

I WONDER WHY.

I wonder why this world's good things
Should grow in such unequal shares;
Why some should feast on all the joys,
And others only feel the cares!

I wonder why the sunshine bright
Should fall in paths some people tread,
While others shiver in the shade
Of clouds that gather overhead.

I wonder why the trees that hang
So full of luscious fruit, should grow
Only where some may reach and eat,
While others faint and thirsty go!

Why should sweet flowers bloom for some,
For others only thorns be found?
And some grow rich on fruitful earth,
While others till but barren ground?

I wonder why the hearts of some
O'erflow with joy and happiness,
While others go their lonely way
Unblessed with aught of tenderness!

I wonder why the eyes of some
Should ne'er be moistened with a tear,
While others weep from morn till night,
Their hearts so crushed with sorrow here.

Ah! well; we may not know indeed
The why, the wherefores of each life!
But this we know—there's One who sees
And watches us through joy or strife.
Each life its mission here fulfills,
And only He may know the end;
And loving Him, we may be strong,
Though storm or sunshine He may send.

M. D. BRINE.

TERRITORIAL COURTS AND JUDGES.

DEBATE IN THE U. S. SENATE,
APRIL 7, 1874.

The next bill on the Calendar was the bill (H. R. No. 1393) providing for the assignment of judges in the Territories, which was considered as in Committee of the Whole. It provides that the Legislature of each of the organized Territories of the United States (except the Territory of Utah), shall at each regular session thereof make an assignment of the judges to hold the courts in the several districts in such Territory; but if the Legislature of either of such Territories shall have failed, or shall hereafter fail to make such an assignment, the judges shall make an assignment, which shall continue in force until the close of the next regular session of the Legislature.

The Committee on the Judiciary reported an amendment which was to strike out all after the enacting clause and insert the following:

"That the judges of the supreme court of the respective Territories, except Utah, or a majority of them, shall, at the first regular or adjourned term of said supreme court after the passage and approval of this act and annually thereafter, if expedient, fix the boundaries of the respective districts, and appoint the times and places of holding courts therein, and designate the judges respectively who shall hold the same: *Provided*, That in case of a failure in any of the said Territories so to fix the districts and make such assignments the Legislature of said Territory shall fix said districts and make such assignment, to continue till the judges, or a majority of them, shall change the same."

Mr. BOREMAN. As far as I am advised on the subject I think the House bill is to be preferred to the amendment of the Senate Committee on the Judiciary. I do not know, of course, what was before the Judiciary Committee here that induced them to submit the amendment. Having been upon the Committee on Territories for some years, I have become somewhat familiar with the difficulties that arise in regard to judges and various other officers in the Territories, and it has been made manifest that the best of feeling does not always prevail among the judges. It seems to me that if this amendment, suggested by the Committee on the Judiciary, shall be adopted, we shall put the judiciary of the various Territories into a position to be in a constant quarrel.

It will be seen that the House bill authorizes the Legislatures of the several Territories, except Utah, to assign the judges at each session of the Legislature, which is once in two years. That is probably for the purpose of taking a judge who has had a hard district for two years and giving him an easier berth for a time, and so on, changing them around. It is thought just for them to do so, that one man may not have a hard berth all the time. Now it occurs sometimes, I have been informed, that two of the judges in a Territory will com-

bine and do injustice to the third. Sometimes under the organic law this matter is left to the governor of the Territory in the first instance, and, so far as I have examined the question, thereafter the Legislature of the Territory has invariably been allowed to fix the boundaries of the judicial districts, and to assign the judges, and I think that is the better course.

