fall on the mercy of the people for pardon.

He has contended that the act in question should be considered as unconstitutional because of the abolition of the former circuit courts. His objection proceeds upon the idea, that in abolishing those courts, the act abolished the office of circuit judge, and thereby excluded from office the justices of the supreme court, and the district judges.

Upon this point it is to be observed, that there never was, before the last session of Congress, such an office as that of circuit judge of the United States.—It is true, that justices of the supreme court, with the respective district judges, were authorized to hold what were styled circuit courts. But the justices were all appointed, commissioned, and sworn into office, as justices of the supreme court, and not as circuit judges. In like manner the district judges were appointed, commissioned, and sworn as such and not otherwise; this was their official character. The title of circuit judge was unknown to the laws of the United States. This objection therefore fails essentially. It is founded on the supposed destruction of the office of circuit judge, which, in fact, never had a legal existence, until it was created by the new judicial act.

Another objection relates to certain district judges. It has been mentioned with an air of confidence, as if those judges were deprived of office by the abolition of certain district courts. And yet it is certain, that the office of district judge is not necessarily connected with the existence of what has been styled a district court under the laws of the United States. No office of judge of a district court, by that name and designation, was ever created by any of the laws.—The name, however, by which a judicial office is designated at its creation, is perhaps as essential in a legal view as the name which designates a corporation. The only judicial officers of the United States, before the passage of the new judicial act, were the chief justice and associate justices of the supreme court, and the district judges resident in the respective districts. This residence is one of the essential qualifications with respect to the office of district judge; and from this the official name is taken. By the original judicial act passed in 1789, the United States were distributed into districts, and provision was made for having, in each of the districts 'one judge, who shall reside in the district for which he is appointed, and shall be called a district judge.' In making these remarks, I have reference to the observations of a gentleman from Massachusetts (Mr. Bacon) who expressed himself more logically perhaps than the Virginian shepherd.

If I clearly apprehend his observations, the argument was founded on the use of the term court. He treated the subject as if *court* and *judge* were completely synonimous, proceeding upon the idea that there was a perfect identity in their meaning; and thence would have it inferred as a necessary consequence, that you could not dismiss the court without dismissing the judge. Now, if this idea be correct, we might use *court* instead of *judge*, and *vice versa*. How will this answer? Would the gentleman think proper, in all cases, to substitute the word judge or judges, instead of the word court, as used in the constitution and laws of the United States?

The constitution in the third section of the 3d article, speaks of 'confession in *open court*.' Would he agree to the substitution of *judge for court* in this case? Among the amendments to the constitution, you may find an article, where it would be equally improper to use the *judge* as a substitute for the *court*. 'No fact, tried by a jury, shall be otherwise *re-examined in any court* of the United States than according to the rules of the common law.'

This too, it may be remarked, is a constitutional recognition of the common law, if the objection about admitting it in courts can be thought relevant to the question on the present bill.

In the 4th section of the judicial act of 1789, after defining the circuits, it is said, 'there shall be held, *annually*, in each district of said circuits, *two courts* which shall be called circuit courts.'—As used in this place, the word *courts* cannot mean judges, but must mean *judicial sessions*. And will any gentleman say that these sessions could not be altered, or that one of them could not be abolished, if necessary, without abolishing the office of judge?

The truth is, sir, that the word *court* is used in various significations, all of which have reference to objects of a judicial nature. One of its plainest significations perhaps is—a seat of justice, a place where justice is administered judicially. It has another signification, as it is used for a judicial body, or the form of a judicial institution. We have seen that it is used to signify a judicial session. And there is a further use of it, somewhat different from either of these, when, after the session has been commenced for several days, the clerk is directed by the judge to open the court: here, the word does not signify either the place for administering justice, or the judge, or a judicial body, or form of institution, or session, but the sitting for a particular day. And there need be no difficulty, about understanding the term, although used so variously. The true meaning in any place may be sufficiently ascertained by attending to the subject matter. And this is a sound rule of construction.

What were the powers of a district judge, as he is legally styled, under the act by which the office was created? In his district court, sitting alone, he might take cognizance of offences, where the punishment could not exceed thirty stripes, or a fine of one hundred dollars, or imprisonment for six months. Besides this, the act gave him cognizance of suits, by aliens for any tort in violation of the law of nations or a treaty of the United States; and of suits against consuls or vice consuls, of all civil causes of admiralty and maritime jurisdiction; seizure, and suits of penalties, under laws of the United States; and suits at common law in behalf of the United States, for the value of not less than an hundred dollars. Appeals and writs of error, from his decisions to the circuit court, were allowed in admiralty causes, where the value in dispute was more than three hundred dollars, and in civil actions where it was more than fifty dollars exclusive of cost. This was the general jurisdiction vested in the district judges, when holding the ordinary district courts. The principal business related to causes of a maritime nature, and bonds taken at the custom-houses.

