perimental the houſe muſt be convinced of the propriety of the repeal.

Mr. *Dayton*, of New Jerſey, truſted it was not the diſpoſition of the mover to preſs a deciſion to day. He thought it would be improper to poſtpone the diſcuſſion, as gentlemen would be thereby precluded from offering their opinion on the ſubject. He hoped the motion for poſtponement would be withdrawn, that other gentlemen might have an opportunity to ſpeak.

Motion withdrawn.

Mr. *Jona Maſon*, of Maſſachuſetts, ſaid it would be agreed to on all hands that this was one of the moſt important queſtions that ever came before a legiſlature. Were he not of this opinion he would not have riſen to offer his ſentiments. But he felt ſo deep an intereſt in the queſtion, & from the reſpect which he entertained for the diſtrict of country he repreſented, he deemed it his duty to meet the ſubject, and not be ſatisfied with giving to it his ſilent negative.

It was well known, and he preſumed would be readily agreed to, that no people on earth for the laſt twenty four years, had been ſo much in the habit of forming ſyſtems of government as the people of the United States. Nor had any people been ſo fortunately ſituated for cool and correct deliberation.

In the conſtitutions they had formed, it would appear that there had been an uniform concurrence in the eſtabliſhment of one great prominent feature. That the legiſlative, the executive and the judicial ſhould form the three great departments of government, & they ſhould be diſtinct from and independent of each other. And the more the proceedings and ſentiments of the people were examined, the more clearly would it appear that all the new and additional checks had been applied to adjuſt the relative weakneſs or ſtrength of the ſeveral departments of government. The ſame principle had been obſerved in the old world, whenever an opportunity preſented for forming a conſtitution, having for its object, the protection of individual rights. It accorded too with the uniform opinions of the moſt celebrated hiſtorians and politicians both of Europe and America; with the opinions and practices of all our legiſlatures. Nor had Mr. Maſon ever heard any one hardy enough to deny the propriety of its obſervance.

He well recollected that among the great grievances, which had roufed us into an aſſertion of our independence of England, it was declared in the inſtrument aſſerting that independence, that the crown had the appointment of the Judges dependent on its will and favour.

From all theſe circumſtances he concluded that the people of America, when they formed a ſyſtem for their federal government, intended to eſtabliſh this great principle; and the concluſion would be confirmed by an examination of the conſtitution, which in every ſection recognized or referred to it.

The conſtitution in the conſtruction of the executive, legiſlative, and judiciary departments, had aſſigned to each a different tenure.—The Preſident was choſen for four years: the Senate for ſix years, ſubject to a preſcribed rotation biennially: the Houſe of Repreſentatives for two years; and the judiciary during good behaviour. It ſays to the Preſident, at the expiration of every four years, you ſhall revert to the character of a private citizen, however ſplendid your talents or conſpicuous your virtues. Why? Becauſe we have aſſigned to you powers which it is dangerous to exerciſe.—You have the power of creating offices and officers.—You have prerogatives.—The temptation to an abuſe of your power is great. Such has been the uniform experience of ages. The conſtitution holds the ſame language to the Senate and Houſe of Repreſentatives:—It ſays, it is neceſſary for the good of ſociety that you alſo ſhould revert at ſhort periods to the maſs of the people, becauſe to you are conſigned the moſt important duties of government, and becauſe you hold the purſe ſtrings of the nation.

To the judiciary: What is the language applied to them? The judges are not appointed for two, four, or any given number of years: but they hold their appointments for life unleſs they miſbehave themſelves. Why? For this reaſon. They are not the depoſitaries of the high prerogatives of government. They neither appoint to office, or hold the purſe-ſtrings of the country, or legiſlate for it.—They depend entirely upon their talents, which is all they have to recommend them. They cannot, therefore, be diſpoſed to pervert their power to improper purpoſes. What are the duties? To expound and apply the laws. To do this with fidelity and ſkill requires a length of time. The requiſite knowledge is not to be procured in a day. Theſe are the plain and ſtrong reaſons which muſt ſtrike every mind, for the different tenure by which the judges hold their offices, and they are ſuch as will eternally endure wherever liberty exiſts.

On examination, it will be found that the people, in forming their conſtitution, meant to make the judges as independent of the legiſlature as of the executive. Becauſe the duties which they have to perform, call upon them to expound not only the laws, but the conſtitution alſo; in which is involved the power of checking the legiſlature in caſe it ſhould paſs laws in violation of the conſtitution.—For this reaſon it was more important that the judges in this country ſhould be placed beyond the controul of the legiſlature, than in other countries where no ſuch power attaches to them.

