The action was for libel, and the defendant by his statement of defence denied the publication of the alleged libel. Interrogatories being administered asking him whether he did not publish the libel, his answer was: "I decline to answer all the interrogatories upon the ground that my answer to them might tend to criminate me." A master ordered a further and better answer; but his order was rescinded by the order of the learned judge.

FIELD, J. I think the learned judge at chambers was right, and that the answer to the interrogatories is sufficient. The point raised is important, for the principle of our law, right or wrong, is that a man shall not be compelled to say anything which criminates himself. Such is the language in which the maxim is expressed. The words "criminate himself" may have several meanings, but my interpretation of them is "may tend to bring him into the peril and possibility of being convicted as a criminal." It is said that a man is not bound to do so. There have been various authorities on the question how the point is to be raised. Suppose a witness in the box declines to answer a question. He is asked why? He answers: "Because it may tend to criminate me." But the judge tells him that he must go further and swear that he believes the answer will tend to criminate him. He answers, "I do not know, but I believe it may do so." The judge tells him that he must go further and say that he is advised that the answer may tend to criminate him. He perhaps replies, "I have no one to advise me in whose advice on the subject I should trust." Then it becomes the duty of the judge to look at the nature and all circumstances of the case and the effect of the question itself, to see whether it is a question the answer to which will really tend to criminate the witness. If he said, "I think it may," or "it may," or "it might," or "I believe it will," or "I am advised it will;" I should not regard the form of words, but look to see whether answering would be likely to have or probably would have such a tendency to criminate, and bearing in mind the cardinal rule that a man shall not be compelled to criminate himself, I should almost prefer a man to be careful and say the answer might tend to criminate, and I should be slow to commit him to prison for not doing that which the law says he is not bound to do. In this case the tendency to criminate is evident. The statement of claim charges the defendant with the publication of a false and malicious libel, the remedy for which is either by action or indictment. It would be competent to the plaintiff, after having got an answer to the interrogatories, to indict the defendant for libel, and the answer might establish the very first step the prosecutor would have to prove.

I do not think the authorities lay down any principle on which this application for a further answer can be rested. In *Fisher* v. *Owen*, 8 Ch. Div. 645, the point was only whether the question could be put, and there are many, amongst whom is Brett, L. J., who think it is a mistake to allow a man to refuse to answer on the ground that his answer might tend to criminate him, for this reason, that although a learned judge may regard the answer without being influenced by it, yet on the interrogatories and the refusal of the defendant to answer them being read to a jury, who are asked whether they can doubt that the defendant really did what he was asked about, they would at once find that they did. In *Allhusen* v. *Labouchere*, 3 Q. B. D. 654, 662, Brett, L. J., doubts whether the equity doctrine is perfectly applicable to the courts of common law. But as the Lord Justice says: "That however is past controversy, and the question has been settled by the Court of Appeal." A decision of Lord Hatherley when Wood, V. C., was cited, and Mr. Woollett produced a case in which there were the same words as those under discussion, but I find in the cases that the learned judges used words such as "will," "may," or "might," indifferently, without laying any stress on the verb. I think there is no substance in the objection to the present answer, and that it is quite sufficient. It is very desirable that the rule should be in favor of the principle of law.

STEPHEN, J. I am of the same opinion. I entirely agree with my learned brother. In every case the principle itself has to be considered, and it would not be well to lay down any kind of strict rule as to the particular form of words in which persons are to be compelled to express their opinion as to whether or not the answer to questions would criminate them. When the subject is fully examined, it will, I think, be found that the privilege extends to protect