

as the task may be, I shall offer a few observations to show that they have this right. I intend to defend Mr. Callender by the establishment of two points.

First, that a law contrary to the Constitution is void; and, secondly, that the jury have a right to consider the law and the fact. First, it seems to be admitted on all hands, that, when the legislature exercise a power not given them by the Constitution, the judiciary will disregard their acts. The second point, that the jury have a right to decide the law and the fact, appears to me equally clear. In the exercise of the power of determining law and fact, a jury cannot be controlled by the court. The court have a right to instruct the jury, but the jury have a right to act as they think right; and if they find contrary to the directions of the court, and to the law of the case, the court may set aside their verdict and grant a new trial.

JUDGE CHASE. Courts do not claim the right of setting aside the verdict in criminal cases.

*Mr. Nicholas.* From this right of the jury to consider law and fact in a general verdict, it seems to follow, that counsel ought to be permitted to address a jury on the constitutionality of the law in question; this leads me back to my first position, that if an act of Congress contravene the Constitution of the United States, a jury have a right to say that it is null, and that they will not give the efficacy of a law to an act which is void in itself; believing it to be contrary to the Constitution, they will not convict any man of a violation of it. If this jury believed that the Sedition Act is not a law of the land, they cannot find the defendant guilty. The Constitution secures to every man a fair and impartial trial by jury, in the district where the fact shall have been committed: and to preserve this sacred right unimpaired, it should never be interfered with. If ever a precedent is established, that the court can control the jury so as to prevent them from finding a general verdict, their important right, without which every other right is of no value, will be impaired, if not absolutely destroyed. Juries are to decide ac-