

furnish evidence against himself? Can he decline to answer on the ground that his answer might tend to criminate him? Has he not thrown overboard all his defensive armor? Is he not to be stretched on the rack of cross-examination? Will not all his secrets be wrung out of him by the torture of question after question? Plainly, the result must be that he will be compelled either to furnish evidence against himself, or to defend himself by lies "gross as a mountain;" an alternative to which the Constitution gives us no right to subject even a felon. We then should see the spectacle of smooth, ingenious, and plausible liars wriggling ingeniously, and perhaps with success, out of the toils in which clumsier, and perhaps better, men are hopelessly involved.

It is occasionally said, however, that it is of no consequence, or, on the whole, it is a good result rather, if the new statute facilitates the conviction of the guilty, and diminishes their chance of escape. Is it right, however to compel the guilty to furnish evidence against themselves? Are we so fond of perjury, that we insist on forcing every man who really does not wish to go to the penitentiary or house of correction, and yet is guilty, to swear that he is innocent? Is not his plea of "Not guilty" enough? It is idle, however, to waste words on this part of the case. The Constitution says, that no man shall be required to furnish evidence against himself. The statute, practically and in its effect, compels the guilty man either to furnish evidence against himself, or resort to a refuge of lies.

But suppose the defendant to be innocent. He may be wholly innocent of the particular crime laid to his charge, and yet very far short of being a saint or an angel. He may have committed every crime in the decalogue or the statute-book *except* the one set forth in the indictment. He may be a veteran from what Carlyle calls the devil's regiments of the line. He may manifestly belong to the dangerous classes; he may be guilty of the great and heavy crime of rags, stupidity and poverty,—yet he is thrown into the mill of the statute, and whirled off to the stand as a witness, where the most humane and tender of judges cannot protect him. The result is easy to foresee. He is torn to pieces by cross-examination. There are fifty things that he would keep back if he could. In a word, he breaks down; and the jury disbelieve him when he is really telling the truth, and find him guilty of the one crime of which he is really innocent. Surely, the advocates and admirers of the statute would hardly say that it is desirable to convict even a bad man, in such a way as this, of a crime of which he is not guilty.

To illustrate still further the operation of this new system in extorting evidence from the defendant himself, let us take a case which has already occurred, and which may recur at every term of the court. Let us suppose, then, a man by no means dead in trespasses and sins, but having a character to lose, and

incommoded, besides, with the possession of a conscience, to be indicted as a common seller of intoxicating liquors. Suppose it to be proved that he is the owner and keeper of a grocery. Suppose some loafer, who has been disappointed in the hope of buying liquor on credit at his shop, should swear positively to the "three distinct and separate sales" within the period covered by the indictment, which the law says shall be sufficient proof of the charge. If he should decline to make himself a witness, the jury would convict him without leaving their seats. He takes the stand, and swears that he never in his life sold one drop to the witness whose testimony has been given in. Then comes the cross-examination; and he finds that the whole subject of the general charge against him is open to inquiry. The confession that he has made three *other* sales is forced out of him; and he is convicted on his own evidence, after he has been successful in demolishing all other evidence in favor of the prosecution.

If, in the trial of an indictment, the defendant is made a competent witness, he must stand or fall by the story which he can tell. If he is a witness at all, he will fare like every other witness, and will besides labor under the disadvantage of being an interested witness; telling his story under suspicious circumstances, and laboring under the most extreme temptation to perjury. The guilty (and, practically, they are more than half of the whole number of the accused parties at a criminal term) will add the crime of perjury to the crime set forth in the indictment. Even of the innocent, some, under the influence of terror and anxiety, may mix some falsehood with the truth, and so increase the embarrassment and aggravate the dangers of their position; some, and probably not a few, from stupidity, from unskillfulness, or from want of established good character, may tell their story badly, and fail to command belief, even when they speak the truth; others will get no farther than simply to protest their innocence, which protest simply leaves the case where it stood before. In all such cases, the alleged privilege of testifying will simply be either nugatory and useless, or an engine of torture and oppression. It is to be remembered, that the statute is universal in its application, and reaches the case of the adroit and hardened culprit, the experienced felon, the green and ignorant novice, the nervous, timid, and feeble boy or woman, the foreigner, all orders and conditions of men, and almost every form of helplessness. All will be tempted to falsehood; all will be badgered on cross-examination. The experienced and self-possessed villian may possibly succeed in swearing his way through; the inexperienced and unskilled will be swallowed up.

But it is said that appearances may be so much against an innocent man that he cannot escape an unjust and wrongful conviction in any way unless he can testify in his own behalf. It certainly must be a very peculiar and