where? What then ſhould detain us, if it be not a regard to ſtability and conſiſtency in public proceedings, combined with a regard to the expectations of reſpectable perſons ſeriouſly intereſted in the queſtion? But if you may repeal the act organizing the judicial ſyſtem, what principle is there that ought to confine the government to the place in which we are now aſſembled? Repeal this act, as is propoſed by the bill on your table, and you ſhake the principle of public ſtability and conſiſtency. Repeal this act, and there can be no principle of conſtitutional obligation, none of political honor, or legal right, to detain you here.

Gentlemen in favor of the propoſed repeal have ſpoken about the act as if this organization of the courts did not contribute to the more convenient adminiſtration of juſtice. The argument deſerves examination.

According to the original ſyſtem as delineated in the judicial act that was approved in September 1789, two courts to be called circuit courts, were to be annually holden, in each diſtrict of the reſpective circuits, by any two juſtices of the ſupreme court, and the diſtrict judge of ſuch diſtrict. The attendance of two juſtices of the ſupreme court, at each circuit court in the reſpective diſtricts, beſides two ſeſſions of the ſupreme court annually holden by all the juſtices at the ſeat of government, required of thoſe gentlemen ſuch burthenſome ſervices, that they at length addreſſed a letter on this ſubject to the Preſident of the United States, who communicated it to congreſs. On recurring to the journal of the ſecond ſeſſion of congreſs, it will be found that the communication was made on the 7th of November 1792. The copy of the letter, as ſent by the Preſident, has been obtained from the clerk's office. It bears date, Philadelphia 9th Auguſt, 1792, and is in the following terms.

[Mr. Dana here read the letter.]

It was undoubtedly in conſequence of this communication, that the ſyſtem was reviſed at the ſame ſeſſion of Congreſs. A further act reſpecting the courts was paſſed and approved on the 2d of March 1793. By that act the ſyſtem was altered, ſo that the attendance of one juſtice of the ſupreme court was to be ſufficient for holding a circuit, with the diſtrict judge. In caſe of their being divided in opinion on the final hearing of a cauſe, or on a plea to the juriſdiction, the cauſe was to be continued to the ſucceeding court, when another juſtice might attend.

This arrangement afforded a relief to the juſtices of the ſupreme court; but on experiment, was found to produce ſerious inconveniences to ſuitors in the circuit courts.

It ſhould be recollected, that the circuit courts decided, without appeal, all caſes of a civil nature, at common law or in equity, where the value of the matter in diſpute was between five hundred and two thouſand dollars. To refer cauſes of this importance to the final deciſion of a ſingle judge muſt be contrary to the ſound principles of juriſprudence. But the mode adopted for avoiding this impropriety ſubjected the parties to accumulated diſadvantages and expence, in conſequence of delays which were continually occurring. Will it be too much to admit, that the deciſions on the reſpective cauſes were generally delayed at leaſt for one term in a year? What would be the average expence to the parties on account of ſuch delay? If you include the expence for counſel, for witneſſes, for the attendance and travel of the parties, on both ſides, is it not moderate, very moderate to eſtimate the amount of theſe items at twenty dollars for each cauſe. The expence for fifteen hundred cauſes amounts at this rate, to the aggregate ſum of thirty thouſand dollars, payable by the ſuitors, for delays reſulting from the defective nature of the judicial ſyſtem. Compare this with what has been ſtated as the additional expence to the government, on account of the new organization of the courts! A tax of thirty thouſand dollars annually, levied ſolely on the ſuitors in the circuit courts, and levied in conſequence of defects in your laws, was a burthen of which they might reaſonably complain. It was a burthen whoſe oppreſſive weight the government ought not to continue upon perſons who had the right to demand juſtice, freely, and without delay. The act of the laſt ſeſſion, as it obviates the former cauſes of delay, relieves the ſuitors from this unreaſonable and vexatious tax. This ſtatement is not a mere affair of ſpeculation. Who diſputes the fact of there being at leaſt fifteen hundred cauſes depending in the courts of the United States? It is proved by a document before the houſe. The document No. 8, notwithſtanding its defects, exhibits enough to prove this fact.

