

FLOTSAM AND JETSAM.

5. What is the difference between a challenge to the array and a challenge to the polls, on a criminal trial?

6. What is the rule as to charging a prisoner with distinct felonies on different counts of the same indictments, and what exceptions are there to the rule?

7. What is the measure of damages to be recovered under Lord Campbell's Act, for the benefit of members of the family of a person killed by the negligence of another? What should be taken into consideration by the jury in assessing them?

8. If A. buys a horse from B., informing him that it is for his daughter to ride, and relying on B.'s representation that the horse is quiet and safe to ride, which is contrary to the fact, in consequence of which the daughter is thrown and injured, will she have an action against B.?

9. Explain the meaning of the following classes of statutes: *declaratory, remedial, enlarging, and restraining.*

10. What children are considered as natural born subjects of Great Britain, although born in a foreign country?

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STATEMENTS BY PRISONERS AND THEIR COUNSEL.

The following letter has appeared in the *Times*:—

SIR,—There seems to be a considerable, though, perhaps, not an unnatural, misapprehension as to the nature and effect of the recent resolution adopted upon the above subject at a meeting of the judges.

So far as I am aware, this resolution is not, nor is it considered to be, binding upon any non-assenting person. It does not profess to be the enactment of a rule of practice, nor a "decision" upon any point of practice or procedure, much less upon any question of substantive law. It is nothing more than a private and purely informal expression of opinion elicited from a certain number of the circuit-going judges as to what the practice had theretofore been, according to their experience. It was not even a declaration of opinion by the judicial body as such, as I shall show in a moment. I was a member of the bench at the time, but I was not present at the meeting, from what cause I have no recollection. I never received any notice of any one's intention to propose such a resolution, nor have I ever to this day received any notice of

such a resolution having been adopted, and I was in entire ignorance of its existence until the fact came to light in the course of the recent discussion that followed the O'Donnell trial. In the meantime, the question had several times arisen before myself; and under the impression that I was acting according to the accepted practice, as it had been laid down by Lord Chief Justice Cockburn, I allowed the prisoner, by the mouth of his counsel, to state his version of the facts to the jury without proof. And, in addition to this, I never refused liberty to a prisoner to make a further statement himself if he desired it.

The truth is, that there is not the slightest foundation for the statement which I have seen published—that the judges have attempted or desired to settle and determine in secret conclave and without public discussion or argument, even so little as a question of practice and procedure; and perhaps the statement scarcely deserves serious contradiction.

For my own part, I own that there seems to be a great practical objection to allowing a prisoner to state through counsel facts that he does not propose to support by evidence. If a prisoner, in his defence, desires to state facts which he is not in a position to support by evidence, he ought to be allowed free scope to do so. He is not permitted by law to give evidence, and it would be most unjust, and even inhuman to restrict him in giving his explanation. But if this explanation, woven, perhaps, skilfully and ingeniously, is presented through the mouth of counsel, this evil consequence immediately follows—that the Court and jury are without any sufficient guarantee that the full, unqualified statement of the prisoner is placed before them, because a cautious and skilful counsel might naturally be expected, as indeed it would be his duty, in framing the defence, to omit whatever might appear to him to amount to damaging admissions or silly and contradictory reasoning. This weak point tends to destroy the moral effect of unproved statements made through the mouth of counsel, a result which, in the case of a really innocent person, may be deplorable. A remarkable instance of this occurred before myself quite recently. In a simple and apparently clear case against the prisoner, the counsel for the defence gave, without offering any proof, an extraordinary explanation of the affair with which the prisoner had furnished him; he did so in a most able and justly-reasoned speech; but it was evident to every one that the explanation thus presented appeared to the jury more plausible and ingenious than probable. The summing up to the jury was concluded, when the prisoner appealed to me to