

courts of the United States will be uniform, or they will become so by the revision and correction of the Supreme Court; and thereby the same principles will pervade all the Union; but the opinions of petit juries will very probably be different in different states.

The decision of courts of justice will not be influenced by political and local principles, and prejudices. If inferior courts commit error, it may be rectified; but if juries make mistakes, there can be no revision or control over their verdicts, and therefore, there can be no mode to obtain uniformity in their decisions. Besides, petit juries are under no obligation by the terms of their oath, to decide the constitutionality of any law; their determination, therefore, will be extra judicial. I should also imagine, that no jury would wish to have a right to determine such great, important and difficult questions; and I hope no jury can be found, who will exercise the power desired over the statutes of Congress, against the opinion of the Federal courts.

I have consulted with my brother, Judge Griffin, and I now deliver the opinion of the court, "That the petit jury have no right to decide on the constitutionality of the statute on which the traverser is indicted; and that, if the jury should exercise that power, they would thereby usurp the authority entrusted by the Constitution of the United States to this court." Governed by this opinion, the court will not allow the counsel for the traverser to argue before the petit jury, that they have a right to decide on the constitutionality of the statute, on which the traverser stands indicted. If the counsel for the traverser had offered sufficient arguments to the court, to show that the petit jury had this right, the court, on being convinced that the opinion delivered was erroneous, would have changed it; for they hold it a much greater reproach for a judge to continue in his error, than to retract.

The gentlemen of the profession know, that questions have sometimes occurred in state courts, whether acts of assembly had expired, or had been repealed; but no one will say that such questions were ever submitted to a jury.