privileged. We would call attention to the decision, *Storey* v. *Veach*, 22 C. P. 164, where, in an action by husband and wife for an injury sustained by the wife (the husband being joined merely for conformity), it was held that the mouths of both plaintiffs were shut, while the defendant could, under our statute, give his evidence against them. In view of this decision, some amendment of the law of evidence, as it relates to husband and wife, would seem to be called for in this Province.

Another matter in the English bill is that a barrister, solicitor, attorney, or clergyman of any religious persuasion, shall not be bound to disclose any communication made to him confidentially in his professional character. Upon this, some correspondence has lately appeared in our columns. As regards privilege of clergymen, we understand there is a very important case now pending in the Court of Chancery (*Keith* v. *Lynch*), where one of the defendants, a Roman Catholic clergyman, refuses to disclose matters communicated to him in the confessional. It is not improbable that some of the questions raised, but not decided, in *Cullen* v. *Cullen*, and adverted to by Strong, V. C., in *Elmsley* v. *Madden*, 18 Gr. 389, touching the Treaty of Paris and the Quebec Act, will have to be decided in *Keith* v. *Lynch*.

Among other changes (some of which have evidently been suggested by Parliamentary Election Law, the Tichborne *cause célèbre*, and the practice in Chancery), we further note the following in the bill we have referred to:

"A witness is not to be excused from answering on the ground of criminating himself, but no answer so given shall be used against him in any criminal proceedings, or in any proceeding for a penalty or forfeiture. The improper admission or rejection of evidence shall not be ground of itself for a new trial or for the refusal of any decision in any case, if it shall appear to the court before whom such an objection is raised that independently of the evidence objected to and admitted there was sufficient evidence to justify the decision, or that if the rejected evidence had been received it ought not to have varied the decision. A witness shall not be bound to produce any document in his possession not relevant or material to the case of the party requiring its production, nor any confidential writing or correspondence which may have passed between him and any legal professional adviser. An impression of a document made by a copying machine shall be taken *prima facie* to be a correct copy."

SELECTIONS.

LIABILITY OF RAILWAY COMPANY—FIRE COMMUNICATED BY LOCOMOTIVE.

No invention of modern mind or appliance of modern civilization has been more prolific in results or more fruitful in litigations than railroads. Railroad cases constitute, in fact, the largest single department of litigation to which the attention of our higher courts is called. Upon the particular subject of the liability of railway companies in case of fire communicated by locomotive engines, more than a quarter of a hundred cases have been decided in the higher courts of England and the United States. Soon after the introduction of railways in England the question arose as to whether railway companies were not liable *absolutely* for any damage that might occur in consequence of fire from locomotives (*King* v. *Pearse*, 4 B. and Ad. 30), but it was early decided that the legislative body of the State, in conferring privileges and franchises on railways, did not thereby impose any such absolute liability upon them. But it appears that this principle demanded reiteration even so late as 1860, when the full court of exchequer, in *Vaughan* v. *Taff Vale R. R. Co.*, 5 H. and N. 679; s. c. below, 3 ib. 743, decided that a railway company was only responsible for the negligent use of fire in locomotives. Chief Justice Cockburn, in this case, said: "The defendants used fire for the purpose of propelling locomotive engines, and no doubt they were bound to take proper precautions to prevent injury to persons through whose land they passed; but the mere use of fire in such engines does not make them liable for injury resulting from such use without any negligence on their part." The following cases, however, well establish the doctrine in England that it is only in cases of negligence that the railway companies are liable for damages by fire from engines: *King* v. *Pearse*, *supra*; *Aldridge* v. *The Great Western R. R. Co.*, 3 Man. and Gr. 515; s. c 42 E. C. L. 272; *Piggott* v. *Eastern Counties R. R. Co.*, 3 Man. Gr. and Scott; s. c., 54 E. C. L. 228; *Gibson* v. *The South-Eastern R. R. Co.*, 1 Fos. and Fin. 23; *Vaughan* v. *Taff Vale R. R. Co.*, *supra*; *Freemantle* v. *The London & North-Western R. R. Co.*, 10 C. B. N. S.; s. c., 100 E. C. L. 89; *Smith* v. *London, etc. R. R. Co.*, L. R. 5 C. P. 98. In the United States, in the absence of statutory regulation, the same doctrine prevails as in England. Negligence alone subjects the company to liability in case of damage.

In Massachusetts by general statutes, chapter 63, section 101, it is provided that "every (railroad) corporation shall be responsible in damage, to any person or corporation whose buildings or other property may be injured by fire communicated by its locomotive engines; and it shall have an insurable interest in the property along the route for which it may be so held responsible, and may procure insurance thereon in its behalf." The wisdom and policy of such a statute is, of course,