

see when the question arises," that the Court would see at the proper time that opportunity for enquiry as to disqualification of jurors was afforded. Having regard to the duty of the Court to take great care that the prisoner got a fair trial, what else could the Judge's answer to counsel, obviously, unfamiliar with the practice in this respect, mean? When the proper time came "we"—whether he meant the Court, or the Judge and counsel—did not "see" to it and consequently the man was deprived of his right of objection to any juror for cause, and so may have been tried by jurors disqualified by interest.

What took place obviously deprived the prisoner of the right of challenge for cause; and that which the Judge said was plainly the cause of that deprivation, and so I think it may be said, fairly, that which took place did amount to a substantial refusal of the right of challenge for cause. Counsel is not to be substituted for prisoner; neither the point, nor the question, is: was counsel refused? The point and the question is: Did ~~all~~ that took place amount to a refusal of the intended challenge? No one would call it incorrect to say that it amounted to a denial of the right; and surely that is equivalent to a refusal in the sense in what this case is stated for our opinion.

I cannot, but think and say, that it was plainly the duty of the Court under all the circumstances to have taken great care that a jury of disinterested jurors only was empannelled; to wait until it was too late to object, before saying anything, may very well have misled the prisoner out of his right, and was in my opinion an error on the part of the Court as well as of counsel.

I answer the first question, No: It is not a question which should have been reserved, for it is one about which there could be no reasonable doubt.

And my answer to the second question is: Yes, substantially.

And accordingly I would direct a new trial.

HON. MR. JUSTICE LENNOX:—The answers to both questions reserved should be "No." But at the same time I desire to add, with the greatest respect, that in my opinion it would have been much more satisfactory if the learned County Court Judge, knowing of the desire and intention of the prisoner's counsel, had, when the proper time for challenge was reached, then called counsel's attention to the