

## LORD CHIEF JUSTICE OF ENGLAND AND MR. JUSTICE BLACKBURN.

boldness, or a little more candour, would have easily extricated him from the embarrassing circumstances which environed him. As it was, he left the matter very much in the same condition as it was when the Chief Justice finished what he had to say, and he did not succeed in the smallest degree in impugning the statements of the latter, far less in vindicating himself.

After carefully considering the matter, we have no hesitation in arriving at the conclusion that Mr. Justice Blackburn made a great mistake. Knowing as he did the opinions of the Chief Justice, it was his duty to explain to the other judges fully and explicitly the views which he intended to lay down to the grand jury. The statement which he made to the other judges did not contain the whole of what he did lay down in his charge, and in this he acted not merely unwisely, but, as we humbly think, unfairly. It was clearly his duty, after consulting the rest of the court, to adhere rigidly and scrupulously to the views which he had brought to their notice, and to which they had assented as sound and just. Even if he had said nothing in his charge as to the sanction which the other judges of the court gave to his views, this was the obvious and straightforward course which he ought to have adopted; but his error was greatly aggravated by his claiming their sanction for views which had never been brought to their attention, and which he must have perfectly well known were opposed to the express declarations of the Chief Justice.

In his explanation to the court, Mr. Justice Blackburn, after referring to the charge of the Chief Justice, said: "I came to the conclusion (it may be an erroneous one, but one which I still entertain) that there was no point on which it was necessary to give the grand jury a direction on which my opinion as to the law was in conflict in any way with any direction contained in that charge." It has been suggested that Mr. Justice Blackburn may have attached some technical meaning to "a direction," and that he did not consider the other parts of his charge touching on legal matters as coming under that category. We acquit the learned judge of quibbling of this sort. Neither do we for a moment suppose that he so totally misapprehended the scope of what the Chief Justice had said, as these words would seem to imply. The declaration seems to us only one of those unmeaning things which a man says when he finds himself in a disagreeable position and must say something, but has not the good feeling to say the right thing.

But the statement of the Chief Justice on one point makes the error of Mr. Justice Blackburn still more serious. It appears that almost on the eve of the delivery of the charge, the opinion of the latter was that the apprehension and removal of Gordon were in point of law unjustifiable. The Chief Justice says: "It certainly was so understood by other

members of the court, and I believe I am warranted in saying, that the statement of the learned judge to the grand jury on this head took the other members of the court as much by surprise as it certainly did me." Mr. Justice Blackburn made no attempt to explain his extraordinary change of opinion on this vital matter, and we believe for the very simple reason that it was impossible for him to do so. The feeling of the learned judge seemed to be a dogged determination to brave the whole thing out without explaining. In the circumstances in which he was placed a man of a sensitive mind would have called on the mountains to cover him, or would have turned resolutely on the Chief Justice and fought *à l'outrance*. But Mr. Justice Blackburn did neither, and therefore excited little sympathy on the part of the crowded Bar, who witnessed the strange and painful scene.

We do not ascribe to Mr. Justice Blackburn any unworthy motive for what he did, or for what he failed to do. His whole conduct in this matter has the appearance of a freak—of an *escapade*—of a temporary aberration. The actions of men are in general governed by certain motives, and when these motives are very recondite, it requires a large amount of sagacity to discover their exact nature and operation. But cases occasionally arise which are entirely abnormal, and where things are done which are utterly inexplicable on any of the ordinary principles which regulate human actions. We are inclined to rank the conduct of the learned judge under this class of cases, rather than to ascribe it to any of the causes which have been suggested, and which we think it quite unnecessary to mention. Mr. Justice Blackburn is no doubt an excellent lawyer and an able judge, but he possesses perhaps too much of the *perferovidum ingenium* of his countrymen, and there are times when, even with the wisest of our northern friends, this quality escapes for a short season from the prudence which in general directs its action. We do not think that anything more can be said with respect to the case now before us, and we are happy to believe that this is really the sum of the whole matter. The thing was an untoward accident, and the sooner it is forgotten the better.

We have formed our opinion of the conduct of Mr. Justice Blackburn quite irrespective of the consideration whether the law he laid down, in opposition to that contained in the charge of the Chief Justice, was right or wrong. Neither have we been influenced by the importance of the question involved, but have endeavoured to treat the matter as if the bill presented to the grand jury had been for the non-repair of a highway, or for refusing to serve the office of petty constable. But we cannot conclude without expressing our dissent from the views stated by Mr. Justice Blackburn, and our full concurrence in the opinions of the Chief Justice. In the charge of the latter in the case of *Reg. v. Nelson and*