The ſuperior convenience of the new ſyſtem is ſufficiently proved, if it be poſſible for gentlemen to want proof of what is ſo evident, by the repreſentations from the bar of Philadelphia, and the bar of New-Jerſey, if you regard profeſſional experience, and by the repreſentations from the reſpectable bodies of merchants in Philadelphia and New-York, if you regard mercantile knowledge. Other conſiderations might be mentioned, to evince the general convenience of the new ſyſtem, and ſhe inconvenience of the former one; but the delays, uncertainties and contradictory proceedings, which reſulted from the late defective arrangement, have already been pointed out with ſuch clearneſs and force of illuſtration, that it muſt be ſuperfluous for me to dwell upon this part of the ſubject.

On the other ſide, reference has been had to a document received from high authority. It is the document No. 8, which has been laid before us by the Preſident of the United States. If the Congreſs had wanted the information which that document profeſſes to give, they would have called for it, I preſume, from a ſubordinate officer, whoſe proper duty it would be to give it—the attorney-general—not the preſident. On this occaſion, however, the chief magiſtrate has been pleaſed to volunteer his ſervice.—The purity of his motives is not now arraigned; but the propriety of his conduct is not perfectly unqueſtionable.—Let me not be underſtood as inſinuating, that he has intentionally given us incorrect information. The extreme impropriety of any ſuch intention, without regard to the hazard of eventual expoſure, ſhould repel every idea of this kind; but the purity of motives does not impair the evidence of facts. No doubt it was the object to give us ſuch information as had been procured. Yet, when information was not deſired, why ſhould we have ſuch as has been laid before us?

This document, with a boldneſs of language bordering on poetic licence, has been called an exact ſtatement. After its incorrectneſs has been detected and expoſed, we have a ſupplementary document ſent to us, ſtating (I am not confident that I preciſely recollect the mollifying ſtyle of the laſt communication, but I think it was nearly to this purpoſe) that there was ſome deficiency of exactitude. What opinion is to be formed of this proceeding? The chief magiſtrate comes forward, unrequired, unaſked, and communicates a ſtatement which is explicitly declared to be exact; and yet he afterwards corrects that ſtatement by following it up with another. It muſt be unfortunate for the legiſlature and for the chief magiſtrate, that errors of this kind ſhould take place, becauſe they tend to excite doubts where no doubt ſhould exiſt. When the Preſident of the United States, with his high reſponſibility and all his means of information, is induced to come forward, in the face of the whole American people, and to make to them, through the legiſlature, an official declaration relative to facts, it becomes his adviſers to be well aſſured of the correctneſs of ſuch declaration. When the Preſident gives the ſanction of his authority to any ſtatement of fact and affirms it to be exact, it ſhould be entitled to full credit, beyond any poſſible contradiction.

The manner in which this document was mentioned, in the communication of the Preſident at the opening of the ſeſſion, would lead to the idea of its containing ample information reſpecting the buſineſs in the courts of the United States. At preſent laying aſide all the clerical errors which have been pointed out, I muſt be permitted to think, there are ſome others of ſuch importance as to deſerve animadverſion.

After what has already occured, I confeſs the communication itſelf ſtrikes my mind as an executive manifeſto againſt the former adminiſtration; and I deem myſelf warranted to conſider the preſent attack on the judiciary as having been comprehended in the general plan of hoſtile operations.

In a concern ſo important as this, where the ſtake was ſo great, and the game to be played ſo deep, it is not to be preſumed, that the firſt magiſtrate would recommend the meaſure, as he has done, without adviſing previouſly with the miniſters, of whom he may be conſidered as the head. If his powers are to be aſſimilated to the prerogatives of the Britiſh monarch, according to the ſpirit of what we have heard from ſome of the advocates of the preſent bill, it muſt of courſe be warrantable for the greater freedom and decorum of debate to conſider him as ſurrounded by his miniſters in council and acting with their advice.

