

THE COLUMBIA DEMOCRAT.

I have sworn upon the Altar of God, eternal hostility to every form of Tyranny over the Mind of Man.—Thomas Jefferson.

PRINTED AND PUBLISHED BY H. WEBB.

Volume III.

BLOOMSBURG, COLUMBIA COUNTY, PA. SATURDAY, FEBRUARY 1, 1840.

Number 40.

OFFICE OF THE DEMOCRAT,
OPPOSITE ST. PAUL'S CHURCH, MAIN-ST.

TERMS:

The COLUMBIA DEMOCRAT will be published every Saturday morning, at TWO DOLLARS per annum, payable half yearly in advance, or Two Dollars Fifty Cents, if not paid within the year.

No subscription will be taken for a shorter period than six months; nor any discontinuance permitted, until all arrearages are discharged.

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MESSAGE

From the Governor of Pennsylvania, to both houses of the legislature, at the commencement, of the session, January, 1840.

(Concluded.)

Since the executive department of the government has been committed to my hands, all vacancies which have occurred in the offices of associate judges, except during the recess of the senate, have been filled by commission to expire when those of their predecessors would have expired, under the amended constitution. This, I apprehend, is the precise meaning and intent of the constitution, otherwise the classification directed by that instrument, could be broken up and defeated, at the will and pleasure of the executive.

The only office remaining in Pennsylvania, in which the tenure is limited by good behavior alone, is that of notary public, authorized by the act of assembly, passed 5th March, 1791. As all offices of that tenure, provided for in the constitution of 1790, have been abolished by the adoption of the amendments to that instrument, a regard to consistency would seem to require that there should be no statutory office, of an ultimate duration, as to tenure. The number in each county, except Philadelphia, being limited by the provision of the act, to three, and some of the number being now superannuated, or otherwise incapable of discharging the duties of the office; and towns and villages having sprung up, requiring frequently the services of a notary public, where appointments cannot be made without exceeding the number limited to the county, legislative action on the subject appears to be necessary.

On the 16th day of June, 1836, an act was passed, entitled "An act to fix the number of senators and representatives, and form the state into districts, in pursuance of the provisions of the constitution," which provided for the election of thirty-three senators in twenty-three districts, into which that act divided the state. The whole number of taxables in the state, as returned to the secretary of the commonwealth, was, 309,421—which, fixing the representatives at one hundred, and the senators at thirty-three, would entitle 3,094 taxables to a representative, and 9,276 to a senator. There have been uniformly great complaints of the inequality of representation under this law, both as to the senators and representatives, and in regard to the latter, there was a positive violation of the constitution of the commonwealth. By the 4th section of the 1st article of the constitution of 1790, which remains unaltered, it is provided that the appointment shall be made "among the city of Philadelphia, and the several counties, according to the number of taxable inhabitants in each," and that "each county shall have at least one representative, but no county hereafter erected shall be entitled to a separate representation, until a sufficient number of taxable inhabitants shall be contained within it, to entitle them to a separate representation, agreeably to the ratio which shall then be established." Agreeably to the return made, as aforesaid, the number of taxable inhabitants were, in the

county of Bedford, 4,712—in Bradford 4,721—in Columbia 4,818—yet to the first named county, having the smallest number of taxables, two members were given, while to each of the last named counties, having a larger number of taxables, but one member is allowed; and the same palpable and unwarrantable violation of the constitution characterize many of the other appointments made by said act. Nor is this all,—the county of Mifflin was in existence as a county, when the constitution of 1790 was adopted, and was entitled to a representative in the legislature, which, by this act, was not allowed to her; but she and Juniata county, which had formed part of her territory, are coupled in a district with the county of Union. It is therefore respectfully submitted, that a due regard to the provisions of the constitution, and the rights of the people, imperiously require the enactment of a law for a new apportionment of the representatives and senators, according to the number of taxable inhabitants.

In Pennsylvania it has often been a source of complaint that the decisions of our supreme court are not reported by a regularly appointed reporter. It may be worthy of inquiry whether some provision ought not to be made by law for regulating the manner of reporting those decisions, by an officer who shall be responsible to the commonwealth, for the manner in which the work shall be performed.

The number of cases taken up on writs of error, and be appeal from the inferior courts to the supreme court, has greatly increased of late years. An inquiry into the causes which have induced this increase, as well as what means had better be adopted to enable the court in the last resort to decide with due care and deliberation, all the cases of sufficient importance to be brought before them, may be productive of much good to the administration of justice.

There are some parts of our system of administering justice, which will perhaps require legislative action, in order to correct evils existing in practice, and daily felt by suitors and others interested in their proceedings.

The present organization of the courts in the city and county of Philadelphia, does not seem to answer the purposes intended. The vast increase of business thrown on the courts of civil jurisdiction by the act of 14th April, 1834, giving them almost unlimited equity powers as the courts of chancery elsewhere possess, as well as the increase growing out of the augmented population and business of that city and its adjoining districts have overloaded their dockets with causes, which the judges by their utmost industry cannot keep down. So nothing should be done to prevent the delay now experienced by suitors in those courts, and what the corrective should be, is submitted to the legislature.

