

In further elucidation and confirmation of your powers to judge of the law, the defendants will state another case.—

A man steals and carries away from one of your neighbours five pounds: He is arraigned for a felony, and tried by a jury, who judge from the evidence produced if he did actually take away the five pounds, which is the matter of fact; if that fact is proved, the jury judge if that fact constitutes the crime of felony; how are they to judge if it be criminal or not? but by consulting the law, to learn what sort of a crime the law pronounces this fact of carrying away to be, either felony as stated in the indictment, or a crime of a less offensive nature, or no crime at all. If they *have doubts about their comprehension of the law*, and if *they choose* they may consult the judge and ask his opinion: It is his duty, and he is bound by oath to give them a faithful explanation of the law, as well in his original charge, as at any time during their consultation; *they are not bound to follow his opinion*, because he may from ignorance, or design give a very improper interpretation of the law; they therefore take the whole into their consideration both fact and law, and adjudge him guilty, or not guilty of felony, or any lesser, or no crime. Just so it is with libels, which (like felonies and larcenies) expose a man to corporal punishment. The fact is publishing, if that be proved, you go to the consideration of the contents whether there be any thing illegal, and criminal in it: This can be done no otherwise than by comparing the law, which marks the criminality of the deed, or instrument, with the instrument itself.

The defendants are solicitous to put the matter in a clear light for your easier comprehension, and they hope they have succeeded.

They will now adduce some authorities to establish and confirm, what they have advanced in support of your power and privilege of judging both fact and law.

Judge Blackstone, in describing the nature of juries concludes in one place thus, (vol. 3. p. 378.)

“ The jury, if they think proper, may take upon themselves