The new judicial act has been censured for abolishing the district courts in Kentucky and Tennessee. But what were those courts? The jurisdiction of the district judges, when holding the respective courts for these districts, was materially different from the ordinary jurisdiction. It extended to all causes cognizable in a circuit court, except appeals and writs of error. And for this exception, there was this decisive reason, that the district judges of Kentucky and Tennessee exercised the power both of a district court and a circuit court: it would have been an absurdity to say, that either of these judges should try appeals and writs of error from his own decisions. As there was this union of district and circuit powers, it was provided, that writs of error and appeals should lie, from their decisions, immediately to the supreme court, in the same causes as from a circuit court to the supreme court, and under the same regulations.'

And it is well known, that the jurisdiction which might be exercised in the circuit courts was of an extensive nature. In criminal affairs it extended to inflicting the punishment of death.—In affairs of a civil nature, it extended to suits at common law or in equity, where the value in dispute exceeded five hundred dollars, and might rise above this sum without limitation. Appeals & writs of error to the supreme court, were allowed only in causes for more than two thousand dollars in value.

What, sir, was done by the new judicial act? It abolished the judicial sessions that were styled district courts in Kentucky and Tennessee, and established new sessions under the name of circuit courts. But not a single judicial office was abolished. Will it be said, that the district judges of Kentucky & Tennessee do not still hold their offices, merely because they are to sit with a third judge, who resides in the circuit and is called a circuit judge. All the former powers and jurisdiction of the courts may now be exercised in the circuit courts to be holden in those districts.—For these circuit courts it should be remembered, are different from the other courts of this name. The general power of ordinary district courts and circuit courts, may both be exercised in the courts for the sixth circuit. Where the judicial powers remain so essentially the same, will gentlemen contend, that this change of the mere name of the courts has abolished the office of those judges? The new judicial act has drawn a clear distinction between the five first circuits, and the sixth.—By the seventh section of the act, it is provided that there shall be in each of the aforesaid circuits, except the sixth circuit, three judges of the United States, to be called circuit judges, one of whom shall be commissioned as chief judge; and that there shall be a circuit court of the United States, in and for each of the aforesaid circuits, to be composed of the circuit judges within the five first circuits respectively. With respect to the circuit which includes Kentucky and Tennessee with the district of Ohio, it is provided, that 'there shall be appointed in the sixth circuit, a judge of the United States, to be called a circuit judge, who, together with the district judges of Kentucky and Tennessee, shall hold the circuit courts hereby directed to be holden within the said circuit; and that whenever the office of district judge, in the districts of Kentucky and Tennessee, respectively, shall become vacant, such vacancies shall respectively be supplied by the appointment of two additional circuit judges in the said circuit.' And by the 24th section of the act, it is provided, that the circuit judges to be appointed for the sixth circuit aforesaid, severally, shall 'be invested with, possess and exercise all and singular the powers, now vested by law in the district judges of the United States.'

As the act required from the district judges of Kentucky and Tennessee additional duties, although of precisely the same nature with those which they performed before, an addition was made to their compensation. But is there any power which either of those judges might before exercise in his official capacity, from which he is now excluded? This is so far from being the case, that even the circuit judges, who may be appointed to succeed the present judges in Kentucky and Tennessee, whenever their offices respectively shall become vacant, are, severally authorised to exercise all the powers vested in the district judges of the United States.

Nor is this last an useless provision. For a district judge, although not sitting in what is legally styled the district court, may exercise various powers in virtue of his judicial office. For example he may administer the oaths of office, and take depositions, under the laws of the United States, and issue writs of habeas corpus, in which case he may decide judicial questions of a very interesting nature. He may also issue commissions of bankruptcy, and in such case may cause a jury to be impannelled for enquiring into facts before him, and, after attending to the various proceedings, he may finally decide, as to allowing the bankrupt a certificate of discharge.

