

**12. Alternative methods of taking the opinion of a jury**—The following lucid statement of principles is extracted from the opinion of Lord Justice Bowen in the leading case of *Abrath v. North-Eastern R. Co.* (a)

(1) A judge may leave to the jury to find a general verdict explaining to the jury what the disputed facts are, and telling them that, if they find the disputed facts in favour of one side or the other, his opinion as to reasonable and probable cause will differ accordingly, telling them what, in each alternative, his view will be, and enabling them to apply that statement with reference to the issue as to malice; that is a way which in a very simple kind of case may be adopted. (b)

(2) A course which judges have been in the habit of adopting where there are circumstances of complication is this: The judge may tell the jury what the issues or questions are, and at the same time inform them what will be the effect upon the verdict which they will ultimately be asked to find of the answers they give to the specific questions, leaving the jury both to answer the questions and then to find a verdict after he has explained to them what result the answers to the questions will involve. (c)

(3) . . . . . A third way in which a judge may conduct the trial is by asking the jury specific questions, and not leaving it to them to find the verdict, but entering the judgment upon their findings himself. (d)

Lord Tenterden considered the correct rule to be this: If there be any fact in dispute between the parties, the judge should

proceeding, is probably rather an independent question for the jury, to be decided on their view of all the particulars of the defendant's conduct than for the judge, to whom the legal effect of the facts only is more properly referred: *Turner v. Ambler* (1847) 10 Q.B. 252.

(a) (1883) 11 Q.B.D. 440 (p. 458).

(b) Cases supporting this statement are *Weston v. Beeman* (1857) 27 L.J. Exch. 57; *Darling v. Cooper* (1869) 11 Cox C.C. 533; *Heslop v. Chapman* (Exch. Ch. 1853) 23 L.J. Q.B. 49; *Kowland v. Samuel* (1847) 11 Q.B. 39 (note); *Cox v. Gunn* (1876) 2 R. & C. (Nov. Sc.) 528; *Fellowes v. Hutchinson* (1855) 12 U.C. Q.B. 633.

(c) In *Martin v. Hutchinson* (1871) 21 Ont. Rep. 388, it seems to be implied that this is the only proper course where the facts are numerous and complicated. But this theory is inconsistent with the fundamental principles laid down in *Panton v. Williams*, sec. 7 ante, and not justified by the language in the text.

(d) "Some judges," said Jarvis, C.J., in *Heslop v. Chapman* (1853) 11 Jur. 348, "ask the jury several questions, and say: 'If you answer these questions, I will then determine whether there is reasonable and probable cause.' Cases where this course was taken are *Douglas v. Corbett* (1856) 6 El. & Bl. 611 [special finding taken as to reasonableness of defendant's belief in guilt of plaintiff], *Long v. Nahmaschinen, &c. Gesellschaft* (1884) 4 Times L.R. 268, (sec. 7, c, ante) [special finding taken as to reasonableness of belief]; *Young v. Nichol* (1885) 9 Ont. Rep. 347 [Special finding asked, whether defendant was prudent in relying on his memory].