Newcomer, Michael Newcomer, Kilgour, Ege, Shower, and Cockey—33.

*Negative*—Messrs. Chapman, Pres't, Blakistone, Dent, Lee, Chambers of Kent, Mitchell, Donaldson, Dorsey, Wells, Kent, Weems, Dalrymple, Bond, Sollers, Brent of Charles, Merrick, Jenifer, Colston, John Dennis, Williams, Goldsborough, Eccleston, Phelps, McLane, Bowie, Sprigg, McCubbin, Thomas, Gaither, Hardcastle, Presstman, Ware, Fiery, Davis, Weber, Hollyday, Slicer, and Fitzpatrick—38.

So the amendment to the amendment was rejected.

Mr. BRENT, of Baltimore city, moved to amend the amendment, by adding at the end thereof, the following:

"And in all criminal trials, the jury shall decide the law, as well as the facts in evidence, and the truth shall always be admissible in evidence."

Some conversation followed, after which the amendment was again read.

Mr. SPENCER moved to amend said amendment, by adding the following:

"And to have all questions of law, arising in the course of his trial, explained by the court before his defence shall be stated by his counsel."

Mr. BRENT, of Baltimore city, accepted this amendment as a modification of his own.

Mr. BRENT rose to say, in justification of his amendment, that there was a difference of opinion on the Bench in reference to this matter. Some of the judges now carry out the spirit of this proposition; but there are others, who doubt the right of the jury to be judges of the law. Such was the rule in the Courts of the District of Columbia. It was not in the old bill of rights; and many gentleman thought it would be a great improvement. He had, therefore, submitted the amendment.

Mr. CHAMBERS was not acquainted with the practice elsewhere. But, if the amendment were adopted, he thought it would operate against the accused in his district. If the counsel for a criminal thinks it desirable, he may send the law to the jury, on an instruction from the court. He thought also, that the amendment might produce some difficulty in practice. The prisoner's counsel could now ask instructions as to the law for the government of the jury; or the court, as he himself had done, might gratuitously interpose his opinion that the law is against the prosecutor, and dismiss the case.

Mr. PRESSTMAN could not give his assent to the amendment, especially was he opposed to some parts of it. He thought that the doctrine that the jury should decide as to the law, as well as the facts—if it had not been long settled in Maryland, ought not to prevail. Such a practice would never have found its way here, but for the transcendent abilities of that distinguished man, Wm. Pinckney. But as the rule has been so long in operation, he did not desire to disturb it. What are the facts which ought to go before the jury, as proper evidence, is for the court to determine. He objected to the words "facts in evidence," in the amendment of his colleague, as liable to the objection of uncertainty as to their true meaning. He thought it of great importance in times of excitement, that the power should be vested in the Judge to expound the law, because his calm and deliberate judgment would be a shield to the innocent. He did not disturb the rule as it now prevails, but if twelve men ignorant of the law were on a jury, they ought to be instructed, so that the verdict might be according to the law and the evidence.

Mr. SPENCER expressed his intention to vote for the amendment, because, in some parts of the State, it was doubted whether the juries are to be judges of the law as well as the fact. He would go still further, and he intended to submit an amendment providing that the prisoner shall be entitled to have the law expounded to him before his counsel closes his defence. At present, the exposition of the law is not made by the court until the counsel for the defence has closed. It was not so, when he acted as a deputy of the Attorney General. The court then expounded the law, and the counsel for the defence closed afterwards. Now a different practice had grown up. The court gave the instructions after the counsel for the accused had closed his defence.

Mr. DORSEY said, that such was not the practice in his district.

Mr. SPENCER said, it was the practice in his district, and he wished to have the principle fixed.

Mr. BRENT accepted the proposition of the gentleman from Queen Anne's, as a modification of his amendment. He intended that the counsel for the prisoner should have a right to ask the advice of the court. He wished to see the largest liberty given to persons brought up for trial, and that the jury should decide both the law and the fact. His colleague had referred to Mr. Pinckney, as the originator of the jury. The practice began on the other side of the water. Previous to the days of Erskine, it was otherwise, but through his efforts aided by others, the present practice was established. It began to be fully discussed, he believed, with the case of Buchnel. There could be no difficulty in inserting a declaratory article on the subject in the bill of rights. His proposition was simple and plain. He referred to the trial of the Rev. Mr. Breckenridge, on a charge of libel. One of the Judges insisted that the truth should not be admitted in evidence, but he was overruled by the other two judges associated with him—this therefore, showed that there was judicial doubt, whether the truth could be admitted in cases of libel, and therefore be proposed to settle this doubt.

Mr. PRESSTMAN offered the following amendment which he asked his colleague, (Mr. Brent.) to accept as a modification of his amendment.

Insert between the amendment offered by Mr. BRENT of Baltimore city, and the amendment offered by Mr. SPENCER, and accepted by Mr. BRENT, the following:

"And that the court may determine what is evidence proper to go before the jury."

Mr. BRENT accepted the modifications.