

lowed the practice laid down by Mr. Justice Stephen as to the time when it should be made."

While it has no practical bearing upon the construction of the statute, I may say that I examined the Hansard Report of the debates in Committee and in the House on the provisions of the Canada Evidence Act at the time of its passage and in no place do I find that the effect of s. 4(1) upon the right of a prisoner to make an unsworn statement was considered or even alluded to. It appears to have been entirely overlooked.

*As to the time when the statement should be made.*—As observed in Russell on Crimes, 7th ed., at p. 2001: "There has been a divergence of practice as to the time when an unsworn statement should be made by a prisoner defended by counsel. Before the Criminal Evidence Act, 1898, the majority of the Judges considered that the statement should be made *after* the address of the prisoner's counsel when no witnesses were to be called for the defence. The practice now most generally adopted is for the prisoner to make his statement *before* counsel for the prosecution sums up his case and before the speech of counsel for the defence: *R. v. Sheriff*, 20 Cox 334; *R. v. Pope*, 18 T.L.R. 717; following on this point, *R. v. Doherty*, 16 Cox 306."

*Evidence on oath and unsworn statement not alternative rights.*—If the view which I take of the effect of the Canada Evidence Act be right, it follows that this Act was not intended to deprive the prisoner of any advantage he might gain by making a statement not on oath as before the Act. The accused may, if apprehended, still make an unsworn statement and may also give evidence on his own behalf under oath. They are not alternative rights, but the accused is to enjoy both. This view is expressed by the learned editors of the Justice of the Peace (1900), vol. 34, pp. 322-3, of the state of the law in England and it is submitted that it is also a correct statement of the law in Canada. But if the accused desire to make an unsworn statement in addition to giving testimony under oath, the latter should precede the former, otherwise the unsworn statement