THE INTELLIGENCER

SAINT LOUIS:

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The Charge of Chief Justice Shaw in the Webster Case.

At the request of several friends we publish below, in full, the charge of Chief Justice Shaw to the Jury. The tone and general bearing of this charge cannot fail to arrest the attention of western readers. It is so wide a departure from the established usages of our western courts, it is so practical an exercise in a capital case, of a power always denied to our Judges, that it strikes us with astonishment to see the Judge, commenting on the testimony, arguing doubtful points to the jury, weakening the force of that which tends to exonerate the accused, suggesting new points not made by the counsel, originating theories tending to implicate the prisoner, and inconsistent with his innocence, and in effect discussing the facts with as much particularity as the prosecuting attorney for the State. We are well aware that this practice is of long standing in Massachusetts and other eastern States, by whom it was borrowed from the English courts. Every one, at all familiar with the history of the British Judiciary, will remember the career of the notorious Jeffries, who, by his brutal and ferocious conduct, overawed the juries of England, insulted them in the grossest manner in the jury box, if they dared to exercise the liberty of thought, and threatened them with fine and imprisonment, if they but hinted at the innocence of the accused. By such means as these, he procured over nine thousand convictions, if we remember correctly, on the "Bloody Circuit," and many of them on the most frivolous and unfounded pretexts. We cite this case, not that we intend to compare Chief Justice Shaw with the butcher Jeffries, but only as an illustration of the danger of confiding to the hands of the Judge, the delicate trust of interfering with or influencing the jury in its judgment on the facts. To the jury is properly confided the exclusive right to decide upon the facts, while it is the province of the court to expound the law upon the facts, as found by the jury. This division of power between the judge and the jury, has been regarded for centuries past, as the very bulwark of British liberty, as it is now esteemed the palladium of our own. So scrupulously has it been preserved in our institutions, that the framers of the Constitution of the United States incorporated into it a provision that "the trial of all crimes, except in cases of impeachment, shall be by jury." And in another section—"The accused shall enjoy the right to a speedy and public trial by an impartial jury of the State or district wherein the crime shall have been committed." It further provides that "in suits at common law, where the value in controversy shall exceed $20, the right of trial by jury shall be preserved." These provisions fully evince the watchful jealousy with which our forefathers regarded the trial by jury.

But if the judge is allowed to become prosecutor, to argue and distort the fact, to make suggestions as to the credibility of witnesses, to express an opinion as to the weight of evidence, the trial by jury is a mockery and ought instantly to be abolished. Every man knows, that in a large majority of cases, the judge, who is supposed to be impartial, and is, or ought to be, a person of more than ordinary intelligence, can by the weight of his official character, and by means of the just respect which is due from the jury to the court, influence the verdict of the jury to a most pernicious and dangerous extent. If the judge, is thus virtually to decide upon the facts, he should take upon himself all the responsibilities of that decision and not shield himself behind the verdict of a jury, found upon his suggestion. The laws of Missouri, we think, are in this respect, a great improvement upon those of Massachusetts. The judge is prohibited by express statute of this State, from giving any instruction or charge to the jury except *in writing*, in all cases, either civil or criminal; and if one of our judges should attempt to travel out of his legitimate sphere, and invade the province of the jury—by discussing the facts, commenting on the weight of evidence, or impeaching the credibility of witnesses—especially in a capital case—he would soon be compelled to retire from the bench, "with the unanimous approbation of his constituents."

But we are detaining our readers from the charge of the Chief Justice, and, when they have read it, we think they will agree with us, that if such a charge be justifiable, under the laws of Massachusetts, we have reason to thank God that we have no such laws in Missouri. We say this without reference to the question of Webster's guilt or innocence. But we protest against the practice of allowing the judge, *in any case*, to become the prosecutor, and thereby to influence, and perhaps control, the finding of the jury on the facts.

CHARGE OF CHIEF JUSTICE SHAW.

Gentlemen: I rise with the deepest sense of the responsibility which presses upon this tribunal. You have been so long engaged in this important case, that I cannot detain you much longer in suspense. I shall not at this late period keep you long confined in considering the facts which have been so fully laid before you, and it is mainly a question of facts; I shall rather dwell upon a few plain principles. It is the nature of our laws under which our lives are secured to distribute to the several organs of government each its several department of duties, and each is responsible for his own. We are not here to make the laws, but to execute them. This indictment charges the prisoner at the bar with murder. Murder is the highest species of homicide. Homicide is a general term, including several degrees; some of which are justifiable, such as those committed in justifiable war, or by the officers of justice, with proper warrants; but I need not dwell on them. The statute law only provides that wilful murder shall be punished by death; but that is not the only law in force among us. We have the common law. The common law was received by our ancestors from England, but it is really as much in force among us as any other, and may be called the common law of Massachusetts. [The learned chief justice read from a memorandum of his own on the nature of malice.] In murder, to escape the imputation of malice, the prisoner must prove the provocation, the accident, or any other circumstance which goes to preclude the malice; otherwise it is argued from the act itself. No provocation of words, however opprobrious, will mitigate the mo-