The court of criminal sessions of the city and county of Philadelphia, also, requires that legislative attention should be called to it. It possesses, now, an anomalous character, and only exercises a part of the criminal jurisdiction of that city and county. The whole criminal jurisdiction could, perhaps, be better vested in the court of oyer and terminer and general jail-delivery, and court of quarter sessions of the peace; and a court of civil jurisdiction created for the purpose, could exercise all the powers now exercised by the court of common pleas, and perhaps dispose of part of the business which now accumulates in the district court. Such a course, by a better distribution of the duties of the court, would add nothing to the present expense, and would probably correct the evils and unnecessary expenses, now incurred by a defective organization and arrangement.

There is however another subject to which I beg leave especially to call your attention. In certain counties in Pennsylvania, attempts have been made to tamper with the jury box, and give a political aspect to the selection of persons for jurors. This is an evil which should not for a moment be tolerated. The trial by jury is one of the invaluable rights of freemen, and

the attempt to give a party character to the selection of jurors, unless promptly checked, will ultimately destroy all confidence in the tribunal. Let provision be made by law to preclude the possibility of encroachment on this most wise and venerable of all human and social institutions, and protect this long boasted bulwark of liberty from prostitution to the basest purposes.—One of the causes specially assigned for our "Declaration of Independence," was the "depriving us of the right of trial by jury." Vain indeed have been the efforts of the sages of the Revolution to restore this invaluable right, if we silently look on and permit it thus to be wrested from us.—Every state in the Union has emphatically engrained on her constitution "that the trial by jury shall be preserved forever inviolate." No one is safe in his life, his liberty, or his property in this state of things. I therefore respectfully recommend, that it be made the duty of the judges of the courts of common pleas, or some two of them, and the sheriff annually to select the jurors in open court, and that the drawing of the same from time to time, shall be by them also done in open court; or that such other provision be made by law, as you in your wisdom shall think best, to restore public confidence to the exercise of this venerable and dearly cherished right, and to preserve the purity of the trial by jury from suspicion.

There are many instances in which the laws relative to collateral inheritance have not been observed, and in which the payment of considerable sums of money, rightfully belonging to the state, is evaded. It is, therefore, respectfully suggested to the registers of wills be enjoined by law, to enquire of all executors and administrators on oath at the time of granting letters, whether the estate of their testator or intestate will be, in their opinion, the subject of the laws relative to collateral inheritances, and that the register give notice of all such to the attorney general, or his deputy, whose duty it shall be to make a record thereof, and enforce the collection, from time to time, and of the moneys arising therefrom.

The militia of the commonwealth are enrolled as required by law, with the exception of some portions of the state, in which difficulties exist in procuring officers to perform that duty. The militia system is a tax to a considerable amount upon the state treasury, which might be considerably lessened if the adjutant general were charged with the duty personally superintending the system in its details, and properly compensated therefor. Legislative attention is requested to this subject. The due enrolment, officering and classification of the militia, should be continued, and encouragement held out to volunteers, and the days of militia trainings might be advantageously reduced to one in the year.

Nothing has occurred, since the meeting of the last legislature, to disturb or affect the relations of Pennsylvania as a member of the Union. The government of the United States has continued to be administered by the wise and distinguished statesman at his head, with his accustomed ability and fidelity. In the high and responsible position which he occupies, he has fully justified the best hopes of our citizens by whose free suffrages he has been elevated to the station which he so well fills.

By the act entitled "an act relating to the elections of this commonwealth," approved 2d July last, no provision appears to have been made for the election of a senator to represent this state, in the senate of the United States; at any other time than on the second Tuesday in January, next preceding the expiration of the constitutional term of a senator, unless informed by the governor that a vacancy exists. By reason of which I have supposed it proper to inform you that a vacancy does exist, in the representations of this state, in the senate of the United States.

By the terms of the loan negotiated with the Girard Bank on the 20th March, last, for \$1,230,000 the sum of \$380,000 00

for repairing the breach on the Juniata division of the canal was to remain in the bank until drawn for, after the vouchers of the disbursing officers should have been examined and approved by a joint committee of three members from each branch of the legislature, agreeably to the provisions of the act authorizing the loan. The joint committee having been appointed at the time, there was every reason to believe the accounts would soon be adjusted, and the money applied. I therefore did not hesitate to embrace the offer to take the loan with that condition annexed, in as much as the commonwealth was then much straitened in her fiscal affairs for want of the residue of the money, and no other offer being made. But by the subsequent action of the legislature, in a joint resolution passed at the close of the adjourned session, and approved on the 2d of July, last, so much of the act of the 9th January authorizing this loan, as requires those accounts to be settled by the joint committee, was repealed; and authority was given to the auditor general to settle and adjust the same, and requiring him to draw his warrant in favor of the Bank of the United States, and the Harrisburg Bank "for such amounts as he shall find to have been fairly expended in repairing said breach." Such have been the difficulties, however, encountered by that officer in attempting the settlement of those accounts that he does not feel himself warranted, by the terms of said resolution, in drawing in favor of those banks, for any part of the money; the facts and circumstances in relation to which, will be laid fully before you by that officer. I respectfully ask the early attention of the legislature to this subject, that the necessary provision be made by law to arrest the further accumulation of interest on the money, that may eventually be found payable to said banks.

