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of the deceased person. This dates everywhere from his death.[39]

From a consideration of the many cases construing the various acts which the legislature has passed on the subject, we can discern a disposition on the part of the courts to impose a strict construction on these statutes which do not create a lien but limit its duration only. If a creditor is to avail himself of the statutory remedy he must carefully follow the procedure set forth in the acts.

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COMMENTING ON THE WEIGHT OF THE EVIDENCE AND THE CREDIBILITY OF WITNESSES IN THE CHARGE TO THE JURY

In the majority of states, usually because of statutory or constitutional provisions, trial courts are not permitted, in charging juries, to comment on the facts, or express an opinion on the weight of the evidence or the credibility of witnesses.[1] There the jury prevails as the sole fact finding agency, divorced from all suggestions and leads of the trial court.[2] Any remark made by a judge, whether direct or indirect, intentional or inadvertent, from which the jury may infer what his opinion is, as to the sufficiency or insufficiency of the evidence, or any part of it pertinent to the issue, is error.[3] However, at common law and in Pennsylvania it is not error for the trial court in its charge to the jury to express an opinion on disputed questions of fact, provided such questions are ultimately left to the jury for their decision, without any direction as to how they

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[39]Breden v. Agnew, 8 Pa. 233, 236 (1848).

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[1]38 Cyc. 1646; Tait v. Murphy, 80 Ala. 440; Randolph v. McCain, 34 Ark. 696; Miller v. Stewart, 24 Cal. 502; Stacy v. Cobbs, 36 Ill. 349; Goss v. Calkins, 162 Mass. 492; Ross v. State, 29 Tex. 499.

[2]State v. Williams, 31 S. C. 4.

[3]Fuhrman v. Huntsville, 54 Ala. 263; State v. Ah Tong, 7 Nev. 148; State v. Dick, 60 N. C. 440.

should find the facts.[4] Let us examine this latter view in detail.

According to this view decisions hold that it rests within the sound discretion of a trial court judge whether or not to express his opinion concerning the facts in dispute.[5] He is not bound to do so, even on request,[6] unless the circumstances are exceptional when it becomes the duty of the judge to express his opinion of the facts and guide the minds of the jury to a correct view of the evidence.[7] If the judge deigns to direct the attention of the jury to any matter affecting the credibility of a witness,[8] or to express an opinion as to the tendency of the facts in evidence,[9] his action remains perfectly proper so long as he leaves the jury at full liberty to decide the facts upon their own judgment.[10] When, on the other hand, an expression of opinion is made in such a manner that the jury may naturally regard it as a direction to them, and as excluding them from finding the facts for themselves—there being evidence proper for them to consider, both for and against such direction—it constitutes reversible error.[11] The best safeguard against such a pitfall is to expressly inform the jury that they are the exclusive judges of the facts, and are not bound by the opinion of the court.[12] It seems that no

[4]Pool v. White, 175 Pa. 459; Heydrick v. Hutchinson, 165 Pa. 208; Bonner v. Herrick, 99 Pa. 320.

[5]Crotty v. Danbury, 79 Conn. 379; Bruch v. Carter, 32 N. J. L. 554; Sawyer v. Phaley, 33 Vt. 69.

[6]Phila. etc. Ry. v. Hagan, 47 Pa. 244; Lorain v. Hall, 33 Pa. 270; Thomas v. Thomas, 21 Pa. 315; Brown v. Campbell, 1 S. & R. 176.

[7]Com. v. Kilpatrick, 31 Pa. 198; Price v. Hamscher, 174 Pa. 73; Repsher v. Watson, 17 Pa. 365; Leibig v. Steiner, 94 Pa. 466; Bernstein v. Walsh, 32 Pa. Super. Ct. 392.

[8]Dale's Appeal, 57 Conn. 127; Brinton v. Walker, 15 Pa. Super. Ct. 449; Springer v. Stiver, 16 Pa. Super. Ct. 184; Cathcart v. Com., 37 Pa. 108.

[9]Oyster v. Longnecker, 16 Pa. 269.

[10]Spear v. Phila. Ry. Co., 119 Pa. 61; Bonner v. Herrick, 99 Pa. 220; Porter v. Seiler, 23 Pa. 424; Delany v. Robinson, 2 Wh. 503.

[11]Spangler v. Hummer, 3 Penr. & Watts, 370; Oyster v. Longnecker, 16 Pa. 269.

[12]Yale v. Seely, 15 Vt. 221; Ill. Cent. Ry. Co. v. Davidson, 76 Fed. 517; Sorenson v. Northern Pac. Ry. Co., 36 Fed. 166.

matter how clearly erroneous a judge's opinion may be, he still has the right to comment on the disputed facts.[13] Moreover, very strong expressions of opinion on the facts are tolerated; indeed, sometimes, they may be necessary.[14] For instance, it has been held that the statement in the charge to the jury, "In the opinion of the court, the defendant is guilty", did not constitute error prejudicial to the defendant.[15] Only the case of a very plain error on the part of the trial judge will cause the supreme court to reverse on account of his comments on the balance of the testimony.[16]

It is respectfully submitted that Pennsylvania's stand in the matter is the better one. The jury should be aided by the trial court in cases of difficulty, and inspired with confidence in cases of doubt. The Pennsylvania rule supplies the available medium to effect those ends. No more cogent reason for the rule can be advanced to counteract the minimized possibilities of abuse of the power under discussion.

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RESPONSIBILITY OF PRINCIPAL FOR NEGLIGENTLY INFLICTED INJURIES CAUSED BY AGENTS USE OF UNAUTHORIZED INSTRUMENTALITY

To settle an hitherto undecided point in the law of master and servant in Pennsylvania was the task of Justice Maxey of the Supreme Court in the case of *Wesolowski v. John Hancock Life Insurance Company*.[1] The facts of the case are briefly these: The defendant, an insurance com-

[13]Long v. Ramsay, 1 S. & R. 72; Oyster v. Longnecker, 16 Pa. 269.

[14]Leibig v. Steiner, 94 Pa. 466; Bitner v. Bitner, 65 Pa. 347.

[15]Com. v. Clymer, 1 Leh. L. J. 311. See also McCain v. Comm., 110 Pa. 263; Winther v. Second St. Pass. Ry. Co., 159 Pa. 628.

[16]Supplee v. Timothy, 124 Pa. 375; 23 W. N. C. 386.

[1]162 Atl. 166 (1932).