

over 25 years as a magistrate, and he had found great difficulty in understanding what the intention of the law ordinarily was; and where, as in this instance, the text was doubtful, it was still more necessary to be guarded. He had been somewhat in sympathy with the provisions of this Bill. He had frequently seen cases in which more satisfactory results would have been reached if the evidence of the defendant had been taken. He understood the member for East Elgin to say that the intention was that a defendant should only give evidence in his own behalf, and not be cross-questioned.

MR. MACDOUGALL (East Elgin) : Not at all. The intention is to provide that, if a defendant sees fit to be called as a witness, he shall be subject to cross-examination like any other witness.

MR. FLESHER said it appeared that, if a defendant once became a witness, he was bound to give evidence, though he criminated himself.

SIR JOHN A. MACDONALD: There can be no doubt about that. If he is a competent witness on his own behalf, he can be cross-questioned.

MR. PALMER: If sworn as a witness, he must be cross-examined.

MR. FLESHER said a legal education probably gave some hon. gentlemen an advantage as to the interpretation of the laws which it was likely a great number of the magistrates did not possess. He had great doubts, however, whether it was, and he thought it was not, a move in the right direction to introduce the testimony of the wife. Influence could be used in this relation which could affect the nature of the evidence given, and the wife might to some extent be a party to the case in question. More than one instance had come under his knowledge, where the wife had been compelled to prosecute a husband under perfect knowledge that for doing so she would receive physical injury. He greatly feared that this measure would present a strong inducement to the committal of perjury; and he thought the House would perceive that the moral and legal wrong would

be greater in case perjury was thus perpetrated and superinduced than even if an ordinary assault went unpunished owing to the absence of this provision. He proposed that there should be a definite and distinct understanding on the subject, and the amendment was intended to apply to what was called the summary jurisdiction of magistrates. He proposed that, from the first line of the first clause, the words "information or" be struck out, and that "on the hearing of any information or complaint of" be introduced. The phraseology of the clause would then be as follows:—

"On the hearing of any information, or complaint, or the trial of any person on any indictment for common assault, the defendant shall be a competent witness on his own behalf."

That would be similar to the phraseology used in the Summary Convictions Act, and the Offence against the Person Act. He would prefer that the second clause should be amended in the same way, so as to read:—

"On the hearing of any such information or complaint, or such trial, the wife or husband of the defendant shall be a competent witness on behalf of the defendant."

SIR JOHN A. MACDONALD suggested that the clause, if amended at all, should be altered in this wise:—

"On the summary or other trial of any person upon any complaint, information or indictment for common assault, the defendant shall be a competent witness on his own behalf."

MR. KERR said that, when this question was before the House some time ago, he took occasion to express his admiration for the skill and ability with which the hon. gentleman who promoted the measure launched it upon the consideration of the House. He, at the same time, took the liberty of stating his conviction that they should be very careful not to interfere too rapidly or frequently with the criminal procedure of the Canadian Courts; and he thought they should hesitate, notwithstanding the opinions to the contrary which had been expressed, before they went too far. His own opinion was that the law of criminal procedure and the law of criminal evidence were quite satisfactory. The principle involved in the present measure was not, however, a very serious one. There was

MR. FLESHER.