all the Judges 75
1841,	do.		1619, do.	73
1842,	do.		1619, do.	74
1843,	do.		1832, do.	83
1844,	do.		1910, do.	87
1845,	do.		1883, do.	85
1846,	do.		2061, do.	94
1847,	do.		2057, do.	94
1848,	do.		1935, do.	87
1849,	do.		2142, do.	97

10) 849

85

Thus, the annual average which our Circuit Courts were in session during this period of ten years, was 85 days. Now, sir! if we were to require of each Circuit Court to perform service sufficient to keep it session twice this number, or 170 days, would it be requiring too much? I think not. And surely it would not require more time for our Circuit Courts to

perform the services which would be imposed upon them by this transfer of the civil and criminal jurisdiction of the County Courts, than is required of them to discharge the duties heretofore devolved upon them. Our quarterly courts do not, on an average, sit more than three days each term.—This would make twelve days annually in each county, and 1656 days annually in the entire commonwealth. Distribute this number equally among the Judges now in commission, and the quota of each would be 75 days—which proves that the estimate of 170 days annually, for each Judge, is more than they would be required, by this increase of jurisdiction, to serve. Besides, every one knows, that the Circuit Courts would despatch the same amount of business much more rapidly than the County Courts.

THE CHAIR. The Chair would like to enquire, for his own information, whether, according to the rules of order, the time occupied by other gentlemen with the assent of the gentleman entitled to the floor, is to be included in the time allotted to that gentleman.

SEVERAL VOICES. No—no, it is not included.

THE CHAIR. The question has never been decided by the Convention, and the Chair made the enquiry merely for his own information.

Mr. WILLEY. The want of experience and qualification of the County Courts, and the delay in their proceedings, have already constrained the Legislature to extend the jurisdiction of the Circuit Courts concurrently with the County Courts, in almost every case; so that to transfer all the civil jurisdiction of these latter courts to the Circuit Courts, would, in fact, be no extension of the jurisdiction of the Circuit Courts.

I will now proceed to show that this transfer of the business of the County Courts would not increase the expenses of our judiciary. The plan of the committee proposes to have only two terms of the County Court, for the trial of causes, in each year. Now, it will first be observed that less business would be done in the County Courts, and more in the Superior Courts, than heretofore. Say, that the duration of these semi-annual terms would average five days each. This average would make the whole number of days in which these courts would be annually in session in the entire commonwealth 1830, which, distributed among the number of Judges now in commission, would give each of them 63 days; and these added to the 85 days annually, during which they now sit, would make the number during which they would be required to sit, 148 days. Pay your Judges well, and I ask if this be imposing too much labor upon them? I have made some calculations in reference to the expense. Let us institute a calculation now. It is proposed to pay the Justices for their services in court. That they will be paid, I regard as "a fixed fact." Let us average the number of Justices in attendance at four. The report of the committee requires that the number shall not be less than three nor more than five.—Two dollars per day would be the least compensation tolerable. These courts will average five or six days each session, holding two sessions in each year. Making a calculation for five days—enough for any purpose—it would make the expense in each county annually $80. Multiply this sum by the number of counties in the commonwealth, and you will have a sum of upwards of $11,000. This sum will employ five additional Circuit Court Judges at the annual compensation of more than $2,200. I repeat that fact—apply the money which you have to pay for compensation to the County Courts proposed to be established by the report of the majority of the committee, and you may employ five additional Circuit Court Judges, at an annual salary of $2,200 each. Add these Judges to the number al-

ready in commission, and surely you would have judicial force enough to accomplish all the civil and criminal jurisdiction within the commonwealth. Or, you might increase the salaries of our present Judges out of this sum, thus to be paid to the County Courts, by the amount of more than $500 each. By adding five Judges to the number now in commission, and by transferring to the Circuit Courts the entire civil and criminal jurisdiction of these semi-annual County Courts, the average number of days which the Circuit Courts would be required to sit annually, would be about 145.