As I remarked, I do not know what moved the Judiciary Committee to propose this amendment. My experience upon the Committee on Territories would lead me to support the original bill unless the Committee on the Judiciary have some good reason for pressing this substitute. As I remarked, bad feeling sometimes exists and two of the judges may combine against the third. They cannot very well influence the Legislature to do that sort of injustice so as to banish one man into a remote part of the Territory and keep him there during his term. The Legislature, it seems to me, is the proper branch of the Government to do this thing. It is so in the States; there, where the constitutions do not fix the judicial districts, the Legislatures select them, and I apprehend that according to the constitutions of most of the States, where the districts are to be fixed thereafter, where there is to be a rearrangement of districts, it is provided that it shall be done by the Legislature. I cannot see why in a Territory the Legislature should not take jurisdiction and attend to this matter as well as in a State; and not leave it to the judges to be a subject of discussion and of injustice and wrangle from time to time, as I think it will be under this bill if amended as proposed.

I will state further that my attention has been called to this by some of the representatives from the Territories, not all of them, but some of them, and they prefer the House bill. They think it is better for the harmony of the Territories, better for the fair administration of justice, better for the equality of the labor of the judges in the Territories. They have spoken to me and asked me to make these suggestions to the Senate, and to say that they prefer the original bill as it came from the House to this substitute. I have thought it my duty, being a member of the Committee on Territories, to make these statements to the Senate for their consideration.

Mr. WRIGHT. Having reported this bill from the Judiciary Committee as the reason that influenced us in making this change. As I understand, by the laws of some of the Territories the assignment of the judges is left to the governor, and then by the laws of some of the Territories left to the Legislature, and then by others left to the judges themselves; and not a little confusion and difficulty have thus originated, and a question was made which was the preferable way. It was deemed advisable to settle it by some congressional action. The House bill provided that in the first instance the assignment of the judges and the arrangement of districts should be left to the Legislature, and if the Legislature failed to act, then the judges should act upon the matter and dispose of the districts and the assignment of judges.

The question before the committee was whether it were better that the judges should dispose of this matter in the first instance, and if they failed to make the arrangement leave it then to the Legislature, or whether the Legislature should first do it, and if the Legislature failed, then submit it to the judges; and in looking the whole ground over, anxious to have as much harmony and quiet and as little difficulty in the Territories as possible touching this matter of judicial districts, the committee concluded that it were better to leave it to the judges in the first instance. This is as a rule for all the Territories. While it may be that in some of the Territories the Legislature could arrange it better, and with but little if any difficulty, it has been found that in some of them there has been difficulty and great injustice done to the judges in that respect.

In view of the *esprit de corps* that obtains among the judges that are out in the Territories, we felt that there would be but little if any trouble on this subject, and there would scarcely be an instance where any two of the judges in a Territory would seek to combine against the third, or where there would be any effort to arrange the districts or

make assignments so as to do injustice to any member of the court.

It will be seen that under this substitute the three judges can arrange it so that they can change the holding of the courts by alternating. It is not uncommon in the Territories that some portion of the Territory is more desirable to reside in, more desirable for holding courts, than other portions; and if it were left to the Legislature, it was presented and made known to us that frequently a designing judge might by importunity and by a system of log-rolling—if I may use such an expression in connection with judges—perhaps get himself assigned to the best portion of the country, while the others would have to go to those that are less desirable. It was believed that if this matter was left to the judges in the first instance, they would be more likely to arrange it in such a way as would be acceptable to the judges themselves and best for the administration of justice.

The Senator from West Virginia has suggested that the delegates from the Territories prefer the other arrangement. I think it but due to say that since this bill was prepared they have so suggested to me, but I think that it is upon grounds that, if they were investigated and the whole matter seen as it really is, they would not be very tenacious about. Some of them, perhaps, are a good deal so, but others not so much so. There has been not a little trouble in some of the Territories touching this very question, and it has been brought to our attention that very great injustice has been done to judges by assigning them to a portion of a Territory that was quite undesirable, sending them hundreds and hundreds of miles away, and seemingly for the very purpose of doing injustice to an individual judge, and benefiting the other members of the court.

