"In the trial of all criminal cases, the jury shall be the judges of law as well as fact, 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. BOWIE asked for a division of the question. It had always been his understanding that not only in regard to the admissibility of evidence, but in regard to the nature of the offence charged, the jury were the judges of law and of fact. If a bill of exceptions was to lie to the court of appeal, it seemed to imply that the judge had a right to decide questions of law, and with regard to the admissibility of evidence. This was a principle which he wholly repudiated. In his own district the judge had always maintained the doctrine that the jury were to decide; and even in questions arising under the admissibility of evidence, he had always positively refused to grant instructions to the jury. He would give his advice, but it was always in the form of advice. He (Mr. B.) utterly denied that the court had the right to instruct the jury upon points of evidence. If the jury did not obey the instructions, the judge would set the verdict aside. Although no court had been found to set aside a verdict where parties had been acquitted, yet as all verdicts were under the control of the court, they had the right to do so. The defendant was not the only party interested. The whole people of the State were interested that the guilty should not escape. All verdicts were under the control of the court. No harm could be done by leaving the law precisely in its present form. If the judge was to be the exclusive judge of the admissibility of testimony, the jury might as well be discharged, and leave the court to settle the whole question. The rights of the jury had been invaded by the modern construction, and he wished to see them brought back to the old common law of England making them judges of law and of fact.

Mr. CONSTABLE asked how a trial could progress unless there was some tribunal to regulate the admissibility of evidence? He thought it necessary for the court to decide upon it before it went to the jury.

Mr. BOWIE said that was the very thing he complained of. Judge Stephens, of his own judicial district, always insisted that he could only give his advice upon it.

Mr. DORSEY suggested that if there was no power in the judge to rule out evidence, witnesses might be brought to give hearsay testimony. He had never heard such an idea before, and his intercourse with Judge Stephens seemed to him irreconcilable with the principle ascribed to him by the gentleman from Prince George. The gentleman could not have meant that the evidence must go to the jury, and that the judge could afterwards only give his advice upon it.

Mr. BOWIE said:

That he did mean that Judge Stephens invariably said that he had no right to instruct the jury; and that he always let the evidence go to the jury. If asked his opinion he would give it.

Mr. BRENT was in favor of the bill of exceptions, giving equal benefit to the State and the accused. He had never before heard that the court were not the exclusive judges in criminal cases of the admissibility of evidence. The jury would always wish to hear the evidence, and thus their minds would become loaded with a great amount of legal evidence they could not throw off.

He differed with the gentleman from Prince George's also with regard to the right to set aside a verdict of acquittal. The judges had uniformly decided that they had no such power. It was contrary to the provision of the Constitution of the United States, that no man should be "subject for the same offence to be put twice in jeopardy of life or limb." If acquitted once, he could plead that acquittal, if charged a second time.

Mr. CONSTABLE read the decision of Judge Buchanan upon the right of the judge upon the admisibility of evidence.

Mr. THAWLEY moved the previous question, and being seconded,

The question was taken on the first branch of the amendment, being in these words:

"In the trial of all criminal cases, the jury shall be the judges of law as well as fact."

Determiued in the affirmative.

The question was then taken on the second branch of the amendment, being as follows:

"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. BOWIE moved that the question on this branch of the amendment be taken by yeas and nays,

Which being ordered,

Appeared as follows:

Affirmative—Messrs. Sellman, Howard, Buchanan, Bell, Welch, Ridgely, Lloyd, Sherwood, of Talbot, John Dennis, Constable, McCullough, Miller, McLane, Spencer, Shriver, Biser, McHenry, Magraw, Nelson, Carter, Thawley, Gwinn, Brent, of Baltimore city, Ware, Fiery, Brewer, Weber, Smith, Parke, Ege, Cockey and Brown —31.

Negative—Messrs. Blakistone, Pres't. p. t., Morgan, Dent, Hopewell, Ricaud, Lee, Chambers, of Kent, Donaldson, Dorsey, Wells, Randall, Kent, Weems, Brent of Charles, Dashiell, Williams, Goldsborough, Eccleston, Phelps, Bowie, Tuck, Sprigg, McCubbin, Grason, George, Wright, Dirickson, McMaster, Hearn, Fooks, Jacobs, Thomas, Annan, Stephenson, Stewart, of Caroline, Hardcastle, Schley, Neill, John Newcomer, Harbine and Hollyday—44.

So the second branch of the amendment was rejected.

Mr. BOWIE moved further to amend the report of the committee by adding at the end thereof as an additional section the following:

"The rate of interest in this State, shall not exceed six per cent per annum, and no higher rate shall be taken or demanded, and the legisla-