Now, sir! having thus shown, that we can secure the performance of all the judicial business of the commonwealth by our Circuit Courts, as expeditiously, with as little, if not less, cost, and certainly with more correctness and satisfaction to the people, I ask if this committee, under these circumstances, will adhere to mere habitudes of mind, and prejudices for the past, and drive us to have our rights litigated and decided before incompetent tribunals, when we, at the same time, shew, that there are other tribunals sitting in the same Court-houses, competent to pass upon all questions submitted to them? I would propound another question. Upon what ground should there be a distinction in the qualifications of courts having original jurisdiction? I cannot understand it. Why should one court possessing original jurisdiction, have any better qualifications than another, having the same jurisdiction? It may be said that these County Courts will have cognizance and jurisdiction only of matters of trivial importance, and simple questions. But look at the proposition of the committee. They give them unlimited jurisdiction—wide as the commonwealth, and as extensive as any interests of life, character or liberty, that can be involved in the decision of any tribunal whatever.

I invite the attention of the committee to another question. Any lawyer, of any professional experience whatever, knows that questions of minor importance in value and amount, require as much professional skill and judicial learning, to decide correctly, as questions involving matters of the highest consideration. What will be the practical result of this thing? If our County Courts are to be confined to cases of minor importance—if they are to be limited in jurisdiction to cases of small amount, what will be the practical effect? Why, the competent tribunals will be closed against the humble citizen, and you will have our inferior and incompetent tribunals for the poorer and less favored class of the community. Now, this does not accord with my views of a proper system of government—it does not accord with my feelings as a man—it does not accord with my sense of right and justice. The true beauty of any government is, to bring its highest faculties to the discharge of all the duties of its various departments. We read, sometimes, with admiration, in history, of the magnanimous condescension, as we are apt to think it, of the sovereign descending from his throne, and coming down, and laying aside his robes of royalty, to vindicate the rights of the humblest subject in his realm. Such feelings, so prompted, are the true tribute of a generous heart to the claims of justice and rectitude. So, sir, in this republican country, I do not want to see our higher tribunals of justice placed beyond the immediate access of the humblest citizen in the commonwealth. I hold that the administration of justice should be equal and uniform, practically as well as theoretically, to every member of the community. It should be as the rain and the sunshine, which fertilize alike the garden of the peasant and the domain of the prince:—as the mercy of Heaven, as full and as free for the humblest as the highest:—as the justice of God, which takes cognizance of the smal-

lest right of the obscurest subject of His moral government, alike with the fortunes of an empire:—or, as that gracious providence, which numbers the hairs of our heads, and notes the fall of a sparrow.

The Chair. Your hour has expired.

Several Voices. Go on—leave—leave is granted.

Mr. Van Winkle. I move that the rule be suspended, and that the gentleman from Monongalia have leave to proceed.

Cries of agreed—agreed—go on.

Mr. Willey. I certainly feel very grateful to the committee. But I think I would best requite the kindness which the committee seem disposed to confer upon me, by declining to accept it. The one hour rule is a good one, and ought to be observed. I will only so far avail myself of the courtesy of the committee, as to recapitulate my objections to the plan of organizing the County Courts as proposed.

I think I have shown that a court so organized would be objectionable:

1. Because of its incompetency in respect of legal knowledge and professional skill:

2. Because of the want of responsibility:

3. Because its mode of organization will subject it to the influence of local, party, and personal prejudices and passions:

4. Because it can never command public confidence:

5. Because it will foster petty litigation and petty-fogging:

6. Becanse it will lead to vexatious and ruinous delays in the administration of justice:

7. Because I have shown that the civil and criminal business, now done by the County Courts, can be done by Circuit Courts, in the same time. and at as little, if not less, cost.

