

the opposite counsel, in re-examining the witness, is confined to such questions as may elicit the meaning of the expressions, and the motives of the witness for using them. But where a witness deposes to certain expressions being used by a party to the cause, the counsel for that party is entitled to re-examine the witness as to the whole of the conversation in which the expression occurred; because the expressions are given, in evidence, in such a case, as an admission of the party, and the whole of his admission should be taken together. 2 Prod. & F. 294. If a witness whose name is on the back of the indictment be called merely to allow the prisoner to cross-examine him, any question put by the prosecutor's counsel afterwards must be considered as a re-examination, and nothing can be asked which does not arise out of the cross-examination. R v Beezley 4 C. & P. 220.

Pages 330, 331, 332.

EVIDENCE FOR THE PROSECUTION; (One J.N.) - It must be proved that J.N. was the person killed otherwise the defendant must be acquitted, unless the variance be amended at the trial (see ante p. 224). If the name of the deceased be unknown, it should be stated so in the indictment. Id.

OF HIS MALICE AFORETHOUGHT DID KILL AND MURDER; - The law presumes every homicide to be murder, until the contrary appears. Forst 255. Therefore the prosecutor is not bound to prove malice, or any facts or circumstances besides the homicide, from which the jury may presume it; and it is for the ~~XXXXXXXXXX~~ defendant to give in evidence such facts and circumstances as may prove the homicide to be justifiable or excusable, or that at most it amounted to but manslaughter. R v Greenacre 8 C. & P. 35 (see post p. 577 et seq).

In cases of express malice the homicide is usually committed in secret, and it is rarely practicable to substantiate it by direct and positive testimony; in most cases, the defendant is convicted upon circumstantial evidence merely. Upon this ~~xxx~~ subject it is only necessary to refer to what has been already said upon the doctrine of presumptions (ante p. 259) repeating