THE COMPETENCY OF WITNESSES.—To advocates of legal reform, and to lovers of consistency, it must be a matter of regret that another parliamentary session has passed without any attempt being made to direct renewed attention to either of the Evidence Amendment Bills. These important schemes of practical reform, which a year or two ago attracted so much interest, still remain on the parliamentary shelf, and must be in some danger of getting dusty. That they will, by-and-by, be taken down, further considered, and finally moulded into law, no one need doubt. Moreover, the halting action of the legislature is quite in accord with the traditional treatment bestowed on proposals for removing the disabilities of witnesses. This remark applies not only to the primary eligibility of persons as witnesses, but also to the conditions upon which they are to be allowed to give evidence. The subject as a whole is of undeniable historic interest, and in its narrow aspect presents a most striking example of tardy legal evolution. It has been suggested, indeed, that from the familiar "oath" of the present day the student may travel back, step by step, to the superstitious ordeal of the dark ages, comprising as it did the various forms of test by red-hot iron, cold water, and even of "judicial pottage." So that, in one sense, the lady who goes into the witness-box in the Divorce Court to "deny on oath" the conduct imputed to her is merely doing in modern form what Queen Emma, mother of Edward the Confessor, did in another manner when she submitted herself to the ordeal of the nine red-hot ploughshares in the ancient city of Winchester.

The witness's oath remains now, as it formerly was, a religious asseveration by one who invokes the Supreme Being, and renounces all claim to His mercy and calls for the Divine vengeance if the evidence given shall be false. It is to be observed, however, that the words "so help me God" are no part of the oath itself, but simply indicate the customary manner of administering it. Less than seventy years ago the general rule was that every witness must be sworn in the common form, and if, from want of religious belief, or from scruples of conscience, a person was debarred from invoking the Deity, his evidence, however important, became absolutely inadmissible. The first measure of relief applied only to Quakers and Moravians, to whom was conceded the privilege of making a solemn affirmation instead of taking the oath in the usual manner. This exemption was made in 1833, and in the same year the Separatists obtained by statute a like indulgence, in order that they might be no longer "exposed to great losses in their trades and concerns," nor be subject to fines and imprisonment for refusing to aid litigants with their testimony under the old conditions. A few years later the Act 1 & 2 Vict. c. 105 enacted that a person shall be bound by the oath administered, provided the same shall have been administered in such form and with such ceremonies as the witness himself shall declare to be binding, subject, of course, to the like consequences as those occasioned by perjured evidence. Hence arose the admissibility of those curious forms and ceremonies adopted by the Chinese, Mahomedans, and others when called as witnesses in English courts of justice.

It became necessary, however, in course of time, to make a further inroad on the old harsh and exclusive rules to which the community had for hundreds of