taxed by the Taxing Officer, if the amount claimed exceeds that sum, notwithstanding anything to the contrary in the order in that behalf contained.

17. Where two or more defendants defend by different Solicitors under circumstances that, by the law of the Court, entitle them to but one set of costs, the Taxing Officer, without any special order, is to allow but one set of costs; and if two or more defendants defending by the same Solicitor separate unnecessarily in their answers, the Taxing Officer is, without any special order of the Court, to allow but one answer.

18. When, after the date of this order, a guardian *ad liten* is appointed on the application of the plaintiff to an infant, or to a person of unsound mind not so found by inquisition, no costs are to be taxed to the guardian; but in lieu thereof, the plaintiff is to pay to the guardian a fee of $15, and his actual disbursements out of pocket; and the plaintiff, in case he is allowed the costs of the suit, is to add to his own bill of costs the amount he so pays. But the Court may, in special cases, direct the allowance of taxed costs to a guardian *ad litem*.

These Orders are to come in force on Monday, the 8th day of April, instant.

P. M. Vankoughnet, C.
O. Mowat, V. C.

SELECTIONS.

TESTIMONY OF PERSONS ACCUSED OF CRIME.

On the twenty-sixth 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 has 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 any thing, or to account for any thing. 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 the system has been that it sometimes let the guilty escape.

It will be found, we think, on examination, that this experiment, or this revolution (whichever term may best describe this new statute), must inevitably and very greatly impair both of these defences against a criminal prosecution. It substantially and virtually destroys the presumption of innocence; and it compels an accused party to furnish evidence which may be used against himself.

If the statute merely provided in general terms that the person "charged with any crime or offence should be deemed a competent witness" on the trial of the indictment, its cruelty and injustice would be manifest at once. No man can doubt that it would be utterly unconstitutional, and would be held to be so, in all the courts, without even the slightest hesitation. It is for this reason, that the statute contains the fallacious and idle words, "at his own request, but not otherwise," and the equally idle and fallacious words, that "his neglect or refusal to testify shall not create any presumption against the defendant." We take the liberty to call these words "idle and fallacious," because the option which is given to the accused party is practically no option at all. In its actual workings, it will be found that this new statute will inevitably *compel* the defendant to testify, and will have substantially the same effect as if it did not go through the mockery of saying that he might testify if he pleased.

Let us suppose that a person is on trial on a criminal charge, and that the same evidence which was sufficient to cause the Grand Jury to find a true bill against him is brought forward at the trial. There will be some plausibility in the evidence; otherwise, no bill would have been found. There will be some show