argument, seems to have attached much importance to the selection of particular sheep by the defendant, but in his judgment, he abstains from deciding on that ground, though certainly not expressing any opinion that the acceptance must be subsequent to the delivery. The other three Barons—Alderson, Rolfe and Platt—express an inclination of opinion that it is necessary, under the statute, that the acceptance should be subsequent to or contemporaneous with the receipt; but they expressly abstain from deciding on that ground. In the elaborate judgment of Lord Campbell in *Morton* v. *Tibbet* (15 Q. B. 428); in **[310]** which the nature of an acceptance and actual receipt sufficient to satisfy the statute, is fully expounded; he says (p. 434), "The acceptance is to be something which is to precede, or at any rate to be contemporaneous with, the actual receipt of the goods, and is not to be a subsequent act after the goods have been actually received, weighed, measured or examined." The intention of the legislature seems to have been that the contract should not be good unless partially executed, and it is partially executed if, after the vendee has finally agreed on the specific articles which he is to take under the contract, the vendor, by the vendee's directions, parts with the possession, and puts them under the control of the vendee so as to put a complete end to all the rights of the unpaid vendor as such. We think, therefore, that there is nothing in the nature of the enactment to imply an intention, which the legislature has certainly not in terms expressed, that an acceptance prior to the receipt will not suffice. There is no decision putting this construction on the statute, and we do not think we ought so to construe it.

We are, therefore, of opinion that there was evidence in this case to satisfy the statute, and that the rule must be discharged.

Rule discharged.

[311] THE QUEEN *against* BOYES. Monday, May 27th, 1861.—Pardon. Impeachment by House of Commons. Act of Settlement, 12 & 13 W. 3, c. 2, s. 3. Privilege of witness in not answering. Questions tending to criminate. Information for bribery. Corroboration of accomplice. Practice at trial.—1. A pardon under the Great Seal takes away the privilege of a witness in not answering, so far as regards any risk of prosecution at the suit or in the name of the Crown.—2. The Act of Settlement, 12 & 13 W. 3, c. 2, s. 3, which enacts that no pardon under the Great Seal shall be pleadable in bar to an impeachment by the Commons in Parliament, renders a pardon under the Great Seal wholly inoperative to prevent impeachment by the House of Commons, and so getting rid of the judgment of the House of Lords; for that purpose a subsequent pardon must be granted by the Crown: per Cockburn C.J., Crompton and Hill JJ.; dubitante Blackburn J.—3. A merely remote and naked possibility of legal peril to a witness from answering a question is not sufficient to entitle him to the privilege of not answering. To entitle him to the privilege of silence, the Court must see, from the circumstances of the case and the nature of the evidence which he is called to give, that there is reasonable ground to apprehend danger to the witness from his being compelled to answer. Moreover, the danger to be apprehended must be real and appreciable, with reference to the ordinary operation of law in the ordinary course of things—not a danger of an imaginary and unsubstantial character, having reference to some extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct.—4. The position, that the witness is sole judge as to whether his evidence would bring him into danger of the law, and that the statement of his belief to that effect, if not manifestly made malâ fide, should be received as conclusive, denied by this Court.—5. Still, if the fact of the witness being in danger be once made to appear, great latitude should be allowed to him in judging for himself of the effect of any particular question.—6. On the trial of an information for bribery, filed by The Attorney General by the direction of the House of Commons, one of the persons charged in the information to have been bribed by the defendant was called as a witness; and, on his declining to answer any questions with respect to the alleged bribery, the counsel for the Crown handed him a pardon under the Great Seal; which the witness accepted, but still declined to answer: held, that the possible risk of impeachment by the House of Commons, notwithstanding the pardon under the Great Seal, according to the Act of Settlement, 12 & 13 W. 3, c. 2, s. 3, was

