there had recently been a decision that the jury were bound by the opinion of the judge, in matter of law. He was in favor of the amendment, and wished this provision to accompany it.

Mr. BRENT of Baltimore city, said that he had offered just such an amendment, and it had been voted down. There had been such a decision within the last twelve days, as had been stated by the gentleman from Queen Anne's, [Mr. Spencer,] and it was a matter of doubt in many districts. In a civil case there could be a bill of exceptions, but in a criminal case there was only a writ of error. It seemed better that the principle should be adopted in Maryland, which had been brought about in England by the eloquence of Erskine and other eminent jurists, that the jury should be judges in the last resort, both of law and fact.

Mr. CONSTABLE said that he was in favor of the proposition proposed as an amendment. If the counsel of the accused asked the opinion of the court, he was bound to give it; but if the State asked for it, then it was but the advice of a lawyer and not binding. The power was to set aside a verdict. They could not set aside an acquittal. Formerly in England they punished the jury heavily; but latterly there had been no power, whatever, over a verdict of acquittal in a criminal case. He would move to amend the amendment by adding these words, "and on such trial there shall be a bill of exceptions, and appeal to the ruling of the court as to the admissibility of evidence the same as in civil cases"

Mr. CHAMBERS said that if the verdict of the jury was against law, the court could reverse it in a hundred cases in succession. But if this passed, and if the jury, in the prejudices arising from local causes should fly in the face of the plainest principles of law, and convict an innocent man, he must be hung although the judge knew that the law was perverted by the jury. He wished gentlemen to understand the effect if they made jurymen judges, and judges cyphers. The bill of exceptions was nothing more than the certificate of the fact that the case had been decided so and so. This was taken to the court of appeals, and if the decision was wrong, there would be a new trial. But if the jury were to be judges of law, they ought to decide upon the bill of exceptions The jury knew nothing about law, and would ask the opinion of the judge. He was bound to give it. The moment he was through, the lawyer would rise before his face and argue that it was nonsense. The jury would pay no attention to the judge, and decide contrary to the law. The practice now was for the judge to grant a new trial. He did not think there was any harmony in the proposition for the jury to decide the law, and for the judge to sign the bill of exceptions.

As to the right of jury trial, the third article of the bill of rights had been considered so conclusive and imperative that it had even been doubted whether even by consent of parties, a trial of facts could be submitted to the court. He had never heard the constitutional right to trial by jury questioned until to-day.

Mr. CONSTABLE read the third article of the declaration of rights, which is as follows:

"That the inhabitants of Maryland are entitled to the common law of England, and the trial by jury, according to the course of that law, and to the benefit of such of the English statutes as existed at the time of their first emigration; and which by experience have been found applicable to their local and other circumstances, and of such others as have been since made in England and Great Britain, and have been introduced, used and practised by the courts of law or equity; and also to all acts of assembly in power on the first of June, 1774, except such as may have since expired, or have been, or may be altered by act of Convention, or this declaration of rights—subject nevertheless to the revision of, and amendment or repeal by the Legislature of this State; and the inhabitants of Maryland are also entitled to all property derived to them from or under the charter granted by his majesty, Charles I, to Cæcilius Calvert, baron of Baltimore."

Mr. CONSTABLE added that the Legislature had the express right to repeal the whole of this article, and they had constantly exercised the power to modify it. He had little fear of any inroad upon the trial by jury; but he should prefer to have it in the Constitution rather than to have it left to the Legislature.

Mr. CHAMBERS inquired if the gentleman meant to be understood that the expression in relation to repeal by the Legislature was applicable to the trial by jury?

Mr. CONSTABLE replied in the affirmative. It applied to the whole article; and the Legislature had exercised the power upon every point but this one. They had changed the common law in a hundred respects. If this were a doubtful point, it should be placed beyond all controversy; for it was the great safeguard and bulwark of security for property and persons. He would suggest to the gentleman from Queen Anne's (Mr. Spencer,) to withdraw the amendment and propose it as a separate section.

Mr SPENCER wished the jury to be judges of the law. The court always decided as to the admisibility of evidence; and sometimes great injustice was done. This would be remedied by the bill of exceptions. He understood the practice to have been for the jury to decide the law. He understood the court to give their opinion, but that the jury were instructed that it was merely an opinion and not instruction. He would accept the amendment moved by Mr. CONSTABLE as a modification of his own amendment; which he would withdraw and offer as a separate section.

The question was then taken on the amendment as offered by Mr. CONSTABLE, as an additional section; and

Determined in the affirmative.

Mr. SPENCER then offered as an additional section to the report of the committee, the following: