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CRIMINAL LAW AND PROCEDURE-JURY TRIAL- DIRECTED VERDICT OF GUILTY- MICHIGAN RULE

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CRIMINAL LAW AND PROCEDURE — JURY TRIAL — DIRECTED VERDICT OF GUILTY — MICHIGAN RULE — The defendant was convicted of negligent homicide as the result of a collision between his car and another, in which an occupant of the other car was killed. The trial court charged the jury, *inter alia*, "The court submits the case to you for your determination. The view of the court is that under the law there is only one verdict that can be found by the jury under the evidence in this case in its most favorable light." This was objected to by the defendant as error. *Held*, the instruction was in effect a direction of a verdict of guilty and, as such, deprived the defendant of his constitutional right to a trial by jury. *People v. Clark*, 295 Mich. 704, 295 N. W. 370 (1940).

The view of the court that the charge amounted to a directed verdict and was therefore erroneous raises two questions: (1) how far will the trial judge in Michigan be permitted to go in advising the jury on the evidence? and (2) is a directed verdict in a criminal case possible under any circumstances?¹ The right of the trial judge to comment on the evidence or express an opinion on the facts of a criminal case is expressly granted by statute,² and may be exercised even where the facts are in dispute, provided that the ultimate verdict is left to the jury.³ In addition, where the facts are undisputed, the Michigan cases consistently hold that the trial court may instruct the jury that it is their *duty* to bring in a verdict of guilty against the defendant.⁴ But concerning the power of the court to go a step further and by a mandatory instruction require the jury to bring in a verdict of guilty, the cases are in confusion.⁵ Many hold such a procedure to be error.⁶ It seems clear that the judge cannot coerce the jury to

¹ This discussion is confined to the rule as developed by the Michigan cases. For the rule in other jurisdictions, see 23 C. J. S. 682-695 (1940); 22 L. R. A. (N. S.) 304 (1909); 72 A. L. R. 899 (1931); 27 MICH. L. REV. 582 (1929); and 31 MICH. L. REV. 992 (1933).

² 3 Mich. Comp. Laws (1929), § 17322 (code of criminal procedure).

³ *People v. Lintz*, 244 Mich. 603, 222 N. W. 201 (1928); *People v. Lenic*, 255 Mich. 29, 237 N. W. 35 (1931); *People v. Johnson*, 260 Mich. 117, 244 N. W. 251 (1932); *People v. Burlingame*, 257 Mich. 252, 241 N. W. 253 (1932); *People v. Lewis*, 264 Mich. 83, 249 N. W. 451 (1933). See 23 C. J. S. 682, note 59 (1940).

⁴ Since the judge is without power to review or set aside a verdict of not guilty, the declaration that it is the jury's *duty* to bring in a verdict of guilty is clearly distinguishable from a mandatory instruction to do so. 22 L. R. A. (N. S.) 304 at 307 (1909); *People v. Lathers*, 223 Mich. 92, 193 N. W. 903 (1923); *People v. Heikkala*, 226 Mich. 332, 197 N. W. 366 (1924).

⁵ *People v. Heikkala*, 226 Mich. 332, 197 N. W. 366 (1924). See 72 A. L. R. 899 at 903 (1931).

⁶ *People v. Remus*, 135 Mich. 629, 98 N. W. 397, 100 N. W. 403 (1904); *People v. North*, 153 Mich. 612, 117 N. W. 63 (1908); *People v. Curry*, 163 Mich. 180, 128 N. W. 213 (1910); *People v. Slater*, 164 Mich. 156, 129 N. W. 22 (1910); *People v. Lathers*, 223 Mich. 92, 193 N. W. 903 (1923); *People v. Heikkala*, 226 Mich. 332, 197 N. W. 366 (1924); and *People v. DeWitt*, 233 Mich. 222, 206 N. W. 562 (1925).

return a verdict of guilty,⁷ or, by a summary procedure, take the verdict away from the jury.⁸ But there is considerable authority that, where there is no doubt of the defendant's guilt, it is not error to direct a verdict against him by a mandatory instruction.⁹ One case goes so far as to hold that, since the judge in a criminal case has the power to direct a verdict of guilty, a statute which divests him of that right when the facts are undisputed is unconstitutional.¹⁰ While the principal case would seem to point to the view that a directed verdict of guilty is error, it should be noticed that the court found the facts to be in dispute.¹¹ No Michigan decision would authorize the direction of a verdict of guilty in such a case.

⁷ *People v. Warren*, 122 Mich. 504, 81 N. W. 360 (1899); *People v. Remus*, 135 Mich. 629, 98 N. W. 397 (1904).

⁸ *People v. North*, 153 Mich. 612 at 613, 117 N. W. 63 (1908) ("I think it is my duty, and I instruct you that you should find a verdict against this respondent of guilty as charged, without leaving your seats, and the clerk will take the verdict"—held error); *People v. Doyle*, 160 Mich. 423, 125 N. W. 358 (1910); *People v. Curry*, 163 Mich. 180, 128 N. W. 213 (1910); *People v. Collison*, 85 Mich. 105, 48 N. W. 292 (1891).

⁹ *People v. Richmond*, 59 Mich. 570, 26 N. W. 770 (1886); *People v. Kirsch*, 67 Mich. 539, 35 N. W. 157 (1887); *People v. Lyng*, 74 Mich. 579, 42 N. W. 139 (1889); *People v. Ackerman*, 80 Mich. 588, 45 N. W. 367 (1890); *People v. Neumann*, 85 Mich. 98, 48 N. W. 290 (1891); *People v. Elmer*, 109 Mich. 493, 67 N. W. 550 (1896); *People v. Schottey*, 116 Mich. 1, 74 N. W. 209 (1898); *People v. Gardner*, 143 Mich. 104, 106 N. W. 541 (1906); *People v. Neal*, 143 Mich. 271, 106 N. W. 857 (1906); and *People v. Damskey*, 180 Mich. 664, 147 N. W. 585 (1914).

¹⁰ *People v. McMurchy*, 249 Mich. 147, 228 N. W. 723 (1930).

¹¹ "In the case at bar, reasonable men might differ as to the inferences to be drawn from the facts with respect to defendant's negligence. . . . Therefore, the trial judge was in error in charging the jury that 'under the law there is only one verdict that can be found by the jury.'" *People v. Clark*, 295 Mich. 704 at 707-708, 295 N. W. 370 (1940).