

STATEMENTS BY PRISONERS' COUNSEL.

tion of making a revenue out of it. . . . Then if that be so, I cannot say that there is any distinction made in this covenant between a business carried on for profit and a business carried on for charitable reasons only."

A. H. F. L.

SELECTIONS.

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"B., who is generally supposed to be Lord Bramwell, writes to the *Times*:—"Till Chief Justice Cockburn ruled as he did, no one ever supposed that a prisoner or his counsel had a right to state facts the existence of which he had no evidence to prove. The decision was an entire novelty. There had never been a doubt or question on the matter. It is impossible to add to the authority of the opinion recently expressed by the judges, but, without being presumptuous, one may be permitted to do what of course they did not—viz., give reasons for that opinion. The statement of facts is either that the jury may act on it as true or it is idle. But to hold that the jury may act on it, is to hold that it is evidence, and then this consequence follows—that a prisoner who cannot give evidence on oath and subject to cross-examination, may give it not on oath, and, what is much more important, without being cross-examined. Such statements may not be made in civil cases. I repeat there is neither precedent, reason, nor analogy to justify the allowing of such statements, nor till it was so ruled was there authority. Let me not be mistaken. It is, and always was, and must be allowed for a party to a suit, civil or criminal, to contend that the evidence was consistent with and tended to prove that of which there was no direct evidence. But though this is clear to me, it is equally clear that there are cases in which the prisoner must of necessity be allowed to make these statements. As is truly said in your yesterday's leader, the unhappy prisoner in the dock with all eyes on him is 'dazed or confused,' and when he is asked if he will

put any questions to the witness called against him, all he understands is that he may speak, and he immediately begins to tell his story. To tell him that that is wrong, as is sometimes done by an officious turnkey in the dock, is to add to his confusion and to shut his mouth. To say that such a man must defend himself according to rule is in effect to say he must be undefended. He must be allowed to say what he wants to say. It would be the most grievous injustice if he were not. For it constantly happens that what he says contains in it the materials for a question which the judge suggests to him to put or puts for him. As for instance, 'he hit me first.' I say therefore of necessity a prisoner undefended by counsel must be allowed to 'run on,' and in so doing state facts which, perhaps, he cannot prove. Further, it cannot be told while he is stating them that he cannot prove them. But this allowance should not go beyond the necessity for it, and that does not exist where the prisoner is defended by counsel. It is monstrous that counsel should be able to say that for their client which he could not, perhaps would not, say for himself. Of course the Bar may be trusted; but to save a man's life and win a difficult case is tempting, and 'lead us not into temptation.' I quite agree with your leader that the defendant, in a criminal case, ought to be able to give evidence if he wishes to do so, on oath and subject to cross-examination. And I agree that the time will come when it will be as much a matter of astonishment that the law was once otherwise as it now is that the law formerly shut out the evidence of parties to civil cases. But that will not get rid of the necessity for letting the defendant tell his own tale his own way when he is not defended by counsel. Mr. Justice Stephen first pointed out the necessity of dealing with prisoners in this way."