

in the law by which he can call his client, his wife, and the wife of Smith's co defendant Robinson. In the afternoon Brown is charged before the same jury, and Brown's friends go into the witness-box to prove an *alibi* for him, and Brown's wife also goes into the witness-box, but he does not himself go there. The jury will not fail to notice this, even if it is not to be alluded to in any way by the counsel or the judge. There are cases in which it would be proper to comment on the prisoner's absence from the witness-box, and cases in which it would be improper to do so.

In some of the colonial Acts there is a provision to prevent such comment from being made, and, although the judges loyally endeavour to carry out the directions of the Legislature, such provision is of little use, as the juries know full well that the prisoner might have gone into the witness-box and for some reason did not adopt that course.

The fourth point is—Is it right that persons should be put under the temptation to commit perjury, and is it not desirable that the future prisoner and his wife should not give evidence on oath? This is a very small matter. As long as the accused is a competent witness, and the husband or wife is not only a competent but compellable witness, it is of little consequence whether the evidence is given on oath or on affirmation or declaration without an oath. There are many persons who will agree with my friend Mr. H. C. Richards, who, I understand, proposes that the evidence given by the accused person under this bill shall not be on oath, and who think that what Pericles said to Helicanus in the play is true—

I'll take thy word for faith, not ask thine oath;
Who shuns not to break one will sure crack both.

The fifth point is—It is proposed that counsel should be assigned in every case to an undefended prisoner.

This is, in my humble judgment, a most mischievous proposal. I should rejoice if in all cases a solicitor could be assigned to a prisoner to get up his case and to instruct counsel, but with regard to assigning counsel to a prisoner, I have seen injustice done by the practice being adopted in capital cases. Counsel assigned by the judge cannot in many cases get fully instructed as to the prisoner's defence, subpoena his witnesses, and do solicitor's work. He makes the best defence he can from the