Note. If Mr Willey had not been prevented from concluding his remarks by the expiration of his hour, he would have attempted still further to shew the impropriety of continuing the County Courts, by—

1. Referring to the original organization of the County Courts, and the peculiar condition of things which suggested their organization, and made them valuable institutions, under the particular circumstanres then, and afterwards existing. But the condition of the State has greatly changed. A very different state of affairs exists now. The wants, relations, interest, and character of the people, have changed. What was proper, convenient, and wise then, is now, under very different circumstances, improper inconvenient, and unwise. He would have described those changes, and shown wherein these courts, which were primarily valuable, were now incompatible with the public welfare.

2. Mr. W. would have pointed out the difference in the operation of the system in the Eastern and Western sections of the State. In the former, the County Courts are usually composed of gentlemen of leizure, who realize no inconvenience from bestowing all the time necessary to hold these courts. In the latter, the men best qualified to discharge the duties, are those who are most actively and personally engaged in the various pursuits of life, who will not, and cannot, neglect the constant and pressing demands of private business, to attend to public duties.

ELECTION OF JUDGES BY THE PEOPLE.

In Committee of the whole, June 20, 1851.

A provision had been adopted, that "*the State shall be divided into five sections;*" and it was further proposed, that "*for each of the said sections a Judge* (of the Court of Appeals) *shall be elected by the joint vote of both houses of the General Assembly.*"

Mr. Hoge, of Montgomery, moved to strike out the words, "*joint vote of both houses of the General Assembly,*" and insert, instead thereof, these words—"*by the qualified voters therein.*" Mr. Barbour, of Culpeper, moved to amend still further, so that *three* of the aforesaid sections should lie wholly *East* of the Alleghany mountains, and *two* wholly *West* thereof. Pending this amendment—

Mr. WILLEY said: I am sensible that I am exposing myself, to some extent, to the charge of presumption, by soliciting the attention of the committee to a subject like this. But the very importance of the subject, in which my constituents are as deeply interested as those of any other gentleman on this floor, constitutes my apology for an effort to express their views in relation to it.

The immediate question before the committee does not seem to me to require much discussion: nor have gentlemen confined themselves to the consideration of it; but they have spoken at large upon the main question. If the discussion had been confined to the question immediately pending, I should not have deemed it necessary to say a word in reply.

I will merely remark, in regard to the pending proposition, that I cannot vote for it, for several reasons. It would still perpetuate, to some extent, those sectional distinctions betwixt the different parts of the commonwealth which have hitherto kept the people of Virginia a divided and distracted people; and I wish to see all such sectional divisions, which have been the source of most of our jealousies and bickerings, forever and entirely obliterated—so that we may, henceforth, be a united and harmonious community. Besides, the proposition of the gentleman from Culpeper, (Mr. Barbour,) if carried into effect, would lead to an unequal and unjust distribution of population and territory amongst the sections. It would give the Trans-Alleghany division two entire sections; whereas it is only entitled to one, and a large fraction.

As to the objection urged by the gentleman from Fauquier, (Mr. Scott,) on yesterday, against the appointment of the Judges of the Court of Appeals in sections, I do not think there is much in it. He said that it might be difficult to find, in some of the sections, gentlemen of legal acquirements, qualifications and abilities commensurate with the duties of the Bench, in the Court of Appeals. I think he underrates the Virginia Bar. Speaking for my own section of the State, I can assure the gentleman from Fauquier, that there will be no difficulty in this respect. One of the gentlemen now occupying the Bench of the Court of Appeals (second to none of his brethren) acquired that learning and legal reputation, which elevated him to the place he now adorns so well, at the Bar in the Northwest. And allow me to say, sir, with satisfaction and pride, that the gentleman who presides in the Circuit Court of the county of my own residence, whether you regard his profound legal learning, sound, discriminating judgment, conscientious appreciation of the duties of his station, industry and patience of

investigation; and, above all, his high and unsullied integrity of character as a man, has no superior, either in the Court of Appeals or in the General Court of Virginia. I allude to the Hon. JOSEPH L. FRY. I cannot suppose that either of the five sections contemplated, would not be able to furnish legal abilities competent to perform the offices of a Judge in the Court of Appeals.

