

MISLEADING CROSS-EXAMINATIONS.

A very objectionable practice in the examination of witnesses is referred to in a recent number of *Law Notes*. The evil referred to, and well stated by our cotemporary, obtains here as well as in the Courts of the United States and should be severely dealt with by trial Judges when the occasion demands interference. The article is as follows:—

"Every practising attorney has heard witnesses asked on cross-examination whether they have talked with counsel about the matter testified to. Few indeed have forbore to ask the question on occasion or to smile significantly at the jury when the witness says that he has talked with the counsel of the party calling him. The general attitude of laymen towards the legal profession is such that it is very probable that jurymen frequently draw from such a question and answer an inference more or less definite that the witness has been unduly influenced, if not suborned. Yet it is well known to every practitioner that a lawyer would be culpably negligent if he put a witness on the stand without having had an interview with him and ascertaining just what he would testify. The advisory lectures given to young lawyers enjoin the utmost care and thoroughness in this detail of the preparation for trial. It is hard to understand why trial Judges, who are perfectly familiar with the entire situation, permit a question so unfair in its tendencies to be asked. It should be met always with a sharp rebuke and a judicial statement to the jury that it is necessary and proper that counsel should interview the witnesses before trial. This is but one of an infinite number of the tricks of advocacy by which jury trials are all too frequently converted into a game in which success goes to the most skilful player. Entire equality in the trial Court is of course out of the question. There must always be a preponderance of ability on one side or the other. So far as that ability is manifested in careful preparation of the case and lucid presentation of the theory or counsel it cannot and should not be in any manner handicapped. But trial Judges should realize much more fully than they seem to do that they sit not merely to see that the rules of the game are