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not a sufficient ground to entitle him to the privilege of not answering.—7. The rule that the evidence of an accomplice requires corroboration is not a rule of law, but a rule of general and usual practice; the application of which is for the discretion of the Judge by whom the case is tried: and in the application of the rule much depends on the nature of the offence, and the extent of the complicity of the witness in it.—[312] 8. On the trial of an information for bribery at an election for members of Parliament for a borough, filed by The Attorney General by the direction of the House of Commons, the persons charged in the information to have been bribed by the defendant were examined as witnesses. It appeared from their evidence that on the day of the election the witnesses came to the front of the house which stood between and opened into two parallel streets of the borough, and went in succession into the house, and into a back room, in which the defendant was seated; after an interview with the defendant each of them passed into another room, in which another person was seated, from whom each received the sums mentioned in the information; they then passed into the other street, and so to the hustings, and voted. Semble, that these witnesses, if accomplices of the defendant at all, were not accomplices in such a sense as to require corroboration; and also that here was corroboration, if necessary.—9. On the trial of that information a witness who was called to prove the fact of his having received a bribe from the defendant, objected to give evidence on the ground that the effect of the evidence he was called upon to give would be to criminate himself. Thereupon the counsel for the Crown handed to the witness a pardon under the Great Seal, who accepted it. The witness, however, still objecting to give evidence, and the Judge entertaining doubts as to whether the witness could be properly compelled to answer, notwithstanding the pardon, an arrangement was come to between the counsel on both sides, with the sanction of the Judge, that the witness should be directed to answer, but that the opinion of this Court should be taken as to whether the privilege of the witness remained notwithstanding the pardon; the counsel for the Crown undertaking, in the event of this Court holding the affirmative, to enter a nolle prosequi, if the defendant should be convicted. The defendant having been convicted, this Court granted a rule to shew cause why a new trial should not be had; and, having heard it argued, discharged it, protesting against the course pursued at the trial being drawn into a precedent—as the Court was thereby called on to pronounce a judgment which it was without authority to enforce.

[S. C. 9 Cox, C. C. 32; 2 F. & F. 157; 30 L. J. Q. B. 301; 5 L. T. 147; 7 Jur. N. S. 1158; 9 W. R. 690. Approved and followed, *In re Reynolds*, 1882, 20 Ch. D. 294. Discussed, *Lamb* v. *Munster*, 1882, 10 Q. B. D. 113. Applied, *Evans* v. *Evans*, [1904] P. 380.]

This was an information filed by The Attorney General, in pursuance of a resolution of the House of Commons. The first count stated that, on the 29th April 1859, at the borough of Beverley, in the county of York, an election was had for choosing two burgesses to serve in Parliament for the said borough; and that at the said election one Ralph Walters was a candidate; and that before the said election was so had the defendant unlawfully, knowingly, wickedly and corruptly did give to one John Best, then being a voter, 1l. to induce him to vote at the said election for the said [313] Ralph Walters; against the form of the statute in such case made and provided, and against the peace &c. The second count stated that the defendant, whilst the said election was being had, gave to the said John Best 1l. to induce him to vote for Ralph Walters. The third count stated that the defendant, before the said election in the first count of this information mentioned was so had as therein mentioned, to wit, on the 29th day of April in the year aforesaid, unlawfully, knowingly, wickedly and corruptly did give to one John Pougher, then being a voter, 2l., to induce him to vote at the said election for the said Ralph Walters; against the form of the statute in such case made and provided, and against the peace, &c. The fourth, fifth, sixth, seventh, eighth and ninth counts charged the defendant with giving other sums of 2l. and 1l. respectively to other voters to induce them to vote for Ralph Walters.

Plea: Not guilty.

On the trial, before Martin B., at the Yorkshire Summer Assizes in 1860, The

Solicitor General, in opening the case for the Crown, stated that the evidence upon which the case for the prosecution rested would be the evidence of the persons who had received the bribes, whom he should call as witnesses. Accordingly John Best, mentioned in the first count, was called, and the learned Judge told him that, by the law of England, no man was bound to state anything which subjected him to a criminal prosecution; and, if he was asked any question with respect to the alleged bribery, he might say whether he would or would not answer it, at his pleasure. The witness, upon being asked whether he knew the defendant, declined answering the question. The Solicitor General then produced a pardon of the witness, under [314] the Great Seal, and handed it to him (*a*). The learned Judge told the witness that the parchment which was handed to him was a pardon from the Crown for the [315] part he had taken in the transaction, so that he could never be prosecuted for it, and asked him whether that made any difference in his wish to answer the question or not? The witness still declined to answer. The learned Judge expressed great doubt whether he ought to tell the witness that he was bound to answer; and The Solicitor General suggested, with respect to this and the other witnesses who should be called, that they should be told that they were bound to answer; and that if there should be a verdict for the Crown, and the defendant should be brought up for judgment, or the defendant should move for a new trial, and the Court of Queen's Bench should be of opinion that the Judge ought not to have required the witnesses to answer, then their answers should not be used against them. He cited *Regina* v. *Garbett* (2 Car. & K. 474; 1 Den. C. C. 236). The learned Judge, after consulting Wilde B., addressing The Solicitor General said, "If I improperly and illegally compel the witness to answer the question, the defendant

