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"SINGLE SEATED JUSTICE"—THE LAST EVIDENCE ACT OF ONTARIO.

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shall content ourselves with remarking at present that one solitary case of assault upon a policeman in a whole year speaks of ready submission to subordinate ministers of the law; but three cases of indecent assault tell favorably for the morals of Upper Canadians; and but two cases for obstructing a railway, with about 4,500 miles of rail in the Province, a considerable portion through a partially settled country tells its own story. On the other hand, perhaps 52 cases of assault, and some 16 cases of aggravated assault, would show a little pugnacity amongst our people. We have no return as to the cases cognizable in other courts and how disposed of, but they are comparatively few in number.

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THE LAST EVIDENCE ACT OF ONTARIO.

Some of the legislation of the Local House for this Province has not passed through a very favourable ordeal before the Judges. In the *Goodhue* case it was more than hinted that Lord Tenterden's observation touching the legislation of his time was applicable to the Ontario Parliament, and that of it, too, it could be said that it was "*magnas inter opes inops*." We are persuaded that a more satisfactory expression of opinion will be accorded by the bench to the Act to amend the law of evidence of 1873. The principal features of change in this Act—those, namely, relating to the admissibility of the evidence of husband and wife, and the provision for the reception of evidence of matters occurring before the testator's death in suits by or against executors, have been before advocated in this journal, as well as recommended by individual judges.

The first section enacts that in any civil suit or action, the husbands and wives of the parties thereto shall be competent and compellable to give evidence therein; save

that, as provided by the second section, neither shall be compellable to disclose any communication made to the other during the marriage. This, of course, leaves it to the option of the husband or wife to disclose such quasi-privileged communications, but if so advised, either may decline to answer any questions on matters of this kind. The difference between competency and compellability to testify was discussed by Spragge, then V. C., in *Peterborough v. Conger*, 1 Chan. Cham., R. 35.

There is also a further exception introduced in the third section, by which neither husband nor wife can give evidence for or against the other "in any proceeding instituted in consequence of adultery." By the fourth section the party opposing or defending, or the husband or wife of such party, is rendered competent and compellable to give evidence in all proceedings, matters, or questions *not being crimes*, under Acts relating to Licenses or Municipal Institutions or assessments, &c., or on trials before Justices of the Peace and other judicial officers of summary jurisdiction. Some very nice questions have arisen upon "what is a *crime*?" It is remarked in a late case, "there would seem to be little doubt that the violation of a public Statute, and more particularly so when that violation is spoken of as an *offence* and is punishable by fine or imprisonment, as substitutionary for the fine, is a *crime* in law, and the proceedings taken against the party are criminal proceedings." *Re Lucas*, 29 U. C. Q. B. 92. In Powell on Evidence, where the author comments on the doctrine laid down in *Attorney General v. Radloff*, 10 Ex. 84, it is observed thus: "Where the imprisonment follows on default of the payment of a fine, it may be regarded in the nature of an execution; and the deprivation of personal liberty would be quite consistent with the character of the Act as a civil