

FLOTSAM AND JETSAM.

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STATEMENTS OF PRISONERS THROUGH COUNSEL.

On December 3, the Attorney-General wrote to the Lord Chief Justice, drawing his attention to the fact that on Saturday, during the trial of Patrick O'Donnell, Mr. Russell proposed to state to the jury the instructions he had received from the prisoner's solicitor, and thereby convey to the jury the prisoner's account of every detail of the transaction they were inquiring into. Upon objection being taken to this course, Mr. Justice Denman said that (there being authority in favour of the statement being made) he should, while refusing to allow Mr. Russell to proceed, reserve a case for the consideration of the question by the Court of Crown Cases Reserved. Sir Henry James pointed out the inconvenience of the state of practice as thus illustrated, and added that he was under the impression that the judges had held a meeting and come to a resolution upon the subject; but Mr. Justice Denman stated this was not so. Lord Coleridge replied as follows:—

Royal Courts of Justice: Dec. 4, 1883.

My dear Mr. Attorney-General,—I entirely agree with you as to the practical importance of the question you have brought to my attention. The paper I enclose will show you that it is no new subject to me. Immediately after the trial of Lefroy at Maidstone, in which, as you may remember, Mr. Montagu Williams claimed to do what Mr. Russell did, I brought the matter before the judges, with the result which the paper will show you. At Maidstone the opinion of Lord Chief Justice Cockburn was said to have been founded on or supported by Lord Justice Lush and Mr. Justice Hawkins. Both those learned judges were present at the meeting called by me, and both disavowed in the strongest way ever having ruled or been inclined to rule in the manner suggested. Mr. Justice Denman authorizes me to say that if he had remembered the very strong judicial opinion which I enclose he should have acted on it, and have refused a case if one had been asked for. Mr. Justice Stephen authorizes me to say that he should, as a present adviser, not vote against the rule as formulated by the Master of Rolls, but approves of it, and should act upon it.

My reason for bringing the matter before a meeting of the judges was this—that directly after the passing of the Prisoners' Counsel Act, Lord Denman, the then Chief Justice, called the judges together, and they (as appears from the Judges' Book) agreed upon a course of practice which has always since been followed. It seemed to me that the question discussed in your letter was one of practice also, and that the best way of settling it was to pursue the course I took. Perhaps it might be well to make this resolution generally known, as there may be considerable difficulty in making the question the subject of a case reserved. Generally I agree with you that the practice is wrong and not to be permitted, and that if permitted at all, it must, in justice and fairness, carry with it the right of reply on the part of counsel for

the prosecution.—Believe me to be, my dear Mr. Attorney-General, your obliged and faithful servant,
(Signed) COLERIDGE.

The Attorney-General, Q. C., M. P.

The paper enclosed was as follows:—

At a meeting of all the judges liable to try prisoners, held in the Queen's Bench room on November 26th, 1881 (Present—Lord Chief Justice Coleridge, Lord Chief Justice Baggallay, Lord Justice Brett, Lord Justice Cotton, Lord Justice Lush, Lord Justice Lindley, Justice Gr. ve. Justice Denman, Baron Collock, Justice Field, Justice Manisty, Justice Hawkins, Justice Lopes, Justice Fry, Justice Stephen, Justice Bowen, Justice Mathew, Justice Cave, Justice Kay, Justice Chitty, Justice North), Lord Coleridge stated the subjects for which the meeting was summoned, and Lord Justice Brett moved the following resolution: 'That in the opinion of the judges it is contrary to the administration and practice of the criminal law, as hitherto allowed, that counsel for prisoners should state to the jury, as alleged existing facts, matters which they have been told in their instructions, on the authority of the prisoner, but which they do not propose to prove in evidence.'

Justice Stephen moved the following amendment: 'That in the opinion of the judges it is undesirable to express any opinion upon the matter.'

This amendment, having been put to the meeting, was negatived by nineteen votes to two. The original motion was then put, and carried by nineteen votes against two (Justice Hawkins and Justice Stephen *diss.*). The question of the propriety of laying down a rule as to the practice of allowing prisoners to address the jury before the summing up of the judge, when their counsel have addressed the jury, was then considered, and after some discussion was adjourned for further consideration.—*Law Journal.*

By clerical error in our Sheet Almanac, Mr. Winchester's name still appears as Clerk of Queen's Bench. The name of course should be James S. Cautwright.

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