

[Reference to and explanation of these cases.]

If no jury could reasonably draw any but one conclusion of fact from the facts admitted or proved, the Judge may and should draw that conclusion himself; but where more than one conclusion of fact may reasonably be drawn from such facts, it is for the jury to say which is the proper conclusion.

It is needless to multiply authorities: the law is clear that the belief of the defendant in the truth of the charge he was laying is a most material fact to be considered—that the state of his mind is as much a fact as the state of his digestion; and that where the evidence, be it of one or more witnesses, including the defendant himself or otherwise, may lead to different conclusions as to his belief, it is not for the Judge, but for the jury, to say what the fact is. We may regret that the law is so—I for my part do regret it—but that this is the law is, I think, plain.

I find it impossible from the notes before us to make out whether the trial Judge himself decided against the defendant upon the question of his belief—but in any case it was not left to the jury, as it should have been.

There should be a new trial; costs of the last trial and of the appeal to be in the cause.

MEREDITH, C.J., gave reasons in writing for the same conclusion.

TEETZEL, J., also concurred.

LAMOUREAUX v. SIMPSON—BRITTON, J.—Nov. 3.

Contract—Transfer of Company Share—Undertaking to Retransfer—Sale or Loan of Share—Findings of Jury.—The plaintiffs, as trustees of the estate of George Tuckett, deceased, were the holders of one share of the capital stock of the Hamilton Jockey Club Limited. The par value was \$100 per share, but \$40 only had been paid thereon. On the 17th May, 1906, the plaintiffs transferred this share to the defendant, taking from him an undertaking in writing and under seal to re-assign and transfer the share to the plaintiffs on demand. The plaintiffs on the 8th July, 1910, wrote to the defendant asking for a retransfer of the share; the defendant paid no attention to the letter. On the 16th September, 1910, the Jockey Club declared