But, apart from this incidental consideration, allow me, most respectfully, to direct the attention of the committee, for a very few moments, to one or two observations in regard to the main question. We are admonished in our Bill of Rights, that one of the surest guaranties of the blessing of liberty and free government is "a frequent recurrence to fundamental principles." And, sir, it does seem to me, if I may be allowed to say so, that the fundamental principles involved in this question have been very slightly and superficially discussed—nay, they have been hardly referred to. This is not only a question as to how the Judiciary department of the government shall be organized, but it includes, likewise, grave considerations affecting the Legislative department of the government. It involves the proper balance of powers, to be observed by the Constitution in the construction of the Legislative and Judiciary departments of the government of the State. The original proposition gives the power of appointing the Judges to the General Assembly; the amendment proposes to confer this authority upon the people, or, rather, it reserves it to the people. The exercise of an important power by the Legislature is to be considered, as well in relation to the effects and operation of the exercise of such authority on the Legislature itself, as on the Judiciary created by it.

Now, sir, I am aware, that in the organization of the different departments of the government, it is not wholly practicable to keep them entirely distinct and separate. On the other hand, however, I am afraid that there is usually more connection between the Legislature and Judiciary especially than can be justified by any principle of expediency or propriety.

My friend from Loudoun, (Mr. Carter,) who last addressed the committee, asks why we do not fortify ourselves by the authority and the experience of the past. He asks why the friends of the popular election of the Judiciary do not vindicate their position by the authority of the sages and patriots who established our American governments, as we are wont to do in respect of other reforms. Scouting the authority of Montesquieu, referred to, the other day, by the gentleman from Montgomery, (Mr. Hoge,) he asks why the opinions of Madison, Jefferson, and others of our illustrious countrymen, are not relied upon. I feel disposed to accommodate the gentleman from Loudoun. I will refer him to the authority he mentions; and on that authority I will claim his vote to aid me in so organizing the departments of government as that they shall be distinct in their offices, and be prevented from encroaching on the proper province of each other.

Mr. Madison, in one of his articles in the *Federalist*, lays down this principle—that "the accumulation of all powers, legislative, executive and judiciary, in the same hands, whether of one, a few, or many, and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny." And I suppose that the blending of any two of these, or any part of any two of them, in the same hands, would so far be an infraction of the principle of a well-balanced government.

Mr. Jefferson, too, whom the gentleman from Loudoun allows to be entitled to some consideration, uses language very similar to that of Mr.

Madison. He says, that "the concentrating the legislative, executive and judiciary departments in the same hands, is precisely the definition of despotic government." The gentleman from Montgomery might have found authority in Montesquieu more pertinent to his purpose than the passage which he quoted from that author on yesterday. Montesquieu, who, although repudidiated by the gentleman from Loudoun, was consulted, no doubt, by Madison and Jefferson, says, that "were the power of judging joined with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the judge would then be the legislator. Were it joined to the executive power, the judge might behave with all the violence of an oppressor." Now, sir, in proportion as you blend legislative, executive or judiciary functions in the same officer, or give one of the departments influence over the other, by the power of appointment or otherwise, in the same proportion you violate the fundamental principle of free government, and endanger the existence of liberty.

But, sir, the principal consideration to which I have risen to direct the attention of the committee is this: It must be obvious to every one, who has examined or reflected upon the subject, that of the three departments of government, the legislative department is the strongest. Its natural tendency is to absorb the province and functions of the other departments. To this fact, universal history, and especially the history of Virginia, bears conclusive testimony. It creates and controls the finances of the State; and if it do not wield the sword, it controls the arm which does, because it regulates all supplies. It is usually the dispenser of honors. It enacts and repeals, at pleasure, the laws to regulate the conduct, civil, political and personal, of the citizen; and thus its influence must be overshadowing. Therefore, the legislative power should be guarded with jealousy; and the other branches of the government carefully fortified against encroachments or undue influence by the legislature. If, sir, I had time, I might successfully appeal to the pages of man's political history in every age of the world, teeming with thousands of admonitory lessons, to justify me in lifting up a warning voice against the danger of legislative encroachment.

