

The jury find the facts but must be guided by the directions of the judge as regards the law. [*Citation of judge's charge.*]

The learned trial judge clearly told the jury, that it was a matter for them to decide—"Whether you believe the "version of the defendant's witnesses, or not." Then he did make the statement, that he would hesitate seriously and a very long time before he would accept that explanation, and did assert that it appeared to him that there was only one explanation; and then he proceeded to picture what the witnesses had testified as to what was found, or the position of the horses and rig with respect to the defendant's car. That part, at least, was clearly within the learned trial judge's powers, and was clearly his duty.

Then follows, as stated, what the defendant considers the objectionable part of the learned trial judge's charge. After having said this, the learned trial judge added—"Nevertheless, gentlemen, what I have said to you, is simply my impression, and you are not bound to follow it. You have to decide yourselves between all these contradictions."

All that the learned trial judge, said, or meant to say, I take it in this way—an appeal to the jury to give the whole matter their best consideration. He did not, I take it, convey the idea to the jury that they were to consider how they would feel if they were in the position, but endeavored to induce the jury to realize the serious nature of the matter which they had under consideration, and clearly such a statement could not in any way influence the jury.

The Court of King's Bench has laid down as a rule, that a clearly expressed opinion by the trial judge to the jury as to the proof made, or as to whether a fact had been