

It will be in the memory of many, that the late lamented Chief Justice Moss, after he ascended the bench, seeing the unwarrantable extent to which cross-examinations were carried—often by young counsel who wished to shew their smartness, and to establish a reputation as successful pleaders—interposed on several occasions in a most decided way, declaring that he desired that cross-examinations should be confined within proper bounds. No doubt the same desire exists in the minds of all *nisi prius* judges, but how to carry it out seems to be the difficulty.

Very often interference from the bench brings forth the insinuation from the offending counsel that the rights of his client are being interfered with—very often it results in actually rendering the examination more protracted. For it sometimes happens that counsel appear to forget that a judge is supposed to be impartial, and may be assumed to be so until he shows a bias, and that the effort to protect a witness, or to prevent time being unnecessarily wasted, is the duty, and sometimes the very unpleasant duty, of a judge.

The extreme latitude that was allowed in the Tichborne case seems to have established a precedent which is freely followed. But it would be wise for counsel to consider well, whether the exercise of the right thus conceded is at all times expedient.

The ordinary text-books lay down that even where questions wholly irrelevant to the issue are being asked in order to test the credibility of the witness, judges seldom interfere, trusting to the honor of counsel not to abuse their liberty. But surely when a judge sees plainly that this liberty is being abused, it is not only his right, but his duty, to interfere.

If counsel's brief contains questions to be put to an opponent's witness, it is of course his duty to put them, unless in the exercise of his judgment or his common sense, he see fit to omit them. And if instructed to put given questions with a view of bringing out certain facts and incidents in the witness's life, which will tend to discredit him, he will be justified in putting them. But will anyone say that a long series of random questions, put with a hope of bringing out something which the questioner has no real grounds for supposing exists, is justified?

An aimless and unwarranted cross-examination is a great evil; and "there is another like unto it"—and that is, the constant interruption by the opposite counsel, even when the cross-examination is being conducted in a fair and proper manner.

It is said that in England, the opposite counsel seldom interferes with the cross-examination of his witness—probably upon the ground that if the witness is honest a thorough sifting of his evidence can do no harm, and that any apparent contradictions can be set right on re-examination; while, if the witness is not honest, it will look as if an effort were being made to help him out, and betray, perhaps, an intimacy with "ways that are dark."

If counsel would ever bear in mind that an improper cross-examination—improper in any way—results only in assisting to bring the profession into disrepute or ridicule, in wasting the time of everyone who has any business at the court, and the patience as well as the time of the judge, and at the same time promotes the idea that the intelligence and judiciousness of the counsel himself are at fault—then, indeed, would some of the evils of this life be ameliorated.