

read opinions of the court to the jury,—as seems to be held in *Dempsey v. State*, 3 Tex. App. 429; *Legg v. Drake*, 1 Ohio St. 286,—it was error to allow the reading of the opinion in this particular case, for we cannot say that it may not have influenced the jury in deciding the very question which was submitted to them. Judge Wallace's opinion concludes with the statement that "whether a libelous sense or an innocent sense is to be attributed to the publication [in this case] must be determined by the jury under proper instructions." This part of the opinion was a correct statement of the law, and harmless. The trial judge charged to the same effect. But, although thus stating that the question was one which the jury must decide as a question of fact, Judge Wallace unmistakably indicated that in his opinion "the first impression upon reading a paragraph like this would be that the person referred to had been guilty of some breach of trust," etc. Under the federal system of jurisprudence it is not error for the trial judge to express his opinion upon the facts if he makes it plain to the jury that they must decide all questions of fact independent of his opinion, but neither in principle nor authority is there any sanction for permitting any other person's opinion to be stated or shown to the jury upon such a question, with or without—and especially without—instructions that they were not to be guided by it. Certainly we cannot say that the strong expression of Judge Wallace's opinion as to the sense in which the words of the publication were used (a question of fact) did not operate upon the jury's mind to persuade them to reach the same conclusion.

The judgment of the circuit court is therefore reversed, and the case remanded, with instructions to award a new trial.

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**ERIE WRINGER MANUF'G CO. v. NATIONAL WRINGER CO. et al.**

(Circuit Court, W. D. Pennsylvania. August 29, 1894.)

No. 12.

**EXECUTION—PROPERTY SUBJECT TO LEVY—PATENTS—INSOLVENT CORPORATION.**

Under the special execution process (*feri facias*) against an insolvent corporation authorized by the Pennsylvania act of April 7, 1870, the sheriff can make a valid sale of a patent right belonging to the corporation.

J. W. Kinnear, for complainant.  
Shiras & Dickey, for defendants.

ACHESON, Circuit Judge. That a patent right may be subjected by suitable judicial proceedings to the payment of the judgment debt of the owner of the patent is now settled. But, because of the intangible nature of the property, such right could not be seized and sold upon an ordinary writ of *feri facias* at common law, and hence the judgment creditor had to seek the aid of a court of equity. *Ager v. Murray*, 105 U. S. 126. I see no good reason, however, to de-

ny the power of the legislature to authorize the taking in execution and sale of a patent right by process at law. In *Bank v. Robinson*, 57 Cal. 520, it was held that a patent right might be reached by proceedings supplementary to execution, which were a substitute for a creditor's bill. Now, in lieu of the remedy by sequestration against an insolvent corporation agreeably to the 73d, 74th, and 75th sections of the act of 16th of June, 1836 (P. L. 774), the act of 7th of April, 1870 (P. L. 58), gives a remedy by a special *feri facias*, whereby the corporate franchises, and all the property and rights of the insolvent corporation, are taken in execution, and sold out and out. *Philadelphia & B. C. R. Co.'s Appeal*, 70 Pa. St. 355. In case of *Flagg v. Farnsworth* (Com. Pl. Phila.) 12 Wkly. Notes Cas. 500, Judge Mitchell, now of the state supreme court, expressed the opinion that a valid sale of a patent right belonging to an insolvent corporation can be made under the act of 1870. In this I concur. True, patent rights are not specially mentioned in the act, but the words, "any personal, mixed or real property, franchises and rights," are certainly broad enough to cover patent rights; and to hold otherwise would defeat the legislative intention, which, I think, clearly was thus to subject all the property and rights of every description, belonging to an insolvent corporation, to the discharge of its debts. Nothing to the contrary of this view is to be inferred from the provisions of the later act of 9th May, 1889 (P. L. 172), which gives to the courts of Pennsylvania (what, it seems, they did not theretofore have) complete equity jurisdiction to charge patent rights with the payment of the owner's debts. Upon this bill and answer the plaintiff fails to show a case for relief, as the defendant company is invested with the title of the sheriff's vendee under the special *feri facias*.

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Ex parte HART.

(Circuit Court of Appeals, Fourth Circuit. October 2, 1894.)

No. 76.

1. INTERSTATE EXTRADITION—INFORMATION AS INDICTMENT.

An information is not an equivalent of an indictment within Rev. St. § 5278, requiring the surrender of a fugitive from justice on demand from another state and production of an indictment or affidavit, made before a magistrate, charging the person demanded with a crime. 59 Fed. 894, reversed.

2. SAME—VERIFICATION OF INFORMATION AS AFFIDAVIT.

Nor is the verification on belief of an information the equivalent of such an affidavit.

3. SAME—AUTHENTICATION OF AFFIDAVITS.

Under the provision of Rev. St. § 5278, that the indictment or affidavit on which extradition is demanded shall be certified as authentic by the governor of the state making the demand, affidavits filed with the governor, requesting him to make a requisition, though made a part of the requisition papers, are not sufficient where the governor only certifies to the authenticity of an information, and makes his demand on this. 59 Fed. 894, reversed.