Mr. Maſon challenged gentlemen to exhibit a ſingle inſtance, beſides that lately furniſhed by Maryland, of a legiſlative act, repealing a law paſſed in execution of a conſtitution, under which the judges held their offices during good behaviour. In truth, no ſuch power exiſted, nor was it in the power of any legiſlature, ſo circumſtanced, by a ſingle law to daſh them out of exiſtence.

The opinion of Mr. Maſon, therefore, was that this legiſlature have no right to repeal the judiciary law. For ſuch an act would be in direct violation of the Conſtitution.

The conſtitution ſays.—The judicial power of the United States ſhall be veſted in one Supreme court, and in ſuch inferior courts as the congreſs may, from time to time, ordain and eſtabliſh. The judges, both of the ſupreme and inferior courts, ſhall hold their offices during good behavior, and ſhall, at ſtated times receive for their ſervices, a compenſation, which ſhall not be diminiſhed during their continuance in office.

Thus it ſays, 'the judges *ſhall hold* their offices during good behavior,' How can this direction of the conſtitution be complied with, if the legiſlature ſhall from ſeſſion to ſeſſion, repeal the law under which the office is held & *remove the office*. He did not conceive that any words, which human ingenuity could deviſe could more completely get over the remarks that had been made by the gentleman from Kentucky. But that gentleman ſays, that this proviſion of the conſtitution applies excluſively to the preſident. He conſiders it as made to ſuperſede the powers of the preſident to remove the judges. But could this have been the contemplation of the framers of the conſtitution, when even the right of the Preſident, to remove officers at pleaſure, was a matter of great doubt, and had divided in opinion our moſt enlightened citizens. Not that he ſtated this circumſtance, becauſe he had doubts. He thought the preſident ought to have the right; but it did not emanate from the conſtitution; was not expreſsly found in the conſtitution; but ſprang from legiſlative conſtruction.

Beſides if congreſs have the right to repeal the whole of the law, they muſt poſſeſs the right to repeal a ſection of it. If ſo they may repeal the law ſo far as it applies to a particular diſtrict, and thus get rid of an obnoxious judge. They may remove his office from him. Would it not be abſurd ſtill to ſay, that the removed judge held his office during good behavior.

The conſtitution ſays, 'The judges ſhall, at ſtated times, receive for their ſervice, a compenſation, which ſhall not be diminiſhed during their continuance in office.' Why this proviſion? Why guard againſt the power to deprive the judges of their pay in a diminution of it and not provide againſt what was more important, their exiſtence.—

Mr. Maſon knew that a legiſlative body was occaſionally ſubject to the dominance of violent paſſions, he knew, that they might paſs unconſtitutional laws; & that the judges, ſworn to ſupport the conſtitution, would refuſe to carry them into effect; and he knew that the legiſlature might contend for the execution of their ſtatutes. Hence the neceſſity of placing the judges above the influence of theſe paſſions; and for theſe reaſons the conſtitution had put them out of the power of the legiſlature.

Still if gentlemen would not agree with him as to the unconſtitutionality of the meaſure propoſed, he would aſk, what is expedient? were there not great doubts exiſting throughout the United States? Ought not each gentleman to ſay, though I may have no doubts on heſitancy, are not a large portion of our citizens of opinion, that it would violate our conſtitution? If this diverſity of ſentiment exiſts, ought not the evils under the judiciary law to be very great before we touch it? Ought we not to aim at harmoniſing inſtead of dividing our citizens? Was not the conſtitution a ſacred inſtrument; an inſtrument ever to be approached with reverence; an inſtrument which ought not lightly to be drawn from its hollowed retreat, and ſubjected to the flux and reflux of paſſion. But where is the evil complained of? The ſyſtem was eſtabliſhed only laſt ſeſſion: ſcarcely had it been yet organized; ſcarcely had we tried it on its very threſhold where then the neceſſity of being ſo pointed, as to deſtroy a ſyſtem ſcarcely formed 3 days ago? Does not this manifeſt precipitation? Will it not manifeſt more magnanimity, more rationality to abide by it until we try it, inſtead of taking up a pen and daſhing it out of exiſtence?