As the question that arises under the constitution, let me now ask, what is the office of a judge of the United States? Is it not an authority or legal right to exercise the power, and to receive the compensation, appertaining to a judicial employment? Upon this construction you cannot apply the terms court and office, indiscriminately, and that they have each the same effect. Is not this idea of the judicial office correct? Permit me, sir, considering its bearing on the present subject, to repeat the definition. The office of judge under the constitution of the United States, is an authority to exercise the power, and to receive the compensation appertaining to a judicial employment. An authority to exercise judicial power, a legal right to receive a determinate compensation, are of the essence of the office.—While the judge is not divested of either of these essential attributes of his office, the judicial sessions may be altered, new names may be given them, and the jurisdiction may be increased or diminished. But this power of modifying the courts and varying the judicial duties, may not be exercised in such a manner as to produce the effect of depriving the judge of office by a circuitous operation. This would be an abuse of power, which ought to be condemned as contrary to the spirit of the constitution. The letter of the constitution does not permit you, while a judge behaves well, to divest him at once of every species of jurisdiction. Nor indeed does it permit you wholly to divest him of the jurisdiction appropriate to his office.

With respect to jurisdictions, the constitution, if you will attend to it, will be found to have marked one great distinction. Some of the judicial officers of the United States are to have authority for deciding in the last resort. Others are to exercise a subordinate power; and their decisions are subject to the revision of a superior tribunal. This distinction is important in jurisprudence; and very different qualifications might be judged requisite in appointing persons to offices so distinguished from each other. The constitution establishes no other distinction of courts than that of supreme and inferior. It has made no distinction of grades between the various inferior courts which may be established by congress. The jurisdiction of them all has the character of subordinate. And while you assign only subordinate power to a judge of the inferior grade, you observe the constitutional distinction respecting judicial offices. The essential difference between them is in the jurisdiction. The decisions of judges invested with none but subordinate jurisdiction are liable to be controuled by the supreme judicial authority.—The justices composing the supreme court are invested with jurisdiction in the last resort; their decisions are above all judicial controul. Vary, therefore, the judicial sessions, and the judicial duties, as may be found expedient; yet, if you do not change the jurisdiction from subordinate to supreme, the essential qualifications and rights of the judges of inferior courts, may be said to remain inviolate, according to the principles of the constitution.

Before the passage of the new judicial act, the district judges of Kentucky and Tennessee, were authorised to exercise judicial power in an inferior court. For this they still have authority; and their jurisdiction, retaining its subordinate character, is perfectly distinct from that of the supreme court.

By the constitution, all the judges of inferior courts are to hold their offices by the same tenure as those of the supreme court. In this respect, there is no distinction between them. And the principle has never been infringed by any act which has yet been passed, concerning the courts of the United States.

The district judges, it may be recollected, were invested with original jurisdiction in admiralty and maritime causes, which might ultimately be removed into the supreme court by appeal. But what business of this kind, was to be expected in Kentucky and Tennessee? Although officers of the customs have been appointed, I do not see a single cent mentioned in the report, as coming from those states.

Mr. Davis made some observations as to the reason of there being nothing from them, seen in the returns.

Mr. Dana. However that might be, so little business is done there, that considerable salaries are allowed to the officers in addition to their fees. From all this, I would only infer, that there cannot be in that quarter of the union, many custom-house bonds, nor many seizures under the laws of trade, nor many prizes for the cognizance of any court. It may be presumed, that district courts were established there, from civility to those states, which had been recently admitted into the union; for as to the principal business of ordinary district courts, there could be none to require them. It was therefore, no injury to the people of those states, to modify the courts there, according to the new judicial act. The business, whatever it was, has been transferred to a circuit court, which is to be holden in each of the districts within the circuit. In this court the district judges are to sit, and with a circuit judge, are to have cognizance of every cause of whatever nature which was before cognizable by them sitting in what were styled district courts. The judicial sessions have been varied; but no judicial office has been taken away. The jurisdiction to be exercised by the judges is in its nature the same as before; and the objects of it are as before, in all such causes as are cognizable in the ordinary district and circuit courts. The judges continue to hold their offices by their original title; they remain authorized to exercise judicial power in an inferior court, and are legally entitled to receive their compensation, which has not been diminished but increased.

There is one other argument in favor of the proposed repeal. It is in substance, that the act should be repealed, to manifest the power of congress over the judiciary department.

In this view of the question, the bill on the table has been zealously supported. It is certainly a singular principle of legislation, that you should legislate merely to show your power. But even if the bill should be passed, will it manifest the necessity or propriety of your exercise of power in the present instance? Although it may prove that you are in possession of power, will it prove your constitutional right to displace the judges?