(*a*) The following was the form of pardon in this case:—"Victoria, by the grace of God, &c. Whereas a certain election was duly had and held, upon the 29th April 1859, at the borough of Beverley, in the county of York, for the electing of a burgess to serve in this present Parliament for the said borough: Now know ye that we, of our special grace, certain knowledge, and mere motion, and for divers good considerations, have pardoned, remitted, and released, and by these presents, for us, our heirs and successors, do pardon, remit, and release A. B. all offences hereinafter mentioned, and all and singular indictments, impeachments, inquisitions, informations, suits, plaints, exigents, judgments, attainders, outlawries, executions, corporal imprisonments, pains, penalties, forfeitures, demands, and other punishments whatsoever which he, the said A. B. has incurred or is subject to for or by reason of such offences, or which we now have or can claim, or have had, or which we, our heirs or successors, may hereafter or in any manner have or claim, against the said A. B., for or by reason of or touching such offences, that is to say: of having, either before or during the said election, directly or indirectly, by himself or by any other person on his behalf, received or agreed, or contracted for any money, gift, loan, or valuable consideration, office, place or employment, for himself or for any other person, for voting or agreeing to vote, or for refraining or agreeing to refrain from voting, at the said election; and also for having, after the said election, directly or indirectly, by himself or by any other person on his behalf, received any money or valuable consideration on account of any person having voted or refrained from voting, or having induced any other person to vote or to refrain from voting, at the said election, and all and every other act and acts of bribery, and all and every bribery and briberies, corrupt practice and corrupt practices, corrupt receivings and payments of money by the said A. B. done or committed, or attempted to be done or committed, at the said election, or whereof the said A. B. was or is guilty in connexion with, touching or relating to the said election, and all and every crime, offence or misdemeanour by the said A. B. done or committed, or attempted to be done or committed, at or before, or during or after the said election, and in any way connected with, or relating to or touching the said election; and we do by these presents give and grant unto him, the said A. B., our firm peace thereupon; and, further, we strictly command all and singular judges, justices, and all others whatsoever, that this our present free and gracious pardon shall be construed, expounded, and adjudged in all our Courts and elsewhere by the general words, clauses, and sentences abovesaid, in the largest and most beneficial sense, for the most full and firm discharge of him the said A. B., according to our true intention expressed in these letters patent, without any ambiguity, question or delay whatsoever" &c.

is to have the benefit of it; and if the Court shall say that he is relieved from answering because he is liable to some proceeding, you are no longer to press the prosecution; otherwise I shall exclude the evidence." The learned Judge then told the witness that he was bound by law to answer the questions, and therefore he must answer them. Similar pardons were also given to the other witnesses. It appeared from the evidence of the witnesses that on the day of the election they came to the front of **[316]** a house which stood between and opened into two parallel streets of the town of Beverley, and went in succession into the house, and into a back room, in which the defendant was seated; after an interview with the defendant each of them passed into another room, in which another person was seated, from whom each received the sums mentioned in the several counts of the information; they then passed into the other street, and so to the hustings, and voted. At the close of the case for the prosecution, the counsel for the defendant took several objections; and, among others, that there was no corroborative evidence of the witnesses, who were all accomplices with the defendant, and that the Judge ought to tell the jury that they ought not to convict on the uncorroborated testimony of the accomplices, citing *Regina* v. *Stubbs* (Dears. C. C. 555). The learned Judge said that he was not prepared to take that course, but that he would reserve leave to the defendant to move for a new trial, on the ground that he was wrong in compelling the witnesses to answer, and on the ground of the absence of corroboration. It was finally agreed that if the Court of Queen's Bench, on a motion for a new trial, should think that there ought to be a new trial on the ground that the witnesses ought not to have been compelled to answer, or that the Judge ought to have directed an acquittal on the ground that there was no confirmatory evidence, then The Solicitor General undertook to enter a nolle prosequi. The learned Judge, in summing up, said, "Another question has arisen in this case. There has been a long course of practice, in the administration of the criminal law of this country, that a man cannot be lawfully convicted upon the uncorroborated evidence of an accessory. . . . I think it may **[317]** be doubtful whether or not the evidence in this case will be found to be of that corroborative character which the law requires;" but he added that the case was distinguishable from *Regina* v. *Stubbs* (Dears. C. C. 555), for the witnesses in that case were accessories properly so called, and all concerned in the same offence in which they came to give evidence against the defendant; whereas in this case, if the jury thought that the witnesses had spoken the truth, all the acts of bribery were separately transacted, and were not one and the same offence. The jury found a verdict of guilty on the third count, and not guilty on the others. In the following Michaelmas Term (November 7th, 1860),

