

Since argument I have read the depositions of defendant upon his examination, from which it appears that he refused to answer a number of questions—some 26 in all—on the one ground only in each case, namely, that the answer might tend to criminate him.

From the manner, therefore, in which the case comes before me, it is not open to me to consider the respective questions themselves, and to determine whether defendant may on any ground whatever be excused from answering all or any of them, but I must assume that all the answers might tend to criminate him, and am restricted to determining whether, notwithstanding that circumstance, the defendant can be compelled to answer.

The principle of the common law of England securing to a witness the privilege of refusing to make answer to a question if it tended to expose him to a criminal charge, was based on the policy of encouraging persons to come forward to give evidence by protecting them as far as possible from injury: *Best on Evidence*, sec. 126.

The privilege, however, existed only so long as the witness's liability to such injury continued. When that liability ceased, the privilege also ceased: *Regina v. Boyes*, 1 B. & S. 311; *Attorney-General v. Cunard*, 4 Times L. R. 177; *Regina v. Kinglake*, 11 Cox C. C. 499.

With the introduction into Upper Canada, by 32 Geo. III. ch. 1, of the laws of England in regard to property and civil rights, this privilege became part of the law of the province, and, unless abolished by legislation, still continues.

The criminal law being by the B. N. A. Act one of the classes of subjects assigned exclusively to the legislative authority of the Parliament of Canada, it is competent to that Parliament to afford protection to a person against injury in a criminal prosecution because of his making incriminating answers, and this protection Parliament has sought to secure by 61 Vict. ch. 53, an Act to amend the Canada Evidence Act, 1893, and by 1 Edw. VII. ch. 36, an Act further to amend the Canada Evidence Act, 1893. The former of these statutes enact as follows:

"1. Section 5 of the Canada Evidence Act, 1893, is hereby repealed and the following substituted therefor:

"5. No witness shall be excused from answering any question upon the ground that the answer to such question may tend to incriminate him, or may tend to establish his liability to a civil proceeding at the instance of the Crown