

its application, as if he were a Governor in the chair of State, or the man whom the people most delighted to honor. Sir, in a case like this, the judge is called upon to decide; and he cannot decline. How is a just and impartial decision to be ensured? Let us not be told, he is bound to do right. We are all bound to do right, but we all fail in some things; fallibility, a liability to do wrong, is the characteristic of our being; and by nothing are we more likely to be deceived, than by our fears and our hopes, our interests and our wants. Seeing this, we are bound to use all the means we have, to guard against the effect of temptation. What I desire to impress upon the mind of the Convention, is the fact, that we must by our provision *strengthen* on the one hand, or *weaken* on the other, the motive of the judge. If we protect him against the influence of the powerful antagonist, we silence his *fears*, if we place him beyond the reach of *favor* we disarm him of his *hopes*. If, on the contrary, we leave him in a condition which exposes him to the effects of that man's power and influence, for advantage or for loss, above all, for subsistence and reputation; you stimulate every motive which can disturb the honest and impartial action of his mind. You do this, by the force of all the circumstances acting directly on the hopes and fears of the officer; and you do it to a further extent by increasing to a higher degree, the ability to do mischief, on the part of the influential litigant. The man who knows that his efforts to destroy the official character and being of the judge, will be utterly hopeless, does not make them with the same earnestness and zeal, as if he knew they would be effectual to accomplish his object.

But bad as may be the case arising from prejudices against the judge; there is another still worse. Some man has encountered the bitter prejudice of a community, justly it may be, or otherwise. Such instances are familiar to us all. We have known cases in which this feeling has been wrought up to such determined purpose, that the bolts and bars of the prison could not resist the determined attack of the crowd, resolved upon vengeance. We have heard of Lynch law, and every sort of law, which can designate a popular outbreak. We have witnessed enough to teach us that such popular fury sweeps every thing before it, as regardless of opposition from every element in the moral world, as the tempest in the natural. Yet popular prejudice against an individual, does not forfeit his claim to the benefits of the law.

The judge may desire to avoid the interposition on his behalf, but is not at liberty as others are; he *must* act, and cannot disregard the appeal of the vilest or the most persecuted. His interposition may delay, and finally defeat, the purposes of the excited crowd, assemblage, or mob. If he opposes it, he of course offends it. Is he to yield? If so, the law is prostrated in the person of its minister; and an innocent man sacrificed. And now, sir, what can you in such a case expect from your judge "dependant upon the people?"

Will he as fearlessly, as firmly resist this torrent, this avalanche of feeling on the part of those upon whose favor, he relies for his bread, his official being, and reputation, as if he knew they could not affect him in any of these respects? Nay—not as firmly—but will he confront and resist it at all? Is he independent in any sense, that enables him to do his duty, as we require him to do it, and as he ought to do it,—“*without fear, favor, or affection?*” He must be more than man to be altogether free from such influences. But, admitting the judge will not “do right,” it is still said, “the people will do right!”—“there is no danger in trusting the people.” I reply, sir, that both history and philosophy contradict this. The people consist of individuals, each of whom is subject to the same passions, the same prejudices, the same motives of action. The mass, composed of such elements, must have the same character. My experience is, that the collection of men in masses, lessens materially, if it does not destroy, the sense of responsibility. It is a truth we have all been taught by observation, as well as by history. It must be so from the mere fact that each, to a certain degree, escapes from the influence of one very strong motive to do right; he does not stand out before the public as the object of their notice, but is protected to the extent of the combined credit of all the party. But let us go further. Men everywhere act alike, under like circumstances. Our people are like each other, and we are like other people, whenever the circumstances and conditions of being, the motives and influences are the same. Sir, I find from a newspaper received a day or two since, that the people of a large city in Pennsylvania, containing about 80,000 inhabitants, had elected as their Mayor a very unfit man, that he had been regularly tried before a court and jury, and convicted of riot, which is a gross crime; and when after this he harangued the people, they cheered him loudly and avowed their determination to elect him to Congress. Now, they are just such people as we are, as intelligent, as patriotic and as submissive to law and order; as much so as we would be, if similarly excited. They labor under temporary mania; prejudice and passion cloud, if they do not blind, their judgment. And who, I ask, is free from those influences? Is there one who hears me who can say, he has not been the victim of excited passion? No, sir, there never has been on earth, but one man; and He was more than a man. There never will be a *other*.

Again:—it is said, that, heretofore the judge has been appointed from political considerations; and I admit that this, or any other argument, which is intended to show the defects of the present system, or mode of appointment, is worthy of consideration. If that mode which the people, in the exercise of their proper sovereignty have prescribed, does not accomplish its object, it is a fair argument for a change. But it must be perfectly clear, that the objection applies merely to the *mode* of appointment; and that, as I have constantly maintained, is a secondary consideration. It does not touch the great and important question which I have endeavored to discuss, that of