Edward James moved for a rule calling upon The Attorney General to shew cause why a new trial should not be had on the grounds, first, that the Judge had improperly compelled the witness to answer, and received in evidence the answers so obtained; citing Stark. Ev. 206, 4th ed., and *Rex* v. *Reading* (7 How. St. Tr. 259, 296); secondly, that there was no evidence in corroboration of the witnesses, and the Judge ought to have cautioned the jury against trusting the evidence of an uncorroborated accomplice.

November 14th. A rule was granted.

This rule was argued at the sittings in banc after Hilary Term, 1861, on the 12th and 13th February; before Wightman, Crompton, Hill and Blackburn JJ.

The Solicitor General, Overend, Monk and Cleasby shewed cause. 1. The witness was rightly compelled to answer. By answering he did not become subject **[318]** to any criminal proceeding, seeing that the time for bringing a qui tam action had expired, and he had the pardon of the Crown; the effect of which was to make him a new man, and consequently to bar any proceedings by or in the name of the Crown; 2 Tayl. Ev., § 1312, 3d ed. The author there refers to two old cases, *Rex* v. *Reading* (7 How. St. Tr. 259, 296), *Rex* v. *The Earl of Shaftesbury* (8 How. St. Tr. 817), which he questions, referring to the note by the reporters in *Roberts* v. *Allatt* (1 M. & M. 193, note (*b*)). In Wigr. Discovery, § 131, "If the answer of the defendant to a given question would subject him to pains or penalties, the plaintiff is not entitled to an answer to such question." In *Regina* v. *Monro*, tried before Erle J., at the Central Criminal Court, in August, 1847, which was an indictment for slaying in a duel, Major Cuddy, one of the seconds, was called as a witness for the Crown, and being desired to state what occurred just before the duel, declined to answer; on which a

pardon was produced and given to him; but, he still objecting, Erle J., said, a pardon takes away the privilege of silence, and therefore he must answer. But where questions tending merely to disgrace the character of a witness are put, he must answer if the questions are relevant to the issue; Best on Evid. p. 174, 3d ed.

2. The second branch of the rule also fails. The witness and the defendant are not accomplices; their offences being quite distinct. Besides this person was not an accomplice in such a sense as to require corroboration. It has been held that persons present at a prize fight, where death ensues, are guilty of manslaughter, but are not accomplices in that sense; *Rex* v. *Hargrave* (5 C. & P. 170). The reason for the rule requiring the confirmation of **[319]** an accomplice is that the accomplice may be tempted to accuse falsely in order to save himself; Russ. Cr. by Greaves, book 6, ch. 5, sect. 6: a rule which cannot apply where the alleged accomplice has been pardoned. Whether an individual stands in the position of an accomplice is matter for the discretion of the Judge at the trial. At all events here was corroborative evidence of the accomplice.

Edward James, E. P. Price and T. Jones (Northern Circuit), in support of the rule. 1. The other side assume that a pardon restores the party to the same state as he was in before any offence committed. But the pardoned man may be indicted and put to the inconvenience of pleading his pardon; for unless pleaded it is of no avail; Com. Dig. Pardon H. Moreover a pardon may be revoked. Besides, although the Crown may pardon an offence as regards itself, it cannot take away the right of a subject to prosecute for the offence. It is for this reason that the Crown could not pardon in appeals of murder, and the like, for the appeal was the suit of a subject. Supposing, however, that the pardon makes the party a new man so far as prosecution by or in the name of the Crown is concerned, he is still liable to be proceeded against by impeachment, at the suit of the House of Commons, before the House of Lords. When the House of Commons impeached Lord Danby, the Crown, pending the impeachment, granted him a pardon; but the Commons denied the right of the Crown to do so (2 Hallam's Const. Hist. vol. 2, p. 411, 7th ed.); and afterwards it was enacted by the Act of Settlement, 12 & 13 W. 3, c. 2, s. 3, entitled "An Act for the further limitation of the Crown, and better securing the rights and liberties of the subject," that no pardon of the Crown should be **[320]** pleadable to an impeachment by the Commons in Parliament; 4 Blackst. C. 399. A pardon from the Crown, in order to be available in such a case, must be granted after trial of the impeachment, not while the impeachment is pending.

