

from a gentleman who has made the subject of evidence a specialty for many years, demands at least a candid consideration by the profession, and all who desire the administration of equity and justice.

As the suggestion of the Chief Justice was adopted by the Judiciary Committee, and reported to the House of Representatives in the form of a bill, and which may, from present appearances, become a law of the Commonwealth of Massachusetts, it is desirable that the question be fully discussed and digested; and we therefore deem it not ill-

The Chief Justice admits, that when the accused is permitted to testify, he will be pressed with question upon question, and that evasion would be suspicious, and silence be tantamount to confession. "All this," he remarks, "may be disastrous to the criminal, but justice is done." We would ask, wherein? If disastrous to the party arraigned, how is justice done? It would assuredly be disastrous to the accused, and justice would not certainly be done, if the party, being allowed to testify, should tell such a confused, incoherent story (as is usual with an ignorant person in such cases), through embarrassment and fright (as it is with those who, circulating in good society, are arraigned for crime), that the minds of the jury would take his incomprehensible answers as evasions, and his testimony, in the main, as implicating and condemning himself. Nothing could be said of avail in palliation of his conduct. And how often do we see instances, even in civil matters, where men cannot make a statement on the stand, with clearness enough to be understood by a lawyer, much less by those who comprise an average panel of jurymen; and how much more is this confusion and incoherency aggravated naturally, in criminal cases, thus militating in an incalculable degree against the prisoner. And it is fair to presume, a man having the right to be heard, whether innocent or guilty, if he remains silent, the suspicions of the jury would at once be keenly aroused.

These we deem cogent reasons why it is safer, and wherein justice will be administered and subserved better, by not allowing parties to be heard in their own defence. The same objections cannot, of course, be equally pertinent in civil cases. We do not, therefore, agree with our advocate, in thinking that the guilty would be "less likely to escape," or the danger of unjust conviction of the innocent "diminished;" for the history of criminal law proves, the *guilty* person, having committed a crime, steals his mind and heart to the "sticking point," and never fails to tell a plausible story; while the innocent usually breaks down under the rigid, perhaps confounding examination.

The time-honored maxim, *Stare decisis et non quieta movere*, has been revered in all ages as the bulwark of safety in jurisprudence; and while we are not among those who cry out *Stare decisis!* (with as much emphasis as the elder Cato ejaculated *Delenda est Carthago*,

on all occasions) whenever a reform in law is proposed, and not unmindful that society is constantly being educated, growing in truth, yet, we hold the reform, or rather change in the code of Maine, to be too radical, untimely, and we can but predict a speedy repeal of the law, as was done in Connecticut. And thus we essay to take issue with the Chief Justice, and against any State adopting said rule, for these obvious reasons.

To wisely prune and graft the law has in every age been considered beneficial; but true timed to offer a few reasons why, in our opinion, the establishment of such rule would not only fail to prove practicable, but be far from subserving the public good. The proposed rule, as yet being almost wholly untried, can be argued only upon general principles of propriety.

The honorable advocate of the change concedes the principle of evidence, that the accused is deemed innocent, and all trials for crime proceed with that presumption. "Yet during the trial," he observes, in speaking of the established rule, "when the question of guilt or innocence is to be determined, the party injured or alleging he is injured, is admitted to testify, while the respondent, presumed innocent, is denied a hearing. *Audi alteram partem*. Hearing both sides of a controversy is so obvious a dictate of impartial justice, that one may well marvel that its wisdom and propriety should ever have been called in question, much more that it should have been denied."

It may be observed here, that one of the principles upon which the rule of law disallowing a party in criminal proceedings to testify, is, it redounds to the benefit of the accused, and thus carries out the fundamental legal presumption of innocence. The guiltless is thus protected. Taking into consideration the overwhelming shock which a man of nervous and delicate sensibilities must realize upon being arraigned for some heinous crime, before a judge, perhaps, who has the reputation of being not only severe in his manner of trying a case, but unmerciful in convicting and passing sentence; and considering, also, the liability of such person being not only overcome, and therefore incoherent in his testimony, but of actually criminating himself, the rule can but work great hurt and injustice. The human mind, under the pressure of calamity, is easily seduced, and liable, in the alarm of danger, to acknowledge indiscriminately a falsehood or a truth, as different agitation may prevail. Taking advantage of his confusion, in the cross-examination, subtle or designing counsel might make out a much stronger case than if the party had not testified, as was found to be the injurious result of the rule in Connecticut. And the honorable gentleman admits that he has known cases where, notwithstanding the innocence of the prisoner, "as was abundantly proved," and *notwithstanding his own testimony, the jury found him guilty*. Our time-honored and time-tried rule, therefore, upon this showing and aspect