

consents to . . . answer." It was held, however, that this section, as it appeared to take away a common-law right, should be strictly construed, and that the refusal "to answer any question touching the case must mean any question which might be lawfully put, and which the witness was otherwise bound to answer. From this category all questions which would tend to subject the witness to criminal proceedings were, it was pointed out, expressly excepted by the Evidence Act of Ontario," s. 5, which leaves this common-law protection intact, unless where the witness is the defendant, or the wife or husband of the defendant. *Reg. v. Nurse*, ante, p. 35 : 2 Can. Crim. Cases, 57, referred to with approval.

*Geo. F. Henderson*, for the applicant. *Glyn Osler*, for the magistrate.  
*R. J. Lewis*, for the complainant.

Falconbridge, J.]

IN RE O'REILLY.

[Aug. 28.

*Custody of young children, right of mother to, where parents belong to different churches, determined under special circumstances.*

A Roman Catholic married a Protestant woman, the latter agreeing that all children of either sex born of the marriage should be educated in the faith of the father. Dispute having arisen between the sponsors a separation finally took place, and for four years previous to hearing of case, the wife had been maintaining herself and her two children, boys of nine and six years of age without any assistance from her husband. During a period of two years after the separation the husband had continued writing a number of letters, abusing his wife and her mother and her sister, and charging her, in extremely foul language, with the grossest immorality. The evidence showed these charges to be unfounded. The conclusion of the court was that the education of young children ought not to be entrusted to a man capable of writing such letters, especially as there was good reason to doubt his ability to support the children. An order was therefore made, declaring that the mother was to have the custody of the children; that they were to be educated in the faith of their father, and that the father should have access to them at all reasonable times.

*Mahon*, for the father. *Chrysler*, Q.C., for the mother.

Armour, C.J., Street, J., Falconbridge, J.]

[Sept. 12.

IN RE ROCHON.

*Examination of insolvent debtor—Assignments and preferences Act—County Court judge—Jurisdiction—R.S.O. c. 147, s. 36.*

A County Court judge has no jurisdiction to commit an insolvent debtor for unsatisfactory answers at an examination under the Assignments and preferences Act. The power to commit is by s. 36 (R.S.O. c. 147) given to the High Court or a judge thereof.

*Aylesworth*, Q.C., for the insolvent debtor.