

a man from answering any question which "would in the opinion of the judge have a tendency to expose the witness, or the wife or husband of the witness, to any criminal charge." Stephen's Dig. of the law of Ev., (3d ed.), art. 120, p. 121. That is what I understand by the phrase "criminating himself." It is not that a man must be guilty of an offence and say substantially, "I am guilty of the offence, but am not going to furnish evidence of it." I do not think the privilege is so narrow as that, for then it would be illusory. The extent of the privilege is, I think, this: the man may say, "if you are going to bring a criminal charge, or if I have reason to think a criminal charge is going to be brought against me, I will hold my tongue. Prove what you can, but I am protected from furnishing evidence against myself out of my own mouth." I do not think the cases cited go any further than this, viz., that the court which has to decide must be satisfied on the oath of the witness that he does object on that ground, and that his objection is *hona fide*. In *Reg. v. Boyes*, 1 B. & S. 311; 30 L. J. (Q. B.), 301, a case not cited in argument, but a somewhat remarkable one, a man called as a witness on an information for bribery refused to answer any question as to his knowledge of the defendant, on the ground that by answering he might criminate himself; a pardon under the great seal was thereupon handed to the witness, who still refusing, was compelled by the judge to answer. This ingenious point was taken, viz., that the pardon was not pleadable to an impeachment by the House of Commons, and that Boyes when he refused to answer after the pardon was handed to him did so under the belief of an impeachment to which the pardon would be no answer. Cockburn, C. J., says: "It was contended that a bare possibility of legal peril was sufficient to entitle a witness to protection; nay, further, that the witness was the sole judge as to whether his evidence would bring him into danger of the law; and that the statement of his belief to that effect, if not manifestly made *malà fide*, should be received at conclusive. With the latter of these propositions we are altogether unable to concur." But he goes on to say that "the court must see, from the circumstances of the case and the nature of the evidence which the witness is called to give, that there is reason-

able ground to apprehend danger to the witness from his being compelled to answer," and also that the danger must be real and appreciable. That is on the whole the principal authority for my view of this case, that a man is not to be forced to answer any question if the witness swears that the answer "may" or "will," or "would" endanger him (I care not for the form of words in which he expresses it), and in the opinion of the judge the answer may, not improbably, be of such a nature as to endanger him. The defendant in the present case is asked whether he has published a libel, and has refused to answer on the ground that it "might" endanger him, and I think that a person who wished to annoy him and cause expense might endanger him, and I cannot say it is an improbable contingency. Having regard to the authority I have cited, it seems to me that a man may say, "I think the answer would tend to criminate me," meaning thereby 'would tend to bring a criminal prosecution against me for a crime of which I am in fact innocent, but of which I might on the facts be very probably accused.'

Order affirmed.

COURT OF QUEEN'S BENCH.

MONTREAL, May 27, 1882.

DORION, C.J., MONK, RAMSAY, CROSS and BABY, JJ.

THE CONSOLIDATED BANK OF CANADA (claimants below), Appellants, and THE MERCHANTS BANK OF CANADA (contestants below), Respondents.

Guarantee—Amalgamated Bank cannot take advantage of bond given to one of the banks consolidated.

Held, that a guarantee given to a Bank which afterwards was amalgamated with another Bank, did not bind the guarantors towards the consolidated Bank.

RAMSAY, J. This case comes up on the contestation of a claim on an insolvent's estate. The City Bank accepted a letter of guarantee from two gentlemen, who thereby bound themselves jointly and severally to and in favour of the said Bank, for the full payment of such notes of two firms which have been, or hereafter may be, discounted by the Bank, thereby making themselves and each of them "as fully liable and bound for the same as if each of them had individually made each and every