

The Legal News.

VOL. V. APRIL 15, 1882. No. 15.

THE JUDICIAL OATH IN DANGER.

In a recent article of the *Legal News* attention was drawn to two bills proposing to alter the law of evidence in criminal matters. At Quebec a bill of a similar nature has been introduced regarding civil matters. It is very short and its single disposition is as follows :

"1. In all cases in the Circuit Court, and in the Superior Court, the parties to the issue may be examined as witnesses on their own behalf, and shall be subject to cross-examination and amenable to all the rules which govern the examination of other witnesses, notwithstanding articles 1232 of the civil code, and 251 of the code of civil procedure to the contrary; provided that the said parties shall be so examined in the presence of a presiding judge."

This clause, should it become law, would allow a party to testify in his own favour. The experience of the whole world, in all ages, shows that people are not to be trusted in matters where they are interested, and particularly when they are engaged in a contest where their *amour propre* is engaged as well. Candid people will be convinced of the truth of this observation, by careful self-examination. But, say the innovators, "the judge need not believe the party." Then why expose him to the temptation of forswearing himself if he is not to be believed? But it is said again, "the judge may discriminate, he may take part and reject part." True, but only on the same ground that he may reject the evidence of any other witness, for the bill says, that parties are to be "amenable to all the rules which govern the examination of other witnesses."

It is a mere waste of time to show that the *aveu* of the party can never really be assimilated to the evidence of a witness, for this is the lesser evil of the proposed law. Its great evil is that it leads to Bradlaughism. The oath is based on religion; but its utility depends on *meurs*. We use the French word, for there is no English one which expresses the conventional, or rather the accepted rule of morality in a given community. The oath is not a protection from its sanctity

alone, nor by the punishment for perjury, but by the infamy which attaches to the perjurer. If we accustom the mind to the contemplation of perjury, the horror of it decreases, and frequently disappears altogether. The evil effects of the admission of parties to testify for themselves have been already remarked in English Courts, and the extraordinary persistence of the majority of the electors of Northampton to reelect a man, who had the indecency to declare one day that he did not believe in the sanctity of an oath, and the next gave proof of his disbelief, by saying that he was ready to take it, should make as yet undemoralized communities pause, ere they follow the example of countries, which have arrived at such fearful results.

R.

SPECTATORS AT PRIZE FIGHTS.

The English judges have had serious difficulty in determining whether a spectator at a prize fight is guilty of aiding and abetting. One Coney looked on at a prize fight, and was convicted as an aider and abetter. The case was first argued before five judges, who could not agree, and has been re-argued at great length before eleven judges, of whom eight have declared in favor of the innocence of the spectator. The dissentients are Lord Coleridge, Baron Pollock and Mr. Justice Mathew. The first named puts the argument in favor of the conviction very forcibly: "When a person goes to a prize fight and stays there, with no other object than seeing one of these disgusting exhibitions, then he is equally guilty with the principals of an assault, for no two men, with no angry feelings against each other, would meet in perfect solitude to knock each other about for an hour or two, if there were no spectators." At the argument Mr. Justice Denham supposed the case of a philanthropist attending a prize fight for the purpose of writing a stinging article on the brutality of the exhibition. Mr. Justice Lopes put the case of a man who approached the throng, under the impression that some one was going to preach. Another learned judge wanted to know what would be the position of one too short to see over the heads of those who formed the inner ring. We suspect that a secret tolerance for the game of fisticuffs lingers in the minds of the learned