2. As to the point relating to accomplices, the Judge should have advised the jury to acquit unless the accomplice was corroborated; *Regina* v. *Stubbs* (Dears. C. C. 555).

Wightman J. With respect to the questions relative to the accomplice; even supposing that the witness here could be considered as an accomplice of the defendant, I think the learned Judge's direction at the trial was quite right. The law on this subject is correctly laid down in *Regina* v. *Stubbs* (Dears. C. C. 555),—it is not a rule of law that an accomplice must be corroborated in order to render a conviction valid; but it is a rule of general and usual practice to advise juries not to convict on the evidence of an accomplice alone. The application of that rule, however, is a matter for the discretion of the Judge by whom the case is tried, and here he appears to have drawn the attention of the jury to the point. Moreover I think there was corroborative evidence here, if corroborative evidence is requisite. It is not necessary that there should be corroborative evidence as to the very fact; it is enough that there be such as shall confirm the jury in the belief that the accomplice is speaking truth.

The point as to the witness being still liable to impeachment by the House of Commons seems to have come on the Crown by surprise, and it raises a very serious question. We had therefore better adjourn the case, in order that the matter may be looked into and re-argued,—one counsel to be heard on each side.

[321] Crompton J. I am of the same opinion. As to the first point, each case must depend on its own particular circumstances, and it is for the Judge at the trial to deal with each; and I should say that here there was corroborative evidence, and that the Judge properly directed the attention of the jury to it. *Regina* v. *Stubbs* (Dears. C. C. 555) arose on a case reserved by the Judge for the Court of Criminal Appeal, which refused to interfere; but still, if we see that there has been a miscarriage of justice, we may grant a new trial. Then it is said that these witnesses were not accomplices with the defendant; but I think they were to some extent.

With respect to the question relative to the effect of the pardon, I think, subject to the objection that has been raised respecting the possibility of impeachment, that the present rule fails. Very few instances of questions as to the effect of pardons are to be found except in the State Trials; but the rule appears to be that a pardon removes the privilege of a witness in not answering questions provided they are relevant to the issue. Two cases have been referred to, *Rex* v. *Reading* (7 How. St. Tr. 259, 296) and *Rex* v. *The Earl of Shaftesbury* (8 How. St. Tr. 817), as authorities to the contrary, but in both the adverse party was attacking the character of the witnesses. That is the distinction between those cases and the present; the witnesses there were justified in refusing to answer what would disgrace them, but witnesses are not justified in refusing to do so where the question is relevant to the issue.

Wightman J. I forgot that last point, but I quite agree in what my brother Crompton has said.

[322] Hill J. I am of the same opinion. In the application of the rule respecting accomplices much depends on the nature of the crime and the extent of the complicity of the witnesses in it. If the crime is a very deep one, and the witness so far involved in it as to render him apparently unworthy of credit, he ought to be corroborated. On the other hand, if the offence be a light one, as in *Rex* v. *Hargrave* (5 C. & P. 170), which has been referred to, where the nature of the offence and extent of the complicity would not much shake his credit, it is otherwise. Now here I think there was corroborative evidence of the accomplice, and that the Judge was right in the way in which he called the attention of the jury to it.

Blackburn J. There are cases where the accomplice is completely in the nature of a Queen's evidence; and there the Judge is not justified in neglectiug to caution the jury so strongly against his evidence, if uncorroborated, as almost to amount to a direction to acquit. But this is not such a case, and I think the Judge at the trial was right in the course he took.

The Court then directed that the remaining point should be argued in the next Term by one counsel on each side. This argument accordingly took place in Easter Term, 1861, on the 25th April; before Cockburn C.J., Crompton, Hill and Blackburn JJ.

