

tained in the publication, in which case, the statute on which the traverser is indicted excuses him. If all the twenty sets of words, stated in the indictment as charges against the traverser, shall not be proved against him; or if he can prove that any of them are true, the jury will acquit him of such of them as shall not be established against him, and also of such of them as he can prove to be true; and they will find him guilty of the residue.

These inquiries, on behalf of the government of the United States, and on the part of the traverser, are proper for, and within the jurisdiction and the terms of the oath of the petit jury, who have been sworn "that they will well and truly try the issue joined between the United States and the traverser at the bar, and a true verdict give according to their evidence." The issue joined, therefore, is, whether the traverser is guilty of the several offenses charged in the indictment; and to this issue no evidence is admissible (on the part of the government, or of the traverser) but what is pertinent or applicable to it. The petit jury, to discharge their duty, must first inquire, whether the traverser committed all or any of the facts alleged in the indictment to have been done by him, some time before the indictment. If they find that he did commit all or any of the said facts, their next inquiry is, whether the doing such facts have been made criminal and punishable by the statute of the United States, on which the traverser is indicted. For this purpose, they must peruse the statute, and carefully examine whether the facts charged and proved are within the provisions of it. If the words that create the offense are plain and intelligible, they must then determine whether the offense proved is of the species of criminality charged in the indictment; but if the words are ambiguous or doubtful, all construction should be rejected. The statute, on which the traverser is indicted, enacts "that the jury who shall try the cause shall have a right to determine the law and the fact, under the direction of the court, as in other cases." By this provision, I understand that a right is given to the jury to determine what the law