

The second section of the sedition law made falsehood as well as scandal and malice an essential part of every libel, and by the last sentence the party accused is allowed to show in his justification the truth of the matter charged to be libellous.

He would not pretend to say decidedly what ought to be the construction of that law, but the opinion which he had been able to form after a very short consideration of the subject, was, that the object of the law was to punish a man, not for abuse nor for erroneous deductions or opinions, but for "fact falsely and maliciously asserted." If this idea was correct, it became a matter of consequence to do what had never been done perhaps before, to draw a line of discrimination between fact and opinion; because if the indictment contained against the traverser charges of being guilty of error in opinion as well as falsehood in fact, it was so far defective, and ought not to be regarded in preparing for a defense, or noticed by the jury in assessing the fine.

JUDGE CHASE. You are mistaken in supposing that the jury has a right to assess the fine. It may be conformable to your local State laws, but it is a wild notion as applied to the Federal Court. It is not the law.

Mr. Hay said that he was somewhat perplexed. He could sometimes answer arguments, but not authority; however, if he was permitted to proceed, he would state his ideas about fact and opinion, and then leave the subject to the court. The observations which he was about to make, were hazarded without that deliberation to which he could wish to have recourse. He was not, however, urging an argument, but praying for time to prepare one. It seemed to him, clearly, that the assertion of a fact was the assertion of that which, from its nature, was susceptible of direct and positive evidence; everything else was opinion. For instance, if one man should say of another that he stole a horse, the assertion, if true, could be demonstrated to be true by proving that he did steal a horse; or if one man