

sel or not, was entitled to make an unsworn statement, if he chose to do so, at the conclusion of his counsel's address, but subject to this: that what he said would be treated as additional facts laid before the Court and as entitling the prosecution to a reply. This was the rule of the practice, he said, now approved of by the Judges of the High Court.

It is apparent then that an accused person always had the right to make an unsworn statement, the difference of opinion prevailing on the question for a time owing to the passage of the Prisoner's Counsel Act being definitely settled in favour of the prisoner by the English Judges in 1881.

In 1898 the English Criminal Evidence Act was passed. It made an accused person a competent witness in his own defence and by section 1(h) it provided that "Nothing in this Act shall affect . . . any right of the person charged to make a statement without being sworn." This express provision prevented any question arising as to whether the new right conferred upon an accused person had abolished his former privilege to make an unsworn statement.

No such saving clause, however, appears in the Canada Evidence Act, and Chief Justice Mathers of Manitoba has expressed the opinion as to the effect of this Act on the right of a prisoner to make an unsworn statement indicated above.

With great deference to the opinion of Chief Justice Mathers, I have, nevertheless, concluded from my research on the question that the Canada Evidence Act does not do away with the right which an accused person had, up to that time, enjoyed to make an unsworn statement at his trial if he wished, and that the Canada Evidence Act had no greater effect upon this existing right than the Prisoner's Counsel Act did when it was passed. The saving clause in the English Criminal Evidence Act appears to me to have been inserted *ex abundanti cautela*.

"In Acts of Parliament it has sometimes, *ex abundanti cautela*, been thought necessary specially to reserve rights," observes Harcastle, 2nd ed., at p. 125. "For instance, in certain