Taking up the communication, however, as we find it, what do we further obſerve? It is well known, that circuit courts were holden in the ſpring the laſt year, and again in autumn. Yet the document (No. 8) has reference to the 15th of June. If it was the wiſh to give us a complete ſtatement upon which we might properly act, with reſpect to an important ſyſtem, why did not the executive, with his miniſters, think fit to cauſe the ſuits for the whole year to be communicated, inſtead of a part of the year, during which the ſyſtem could not have gone into fair operation? Why could not we be furniſhed with a report of the buſineſs before the circuit courts at their laſt ſemi-annual ſeſſion? Has there not been ſufficient opportunity for obtaining the information? Why then is it, that we have a ſtatement for only the firſt part of the year, and not for the whole? Is this giving to us, or to the public, full and fair information? It cannot, certainly be pretended, that we have before us all the official information which might have been given upon this ſubject, although its importance is not to be denied. If we were to act on the information ſent us, we ought to have been preſented, as far as practicable, with a full view of the buſineſs in the circuit courts ſince their late organization.

But is the utility of courts to be teſted ſolely by the number of cauſes, and not by the magnitude of the queſtions decided. A thouſand cauſes before courts of very limited juriſdiction, ſuch for example as thoſe before juſtices of the peace in ſome of the ſtates, are of far leſs conſequence than a ſingle cauſe that might come before a court of the United States. Did the miniſterial adviſers of the executive hold the diſcernment of the American congreſs in ſuch low eſtimation as to imagine, that, in legiſlating on this ſubject, the nature of the buſineſs before the reſpective courts would be wholly diſregarded? Where great queſtions are litigated, your courts ſhould be ſo conſtituted as to authoriſe great confidence in their deciſions. The value of the intereſts immediately in controverſy, and the extenſive influence of the principles on which the deciſions muſt depend, ſhould both be conſidered in eſtimating the importance of a judicial eſtabliſhment. Where life may be taken by ſentence of the court, and where cauſes may be decided of the value of many thouſand dollars, cauſes in whoſe proper deciſion the commerce of the country is ſeriouſly intereſted, where the cauſes are of this nature, it is important, that the organization of the court ſhould be ſuch, as to inſpire confidence by its tendency to unite talents and character, with ample opportunity for mutual compariſon of opinions and mature deliberation. Were the miniſtry wholly regardleſs of theſe principles? Notwithſtanding the facility with which further information might have been given as to the nature of the reſpective cauſes, eſpecially in relation to the value in controverſy, it is to be remarked, that the communication is wholly ſilent reſpecting theſe objects.

As I ſee the gentleman from Maryland (Gen. S. Smith) in his place, I beg liberty to notice again the diſmiſſion from office in Connecticut. I refer to the caſe of the ſupervisor of the revenue and two collectors of the cuſtoms. If I underſtood the gentleman when he was ſpeaking about the officers who have lately been removed, he would allow, that there were ſome worthy men among them, although he appeared to be ſatiſfied, that in general they ought to have been diſmiſſed for not conducting properly in office. His ſenſe of juſtice, I am perſuaded, would not permit him to apply this cenſure to the gentlemen whom I have mentioned. But, as he did not make any particular exception, and his language might perhaps be conſtrued ſo as to implicate perſons very differently from his intentions, I could wiſh the gentleman to ſtate, whether he would have his obſervations underſtood as implicating the gentlemen who have been diſmiſſed in Connecticut. If he will be ſo good as to do this, I will give place to him.

Gen. S. Smith. My obſervations did not apply to thoſe gentlemen. I ſaid nothing againſt them.

Mr. Dana. I am happy to have had this opportunity of making the inquiry. I believed the gentleman from Maryland to have been in ſituations where he might be informed reſpecting thoſe gentlemen; and was ſatisfied, that, if he had become acquainted with their true characters, he could not be willing to accuſe them of having conducted improperly in office.

To reſume the conſideration of the document (No. 8) it is to be obſerved, there is another material deficiency. The document has been recommended to our attention, as if it were an exact ſtatement of all the cauſes decided or pending before the ſeveral courts of the U. States. But is it ſo? No, ſir. It is an imperfect docket of the circuit courts; we muſt include in this deſcription, however the courts holden by ſuch diſtrict judges as exerciſe the powers of circuit courts.—There is no mention of the cauſes before the ordinary diſtrict courts. Not a word about the cauſes in the ſupreme court. Why are all theſe omitted? Is it of no moment for us to be acquainted with them, if we are to reviſe the whole judiciary ſyſtem of the United States? After the recommendation of the reviſion at the opening of the ſeſſion, ſuch an imperfect document ſerves to argue an expectation that Congreſs would proceed to alter the ſyſtem without examination of the ſubject. If it was prepared with a view to inform the people, what information does it give? Such as cannot be relied on. We have been called upon to receive it as completely correct; it is found to be palpably erroneous and defective.

