

England and Canada such a practice is now-a-days unknown, and we are rather glad it is so. But in olden times, the judges of England, not unmindful of dedications and the like, whether they were styled *très Sage et très Reverend*, deemed it becoming to their dignity to garnish their deliverances with Scripture texts. For example, Mr. Justice Fortescue cites a very old precedent in support of the doctrine that a man should not be condemned before being heard: "I have heard it observed," he says, by a very learned man, that even God himself did not pass sentence upon Adam before he was called upon to make his defence. 'Adam, where art thou? Hast thou eaten of the tree whereof I commanded thee that thou shouldst not eat?' And the same question was put to Eve also." This passage was cited by Maule, J., in *Alley v. Dale*. Another case, before the Quarter Sessions at Philadelphia, merits notice for the peculiar way in which the judge (Ludlow, J.) charged the jury, in an indictment under the Sunday law, for liquor sold on that day in the hostelry of one Jacob Valer. He first recommends the jury "to discard every outside consideration, and to rise above the surrounding atmosphere in their deliberations upon the questions presented, with an earnest effort to seek for and discern the truth under the law of our land." Then, after reading out the statute to the jury, he proceeds thus:

"The testimony in this case is, that on a Sunday night, by a sort of prearrangement, these four persons, the witnesses, went into the house of one Jacob Valer; that they saw the lights burning, the tables around the room, and that they asked for whiskey, lemonade and segars; and that thereupon the whiskey, or that which seemed to be whiskey—it is for the jury to say whether the fact is established—was presented to one person. It is not indictable to drink lemonade on a Sunday, or to smoke, but to drink liquor is indictable. It is alleged that these articles were furnished, and one of the witnesses swears that one of the articles produced was whiskey, for he smelled of the article, and so determined that it was whiskey.

"Upon the question of what day it was, you have the testimony of these witnesses—it was Sunday. In the second place, as to what they drank, you have the testimony of these witnesses. It is for you to determine what they ordered, and what they drank—and paid for, by the way.

"Lastly—and this is the most important point of all—who sold this article, if it was liquor? Who furnished it? Well, it is alleged that a man

named Jacob Valer furnished it; that a person named Jacob Valer has a license for that house; that he had it considerably before this prosecution was instituted; that he, Valer, took out that license, and entered a bond, which is signed Jacob Valer. There is no testimony here, speaking as I now do with the utmost possible accuracy, as to whether this man Jacob Valer, *this Jacob Valer*, signed the bond. The question is, however, for you to decide, whether he, that is, this defendant, did or did not take out a license for that house—whether he is the identical man."

The learned judge, in his eagerness to secure his re-election by a *publican* vote, forgets that the identity of name (especially when that name was not "John Smith") is evidence of identity of the person. The judge then proceeds to bring down the case to the level of the commonest understanding, by explaining what is meant by *prima facie* evidence—it being noteworthy, however, that *all the evidence* before him was against the defendant:

"The presumption of law is, that in the ordinary and usual line of business, the employees of an establishment act under the direction and by the permission of the chief of the establishment. That, however, is only *prima facie* evidence, that is, evidence in the first place, evidence at the outset, at first blush: that is the general meaning of the words *prima facie*. If it is established as a fact, *prima facie*, in the first place, it then devolves upon the defendant to disprove the fact, either by the circumstances surrounding the case, or by positive evidence. I will illustrate what I mean by *prima facie* evidence. A receipt is said to be *prima facie* evidence of the payment of a debt. Suppose I owe a man one hundred dollars, and when I pay him he gives me a receipt; that receipt is in the first place evidence of payment. But he may show that I have not paid the debt after all. So here, where business is carried on in the ordinary and usual way, it is, in the first place, evidence that it was carried on with the consent of the owner or proprietor of the house. But the proprietor may rebut that assumption by evidence, either direct and positive, that he prohibited the business, or by evidence of all the surrounding circumstances of the case tending to prove the fact.

"Here the testimony is, that this business was carried on, and carried on in the absence of Valer; that is, there is no proof that he was there when the liquor was sold, if it was liquor. Now, it is for the jury to say whether these servants in the room acted by his (Valer's) order, and with his consent; or whether they can, from all the circumstances surrounding the case, draw an inference which rebuts that presumption, and which