the law generally which related to marriage. The statute 26 Geo. II. cap. 33, being in force in England when our statute 32 Geo. III. cap. 1 was passed, was adopted as well as other statutes, so far as it consisted with our civil institutions, being part of the law of England at that time *relating to civil rights:* that is, to the civil rights which an inhabitant of Upper Canada may claim as a husband or wife, or as lawful issue of a marriage alleged to have been solemnized in Upper Canada.

"The Legislature of Upper Canada have so regarded this matter, as appears by the statute 33 Geo. III. cap. 5, secs. 1, 3 and 6; 38 Geo. III. cap. 4, sec. 4; and 11 Geo. IV. cap. 36, in which they have recognized the English Marriage Act, in effect though not in express terms, as having the force of law here in a general sense, and controlling the manner in which marriage is to be solemnized.

"We find nothing in the ordinances of the Governor and Council of the province of Quebec, nor anything in the British Statutes, 14 Geo. III. cap. 83, or 31 Geo. III. cap. 31, or in any other British Statute passed between the 26 Geo. II. cap. 33, and the time of our adopting the law of England, which can affect us in this matter, nor anything in any British or Imperial act passed since, which either extends to the Colonies generally or to Canada in particular."

Besides the Provincial Statutes above cited by the Chief Justice, reference may also be made to 2 Geo. IV. cap. 11, sec. 1, which contains *express* mention and recognition of the English Marriage Act as in force in Upper Canada. The only case reported subsequent to *Reg.* v. *Roblin*, in which the marriage laws were considered, is that of *Hodgins* v. *McNeill*, 9 Grant, 305, wherein Esten, V. C., takes the same view of the law and substantially follows the previous case.

Both courts agree in this, that while Lord Hardwicke's Act is generally in force, yet the 11th section is not to be considered as part of the law of this Province. That section avoids the marriages of minors without the consent of their parents and guardians first had, and the 12th section provides that if the parents and guardians are of unsound mind, or beyond the seas, or shall unreasonably withhold consent, an application may be made to the Lord Chancellor who has power to order such marriage without such consent. And our courts hold that as it would work great hardship to have the 11th clause in force without the 12th or any other provision as a substitute for it, therefore it is to be taken that in this Province the marriages of minors without the consent of their parents or guardians, are not to be accounted invalid, but simply irregular, illegal, and in breach of the usual bond-condition that no impediment exists.

SELECTIONS.

TESTIMONY OF PERSONS ACCUSED OF CRIME.

On the 26th day of May, 1866, the Legislature of Massachusetts enacted, that, "in the trial of all indictments, complaints, and other proceedings against persons charged with the commission of crimes or offences, the person so charged shall, at his own request, but not otherwise, be deemed a competent witness; nor shall the neglect or refusal to testify create any presumption against the defendant." In these few words, with very little discussion and with no great amount of inquiry, the Commonwealth of Massachusetts enters upon what to some appears merely an experiment, and to others a thorough revolution, in the administration of criminal law. Whether it should be designated as an experiment or a revolution, it cannot be said to have been called for by any generally acknowledged necessity, or to be intended for the purpose of reforming any practical abuse or defect that had been a matter of general complaint. On the contrary, if there had been any one thing in which the old rules of the common law were successful in their practical working it was in the protection of persons accused of crimes against the danger of being unjustly convicted. Here, if anywhere, was to be found a justification of the cry of the old barons, "*Nolumus leges Angliæ mutare*," It is a just and well-founded boast of the common law, that under its humane provisions, the risk of convicting a man of a crime of which he is not guilty is reduced to its very lowest expression.

Under the law of Massachusetts, as it stood until May 26, 1866, the great practical defence of every person accused of a crime was, first, the presumption of his innocence; and, secondly, the certainty that he could not be compelled to furnish evidence against himself. The law not only presumed him to be innocent but allowed him to keep his own secrets. He was not called upon to explain anything, or to account for anything. He was not to be subject to cross-examination. He had nothing to do but to fold his arms in silence, and leave the prosecutor to prove the case against him if he could. The penitentiary could not open "its ponderous and marble jaws" to devour him, unless his guilt was made out affirmatively beyond reasonable doubt. The verdict of "Not guilty" was perfectly understood to mean precisely the same as the Scotch verdict of "Not proven." No better protection to innocence could ever be devised. The only reasonable reproach ever urged against