On the other hand, the Judiciary is the weakest of the three departments of government. My friend from Loudoun (Mr. Carter) will not allow that Montesquieu is good authority. He says he was a Frenchman, and knew little of the theory of free government. Nevertheless, I think he was correct when he declared, that "the Judiciary is next to nothing," as compared with the power of the other departments. But let me refer my friend to American authority—authority which he, which all, must revere. If my friend has read the Federalist, as every lawyer and statesman ought to do, he will remember that Mr. Hamilton says of the Judiciary, that "It may be said to have neither *force* nor *will*, but merely judgment, and must ultimately depend upon the aid of the executive arm for the efficacious exercise of even this faculty."

It follows, therefore, that the Judiciary department, in order to maintain its integrity and independence, should be carefully and jealously secured against all improper influences, and especially against legislative influence. It should be surrounded with all the barriers possible and proper to protect it from the natural tendency of the legislature to encroach upon its distinct and peculiar sphere of action. Now, I submit to the committee, whether the freedom and independent action of the Judiciary can be maintained whilst the power of appointing the Judges is placed in the

hands of the Legislature? I know the answer which will be given to this interrogatory. The distinguished gentleman from Loudoun (Mr. Janney) has already alluded to it. It will be said that a fixed salary, and the fifteen years' term of office, will secure the independence of the Judges, and place them beyond all legislative influence. But, apart from the gratitude, and those feelings of obligation naturally inspired by benefits conferred, there are other considerations which would have a tendency to bias the mind and color the conduct of the Judge towards his legislative creator. What have we already done, in our action on the report of the committee on the Legislative department? Whom have we constituted as the tribunal, before whom Judges are to be impeached? The Legislature. It is to be the court of impeachment. It is to pass upon all prosecutions for judicial malfeasance.

There is an incongruity in thus making the same body both the lawgiver, the judge, and the prosecutor of its own offspring. The natural parent is wont to conceal the defects and delinquencies of his own child, both from motives of commiseration for the offender, and from a desire to prevent his own disgrace. May not the Legislature be actuated by a similar lenity towards its own appointee, from a similar desire to conceal its own impropriety in having made a bad appointment? And again—in a conflict between the Judiciary and the Legislature, which would most likely triumph? Suppose a corrupt Legislature, finding some constitutional restriction in the way of some ambitious project, were to violate it—suppose an ambitious western majority were to infringe upon those wholesome restrictions and guaranties which I hope to see incorporated in the Constitution, and oppress the east by onerous taxation, or interfere with your "peculiar institution," or encroach upon the Constitution in any other respect, would such a Legislature, thus determined, and thus clothed with the power of re-appointment, and with the power of impeachment, exercise no influence over the Court of Appeals, who stood in the way of such encroachments? And suppose the Judges resisted all such influence, and maintained their integrity, how easy would it be for such a Legislature to construe the faithful decisions of the upright Judge to be the results of corruption, eject him from his office, and substitute in his place some pliant tool of power, who, for the spoils of office, would sanction any legislative tyranny! And since gentlemen have invoked authority for the popular election of the Judiciary, I beg to refer them to a very eloquent and able argument of Mr. Hoffman, made in the late New-York Convention. Mr. H. declares that "you cannot get Judges to maintain the constitution against power without their election;" that Judges appointed by legislative or executive authority cannot "resist the encroachments of power and maintain the constitution;" that they cannot do this "unless supported by election from the constituent body." And as my friend from Loudoun (Mr. Carter) seems to place great reliance upon the authority of Mr. Madison, I hope he will allow me to commend to his serious consideration the opinion of that great man expressed, I think, in the 51st number of the Federalist. Mr. Madison there asserts that—"In order to lay a due foundation for that separate and distinct exercise of the different powers of government, which, to a certain extent, is admitted on all hands to be essential to the preservation of liberty, it is evident that each department should *have a will of its own*, and, consequently, should be so constituted, that the members of each should have *as little agency*

as possible in the appointment of the members of the other." There, sir! is the authority of Mr. Madison.