In addition to what has been communicated to us on the part of the executive, the ſyſtem, which the preſent bill is deſigned to repeal, has been cenſured in the memorials of ſundry inhabitants of the city and county of Philadelphia.—Their memorials are all alike; different perſons having ſigned printed copies to the ſame effect. What are their complaints againſt the act in queſtion? The time of bringing it forward, the manner of conducting it through the ſeveral ſtages, the ſubſequent appointments under it, are all mentioned; and, for reaſons in favor of repealing the act, there is a general reference to the debates in the ſenate. It is not in order, ſir, for any member of this houſe to mention, in debate, what has been ſaid in the other houſe. By your rules, I am not permitted to reply to any of the arguments which have been urged by thoſe ſenators who advocated the repeal. This part of the memorial, therefore, cannot, without inconſiſtency be regarded by this houſe. For the reſt, what information is given you? The proceedings of Congreſs appear from their records, and, it is to be preſumed, are at leaſt as well known to the reſpective members as to the memorialiſts. The mention of appointments under the act may perhaps be conſidered as implying ſome information unfavorable to the characters of the circuit judges. But as to them, the memorialiſts cannot be preſumed to have particular knowledge, unleſs it be with reſpect to judges in the third circuit. And theſe judges are ſpoken of in terms of high reſpect by the gentlemen of the bar in Philadelphia and New-Jerſey. This honorable teſtimonial is from gentlemen of profeſſional eminence, who have had an opportunity of perſonally obſerving the judges in attending the reſpective courts. To this effect too, you have the teſtimony of the very reſpectable body of merchants in Philadelphia, whoſe repreſentation on this ſubject has been ſubmitted to the houſe. They may concur with the gentlemen of the bar in highly appreciating the ſervices of the circuit judges. The characters of thoſe judges are, unqueſtionably, placed on a baſis, too firm to be affected by any thing inſinuated againſt them.

The repreſentations from the gentlemen of the bar in Philadelphia and New-Jerſey, furniſh a ſtrong body of evidence in favor of the new organization of the courts. They are gentlemen accuſtomed to the tranſaction of profeſſional buſineſs, and have experienced the comparative effects of the former ſyſtem and the preſent. In a manner honorable to themſelves and to their profeſſion, the gentlemen of the bar in Philadelphia, although well known to entertain different ſentiments on political topics, have laid aſide their political diſtinctions, to attend to this ſubject, which concerns the common intereſt of honeſt men of all parties: and have united to ſupport a ſyſtem which they believe to be of high importance for the due adminiſtration of juſtice. It is to be regretted that any member of the national legiſlature ſhould be induced from any cauſe whatever, to give utterance to ſuch ſentiments as have been thrown out againſt the profeſſional gentlemen, who have borne teſtimony in favor of the preſent organization of the courts. Perſons who have been intimately acquainted with none but the mere underlings of the profeſſion, might perhaps be expected to indulge ſuſpicions, that gentlemen ſo reſpectable as theſe would ſtate their opinions in favor of a ſyſtem, ſolely from motives of pecuniary intereſt, and not from the conviction of their unbiaſſed judgment. An acquaintance with the courſe of profeſſional buſineſs, however, might ſatiſfy men of candid minds, that pecuniary motives cannot have induced the gentlemen of the bar to addreſs you as they have done. It is to be hoped, for the honor of the houſe, that we ſhall not act upon ſentiments ſo little worthy of the national legiſlature, and ſo unjuſt to gentlemen of profeſſional reputation. Sir, the teſtimony of the gentlemen of the bar on this ſubject, is one of the moſt reſpectable ſources of opinion.

