

ording to the dictates of conscience and the laws of the country, and to control them would endanger the right of this most invaluable mode of trial.

I have understood that some reliance would be placed on two decisions of the courts of this State, in which they determined two acts of our legislature to be unconstitutional; but when we come to analyze these decisions, they will not authorize the belief that the jury have not the right I contend for—they only prove that the judiciary can declare legislative acts to be unconstitutional; they do not prove that a jury may not have a similar power. In the case of *Kemper v. Hawkins*, they refused to carry into effect a law which gave the district courts a right to grant injunctions in certain cases, because they thought it unconstitutional, and that the courts had no power to act under the law. That case did not turn on a relative view of the power and connection of a court and jury; it was a question whether the courts would exercise a particular jurisdiction, and carry into effect that act as practiced by the judges in chancery; but they never decided that a jury had not a right to determine on the constitutionality of a law, nor could a question about this right have arisen in those two cases; the court said that the judiciary were not bound to carry into effect an unconstitutional law. I do not deny the right of the court to determine the law, but I deny the right of the court to control the jury; though I have not bestowed a very particular attention on this subject, I am perfectly convinced that the jury have the right I contend for; and, consequently, that counsel have a right to address them on that subject.

The act of Congress to which I have alluded, appears to have given to the jury the power of deciding on the law and the fact; and I trust, that when this whole question comes into consideration, the court will suffer the counsel for the traverser to go on to speak to the jury, subject to the direction of the court.

*Mr. Hay* observed that he was prepared to address the court on the extent of the powers of the jury in the case at