

powers of denial of acts and things charged, but his mouth seems to be closed the moment he is subjected to cross-examination as to acts and things he has done. I would venture to express an opinion that it would be more rational to apply to this section the principle adopted in the Canada Evidence Act.

But I have to give the best interpretation in my power, and I see no alternative but simply to give the words of section 164 the meaning which they naturally bear. Under this section I think it would be obviously impossible for the prosecutor to call the accused as a witness to prove the offence, because he could claim his protection. Is the case changed when the accused goes on the stand to deny the statements of witnesses for the prosecution? Is he any the less entitled to claim precisely the same protection against making incriminatory statements? I rather regret that I am unable to see any distinction.

Dealing with the four questions submitted, I have to say that my answer to the first is "yes," and this disposes of the second and third.

In regard to the fourth I would be compelled to answer it in the negative if the stipendiary had put it in this form: "Was I right in compelling the accused to answer the above questions against the specific claim of the accused that the answer would tend to criminate him?" He has not put it in that form. The accused, I am clear, cannot escape by the objection of counsel. The claim is a personal one and must be made by the party himself, and under oath: *Boyle v. Wiseman*, 1855. (See note 7, *Taylor on Ev.*, 9th ed., sec. 1457.) In *Vaillant v. Dodemead*, 2 Atk. 524, Lord Hardwick said, "These objections to answering should be held to very strict rules." The Court ought at least to have the sanction of an oath as to the foundation of the objection that the answer will criminate. *Taylor on Evidence*, s. 1458, 9th ed.

As the question now stands I have to answer the question in the affirmative. But I do not wish the matter to go off upon a mere technicality, and if either of the parties desires it, I will refer the case stated back to the justice in order that he may, if he can, report as to whether the claim for protection was made by accused under the sanction of his oath or whether it was merely a formal objection made by his counsel. If no such application is made within ten days from the filing of this memo. an order will pass affirming the conviction.