Between judges themselves we have no thought that this would occur. We believe the judges themselves will always arrange it so as that they will be reasonably satisfied on the subject; while if you refer the matter to the Legislature, you will find that this trouble will continue and that we shall be called upon at the next session of Congress, or if not then soon thereafter, to re-examine this whole matter. The amendment as it is prepared, I may say, was in accordance with what we understood to be the wishes of the several Territories at the time it was prepared. The committee proposed this amendment after examining the whole subject, and I believe were unanimous in making the recommendation as it now stands.

Mr. SARGENT. In matters local in their character the opinions of those who are directly interested and who are consequently well informed with reference to the facts are most valuable to determine what our course should be. The Delegates from the Territories are not judges and they are not members of the Legislature. They can have no motives except those which make to the best interest of their people. They are unanimous upon this proposition. I have talked with most of them, and I understand from those with whom I have conversed that they all have one opinion. I have talked with the Delegates from Colorado, from Wyoming, from Arizona, and from Montana, and they all say that it is infinitely preferable that the Legislature shall create the districts, mark their boundaries, and fix the places where courts shall be held, and they further say that the judges themselves prefer that this should be done.

The Territories, of course, have very large areas; sometimes the different parts of the Territories are separated by ranges of mountains. On each side of a range of mountains there may be comparatively unimportant communities which need that courts should be held locally, while it is possible that on one side rather than on the other there may be places more pleasant for the judges to select as places of residence. The temptation is continually before them, if they have the disposal of the matter, to crowd to the centre of the Territory, or some place where it is more pleasant for them to live, than to go across the mountains or go to the more remote parts of the Territory. The result is that suitors who have business before their courts are put to enormous expense for the travel of their witnesses to attend the courts at long distances from their homes. It is upon a

small scale a denial of justice. I might almost say to a minor extent it is a violation of that principle which is recognized in the fundamental law, that the people shall not be called to places remote from their homes in order to secure justice. As my friend from Delaware says, they shall have justice brought to their doors.

The Legislature can have no motive in a matter of this kind except to so arrange the districts as shall be for the greatest convenience of their people. I do not believe in wholesale charges against territorial Legislatures or against Congress; and I respect the purity of the majority of the body. I think that with public reasons to act upon, they will act upon public reasons. To put it in the hands of those who are directly interested, whose ease is concerned, who may be disposed to locate themselves where it is easier to get through the year and draw the salary and have the most ease and be at the least trouble in performing their duties, seems to me to be reposing this power in the wrong hands. The Legislature which we create and authorize to make counties, to designate county seats, to perform all the local legislation of the Territories, ought to be the safest guardian for interests of this kind.

The Senator from Iowa says that it is thought sometimes that some judges are assigned to inconvenient districts and kept there, and some are not. Under which system does this take place? All three systems prevail. The judges in some of the Territories assign each other. Does the difficulty arise where they make the assignment? In Arizona, one of the Territories where the Legislature regulates this matter, they are perfectly satisfied; the judges are satisfied and the people are satisfied with the manner in which it is done. I do not think the complaint of injustice to any judges comes from either of those Territories where the matter is fixed by the Legislative body.

I think that the wish, that the opinion of the Delegates ought to have great weight. It had weight with the House of Representatives, and they sent us the original bill. Now, without any specific or good reason it seems to me being given—I have answered the reasons given by the Senator from Iowa—we propose to change it and to put this question in the hands of the judges alone.

Mr. CONKLING. Has the Senator heard of any case where justice was not brought home to the doors of the people, as he expresses it, owing to the fact that districts have not been properly allotted?

Mr. SARGENT. I know there is a very great unwillingness on the part of the judges to go to places in the district which are remote from the centers. They prefer to live in the centers. There is a tendency to gravitate towards the center of the Territory, or the more populous part. Take Utah, for instance, although it is not covered by this bill. Salt Lake is the most desirable place in the whole Territory for judges to reside, and they will get as near Salt Lake as possible; while the other parts of the Territory are very important, have a large amount of legal business, and are apt to be overlooked under this system, unless there are men who take the interest of these localities to heart and who are in the Legislature to speak for their constituents, to protest against the growing costs of litigation, and to ask that there may be a fair assignment?

