

As the evidence stood at that time, we think the re-examination should have been allowed. No doubt, what Pepin had stated was in strictness not evidence, but the jury were not aware of that. It had come from him in the course of cross-examination, and counsel for the Crown had not asked that it should be struck out; nor were the jury informed that it was not evidence, and that they must disregard it. That being so, the prisoner was entitled to get, by further examination, every part of the conversation that related to the statement concerning the prisoner being the person who shot at the prosecutor. It was argued for the Crown that the witness volunteered the statement, and that in any case it was not evidence.

The right to re-examine follows upon the exercise of the right to cross-examine, and even if inadmissible matters are introduced in cross-examination, the right to re-examine remains—and the rule holds good where the witness volunteers the statement. If it was desired to avoid re-examination upon it, it should have been expunged at the instance of the Crown. While it remained as part of the testimony, the right to re-examine upon it also remained. In *Blewett v. Tregoming*, 3 A. & E. 554, where the point was fully argued, all the Judges agreed that, however the evidence came in during the cross-examination, whether voluntarily or in answer to a question by counsel, the other party was entitled to pursue it on re-examination, unless the cross-examining party got it struck out. See also *Phipson on Evidence*, p. 454.

We cannot judge of the effect that the statement, unqualified by other portions of the same conversation, or by any explanation, may have had on the minds of the jury, nor estimate to what extent it may have prejudiced the prisoner. There was, no doubt, other evidence as to the identity of the prisoner on which the jury might have convicted without reference to Larocque's evidence on that point, but, in view of the way in which the statement came out in Pepin's testimony, and of the discussion on the question of re-examination, the jury were not unlikely to have attached considerable importance to it.

We think, therefore, that there should be a new trial.