The reaſon that the ſuits depending were not ſo numerous, roſe from the nature of the old eſtabliſhment. That eſtabliſhment had no parallel. It carried with it the ſeeds of its own diſſolution. No ſet of judges could be found phyſically hardy enough to execute it. Such was the labour of their duties, that they were denied time for ſtudy or improvement. Beſides a caſe was heard of one term by one judge, and poſtponed for conſideration to the next. At that term another judge appeared, and all the arguments were to be gone over anew; and the ſame thing might happen again and again. Was this the way to extend juſtice to our citizens? Was not the delay equivalent to a denial of juſtice? It was a fact that three fourths of the time of the judges had been taken up in travelling.

It may be true, that the number of ſuits in the federal courts is leſſened; and if the internal taxes are to be ſwept away, it may be ſtill more leſſened as far as depends upon that ſource. But is it poſſible, that ſuits will go on diminiſhing as the gentleman ſeems to think? Is reaſon ſo predominant? Is the milenium ſo near at hand? On the contrary, is not our commerce encreaſing with great rapidity? Is not our wealth encreaſing? And will not controverſies encreaſe in proportion to the growth of our *numbers* & property. *Controverſies*, which will go to the federal tribunals as ſoon as the judiciary ſyſtem is fully eſtabliſhed. By the documents quoted by the gentleman from Kentucky, it appears, that more buſineſs has been lately done in the federal courts, than in any other antecedent time, except in one or two counties in Pennſylvania.

Beſides (ſaid Mr. Maſon) even if there be not a great preſſure of buſineſs, had we not better pay the paltry ſum of 30 or 40,000 dollars for a ſyſtem too broad, than have one that is too narrow? Is it not a melancholy conſideration, that in many of the European ſtates, the coſts are equal to the principal contended for? It would be honorable to the United States to exhibit a different example. It would be honorable to them to hold out an example, even if confined to foreigners, of prompt and efficacious juſtice, though at the exiſtence of 100,000 dollars.—Such an example would be a cauſe for national triumph, and our people would exult in it.

Inasmuch, therefore, as to render the judges reſpectable, it was neceſſary to make their appointments permanent, as time labour, experience, and long ſtudy, were required to perfect any man in a knowledge of the laws of his country, inſomuch as it has been thought good policy that the judges ſhould be well paid; and that they ſhould be ſo placed as to be diveſted of all fear, and neither to look to the right or to the left; inaſmuch as they ſhould be ſo placed as to render them independent of legiſlative as well as of executive power; he hoped this law would not be repealed.

Theſe were the reaſons, which Mr. Maſon aſſigned, as thoſe which would influence his deciſion. He acknowledged, that he had not entered the houſe prepared to offer his ſentiments; but as the queſtion was about to be put, he had thought it beſt to offer them, ſuch as they were, rather than to give a ſilent vote on a ſubject of ſuch great importance.

Mr. *Wright*, of Maryland, ſaid it muſt be agreed that this ſubject was one of great importance from its effect upon our revenues. If the repeal of the act of laſt ſeſſion was conſtitutional, he preſumed there could be little doubt of its expediency from the documents on our table. Has the conſtitution veſted the legiſlature with a power over the ſubject of the reſolution? If ſo, then ſhould a law, which had been the effect of a flux of paſſion, be repealed by a reflux of reaſon. He believed it had been introduced at the period of an expiring adminiſtration. It had been reſiſted by the republican ſide of the Senate; and he truſted that now on the return of reaſon it would be repealed.

An alluſion had been made to the ſtate of Maryland, which had repealed a law reſpecting the judiciary. Mr. W. here quoted the conſtitution of that ſtate, whoſe proviſions, he obſerved, ſo far as reſpected the tenure of the office of a judge, correſponded with thoſe of the conſtitution of the United States.—The legiſlature of that ſtate had been of opinion, and correctly too, that they did poſſeſs the power of repealing a law formed by their predeceſſors. And the legiſlature of the United States poſſeſſed the ſame power. This they had already determined by the very act of the laſt ſeſſion, which, while it created a number of new judges, aboliſhed the offices of ſeveral diſtrict judges.

It was clear that the conſtitution meant to guard the officer, and not the office. Will it be ſaid that what the legiſlature makes to-day, they cannot annihilate to morrow. Even as to the judges of the Supreme Court, had not the law firſt conſtituted ſix, and was it not now reduced by law to five? And if congreſs has power to reduce the number of the ſuperior, have they not the ſame power to reduce the number of the inferior judges? Are we to be eternally bound by the follies of a law, which ought never to have been paſſed?