Not only, therefore, to preserve the proper independence of the judiciary department, would I deprecate its appointment by the legislative body, but also to limit the aggressive tendencies of the Legislature, and confine its powers and operations within such boundaries as shall prevent it from absorbing the other departments of government, and destroying liberty itself:—not merely because legislative appointment would render the bench too weak, but because it would make the Legislature too strong.

I am aware, Mr. Chairman, that in the present state of human imperfection, it is not altogether practicable to allow abstract principles to have, in all cases, a literal application. But then we should approach as nearly thereto as circumstances will permit. We ought, at least, to keep pace with the progressive improvement of the age, in the application of the abstract principles of government. Nay, we should plant our standard a little in advance of the times, that we may elevate society to it. I will announce, with the leave of the committee, two or three abstract propositions, which I think ought to have some influence in the formation of our organic laws. The first one is, that "*The people are capable of self-government.*" Who will rise on this floor and say the people are not capable of self-government? Yet, what is the use of a recognition of the principle, if it is to have no application? Why may not this principle apply as well in the selection of a Judiciary as in the selection of a Legislature? in the choice of the officer who is to expound the law, as well as in the choice of the officer who is to make the law? Why, sir! the brightest page of the world's history contains an irrefutable record of the practical verity of this great popular principle, grateful to the pride of every true American heart, and consoling to the hopes and sympathies of every lover of his race.

I will announce another, or rather the same, truth in other words—"*all power is derived from the people, and magistrates are the servants of the people, and are amenable to them.*" Now, why shall not this maxim, recognized in our Bill of Rights,—a maxim which we have solemnly ratified by the decision of the committee the other day, and which, without a dissenting voice, we determined shall remain as a part of our declaration of rights, and as such, a part of the new constitution—why, I say, shall this maxim not have a practical application in the organization of the judiciary, as well as in the executive and legislative branches of the government? Magistrates are the *servants of the people!*—and the *people* are the *source* of *all* power! If we are not to apply this principle, where is the utility of recognizing it? Why not expunge it from the Bill of Rights?

The application of this great principle was resisted strenuously in the origin of our American governments even when confined to the constitution of the executive and legislative departments of the government. Kings and tyrants, and titled nobility, exclaimed against it. Nay, even some of our revolutionary fathers doubted the success of the experiment. But what has been the result? Look around you and see. I ask the opponents of the popular election of the Judges of the Supreme Court of Appeals, to look around upon the glorious results of this first principle in the republican creed. I ask my distinguished friends from Loudoun, who have been calling so loudly for authority, to open their eyes, and behold authority which their own hearts must acknowledge with pride, everywhere writ-

ten on the face of this great country. It was the application of this great popular principle in the organization of our executive and legislative departments of state, which has covered this broad land with the most intelligent, prosperous and happy people that ever dwelt on the face of the earth. Where are morals purer, religion more revered, justice held more sacred, and all the rights of man more secure, than here under the protection of this principle? It has covered every sea with commerce. It has furnished some of the brightest chapters in the annals of science, and some of the greatest names on the pages of history. And this day its moral effects are felt and feared by every monarchist and despot in the civilized world. It is shaking the throne, and relaxing the grasp of the tyrant; infusing hope and vigor into the bosoms of oppressed nations; and dissolving the fetters of political bondage wherever the American name has been heralded. I cherish the principle. I glory in it. Why shall not the same principle operate in the judiciary of the country? If the people, under its practical operation, have accomplished so much through their agency in the other departments of the government, why may they not be intrusted with a similar agency and participation in the selection of the judiciary?

