

ON JUDICIAL EXPRESSION.

seemed to be whiskey—it is for the jury to say whether the fact is established—was presented to one person. It is not indictable to drink lemonade on a Sunday, or to smoke, but to drink liquor is indictable. It is alleged that these articles were furnished, and one of the witnesses swears that one of the articles produced was whiskey, for he smelled of the article, and so determined that it was whiskey.

“Upon the question of what day it was, you have the testimony of these witnesses—it was Sunday. In the second place, as to what they drank, you have the testimony of these witnesses. It is for you to determine what they ordered, and what they drank—and paid for, by the way.

“Lastly—and this is the most important point of all—who sold this article, if it was liquor? Who furnished it? Well, it is alleged that a man named Jacob Valer furnished it; that a person named Jacob Valer has a license for that house; that he had it considerably before this prosecution was instituted; that he, Valer, took out that license, and entered a bond, which is signed Jacob Valer. There is no testimony here, speaking as I now do with the utmost possible accuracy, as to whether this man Jacob Valer, *this* Jacob Valer, signed the bond. The question is, however, for you to decide, whether he, that is, this defendant, did or did not take out a license for that house—whether he is the identical man.”

The learned judge, in his eagerness to secure his re-election by a *publican* vote, forgets that the identity of name (especially when that name was not “John Smith”) is evidence of identity of the person. The judge then proceeds to bring down the case to the level of the commonest understanding, by explaining what is meant by *prima facie* evidence—it being noteworthy, however, that *all the evidence* before him was against the defendant:

“The presumption of law is, that in the ordinary and usual line of business, the employees of an establishment act under the direction and by the permission of the chief of the establishment. That, however, is only *prima facie* evidence, that is, evidence in the first place, evidence at the outset, at first blush: that is the general meaning of the words *prima facie*. If it is established as a fact, *prima facie*, in the first place, it then devolves upon the defendant to disprove the fact, either by the circumstances surrounding the case, or by positive evidence. I will illustrate what I mean by *prima facie* evidence. A receipt is said to be *prima facie* evidence of the payment of a debt. Suppose I owe a man one hundred dollars, and when I pay him he gives me a receipt; that receipt is in the first place evidence of payment.

But he may show that I have not paid the debt after all. So here, where business is carried on in the ordinary and usual way, it is, in the first place, evidence that it was carried on with the consent of the owner or proprietor of the house. But the proprietor may rebut that assumption by evidence, either direct and positive, that he prohibited the business, or by evidence of all the surrounding circumstances of the case tending to prove the fact.

“Here the testimony is, that this business was carried on, and carried on in the absence of Valer; that is, there is no proof that he was there when the liquor was sold, if it was liquor. Now, it is for the jury to say whether these servants in the room acted by his (Valer's) order, and with his consent; or whether they can, from all the circumstances surrounding the case, draw an inference which rebuts that presumption, and which inclines the jury to believe that it was against his (Valer's) desire that the place was kept open and articles sold.”

We are glad that our lot has fallen in a country where a Judge Ludlow has not taken root. But even this curious specimen falls far short of the familiar charges and quaint illustrations with which that good, old-fashioned, honest judge, Mr. Justice Burrough, was wont to elucidate the technicalities of counsel for the benefit of the jury. He once began an address to them after this fashion: “Gentlemen, you have been told that the first is a *consequential issue*. Now, perhaps you don't know what a consequential issue means, but I dare say you understand ninepins. Well, then, if you deliver your bowl so as to strike the front pin in a particular direction, down go the rest. Just so it is with these counts;—knock down the first, and all the rest will go to the ground. That's what we call a consequential issue.”

The third and last specimen of judicial expression we cite is taken from an Illinois case, decided by Williams, C. J., in the Circuit Court of Cook County, in June of this year. Therein it became necessary to decide whether a cemetery was a nuisance, so that the State could interfere with a cemetery corporation, and the court thus rhapsodizes on the theme:

“Cemeteries are not only a necessity, but the civilization and culture of this age demands cemeteries ample and attractive, selected with reference to natural scenery as well as convenience; where art many vie with nature, and taste supplement capital in rendering the spot a beautiful home for our dead. Such places cannot be secured except by the lavish expenditure of