Why the expreſſion in the conſtitution, "The judicial power ſhall be veſted in ſuch inferior courts, as congreſs may, *from time to time*, ordain and eſtabliſh," if it had been intended, as is now contended, that the office being once beſtowed, no change can be made.

If the caſe of thoſe, who have accepted thoſe offices, be conſidered as a hard one, may it not be ſaid that they knew the conſtitution, and the terms by which their offices were to be held. In our regard for individual intereſt, we ought not to ſacrifice the great intereſts of our country: and who it not demonſtrable That, if twenty one judges were ſufficient, when 1200 ſuits exiſted, they were equally ſo when there were no more than 700.

The gentleman from Maſſachuſetts was wrong in ſtating that Maryland was the only ſtate that had repealed a law creating judiciary offices. Virginia, if he was not miſinformed, had done the ſame thing. But we wanted not theſe precedents. Our own archieves furniſhed us with abundant precedents. We had reduced the judges of the Supreme Court from ſix to five, we had annihilated two diſtricts. The very gentlemen oppoſed now to the repeal of this law had voted for theſe meaſures. Thus it appeared, that though the conſtitution juſtified the meaſure *then*, it prohibited it *now*!

Believing the judiciary law of the laſt ſeſſion had ariſen from a diſpoſition to provide for the warm friends of the exiſting adminiſtration; believing that great inconveniences had ariſen under it; believing its expence to be oppreſſive; and believing that if one legiſlature had a right to paſs it, another legiſlature had the ſame right to repeal it; he truſted that, however a preceding legiſlature might have been governed by paſſion, the preſent legiſlature would, by repealing it, ſhew that they were governed by reaſon.

Mr. *Morris*, of New York.—Mr. Preſident, I am ſo very unfortunate, that the arguments in favour of the motion have confirmed my opinion, that the law, to which it refers, ought not to be repealed. The honourable mover has reſted his propoſition on two grounds.

1ſt. That the judiciary law paſſed laſt ſeſſion is unneceſſary, and

2. That we have a right to repeal it, and ought to exerciſe that right.

The numerical mode of argument, made uſe of to prove this, is perfectly novel, and commands my tribute of admiration. This is the firſt time I ever heard the utility of courts of juſtice eſtimated by the number of ſuits carried before them. I have read that a celebrated monarch of England, the Great Alfred, had enacted ſuch laws, eſtabliſhed ſuch tribunals, and organized ſuch a ſyſtem of police, that a purſe of gold might be hung up on the highway, without any danger of being taken. Had the honourable gentleman from Kentucky exiſted in thoſe days, he would perhaps have attempted to convince old Alfred, that what he conſidered as the glory of his reign, was its greateſt evil. For by taking the unfrequency of crimes as a proof that tribunals were unneceſſary, and thus boldly ſubſtituting effect for cauſe, the gentleman might demonſtrate the inutility of any inſtitution by a ſyſtem of reaſoning the moſt fallacious.

But, ſir, if with that poor meaſure of ability which it has pleaſed God to give me, I march on that ground, which I have been accuſtomed to deem ſolid, I ſhould ſay, that in ſo far as the error of our judicial inſtitutions prevented the perpetration of crimes, in that ſame degree are thoſe inſtitutions uſeful.—This would be my mode of reaſoning, but for the wonderful diſcovery made by the honourable mover of the reſolution.

We have been told of the great expence of the judiciary—that it amounted to one hundred and thirty ſeven thouſand dollars. And thus attributing the whole expence of the eſtabliſhment to this particular law, it has been aſſumed in argument that to repeal the law would be to ſave 137,000 dollars. If the other arithmetical arguments of the gentleman were equally incorrect, his inferences will be entitled to but little attention.

Of this ſum, it appears from a report of the Secretary of the Treaſury, that 45,000 dollars are for the contingent expences of juries, witneſſes, &c. which ſerves in ſome meaſure to ſhew that it is expected much buſineſs will be actually done.

The expence ariſing under this law, that it is propoſed to repeal, amounts to thirty thouſand dollars, excluſive of fifteen thouſand dollars eſtimated for contingent expences, making together forty five thouſand dollars. But let us not ſtint the allowance; throw in a few thouſands more, and let the whole be ſtated at 51,000—apportion this