Mr. HART—May it please your Honor, the question has been, it is very true, decided already by the Court—but in a case like the present, where the lives of two innocent men are in jeopardy, I feel urged to bring the point again before the Court, and I must respectfully insist that this Court has no right to establish a precedent, which is in contradiction to the established principles of the Criminal Law, and that your Honors are bound to abide by the Criminal Law of England, as it stood when introduced into this Province, or as since altered or qualified by Provincial enactment.

Let us regard the Reports of Criminal Cases, and ascertain what the writers on Criminal Law have stated, and we will find that the question was only once raised and revised by the Judges of England; and that on that occasion a different point was agitated—It was in the case of the King against Benjamin Oldroyd, reported by Russel and Ryan, and revised on the 11th and 18th May, 1805; There the matter mooted was this:—"Where a presiding Judge on a trial finding the name of a witness on the back of the indictment, who has not been examined by the Crown officer, directs the witness to be called up, and on the witness being examined, the testimony given by the witness proves to be a direct contradiction of a former deposition given by that witness, whether that Judge had a right to call for the first deposition and have it read, in order to discredit that witness?" On the revisal of Oldroyd's case by the twelve Judges of England, they were unanimously of opinion that Baron Graham, (the Judge on Oldroyd's trial,) had acted correctly in calling for the deposition; and it is added by the reporter, that two of the Judges (Lords Ellenborough and Mansfield) thought that a prosecutor had the same right. But the Court on referring to the report of the case, will find that the attention and consideration of the Judges on the revisal of the case, was confined solely to the question *of the* JUDGE *having a right to call for the deposition of a witness whom he had forced the prosecutor to call*; and the word "JUDGE," in the report, is printed in capitals. Again, had the majority of the Court been of the same opinion with Lords Ellenborough and Mansfield, the decision would have been reported, and we are therefore to consider their opinion as merely that of a very small minority of the Judges, namely, two out of twelve, and ought in no way to decide or influence the judgment of this Honorable Court.

If then we have no positive authority, warranting your Honors in granting the application of my learned friend, the Solicitor General, let us see whether the weight of legal authority stands positively and directly opposed to it. I humbly contend that it does, and I will refer the Court firstly to the opinion of a Judge whose remarks are ever regarded with admiration; I allude to Mr. Justice Buller, and beg leave to cite his law of Nisi Prius, p. 296, (*a*) and your Honors will find that he lays down the general principle that a man should never be allowed to discredit his own witness, or making use of his evidence, if it answer his purposes, and setting it aside if it should not serve his interests. (Here Mr. Hart read the authority.) We have next the case in point of Warren Hastings before the House of Lords, where it was decided that a man shall not discredit his own witness, but shall merely be allowed to contradict the facts which that witness has proved. I beg leave to cite from 1st Phillips on Evidence, p. 309.

The question has only been agitated three times before the Court; twice I had the honor of opposing the application of the Crown Officer. The third case was that of the witness M'Nesce, a few days since. In the case of the King vs. Simon d'Helle and others, in the last Term, I succeeded in having the application of the Attorney General rejected, and in the first case wherein the question was for the first time mooted before the Court, I opposed the Attorney General Stuart's application, which was ultimately granted; it was in the case of Alexis Boyer, for murder—but that, your Honor the Chief Justice observed, was a case *sui gueris*, and I certainly have ever considered that the decision of the Court was correct in that case, for there it was the mother of the accused, who had been in the house alone with the prisoner and his wife, when the murder was committed, and might have been suspected of be-