

*Mr. Pinkney.* There is no law in this prayer, for it excludes that which is the essence of the offense—intention—and if it were otherwise the court has no right to instruct the jury, as if this were a civil case. No instance has occurred in modern times of an attempt to bind the jury in such a cause by the opinion of the court. What remedy is there for the party if you err? We may appeal to a higher tribunal, it is true; but what is the consequence? the man is hanged, and your judgment is reversed.

In England did their courts interfere in this mode in the celebrated cases of Hardy, and Horne Tooke and others? No. It would not have been endured. The best security for the rights of individuals is to be found in the trial by jury. But the excellence of this institution consists in its exclusive power. The jury are here judges of law and fact, and are responsible only to God, to the prisoner, and to their own consciences. After the case is closed you may indeed advise, if they ask it, or if you think proper to do so without being asked by them. But to interrupt the progress of the trial in the way proposed would be monstrous. Suppose the court to give the direction, I shall not submit to it, as the prisoner's counsel. I will, on the contrary, tell the jury that it is not law. It is my right to do so, and in a case of blood I dare not forego the exercise of it. I trust I shall not be placed in a predicament, which will thus set my duty to a man whose life is in my charge, against my respect for this tribunal. I pray your honours to suffer this cause to go on in the customary and legal manner.

*Mr. Glenn* observed that it was the practice every day in the criminal court, and appealed to counsel for the prisoner, whose long career as a public prosecutor must have furnished innumerable instances.

*Mr. Jennings* said that being thus called upon, he was sorry he could not aid the district attorney by any such precedent. He never knew an instance, while he was prosecutor for the state, of praying a direction on behalf of the state, though it was frequently done by the prisoner.

The Court said they were bound to declare the law whenever they were called upon, in civil or criminal cases; in the latter, however, it was also their duty to inform the jury that they were not obliged to take their direction as the law. In the case at bar they declined giving any opinion at present, being desirous to hear counsel.

*Mr. Glenn* said he would not now address the jury.

*Mr. Pinkney.* Gentlemen of the jury: I regret that my learned friend across the table has not seen fit to come forward in support of his case, as I wished to have delivered a brief homily on the law of treason; not indeed for the benefit of my client, but for the instruction of others, who appeared to stand in need of it.

But as the District Attorney declined to support the prin-