After what they have ſaid, to evince the ſuperior convenience of the preſent organization of the courts, if any doubt can exiſt as to the fact, it is to be recollected, there is the additional teſtimony of mercantile gentlemen in the populous cities of Philadelphia and New York. It is obſervable, however, that the merchants of Philadelphia, and the chamber of commerce in New-York, like the gentlemen of the bar have abſtained from any diſcuſſion of conſtitutional or political queſtions.—With a delicacy as honorable to themſelves as it is reſpectful to the legiſlature, they have left it for the reſpective members to reaſon on general topics; and have ſpoken of what has paſſed within their own obſervation and experience. The merchants addreſs you with a particular reference to the commercial intereſts of the country. Will you deny their practical knowledge with reſpect to the buſineſs in which they are occupied, and for which they were educated? They ſpeak of the propoſed repeal as a meaſure which muſt be ſeriouſly prejudicial to their commercial concerns. It ſhould be remembered, that the queſtions, which very frequently occupy the courts of the union, are ſuch as relate to commerce not only with foreigners, but between perſons of different ſtates. On theſe ſubjects, Congreſs have power to legiſlate, and the judiciary to judge. Much of the credit of the country, the aſſurance of obtaining juſtice, the national character for integrity, depends on a ſyſtem for the wiſe and impartial deciſion of judicial queſtions. Is it not neceſſary to your commercial proſperity, that the foreign creditor of your merchants ſhould have a ſecurity for as ample juſtice here as he could have in his own country? Is it not neceſſary in a national view that there ſhould be ſuch an organization of the courts as will fully ſatisfy creditors abroad or in the reſpective ſtates, that their claims ſhall be fairly tried without being ſubjected to the influence of local prejudices? Let me aſk, ſir, Are your merchants generally ſuch capitaliſts as to make inſtant payment for every thing they import? They cannot do it. They muſt have credit, if the country is to continue its accuſtomed commerce. And we know that credit is not an object of compulſion, as it reſpects thoſe who give it. They require a juſt cauſe of confidence. Credit is free as human thought. Mercantile gentlemen in Virginia, in Georgia, or any other ſtate, when it is known that ample juſtice is aſſured to creditors in the courts of the United States, may obtain a credit abroad, which otherwiſe would never be given them. Without a confidence of this kind, you muſt not, you cannot ſpeak of your country as being in good credit. When gentlemen of extenſive mercantile information, addreſs you in favor of theſe courts, as requiſite for ſecuring mutual juſtice and the proſperity of commerce, they are entitled to attention. They are a body of men who have too much honor to ſtate for truth, any thing of which they are not well ſatisfied that it is the fact; and they have too much knowledge to err on a point ſo intimately connected with their purſuits.

What, ſir, I pray you, muſt be the conſequence of meaſures contemplated at the preſent ſeſſion of congreſs? If you aboliſh the internal revenues, and lay upon the commercial intereſt, the burden of ſupporting government, will you ſuperadd the deſtruction of an eſtabliſhment which authoriſes general confidence, and is beneficial to your commerce both foreign and domeſtic.

Conſider the repreſentation from the reſpectable body of mercantile gentlemen in Philadelphia. If you aboliſh all the other courts, they requeſt, that the circuit court, may be preſerved in the third circuit. This, it is known, extends over New-Jerſey, Pennſylvania, and Delaware. The merchants requeſt the preſervation of this court, as being an inſtitution in which their commercial welfare is moſt intimately concerned.—If you reſolve, that all the expences of government ſhall be defrayed from commerce, will you not purſue an inſtitution which may aſſiſt the merchants to obtain the means of paying the ſums which you demand from them?

Gentlemen have undertaken to inform us, that the ſtate courts will be ſufficient; and appear to have a peculiar jealouſy of the federal courts.—But they may be reminded, that the preſent queſtion is not, what they may think, but what others will think, of the courts of their reſpective ſtates. Whatever may be the adminiſtration of juſtice in any of the ſtate courts, yet they are not ſufficient in a national view, if foreigners or citizens of other ſtates have not a confidence in them. The declarations of gentlemen, therefore, in commendation of the courts of their own ſtate, cannot, in the preſent caſe aboliſh the point in their favor, unleſs it is alſo ſhewn that equally favorable opinions of them are entertained by perſons who live without the ſtate. But why are ſome gentlemen ſo zealous for ſtate courts, to the deſtruction of the courts of the union? Shall we be told, that ſuch is the will of the people? While I ſpeak, ſir, of the people in this manner, I mean Virginia. Why ſhould that particular ſtate have a predominant influence for governing the union? And why ſhould a zeal againſt the federal courts be particularly manifeſted from that quarter? Is it apprehended, if theſe courts ſhould continue and become objects of general