But I desire to repeat this principle in a still different form of expression, and with more direct reference to that application of it which I propose to make. And if my friends from Loudoun are satisfied with American authority, I will now draw from a foreign source—even from the apologist and defender of monarchy. Sir William Blackstone lays down this principle—"that the original power of judicature, by the fundamental principles of society, is lodged in the society at large." This, Mr. Chairman! is the language of a British Knight and a monarchist. I commend it to the opponents of the election of Judges by the people. I invoke the attention of the gentleman from Fluvanna, (Mr. Cocke,) to whose able speech I have just listened with pleasure, and, influenced by which, I was mainly induced to rise in reply. This was an acknowledgment which even Sir William Blackstone could not refrain from making. But then Blackstone was a British subject, and a defender of the British constitution, and, therefore, he denied the practicability of applying the principle literally, because he held that the people were incapable of exercising this right which naturally belonged to them—that the people were incapable of self-government. Do gentlemen here excuse themselves upon the same plea? Looking to the condition of English society, when Blackstone wrote, we may find some reason for his opinion. I doubt if he would concur with the opponents of the popular election of the judiciary, if he were now a citizen of Virginia. I do not think he would have been so far behind the spirit of the age.

But, sir, I am encroaching much longer upon the attention of the committee than I intended. The kind attention of the committee has seduced me; but I will requite it by hastening to a conclusion with a very few further remarks.

I can see no *practical* reason why the election of the Judges of the Supreme Court of Appeals should not be submitted to the qualified voters. Now, sir, there are two leading elements entering into the qualification necessary for the judicious election of a Judge. The first is intelligence of mind, the second is integrity of purpose—intelligence to perceive and determine who is the most competent to discharge judicial duties, and integrity of purpose to enforce the choice of the mind thus enlightened. The

question is not, whether the people may never be deceived, or whether they may not sometimes be influenced by unworthy motives and passions. But the true practical issue involved is—will they not generally make wiser and better selections, than the Legislature? In the first place, it is to be considered that it is certainly the interest of the people to have pure and competent Judges; for their safety of life, liberty, and estate, is indissolubly connected with an enlightened and righteous administration of the laws. They would, therefore, not be callous or indifferent about a matter of so much importance. Self-interest, moreover, is sharp-sighted, and jealous of wrong. It prompts caution and vigilance.

I know, sir! that it ought to be admitted that the legislative body should possess greater intelligence than the constituent body. But it must likewise be admitted that the people within the limits of a judicial section, embracing a little more than twice the territory of a congressional district, must have better opportunities of becoming acquainted with the qualifications of the legal gentlemen residing in the section, than the members of the General Assembly, coming from remote quarters of the State. What, I ask, do nine-tenths of the members of our Legislature know of the personal character and official qualifications of nine-tenths of their appointees? Very little—nothing. They take them upon trust—upon the recommendation of personal friends and interested partizans. It would not be so with the people in their judicial sections. An extensive practice would bring the leading lawyers of each section into personal acquaintance with a majority of the counties embraced; and their legal reputation would be known and appreciated. And thus, in the selection of a Judge, the people would be guided by a sound discretion, founded on personal observation and well established reputation.

In relation to the comparative integrity and honesty of purpose of the people as the selecting agency, I have but little to say; for little need be said. They may be deceived. They may err in judgment; and they may, sometimes, take counsel of their passions and prejudices, rather than of their hearts and judgments. But their intentions are usually honest and patriotic. It is not always so with legislative bodies. They are often actuated by sinister motives, by ambitious views, and by selfish considerations. We shall have nothing to fear from the popular intention.

