

utes, mistaken verdicts are greatly multiplied." The State statutes above mentioned do not affect the practice in the federal courts, and the federal judges, if they are so inclined, freely advise juries on questions of fact, as authorized by the common-law practice. Sometimes a federal judge merely recapitulates the facts and leaves all the responsibility to the jury; or, having formed an opinion on the various issues in the case, he points out to the jury the considerations tending to that conclusion, giving them at the same time all the considerations which have an opposite tendency; and occasionally he adopts the rhetoric of an advocate and addresses the jury in terms which make his own strong opinion of the merits of the case unmistakable. It has been said that the first plan is that of a weak judge. But we do not think this is necessarily true: for the judge may be perfectly sure in the particular case that the jury will render a correct verdict without any suggestions from him, or the questions of fact may happen to be of such a character that wise and strong judges would freely concede the superior qualifications of an intelligent jury to determine them. Probably a federal judge's instructions are never formed on one model, and he varies his style according to circumstances and supposed necessities. In *Illinois Cent. R. Co. v. O'Neil*, (C.C.A.) 177 Fed. Rep. 328, where the plaintiff's intestate was killed at a railroad crossing, Judge Foster gave the following colourless instruction on the facts (he made no further comment on the testimony), and the plaintiff recovered, as is usual in such cases:

"Now, gentlemen, you are the sole judges of the facts in this case. There has been very little conflicting testimony, and while I have a right to comment on the evidence, it is not my intention to do so, further than to be of some assistance to you in arriving at a solution of the problem, and you are not bound in any way by my opinions as to what has been testified to; you are at liberty to disregard anything I say in regard to the evidence, and to draw your own conclusions from what you have heard. In determining the issues of fact, where there is conflict of testimony you must resolve those conflicts of testimony, you