

fact that they were trustees could not of course by itself make their contract in that capacity. As creditors of Edwards they had a personal interest in the success of his business, and I think they must be held to have contracted personally. The plea is therefore dismissed, and plaintiff has judgment.

Abbott & Co., for plaintiff.

Kerr & Co., for defendants.

Rhodes v. Starnes et al.—In our last issue it should have been mentioned in our report, that Messrs. *Kerr & Carter* appeared for the defendant, *Jas. O'Brien*.

DISPUTED QUESTIONS OF CRIMINAL LAW.

(Concluded from page 324.)

IV. Defendants as Witnesses for themselves.—

Mr. Evelyn Ashley, a son of Lord Shaftesbury, has succeeded in carrying to a second reading in the House of Commons a bill to enable defendants in criminal cases to testify for themselves. The bill is substantially the same with those now in force in most of the states in this country, and contains the proviso, so familiar to ourselves, that "the neglect or refusal of any prisoner or defendant at any trial to give evidence under the provisions of this act shall not create any presumption against him, nor shall reference be made to, or any comment made upon, such neglect or refusal during such trial."

The bill was advocated, as we learn from the *London Law Times* of April 18, 1878, by Sir *Henry James*, an eminent counsel, who said, speaking of defendants on trial: "But, if they were not guilty, could there be any greater injustice than saying to them, 'You are innocent; you can clear yourself if you are allowed to speak, but the law says it would not be just for you to have an opportunity of clearing yourself, and, therefore, you cannot be heard.' " And, again: "He could not conceive any more natural desire on the part of an innocent man than that he should stand face to face with his accusers—not with his tongue tied, for there could be no greater injustice to him than to compel him to be silent. Why should he not be allowed to speak when he stood in peril of life, liberty, and property?"

There could be no benefit to the innocent man in forbidding him to speak."

The bill, however, is vigorously opposed in the *Law Times* by a contributor who argues that the right to make a statement to the jury already belongs to a defendant on trial, and that to put him on his oath does not add to the credibility of his statement, or in any way enhance the weight of what he says. *R. v. Malings*, 8 C. & P. 242, is cited as establishing the defendant's right to make such a statement. This objection to the bill, however, is of little weight. Even if a right by the defendant to make a statement to the jury be recognized in principle, it is a right which defendants rarely avail themselves of, for two obvious reasons: In the first place, a statement made by a party who does not subject himself to cross-examination has little logical weight. In the second place, such statement, not being under oath, is not evidence, and is so treated on trial. Counsel for the prosecution tell the jury that the statement is not evidence, and the judge sustains the position, and the jury brush aside the statement as not entitled to affect their deliberations. Hence it is that the right, if it exists, has fallen into disuse.

More serious are the remaining objections made by the writer in the *Law Times*. The clause in the statute requiring that no presumption should be raised against the defendant for declining to present himself as a witness is, it is argued, absurd. "Were it not," so it is said, "that the subject is a most serious one, we should be inclined to smile at the perfect absurdity of such a provision. If a man has an opportunity of denying, upon his oath, the truth of a charge made against him, and does not avail himself of it, how in the name of common sense can a jury be restrained from presuming against him? They would naturally say: 'This man does not venture to swear that he is innocent; he must, therefore, be guilty.' An act of Parliament can effectually deal with legal presumptions, but it is out of its power to regulate moral presumptions."

We have had the same difficulties in the United States, and in several states it has been proclaimed that presumptions arising from the defendant's failure to testify are instinctive mental processes which it is beyond the power of legislatures or courts to control. See *The*