Cleasby, for the Crown. The remaining point for discussion in this case is, whether the possibility of the witness, although pardoned by the Crown, being **[323]** impeached by the House of Commons for bribery, affords an excuse for his refusing to answer questions tending to shew his guilt of that bribery. This point is quite new, and one in which no authority is to be found, except the case of *Regina* v. *Monro*, referred to on the last argument. [Cockburn C.J. That was a case of felony, not misdemeanor.] The law is laid down in 2 Tayl. Ev., § 1308, 3d ed., that a witness is not compellable to answer questions the answers to which would have a tendency to expose him to a criminal charge; and in § 1312, it is stated that if the offence has been pardoned, the witness will be bound to answer. These passages, however, do not refer to the case of impeachment, which was not present to the author's mind. [Blackburn J. Taylor refers to an American case, *The People* v. *Mather* (4 Wend. 229), where Marcy J. delivered the judgment of the Court, and, after a learned and elaborate argument, decided that the witness there was not obliged to answer. His conclusion is, p. 257, "I think the Judge could not safely say that the privilege was claimed by the witness in this case as a mere subterfuge to suppress the truth, and thereby aid the escape of the guilty." That is the reason of the decision, and it is a very sensible rule to go by.]

The possibility of impeachment by the House of Commons is so remote that the Judge at the trial ought not to take it into consideration, and great difficulties would arise in the administration of justice from his doing so. An impeachment by the House of Commons is only resorted to for great and enormous offences, with which the ordinary tribunals are unable to deal; Com. Dig., Parliament, L. 28-40; 4 Bl. Com. 259; 2 Inst. 50. **[324]** Thus one of the articles of impeachment against the Earl of Stafford was endeavouring to stir up enmity and hostility between His Majesty's subjects of England and those of Scotland (3 How. St. Tr. 1382, 1386); and one of those against Warren Hastings was that he had, contrary to justice and honour, abandoned a certain party. [Crompton J. Are you not confounding an impeachment with a bill of attainder? The House of Commons were unable to impeach Sir John Fenwick of high treason because there was only one witness

against him, the other having been spirited away; but they and the Lords passed a bill of attainder to cut off his head on the evidence of one (*b*)]. There may be some difference between impeachment and bill of attainder. [Cockburn C.J. Suppose the House of Commons found that in some particular place there was such an incurable tendency to bribery that no hope of a conviction before an ordinary Court of justice could be had, however plain the proof, and therefore thought the better course would be to impeach the parties before a tribunal where justice would be certain. Crompton J. If that would be unconstitutional, it was worse to impeach a clergyman for preaching a high church sermon (*c*).] In any event the Judge is bound to consider whether the party is liable to be impeached in the ordinary course of things, not in extraordinary circumstances. If, indeed, the House of Commons had passed a resolution declaring the witness, and those acting with him, guilty of bribery, and that they ought to be impeached; then he might be said to be in some danger. But, so far is that from being the case here, **[325]** that the House, instead of proceeding by impeachment, expressly directed this prosecution according to the ordinary law of the land. [Crompton J. There is always the remote possibility that there may be some informality in the pardon. Is a witness justified in refusing to answer on that account?] There in reality there is no pardon.

As to the argument founded on the Act of Settlement, 12 & 13 W. 3, c. 2, s. 3; that statute does not render a pardon inoperative in the case of impeachment, but simply prevents its being pleaded, so as to suppress public inquiry into the case. In Vin. Abr., Prerogative (T. 2), pl. 33, it is laid down that the King cannot be divested of any of his prerogatives by general words in an Act of Parliament but that there must be plain and express words for that purpose.

Edward James, contrà. With respect to the last part of the argument of the Crown, the Act of Settlement introduced no new law, but was declaratory of the old. So far back as the time of Ed. 3, the prerogative of pardon in the Crown lay under limitation; Com. Dig., Pardon (B.) [Cockburn C.J. The majority of the Court are of opinion that the effect of the provision in the Act of Settlement which has been referred to is to render a pardon wholly inoperative to prevent impeachment by the House of Commons, and thereby getting rid of the judgment of the House of Lords; for that purpose a subsequent pardon must be granted by the Crown. My brother Blackburn does not come to the same conclusion; but he agrees with us that that question need not be considered now, for it is a matter of some doubt and difficulty, and we think that a man ought not to be put in peril by being com-**[326]**-pelled to answer a question when the propriety of that course depends on so doubtful a point. You may therefore leave the second part of the argument of the Crown. The question now is, not whether this man can be impeached, for he might be impeached for many things besides bribery, but whether the possibility of the man being impeached for bribery will protect him against being compelled to answer this question. For this purpose we must judge from the course which Parliament has pursued in like cases, and inquire, Is there, practically, any reason to anticipate such a danger to him?] To come, then, to that question. The reason why no authority exists upon it is chiefly owing to this, that grounds of contempt cannot be inquired into by the Superior Courts. The question should be determined in the same way as if the facts here were stated in the return to an habeas corpus. It would be very dangerous to lay down as a proposition of law that the probability or improbability of a man's being proceeded against should be taken into consideration in determining whether he should be compelled to answer a question the answer to which may criminate him. An accomplice is not compellable to give evidence, if he refuses to chance the possibility of his being proceeded against afterwards: and a man will not be compelled to answer if he was author of a libel, even when his prosecution for it is highly improbable. So a man will not be compelled to say whether he has been guilty of blasphemy, although his prosecution for it under the 9 & 10 W. 3, c. 32, is in the highest degree improbable. [Crompton J. In our old law of evidence the most remote pecuniary interest disqualified a witness; but that is to be regretted. Blackburn J. Still the defendant's counsel has to shew that the **[327]** remotest possibility of crimination will protect.] It is incorrect to say that a parliamentary impeachment can only be for high crimes and