It seems to me that it is much better to leave it as the House has done, in the hands of the local Legislature, and if it is found subsequently that injury is done by this, that there is cause of complaint, we can soon remedy it. There certainly is more stability under the House bill than there is under the Senate bill in the assignment of districts, because the Legislature cannot make changes, even in view of any growth of the Territory, oftener than once in two years, whereas the judges themselves are authorized to do this annually, to change around like the figures of the kaleidoscope, and certainly there is not permanence enough in a judicial system or in a court of law who presides over a court under such a plan. I think for that reason, and speaking on the promptings of the intelligent gentlemen who represent the Territories, it would be much better to reject the amendment recommended by the Committee on the Judiciary.

Mr. CONKLING. The Senator from California does not discuss this case

as it was understood by the Committee on the Judiciary. In the first place the committee did not understand, I had never heard before myself, that there was or had been any difficulty or complaint touching a failure to establish districts and locate courts properly in those districts. It was to such a difficulty or complaint that the Senator addressed a part of his argument. No such thing is in the case as it reached the committee. The whole subject was of a different character. It related to the matter to which the Senator adverted in another part of his remarks, namely, the choice which judges might have between district and district in a Territory. It was that and nothing else. The committee determined upon this substitute, not upon hearsay, not by guess-work, not by caprice, but upon an understanding which I think would be quite satisfactory to the Senator from California and every other Senator.

In the first place, the committee had before them statements made by the judges themselves, and from those statements it turned out that there was one difficulty which the Senator from Iowa forgot to mention in his statement; there was not only a diversity arising from the circumstance that in one Territory the Legislature assigned judges, in another Territory the governor, and in another the court, but there was difficulty in the fact that a majority of the judges in some cases could not do it; in other words, the statute was held to mean that the whole court with unanimity must act, or it was no action at all. Thus contrariety and thus difficulty had ensued. Several of the judges, speaking for themselves in their own letters, said that if it could be done by the court or a majority of the court, a member was absent, or could not act, or there was discord, the whole case would be provided for and the difficulty would be at an end. This was the opinion of other persons also; and when my honorable friend from California says that all the Delegates from all the Territories are adverse to this amendment, my impression is that he goes much too far. I have conversed with some of the delegates in regard to it myself, and I think upon an understanding and discussion it will turn out that really no such thing exists as a unanimous opposition by the Delegates from the Territories.

Mr. SARGENT. Will the Senator allow me a moment?

Mr. CONKLING. Certainly.

Mr. SARGENT. I will state that the Delegates from Colorado, Wyoming, Arizona, and Montana came over to the Senate and told me that they were opposed to this provision, and I understood—I distinctly heard some of them state—that that was the unanimous opinion of the Delegates.

Mr. CONKLING. I so heard the Senator state before.

Mr. MITCHELL. I desire to state that the Delegate from Washington Territory also makes the same objection.

Mr. CONKLING. I listened to that statement before when the Senator from California made it; and I repeat my statement that I think he will find that the Delegates from the Territories are not unanimously opposed to this provision. Doubtless the Senator has reason for what he says. I think I have reason for what I say. However that may be, as between these conflicting modes of doing it, the Senate is brought to comprehend the merits of the proposition; and upon that I desire to say one word.

The Senator from California thinks it would be wise to set the Legislature at work in the first place, and if that fails, then we might take some other mode of doing it. The Committee on the Judiciary thought that a double chance and a double provision was better: first, to allow the judges to do it, and if they failed, then in the same bill to confer upon the Legislature the power to act.

Mr. SARGENT. That is also provided in the House bill; first, to confer the power on the Legislature, and if they fail, then to authorize the judges to act.

Mr. CONKLING. If my friend would listen to what I am saying he would see that I am addressing myself to that very fact; and I say that puts the cart before the horse; and if the Senator will hear me I am going to state why. I say the committee reversed that order; and they did it not at hazard, but be-