

PRIVILEGES OF COUNSEL.

ford immediately on his hearing these words, so as to bring the case within the ruling of Lord Blackburn under like circumstances, and reduce the crime to manslaughter. Lord Justice Cotton, on the other hand, in summing up, pointed out to the jury that the proper inference from the facts proved was, that this was not so; but that the prisoner, in what he said to the constable, was speaking of language used by the woman on a previous occasion. So far counsel and judge were acting plainly within their respective provinces. But after the learned judge had addressed the jury, Mr. Ribton again rose, and re-stated his argument. What occurred was thus reported in the *Times* :—

Mr. Ribton, before the jury retired, said he must submit to his lordship that it might be presumed the prisoner in his statement to the officer after he was charged before the magistrate must have made it with reference to that charge, and therefore with reference to the night in question.

The Lord Justice: Mr. Ribton, that observation ought not to have been made; for, as I have pointed out, the statement was made in the same connection as a statement which clearly referred to something that had occurred on a previous occasion.

Mr. Ribton still urged that the presumption was that it was made with reference to the night in question.

The Lord Justice: Mr. Ribton, you are not justified in making those observations. I have endeavoured—and it is a very painful duty—to lay down the law correctly to the jury, and it is their duty to take the law from me and to find such a verdict on the evidence as their consciences may dictate in accordance with that direction.

Mr. Ribton still argued that there was a legal presumption.

The Lord Justice: Mr. Ribton, really, I cannot allow this.

Mr. Ribton: My lord, you are very peremptory.

The Lord Justice: Mr. Ribton, I am compelled to be so.

Mr. Ribton: My lord, this a case of life and death, and I am not to be put down in the discharge of my duty.

Mr. Ribton then admitted that it had appeared that the prisoner had had previous suspicions; but still he urged that

it was to be presumed, from the prisoner's own statement, that the taunt had been made to him on the night in question, and that if it had been so made it was calculated to arouse him to a state of frenzy by confirming his previous suspicions.

The Lord Justice, with great calmness: Gentlemen, I think that counsel has exceeded his duty upon this occasion. It is the duty of the judge, as calmly as possible, to hold an even hand between the prosecution and the prisoner, and I hope I have done so; and in consequence of these observations of the prisoner's counsel I will read to you again what was said by the police constable, the witness who spoke to the prisoner's statement.

His lordship then read the evidence again, and made some further comments thereon, in effect re-stating the propositions contained in his summing up.

Now just as at the close of a summing up by the judge at Nisi Prius, counsel are at liberty to make a reference to a direction given on a matter of law by the judge for the purpose of asking the judge to correct the same, or to state it more definitely, or it may be with some addition or limitation, so also we take it that in a criminal prosecution counsel may submit that the case ought not to go to the jury with the direction on matter of law given by the judge. But, on the other hand, it is manifest that counsel has no right, under cover of his privilege, to win the last word with the jury, or to attempt at that stage to make the jury believe that in law they are bound to find any given verdict in the face of what has fallen from the judge. Every one who has attended criminal trials must have noticed the great latitude allowed to the counsel for the prisoner. There is practically no limit to his right of cross examination, however harsh he may be towards the witness, or however wide may be the scope of the questions put. So, also, the flights of his oratory are boundless. But when counsel has had his turn, it is the duty of the judge to address the jury, and, as the Lord Justice so well said, "to hold an even hand between the prosecution and the prisoner;" and after that it is not the duty, nor the privilege, nor in any sense the right, even in matters of life and death, for counsel to intervene between