'During good behaviour' is the tenure by which every judge of the United States holds his office. If the idea were to be expressed in a negative form, it may be said, no judge shall be divested of his office while he behaves himself well. Here the general sentiment is the same as when it is said, 'the judges shall hold their offices during good behaviour.'

If the term hold has an appropriate legal meaning, so the term divest has its appropriate meaning on the other part. And when it is said, a person shall hold an office or estate, it is equivalent to saying he shall not be divested of it. The question then is, whether the present bill goes to divest the circuit judges of their offices?

Will gentlemen say that this is not the object? What else can they mean? Every part of the bill is calculated for this purpose. It is the very essence of a judicial office under the constitution, to be entitled to exercise judicial power, and receive a regular compensation. But this bill seizes on the power, and the salaries at once, and deprives the judges of both. It is not the act of the last congress which directed that certain judicial sessions should cease, while the judges were to exercise their official power in the same causes as before, although they were to hold their courts according to a new arrangement; their salaries too were not only continued, but increased. By this bill, you now strike at the judicial sessions, at all the power of the judges, at all their services, and the whole are to fall together.

Are we to be told, that this bill is directed against the office, and that in this view it is no infraction of the constitution to pass it? Will gentlemen say, that this procedure does not touch the judge, but merely his office? How is it possible to maintain such a position? It has hitherto been understood, sir, that a judge is a person having a judicial office. If the office is destroyed, although the man may exist, the judge is no more.

We have been told, by a gentleman from Virginia (Mr. Giles) that the term *hold* is technical having reference to a person holding, and a person granting. He, as I understood him, would have it believed, that the President of the United States is the person granting, and that the judges hold their offices of the President. To support this doctrine, the gentleman reminded us, that the President, according to the constitution, has power to nominate, and, by and with the advice and consent of the senate, *appoint* the judges, and other officers, and to commission all of them. So too a gentleman from Vermont (Mr. I. Smith) has contended, that the power of appointment, as vested in the President, implies the power of removal, and therefore, that the expression 'during good behaviour,' having reference to this power, is to guard the judges against being removed by the President.

As to the power to remove from office, 'I believe it is no where in the constitution given explicitly to the President, with respect to any officer although of his sole appointment: and it is to be remembered, that the senate have a voice, with the President, in appointing the judges of the United States. When the department of state, of the treasury, and of war, were established at the first session of the first congress, the secretaries by the terms of the acts respecting them, were declared liable to be removed from office by the President. By the judicial act passed in 1789, the marshals were removable at his pleasure. As the principle was recognized in this manner by acts of congress, the power of removing other executive officers has been considered as left to the President, wherever there is no prohibition. But the power of appointment does not, in its nature, comprehend the power of removal. These powers are not the same in essence. They are so different from each other as to be, in some cases, very properly vested in different persons. The marshals, in the several judicial districts, may appoint deputies; but these deputies are removable from office at the pleasure of the judges. Under the confederation, all officers of or under the rank of colonel for the army of the United States were appointed by authority of the respective states, but were commissioned by congress, and removable by sentence of a court martial. As it respects executive officers, however it may be said, that the president should possess the power of removal, because he is supposed to have the whole executive power, and is to take care that the laws be faithfully executed by those officers. Although I do not question the general propriety of such reasoning, yet I may ask, whether congress may not regulate the tenure of any executive office which they establish? Where is the clause, in the constitution, to restrain them from doing this? But, after what has been done with respect to the heads of the several executive departments, if the law establishing any executive office is silent on this subject, the power of removal may be considered as resulting to the president by admitted construction. It is no part, however, of the executive power as such, nor does it concern the proper office of the president, to remove any of the judges of the United States.

The gentleman from Virginia would have us believe, that the tenure 'during good behaviour' as mentioned in the constitution, has reference solely to the President of the United States. He has attempted to show, by his remarks on the word hold, that the judges hold their offices under the President. Now, if this doctrine can be completely refuted, the argument fails. Let us examine the constitution. If the terms 'shall hold their offices during good behavior' as used in the 1st section of the 3d article, are to be understood according to the use of terms in other parts of the constitution, it is evident to demonstration that the judges hold their offices, not under the President, but under the United States. In article 1, section 3, clause 7.—speaking of judgment in cases of impeachment, mention is made of 'disqualification to hold any office of honor, trust or profit, under the United States.' In