In pursuance of the provisions of the act of July 2d, 1839, relating to the claims of the commonwealth against the estate of John Nicholson and Peter Baynton, a commissioner was appointed to perform the duties therein required. From the nature and extent of the investigation, and the limited time allowed to make report, it was impossible for the commissioner to examine into and ascertain the various complicated and important matters enjoined on him, within the period allotted. By reference to his report which will be laid before you, it will be seen that the outstanding claims of creditors (other than the state) against the estate of John Nicholson, amount to upwards of thirteen millions of dollars, including interest till the 1st of April, 1839; that the balance due the commonwealth on the same day was \$278,179 57, and that the estate of Peter Baynton on that day owed the commonwealth \$58,913 03.

By the 8th section of the act above mentioned, all former laws in relation to the sale of the lands of Nicholson and Baynton are suspended; hence it may be worthy of consideration whether some additional legislation should not be had, to relieve all parties concerned from their present embarrassment. The great length of time which has elapsed since those debts were contracted: the fact that many of the lands have been held for a number of years by actual settlers, and a large portion of the residue sold for taxes; the immense sum of outstanding debts against John Nicholson, as well as the claims of his heirs, all urge the necessity of a speedy settlement, as the titles to immense bodies of land, in various parts of the state, depend upon the adjustment of the conflicting claims of creditors, heirs and landholders.

I would therefore, respectfully, recommend the passage of a law authorizing the commissioner, under such restrictions as may be deemed advisable, to compromise, adjust, and settle the claim of the commonwealth with actual settlers and others claiming title to the lands, on which the state has a lien in such manner as not to prejudice or affect rights of others.

It is highly important to the commonwealth that the doubt and uncertainty in

which the title to those lands is at present involved, should be removed without further delay. I have accordingly deemed proper to call your attention to the subject in anticipation of the commissioner's final report.

By the act of the 29th March, 1836, a geological survey of the state was authorized, and the sum of \$6,400, was thereby annually appropriated for that object for five years. A supplement to this act was passed on the 21st March, 1837, authorizing an increase in the corps, and appropriating the further sum of \$3,000 per annum to the appropriation made by the act of 1836—and by an additional act passed 13th April, 1838, the further sum of \$6,000 per annum was added to the appropriations for this object, "in order to complete the geological and mineralogical survey of the state more rapidly." In pursuance of these acts the state geologist, with the assistants, authorized by the acts stated, has been engaged in the mineralogical and geological survey of the state, and considerable progress has been made in the work which it is hoped may be completed within the time contemplated by law. The reports already made by that officer, with that which he will present at the present session, will exhibit the amount of the work done, and, to some extent develop the mineral resources of this commonwealth, which have become sources of immense wealth and trade.

The coal and iron of Pennsylvania are more valuable as sources of wealth and employment, than mines of the precious metals are in countries where they are found. They furnish investments for large amounts of capital—give constant employment to numerous operatives; and under ordinary circumstances, with prudent management yield a certain and regular profit to all engaged in the business. They pay a large proportion of the tolls upon our public improvements, and constitute the most important share of freight for those engaged in transportation upon our canals and railroads as well as for numerous vessels engaged in the coasting trade. The value of the coal and iron must necessarily be much enhanced by the recent successful application of anthracite coal as fuel for smelting iron ore, which will in all probability introduce a new era in the iron business in our commonwealth. Should the experiment become generally successful, of which little doubt is entertained, it will save us the necessity of importing large amounts of iron for railroads, as well as other purposes, which Pennsylvania in that event would be able to furnish in abundance, not only for her own use, and that of her citizens, but for a large portion of her sister states. Possessing as Pennsylvania does the great bulk of the iron ore and anthracite coal formation of this country, in alternate strata, in the same territory, and situated in a quarter of the Union peculiarly accessible by means of her geographical position and canals and railroads, she must enjoy almost exclusively, the great revenue that will arise from this source. A large portion of our public debt abroad, was contracted in the purchase of rail road iron, which would have been obtained in this country, if it had been possible to procure it here.

It is confidently believed that the coal and iron fields of this commonwealth, will hereafter furnish a cheap and adequate supply, and if so, there is every reason to think, that the numerous rail roads, in nearly all the states of the Union, that have been either suspended or contemplated, will in a few years go into operation. The business on our public improvements as well as the permanent mass of the wealth of the people of this state, must then be immeasurably increased.

Much of the time and attention of the legislature is annually occupied in the consideration of private matters, and the interests of the commonwealth are sometimes sacrificed to the importunities of individuals. This has been peculiarly so in cases where the canal commissioners, as well as the board of appraisers, have passed upon the claims of individuals for alleged dama-