the system has been that it sometimes let the guilty escape.

It will be found, we think, on examination, that this experiment, or this revolution (whichever term may best describe this new statute) must inevitably and very greatly impair both of these defences against a criminal prosecution. It substantially and virtually destroys the presumption of innocence; and it compels an accused party to furnish evidence which may be used against himself.

If the statute merely provided in general terms that the "person charged with any crime or offence should be deemed a competent witness" on the trial of the indictment, its cruelty and injustice would be manifest at once. No man can doubt that it would be utterly unconstitutional, and would be held to be so, in all the courts, without even the slightest hesitation. It is for this reason, that the statute contains the fallacious and idle words, "at his own request, but not otherwise." and the equally idle and fallacious words, "his neglect or refusal to testify shall not create any presumption against defendant." We take the liberty to call these words "idle and fallacious," because the option which is given to the accused party is practically no option at all. In its actual workings, it will be found that this new statute will inevitably *compel* the defendant to testify, and will have substantially the same effect as if did not go through the mockery of saying that he might testify if he pleased.

Let us suppose that a person is on trial on a criminal charge, and that the same evidence which was sufficient to cause the Grand Jury to find a true bill against him is brought forward at the trial. There will be some plausibility in the evidence; otherwise, no bill would have been found. There will be some show of a case against him. The court, the prosecutor, the defendant, and the jury all understand that he *can* testify if he will. In fact, it is difficult to see how the presiding judge can possibly avoid informing him (if he is without counsel) of this privilege which the law gives him. How can he possibly do otherwise than testify? How can he be silent? Or if he should see fit to be silent, of what practical value to him will be the presumption of innocence? How can the jurors avoid the feeling that the reason why he does not testify is because he cannot explain the suspicious appearances of his case, and because he dares not subject himself to the risks and perplexities of a cross-examination? If he has counsel, it is, if possible, even worse and worse; for the feeling will be that his counsel are afraid to put him on the stand. It will be found, in practice, that the defendant, in every case in which there is any apparent plausibility in the charge, will, "at his own request," be made a witness; and the request will be made because he cannot help it. He will *volunteer* under the strongest compulsion, under a necessity that is wholly irresistible. The moment he takes the stand as a witness, the presumption of innocence, that bridge which has carried thousands safely across the roaring gulf of the criminal law, is reduced to a single and a very narrow plank,—he must then stand or fall by the story which he can tell.

But it will be said, that the statute provides in express terms, that his neglect or refusal to testify shall not create any presumption against him. This is an attempt, on the part of the Legislature, to cure the inhumanity of the "experiment," and would answer the purpose admirably, if it could be done by any amount of "provided nevertheless." The difficulty is, that the jurors all know that the defendant has the privilege (as it is called) of making himself a witness if he sees fit; and they also know that he would if he dared. They will, and they must, draw every conceivable inference to his disadvantage if he do not. His neglect or refusal to testify will, and inevitably must, create a presumption against him, even if every page of the statute book contained a provision that it should not. The statutes might as well prohibit the tide from rising, or try to arrest the course of the heavenly bodies, as to prevent a juror from putting upon the defendant's silence the only interpretation that it will bear. The juror cannot fail to see that the defendant must know whether he is guilty or not; must know all about his own connection with the case; must know where he was and what he was doing at the time in controversy; must be able to explain every thing that bears against him; must be not only ready, but most eager to do so, if he is in fact innocent of the charge, and yet that he refuses to do so. There is but one construction to be put on such refusal; and no statute can be devised that will prevent that construction from having its full effect.

The inevitable effect of the statute will be, that "in the trial of all indictments, complaints and other proceedings against persons charged with the commission of crimes or offences," the defendant will request to be himself a witness. This will be the invariable course of things in every criminal case which makes any show of plausibility, or exhibits evidence of any force or weight at all against the defendant. The necessity which has been pointed out will press equally and irresistibly on all. The innocent will be ready and the guilty will be compelled to ask the privilege, and all will use it. Passing over the question (though by no means a trivial one) of what value testimony will be that is given under such fearful and overpowering temptation to perjury, let us ask attention to the predicament in which a guilty man will be found. Suppose the evidence against him to be formidable, he may understand, or be advised, that silence would be better for him than any thing he can possibly say; yet, under the pressure of this terrific statute, he must go upon the stand as a witness. Ruin stares him in the face if he do not; and, if he does, what becomes of the constitutional provision that no man shall be compelled to