competent and compellable to testify; but they are still privileged from disclosing any communication made to them during the marriage." The words of the Act are the same as those above quoted from 14 & 15 Vic., except that after the words "examine evidence" the husbands and wives of the parties thereto" are inserted. This is now the law of England.

By ch. 32, Consol. Stat. U. C., sec. 3, "No person offered as a witness shall, by reason of incapacity from crime or interest, be excluded from giving testimony." Sec. 4 provides that "Every person so offered shall be permitted and be compellable to give evidence, notwithstanding that such person has or may have an interest in the matter in question," &c., &c. Sec. 5 is the most important in connection with the present discussion: "This Act shall not render competent, or authorize or permit any party to any suit or proceeding individually named on the record, or any claimant or tenant of premises sought to be recovered in ejectment, or the landlord, or any other person in whose right any defendant in replevin may make cognizance, or any person in whose immediate or individual behalf any action may be brought or defended either wholly or in part, or the husband or wife of any such party, to be called as a witness on behalf of such party, but such party may, in any civil proceeding, be called and examined as a witness in any suit or action, at the instance of the opposite party: provided always, that the wife of the party to any suit or proceeding named in the record shall not be liable to be examined as a witness by or at the instance of the opposite party."

This Statute remained in force until the passing of the Act of Ontario, "The Evidence Act of 1869," and under it no person named as a party to the record, nor on whose behalf a suit was brought or defended, could be examined on his own behalf, although he might be called as a witness by the opposite party, and in no case could the wife be called. The Evidence Act of 1869 was passed to amend this state of the law. Sec. 4 is, with the exception I am about to mention, in effect the same as sec. 2 of 14 & 15 Vic., before it was amended by 16 & 17 Vic., which I have already considered. Sec. 5, in sub-secs. *a*, *b*, *c*, *d*, *e*, contains the exceptions to sec. 4. Sub-sec. *a*, on which the case now before us turns, is, "Nothing herein contained shall render any husband competent or compellable to gives evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband.

Such is a short but intelligible review of the legislation on the subject, both here and in England, and from it we are prepared to follow the judgment of the learned Judge referred to in the beginning of this article, who thus continues:—

"When we remember that until this Act was passed, parties to the record could not be examined on their behalf, although they might be called by the opposite party, and that their wives could not in any case be called, and when we refer to the decisions of the Courts in England on the Act of 1851, of which sec. 4 (saving the exception) is a copy, we can, in my opinion, come to no other conclusion than that our Legislature has deemed it expedient to adopt an entirely different course from that pursued in England, and that the effect of the exception is, in all cases where husband and wife are parties to the record, to render them both incompetent witnesses for any purpose, and that not only cannot they, or either of them, be called on their own behalf, but they cannot, nor can either of them, be called by the opposite party."

By ch. 32, Consol. Stat. U. C., above quoted, it is plain that the wife could not be called either on behalf of her husband or by the opposite party, although the husband might be called by the opposite party. This section has been expressly repealed, and, in place thereof, the Legislature had said that nothing in the Evidence Act of 1869 shall render any husband competent or compellable to give evidence for or against his wife, or any wife competent or compellable to give evidence for or against her husband.

The same Judge then concludes his judgment by saying:—

"In all cases the suit is the suit of the husband, although the wife may be the meritorious cause of action, or it may be brought for injuries done to her, and, consequently, she may be a necessary party; but the suit is his, and if the wife is called as a witness, it must necessarily be for or against him. On the other hand, if the action is against husband and wife for any matter done by her, the defence is his; and if the wife is called, it must be as a witness for or against him. In the same way, if the wife is a necessary party to the suit, and the husband is called, it must be as a witness for or against her, and in all these cases the Legislature has expressly said that husband and wife shall not be competent witnesses. It may not have been the intention of the Legislature to prevent the opposite party from calling the husband of a female plaintiff or defendent as a witness, nor of depriving the husband of the right to tender himself as a witness, but I can arrive at no other conclusion than that they have done so, and if the law is found to be inexpedient, it rests with the supreme authority to amend it."