

Act does not take away the right in cases of high treason. That was one of the principal reasons that influenced me in taking the course I did yesterday in this trial in allowing the prisoner to make the statement he made to you."

It is evident that Baron Alderson had the same view of the origin of the practice, for in *Reg. v. Malings*, 8 C. & P. 242, where he allowed the prisoner, though defended by counsel, to make an unsworn statement, he said:—

"On trials for high treason the prisoner is always allowed to make his own statement after his counsel has addressed the jury."

The difference of opinion as to the effect of the Prisoner's Counsel Act, to which Mr. Justice Stephens referred, is reflected in several cases which followed the passage of the Act: Notably, *Reg. v. Boucher* (1837), 8 C. & P. 141; *Reg. v. Beard* (1837), 8 C. & P. 142; *Reg. v. Burrows et al.* (1838), 2 M. & Rob. 124; *Reg. v. Rider* (1838), 8 C. & P. 539; *Reg. v. Teste*, 4 Jurist. (N.S.) 244; *Reg. v. Taylor* (1859), 1 F. & F. 534. In all of these cases the prisoner was refused the privilege of making an unsworn statement. Collected and briefly summarized, the grounds upon which the making of the statement was denied appear to be these: That the rules which had been established with respect to the conduct of cases by counsel precluded the right of a prisoner to make a statement to the jury himself in addition to the address of his counsel; that allowing such a statement would lead to prisoners being examined on their own behalf without the sanction of an oath and then a speech commenting upon their statements; and that the Prisoner's Counsel Act could only be meant to put prisoners in the same situation with reference to felonies as they were in before when defended by counsel in cases of misdemeanour, and that in those cases the defendant could not be allowed the privilege of two statements, one by himself and another by his counsel.

On the other hand, the prisoner was held to be entitled to make an unsworn statement in the following cases: *R. v. Malings*