

make them in any sense, independent of the people.

Now, if you wish to engraft this theory of an independent judiciary upon our Constitution, that they are to be above the people, and independent of the people, you do that which does not exist even as a theory in England, much less in any of our American Constitutions, in our American common law, or in any theory of law or government to be found on this side of the Atlantic. I wish never to see the day, when the American judiciary is made to derive its power from any other source than the will of the people. I never wish to see a judiciary in this sense, independent of the people.

Sir, "there is no such word in our vocabulary," there never was, and I pray to God there never may be. I wish to see them independent of corrupt motives, of improper influences, of partisan feelings— independent of any thing and every thing that is base, and dishonorable. I can understand this meaning of the term independent. In no other sense am I willing to apply it to an American judiciary.

I want to make the judges independent, but not independent of the people, not independent of that wholesome restraint and moral sense which belongs to public opinion, and ever will belong to it. He who wants to make them independent of that, is no republican, in my judgment, and never can be. You may as well attempt to change the Leopard's spots, or the Ethiopian's skin, as to convert such a man into a republican statesman.

Let the judges be elected by the people, and my word for it, you throw them before an ordeal through which alone upright and honest men can pass. There will be no trickery, no resort to artifices, no appeals to political combinations.

They will be apt to elect men who have had among them and we know only by their elevated character, and by their straight-forward course through life—men in whose opinions the people have confidence, in whose judgments they rely and to whose uniform course of conduct throughout life, they are willing to trust their lives, their fortunes and their destinies. Give me a system by which the people will be allowed to vote for such men, and I will show you a system of judicature that will promote the good and happiness of the people.

Mr. President—I have said now more than I intended to say in this stage of the discussion. If I were to undertake to go through the details of this bill, I should inflict a speech upon this Convention of too great length. I do not mean to do so. The great battle to be fought here, in the first instance, is between those who are the friends of an elective judiciary, and those who are its opponents. That question is raised in the section now under consideration. When we shall have discharged our duties in this respect, when we shall have engrafted that important feature of reform upon this report, it will be time enough, I think, to look to more wholesome measures of detail.

In regard to the tenure of office, a question arises, upon which there may be and will be a great diversity of opinion. If I held the theory that in establishing a judicial system, we should pay more regard to the independence of the judges, than to any thing else, I should still hold that the mere mode of appointment was a matter irrelevant to the question. Sir, the mode of appointment has no more to do with the independence of the judiciary than light has to do with darkness, or virtue with vice. It is not the mode of appointment, but the tenure of the office, which constitutes an independent judiciary. If after their appointment the judges are placed beyond the reach of sudden, violent, or capricious removals, their independence of all corrupting influences from the appointing power is effectually secured, and the mere mode of appointment degenerates into a matter of secondary consideration. When the judges in England held their appointments at the pleasure of the crown, they were liable to be removed from office at the will of the King, and were, therefore, dependant upon his caprice. They consequently became the corrupt and venal instruments of the crown. But when the tenure of their offices was secured to them during good behavior, notwithstanding the appointing power remained the same, they became independent of all control or influence from that quarter. So it will be here. Let the term of office be long enough to place the judges beyond the influences of popular caprice, and their independence will be as effectually secured when elected by the people, as if they were appointed in any other mode. Now, I am free to admit, in securing to the people this right of appointing their own officers, that in the selection of judges, the elections ought to be at long intervals. I think it would be wise; indeed necessary, to make the tenure of office long enough to place the judges in the discharge of their duties, beyond the influences of a vicious public sentiment, or a capricious popular commotion.— But I think this may be done as well by a tenure for a term of years as by a tenure for life. The argument which asserts that nothing short of a life tenure will secure an independent and upright judiciary, assumes the very proposition in dispute, and does not seem to me, sir, to be founded upon a correct knowledge of the principles of human nature, or to be sustained by any well considered theory of reason.

If the independence of a judge consists in his security against the arbitrary and capricious will of the appointing power—his freedom from all apprehensions of sudden and violent removal from office, whenever this capricious will, this arbitrary power of removal is limited, and cannot be exerted against the judge, during the continuance of his term of office, it follows that, for the time being at least, he is as far removed from such influences, as if he held his office by the life tenure. I hold this to be clear and incontrovertible. The true question directs itself, not so much to the extent or duration of the tenure, as it does to the nature and charac-