It is alleged, however, that if the Judges shall be elected by the people, such elections would assume a political character, and the bench would be filled by political partizans, irrespective of personal worth or official capacity. It has been urged here to-day that all such elections would be made in pursuance of caucus nomination, managed by party trickery, and that the people would be precluded from the exercise of their honest and independent judgment. This would, indeed, be a deplorable evil; and it will probably be expecting too much to suppose that party spirit would never enter into judicial elections by the people. But I would fain hope, that the pictures of gentlemen are too deeply colored—I would fain hope that the people, in the exercise of this high prerogative, involving all that is dear to them, the security of their firesides, the protection and enjoyment of life and property, will not submit to the behests of pot-house politicians, or undue party excitement; but that they will rise to the true dignity of freemen, and, from their farms and their stores and their shops, speak out, coolly and calmly, the enlightened decisions of their own judgment—that they will do, in the elections of Judges, as they did, to a great extent, in

the election of this body, sink the prejudices and passions of the mere partizan, in a patriotic desire to promote justice and secure the welfare of society. I speak of the true people. There will be exceptions, whilst there are demagogues; and there will be demagogues so long as there are a free people and a popular government. But I shall rely with confidence, in a case like this, upon the wisdom and integrity of the great mass of the people.

But what of legislative appointments in this respect? Does party spirit never enter into them? Is our Legislature so immaculate as to be above party influence and excitement? Does it never select a Judge with reference to party predilections? When, in recent times, did our Legislature appoint a Judge, uninfluenced by political considerations, looking only to merit and fitness for the office? Talk about caucusses amongst the people, and party machinery! as if such things never entered the sacred precincts of the Legislature! Why, sir! I may safely appeal to your experience, and distinguished participation in the legislative history of the State of Virginia, to justify me in saying that our Judges as well as all other important officers have been, almost without exception, for many years past, appointed by the political majority predominant at the time of appointment—nay, sir! controlled and effected, not unfrequently by the caucus tactics and log-rolling trickery of the impracticable fag end of the predominant party. And yet, sir! gentlemen are for retaining the power of judicial appointment in the Legislature, to avoid partizan and political appointments. To avoid the operation of political influences in the selection of the Judge, they propose to take the power of selecting him from the honest, unbiased, calm people, and confer it upon professed party politicians! Such logic is, to my mind, inexplicable. It is condemned and falsified by reason and experience.

There are some very obvious considerations, respecting the competency of the people to make discreet elections of Judges, which seem to have escaped the attention of gentlemen. If the people are capable of voting for a Governor of the whole State—if they are fit to be invested with the power of selecting their representative in the Congress of the United States—if they can look over this wide confederacy and designate the man who is worthy to assume the reins of government as chief magistrate of this great nation,—why may they not be safely trusted with the privilege of electing and selecting a Judge of our Supreme Court of Appeals, from an extent of territory not greater than one-fifth of the whole State? It seems to me, moreover, that it is a solecism to deny that the people have capacity to select an officer, and yet allow them the capacity to select an agent who *can* perform that duty properly. It appears to me that they can as well select the Judge himself, as they can the person who shall select the Judge for them.

Entertaining these views in relation to the right, and the capacity of the people, to appoint their own Judges, I hope the amendment of the gentleman from Montgomery will prevail. I yield to no man on this floor, or elsewhere, in my high appreciation of a pure, enlightened, impartial, and independent judiciary. The peace of society, the welfare of the commonwealth, the security of life, liberty and honor, depend upon the character of our courts. The punishment of crime, the vindication of innocence, the dowry of the widow, the home of the orphan, and it would not be an unwarrantable appropriation of the language of holy writ to say, that "what-

soever is pure, whatsoever is true, whatsoever is just, whatsoever is lovely, and of good report,"—all, all, depend, to a vast extent, upon the wisdom and virtue of the judiciary. With such a sense of the importance of the question before the committee, and after mature deliberation, prompted by a sincere desire to arrive at a correct decision, I believe that the public welfare, and individual interests, would be best promoted and secured by the popular election of the Judges—especially the Judges of the Supreme Court of Appeals.