State *v.* Ober, 52 N. H. 459; The State *v.* Lawrence, 57 Me. 574; The State *v.* Bartlett, 55 Me. 200; Calkins *v.* The State, 18 Ohio St. 366.

Yet, on the other hand, it is possible for a court to stop any reference to such a presumption on the part of counsel, and to leave the case to the jury, with instructions that they are to be governed solely by the evidence produced in the case, putting the question in such a way that the jury will feel themselves thus limited. And of this we have several emphatic illustrations. See The State *v.* Cameron, 40 Vt. 555; McKensie *v.* The State, 26 Ark. 334; Crandell *v.* The People, 2 Lans. 309; Knowles *v.* The People, 15 Mich. 408.

The same objection that is made to the statute now before us might be made to statutes enabling defendants in criminal cases to take depositions of absent witnesses, or to have a change of venue in case of public prejudice against them at the place where the indictment is found. It would be no valid objection to the passage of these statutes that they would subject the defendant, in case he should not avail himself of their privileges, to the presumption that, if he had taken the depositions of witnesses who were absent, these depositions would have told against him; or that, if he had obtained a change of venue, the public horror at his guilt would pursue him wherever he was tried.

The remaining objection is put as follows: "Assuming, however, that he elects to give evidence upon oath, the prosecuting counsel will have a perfect right to cross-examine him to the fullest, and the accused will be bound to answer—however, by doing so, he may criminate himself; and in this way we shall have, in all its most objectionable forms, the odious and un-English system of interrogating prisoners. In the hands of a skilful prosecuting counsel, the most innocent man might fare exceedingly bad, and, by incomplete answers to craftily-put questions, may compromise himself to a most serious degree. Under such circumstances it is not likely that even the perfectly innocent will venture to give evidence upon oath, the more especially when he knows that by giving such evidence he will confer upon the prosecuting counsel a right of reply."

That a defendant, on becoming a witness, cannot shield himself on the ground of self-crimination, on his cross-examination, has been abundantly settled in the United States. See the State *v.* Ober, 52 N. H. 459; The Commonwealth *v.* Lannan, 13 Allen, 563; The Commonwealth *v.* Morgan, 114 Mass. 255; Connors *v.* The People, 50 N. Y. 240; The State *v.* Harrington, 12 Nev. 125, and other cases cited in Whart. on Ev., sec. 484.

So far, however, from the rulings in this respect driving defendants from the witness-box, the cases are now very rare in which defendants do not avail themselves of the privilege the statute gives, notorious as are the drawbacks thus imposed upon the privilege. Nor, after all, are these drawbacks such as seriously interfere with the eliciting of truth. A defendant, for instance, who sets up a false *alibi* in his own testimony is likely to be caught; but so is a defendant who undertakes to prove a false *alibi* by the testimony of others. There is this, however, in his favor when he is himself on the stand: he is not likely, if his cause be good, to be injured to the extent he is likely to be, if his case rests on the testimony of friends who, with an imperfect knowledge of the facts, are led by their zeal to testify more than they know. If he be innocent, and answers fully to questions put to him, cross-examination, the more thorough it is, will the more thoroughly exhibit his consistency. If he is fabricating a defence, it is right that the explosion of his fabrication should tell against him. It may be said that an innocent man will, in his desperation, fabricate a defence when put on the witness-stand. But innocent men are equally likely to connive at the fabrication of defences by witnesses or counsel; yet this is no reason why defendants should be precluded from having counsel or calling witnesses. Aside from these views, there are points in a defence (*e. g.*, the defendant's impression, in a homicide case, of the danger of an attack), as to which the defendant is the only person from whom the facts are to be obtained. It is a narrow rule which would prevent such a witness from being examined if he offer himself for examination.

So far as concerns the United States, we cannot study the reports of trials which have taken place since the rehabilitating statutes, without seeing that these statutes in the main conduce to promote public justice by enabling each case to be determined more fully on its merits.