(*b*) See his case, 13 How. St. Tr. 538.
(*c*) See *Dr. Sacheverell's Case*, 15 How. St. Tr. 1.

misdemeanors; it must be for offences known to the law of the land; Selden's Judicature in Parliament, ch. 2, Hale's Jurisdiction of the Lords' House, or Parliament, ch. 16. Although there is some difference of opinion on the subject, it is in the breast of the witness himself to declare whether a question put to him will criminate him, provided that, in making that declaration, he acts bonâ fide. *Fisher* v. *Ronalds* (12 C. B. 762, 765) is an authority on the point. Maule J. there says: "The witness might be asked, 'Were you in London on such a day?' and, though apparently a very simple question, he might have good reason to object to answer it, knowing that, if he admitted that he was in London on that day, his admission might complete a chain of evidence against him which would lead to his conviction." [Blackburn J. In that case the question was not decided: the Judges expressly say that it was not necessary to do so.]

Cur. adv. vult.

The judgment of the Court was now delivered by

Cockburn C.J. This case comes before us under peculiar circumstances. At the trial of the defendant on an information by The Attorney General for bribery, a witness who was called to prove the fact of his having received a bribe from the defendant, objected to give evidence on the ground that the effect of the evidence he was called upon to give would be to criminate himself. Thereupon the counsel for the Crown handed [328] a pardon under the Great Seal to the witness, who accepted it. The witness however still objecting to give evidence, and the learned Judge who presided at the trial entertaining doubts as to whether the witness could be properly compelled to answer notwithstanding the pardon, an arrangement was come to between the counsel on both sides, with the sanction of the Judge, that the witness should be directed to answer, but that the opinion of this Court should be taken as to whether the privilege of the witness remained notwithstanding the pardon; the counsel for the Crown undertaking, in the event of this Court holding the affirmative, to enter a nolle prosequi if the defendant should be convicted.

We think it necessary to protest against a repetition on any future occasion of a proceeding which we believe to be wholly unprecedented, it appearing to us inconvenient and unbecoming that this Court should be called upon to pronounce a judgment which it is without authority to enforce. It is perhaps to be regretted that a rule nisi should under such circumstances have been granted. Probably, had the rule nisi for a new trial been moved for on this ground alone, we should have refused the rule, but, the rule having been moved for on other grounds as well as on this, it was perhaps somewhat improvidently allowed on this ground also. Now however, the matter having been discussed on a rule granted by us, we think it best to pronounce our opinion on the point submitted to us; but we are anxious to protect ourselves against the present proceeding being drawn into precedent, or adopted on any future occasion.

Upon the first argument, we held that the pardon took away the privilege of the witness, so far as regarded any [329] risk of prosecution at the suit of the Crown, but it was objected that a pardon was no protection against an impeachment by the Commons in Parliament, and on this point the case was argued before us in the last Term.

The question on which our opinion is now required is whether the enactment of the 3d section of the Act of Settlement, 12 & 13 W. 3, c. 2, that "no pardon under the Great Seal of England be pleadable to an impeachment by the Commons in Parliament," is a sufficient reason for holding that the privilege of the witness still existed in this case, on the ground that the witness, though protected by the pardon against every other form of prosecution, might possibly be subject to parliamentary impeachment. In support of this proposition it was urged, on behalf of the defendant, that bribery at the election of members to serve in Parliament being a matter in which the House of Commons would be likely to take a peculiar interest as immediately affecting its own privileges, it was not impossible that, if other remedies proved ineffectual, proceedings by impeachment might be resorted to. It was also contended that a bare possibility of legal peril was sufficient to entitle a witness to protection: nay, further, that the witness was the sole judge as to whether his evidence would bring him into danger of the law: and that the statement of his belief to that effect, if not manifestly made malâ fide, should be received as conclusive.

