the prisoner, who had been recaptured, the Trial Judge is not bound to give a direction asked by the accused that the prisoner be called as a witness for general cross-examination without making such witness a witness for the accused, nor a direction that the Crown make the prisoner its witness, if the Crown is prepared to permit counsel for the accused to interview such prisoner as to the evidence he can give and offers to facilitate his being called as a witness for the defence if desired. [R. v. Holden, 8 C. & P. 606; R. v. Stroner, 1 C. & K. 650, distinguished.]

R. v. Hagel, 16 D.L.R. 378, 23 Can. Cr. Cas. 151, 24 Man. L.R. 19, 6 W.W.R. 164, 27 W.L.R. 271.

C. Privilege.

(§ II C—45) — Criminating evidence — Governmental investigation.

The powers conferred on an Investigation Commission to compel the attendance of witnesses and production of documents for the purpose of enabling the government to proceed in civil and criminal prosecutions, is no abridgment of the immunity of giving criminating evidence recognized by the Dominion and Provincial Evidence Acts.

Kelly v. Mathers, 23 D.L.R. 225, 25 Man. L.R. 580, 8 W.W.R. 1208, 31 W.L.R. 931, 32 W.L.R. 33.

Self-incrimination.

The right of a witness to refuse to answer questions put to him, on the ground that his answer might tend to criminate him is a civil right which has been taken away from him by the Ontario Evidence Act, R. S.O. 1914, c. 76, s. 7, in respect of civil matters.

Re Ginsberg, 38 D.L.R. 261, 40 O.L.R. 136, reversing 27 Can. Cr. Cas. 447.

To divulge secrets of state—Military Service Act.

A court cannot compel a witness, who is a subordinate of the Minister of Justice, to answer questions put to him, when he has received instructions from the Minister to state only the number of men actually on active service under the Military Service Act, 1917, and amendments, is under 100,000, and to refuse to reply to any other questions tending to divulge administrative acts of the state, with regard to the military service of Canada.

Rheault v. Landry, 20 Que. P.R. 187.

Apprehension of criminal prosecution—Disobedience of judgment.

The plaintiffs launched a motion to commit G., the chairman of the defendant board, for breach of the injunction granted by the judgment of Lennox, J., in this action (32 O.L.R. 245, 261, 18 D.L.R. 456). As witnesses for the plaintiffs upon the pending motion, G. and certain other persons were examined before a special examiner; and the plaintiffs now moved for an order compelling G. and the other witnesses to attend for re-examination and to answer questions which they had refused to answer and to produce books, papers, and documents relating to the payment of salaries of teachers in the employment of the defendant board, and, in default, for the committal to gaol of G. and the others:—Held, that this motion was properly made in the action: it was not necessary to begin an independent proceeding by originating notice, making G. and the others parties; the notice of motion was directed to the persons individually affected, and that was sufficient. Held, also, that there could be no reasonable apprehension on the part of G. or other witnesses that by answering the questions which they refused to answer they would make themselves or the board liable to a criminal prosecution: the witnesses themselves were fully protected under s. 7 of the Evidence Act, R.S.O. 1914, c. 76; the defendant board could not be proceeded against criminally; and the statement of one member of the board, made upon an examination in a civil action, could not be used against another in a criminal proceeding. Held, also, that three members of a religious teaching fraternity, who were employed by the defendant board as teachers, and were among the witnesses examined whose re-examination was sought, and who admitted that they had been teaching without legal qualification, were not excused from answering questions, as to salaries paid to them, on the ground stated by them, viz., that they had made perpetual vows to devote themselves to the welfare of children and their own sanctification, and that the interests of the school children might be prejudiced if they answered the questions.

Mackell v. Ottawa Separate School Trustees, 40 O.L.R. 272. [See also 32 D.L.R. 1, [1917] A.C. 62.]

Secrets of confessional.

Although by Quebec law, as in the old law of France, a confessor cannot be compelled to divulge the secrets of the confessional, the penitent has the right, if he wishes, to testify as to what the priest said to him in the confessional. The incapacity of a penitent to be witness of what passed at the time of his confession to a priest cannot be raised by an inscription en droit; it is an objection to the evidence which should be decided by the judge presiding at the hearing.

Lefebrev v. Jobin, 52 Que. S.C. 492.

(§ II C—47)—Privilege—Authorization of Solicitor's Act.

The authorization or direction to a solicitor to send a letter on behalf of the client is not within the privilege between solicitor and client, and the latter, called as a witness in a criminal case in which he was the complainant, cannot on that ground decline to answer a question put by counsel for the accused whether he, the witness, had not authorized his solicitor, at or about the time the accused brought civil proceedings against the complainant, to write a particu-