

them, many an innocent man would unjustly suffer." (2 Russel, p. 628.)

In Note (s), it is stated as follows :

" See also 1 Arch. Pract. 193—Arch. Cr. Pl. 102, where a MS. case of *Rex vs. Helling and Wade* is cited, in which Bayley J. held that all questions must be answered except those the answer to which may subject the witness to punishment."

It is somewhat singular, that the authors have not explained what is to be understood by the words "which may subject the witness to punishment," for it is difficult to view as "possibly subjecting to punishment" the affirmative answer of a witness: he cannot, or rather he ought not to be convicted on his mere acknowledgement as a *witness*, of an offence which he has *subsequently* to be indicted for, prosecuted, and whereon the regular ordeal of a trial, has to be gone through. How then, can that answer "subject him to punishment." ?

It would, perhaps, have been a better way of laying down the principle, had the authors said, and the Courts ruled, that "a witness is not bound to answer, if by so doing, he exposes himself to a revelation which may cause him to be prosecuted or punished."

Such a (more) liberal construction is yet, in our opinion, illogical and unphilosophical, inasmuch as character, reputation, private or public esteem, are more important, and worthier of being preserved, than punishment to be avoided; and secondly, there is very little philosophy in protecting a guilty person from punishment, or rather from a question the answer to which, may possibly induce a prosecution, and thereby, and for the avowed purpose of obtaining the conviction of the accused, or wresting therefrom, a person who should be punished.

The case may be thus put: An innocent man stands charged with murder. A witness, *the only one*, whose evidence is sufficient to convict, is asked a question, the answer to which *may* expose him, or rather induce a prosecution, the result whereof *may* be punishment, but *must* discredit altogether the witness in the opinion of the Court and the Jury, and save the prisoner who is innocently accused. Shall the Court protect the witness ?

Unquestionably, say the advocates of the principle of protection to the witness. And why ? because no one is bound to reveal his own infamy, and also, because it would be cruel thus to expose a witness to punishment. It is moreover strenuously insisted that such has always been the practice in England, and in this country.

As to the first reason, we think it may be met by quoting Chief Justice Best's words, in giving judgment in the case of *Cundell vs. Pratt*, (Russell *loco citato*), which shew that the practice in England has not *always* been in favor of extending to witnesses, a *limited* protection. As to witnesses being in danger of a prosecution, or even of punishment, whose fault is it ?