

might be made use of to restrict the right of cross-examination on the sworn evidence. The opinion of the editors of the Justice of the Peace is that the making of the unsworn statement ought in such circumstances to be postponed until just before the reply for the prosecution, and this appears to be a practical view.

*As to comment on statement and right of reply.*—It is said at least in two cases, *Reg. v. Malings* (*supra*), and *R. v. Dyer*, 1 Cox Cr. Cas. 113, that counsel for the accused in his address to the jury has the right to comment upon the prisoner's statement.

There are also rulings that the making of the unsworn statement gives the prosecution a reply (*R. v. Doherty*, *supra*, *R. v. Shimmis*, *supra*, and *R. v. Reiglethuth*, *supra*), though to call a prisoner as a sole witness for the defence does not in itself give the prosecution a reply—this in England only because of a special provision in the Criminal Evidence Act.

*Semle: The statement should be limited to facts.*—It also appears that the unsworn statement of the accused when he is defended should be limited to facts and not extend to argument: see *R. v. Everett*, 97 C.C.C. 333; *R. v. Millhouse* (*supra*). This ruling appears to be in accordance with the observations of Lord Ellenborough in the case of *R. v. White* (1811), 3 Camp. 98, and of Chief Justice Abbott in *R. v. Parkins* (1824), 1 C. & P. 548.

*Quare: Whether statement should be allowed if prisoner call witness.*—There is a difference of opinion as to whether the prisoner should have a right to make an unsworn statement where he calls witnesses. In *Reg. v. Millhouse* (1885), 15 Cox Cr. Cas. 622, Coleridge, C.J., refused to extend the privilege to a case where an accused person proposed to call a witness. But it appears from the report of Carrington & Payne in *R. v. Malings* (*supra*), one of the first cases after the passage of the Prisoner's Counsel Act, in which the prisoner was allowed to make a statement not on oath, that "He (the prisoner) also called witnesses." And this practice was followed in the case of *R. v. Maybrick*, Liverpool Assizes, August, 1889 (referred to in Phipson on Evidence, 2nd ed., p. 38). Certainly it is clear upon reference to