

# ANNOTATIONS.

## CHAPTER 145.

### Canada Evidence Act.

#### WITNESSES.

Section 4 (Wife or husband). Wife or husband of person charged with indictable offence not only competent but may be compelled, to testify, and for the Crown as well as the prisoner: *Gosselin v. The King*, 33 S. C. 255.

Evidence by prisoner's wife of acts performed by her under direction of counsel sent by prisoner, not a communication disclosure of which cannot be compelled under par. 3. *Ib.*

Such communication may be *de verbo, de facto*, or *de corpore*. Sexual intercourse is a communication under said par.: *Ib.*, per Girouard, J.

In an action to revendicate money seized in a gaming house, on a search by warrant issued under s. 575 of the Criminal Code, 1892, the plaintiff who, by law of the province, could not testify for himself, was not allowed to do so by invoking the provisions of the Canada Evidence Act: *O'Neill v. Attorney-General of Quebec*, 26 S. C. 122.

The person "charged with an offence" is one actually on trial. When two are jointly indicted but tried separately, the one not on trial is a competent witness irrespective of this Act, and s.-s. 5 does not prevent the Judge from commenting on failure to call him: *Rex v. Blais*, 11 Ont. L. R. 345.

Direction to jury that accused has failed to account for a particular occurrence when onus is on him to do so, is not a comment on his failure to testify: *Rex v. Aho*, 11 B. C. 114.

But calling jury's attention to fact that prisoner was not called, warning them not to take it to his prejudice, and stating that if he was innocent he could have proved that he was not in the locality where and when the crime was committed, is prohibited comment: *The King v. McGuire*, 36 N. B. 609.