With the latter of these propositions we are altogether unable to concur. Upon a review of these authorities, we are clearly of opinion that the view of the law pro-

pounded by Lord Wensleydale, in *Osborn* v. *The London Dock Company* (10 Exch. 698, 701), and acted upon by V. C. Stuart, in *Sidebottom* v. *Adkins* (3 Jur. N. S. 631), is the correct one; and that, to en-**[330]**-title a party called as a witness to the privilege of silence, the Court must see, from the circumstances of the case and the nature of the evidence which the witness is called to give, that there is reasonable ground to apprehend danger to the witness from his being compelled to answer. We indeed quite agree that, if the fact of the witness being in danger be once made to appear, great latitude should be allowed to him in judging for himself of the effect of any particular question: there being no doubt, as observed by Alderson B., in *Osborn* v. *The London Dock Company* (10 Exch. 698, 701), that a question which might appear at first sight a very innocent one, might, by affording a link in a chain of evidence, become the means of bringing home an offence to the party answering. Subject to this reservation, a Judge is in our opinion, bound to insist on a witness answering unless he is satisfied that the answer will tend to place the witness in peril.

Further than this, we are of opinion that the danger to be apprehended must be real and appreciable, with reference to the ordinary operation of law in the ordinary course of things—not a danger of an imaginary and unsubstantial character, having reference to some extraordinary and barely possible contingency, so improbable that no reasonable man would suffer it to influence his conduct. We think that a merely remote and naked possibility, out of the ordinary course of the law and such as no reasonable man would be affected by, should not be suffered to obstruct the administration of justice. The object of the law is to afford to a party, called upon to give evidence in a proceeding inter alios, protection against being brought by means of his own evidence within the penalties of the law. But it would be to convert a salutary protection into a means of abuse if it **[331]** were to be held that a mere imaginary possibility of danger, however remote and improbable, was sufficient to justify the withholding of evidence essential to the ends of justice.

Now, in the present case, no one seriously supposes that the witness runs the slightest risk of an impeachment by the House of Commons. No instance of such a proceeding in the unhappily too numerous cases of bribery which have engaged the attention of the House of Commons has ever occurred, or, so far as we are aware, has ever been thought of. To suppose that such a proceeding would be applied to the case of this witness would be simply ridiculous; more especially as the proceeding by information was undertaken by The Attorney General by the direction of the House itself, and it would therefore be contrary to all justice to treat the pardon provided, in the interest of the prosecution, to insure the evidence of the witness as a nullity, and to subject him to a proceeding by impeachment.

It appears to us, therefore, that the witness in this case was not, in a rational point of view, in any the slightest real danger from the evidence he was called upon to give when protected by the pardon from all ordinary legal proceedings; and that it was therefore the duty of the presiding Judge to compel him to answer.

It follows that, in our opinion, the law officers of the Crown are not bound to enter a nolle prosequi in favour of the defendant.

Rule discharged accordingly.

[332] BELLINGHAM AND ANOTHER *against* CLARK. Tuesday, May 28th, 1861. —Misjoinder of plaintiffs. Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 19.—A declaration alleged that A., administrator of B. and C., sued D. for money payable by him to A. as administrator, and C.; for money paid by C. & B. in his lifetime &c.; and for money paid by A., administrator &c., and C.; and for money lent by C. and B. in his lifetime; and for money lent by A., administrator &c., and C.; and on accounts stated between the defendant and A., administrator &c., and C. To this declaration the defendant demurred. Held, —1. That the declaration was bad for misjoinder,—2. That the defect was not cured by The Common Law Procedure Act, 1860 (23 & 24 Vict. c. 126), s. 19.

[S. C. 4 L. T. 405; 9 W. R. 667. Referred to, *Hannay* v. *Smurthwaite*, [1893] 2 Q. B. 424; [1894] A. C. 494.]

The declaration alleged that Francis Field Bellingham, administrator of the goods chattels and credits of Thomas Bellingham, deceased, who died intestate, &c., and