sought to be recovered in ejectment, or the landlord or other person in whose right any defendent 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 such persons respectively."

In 1846 the English Legislature while establishing County Courts went still further, by enacting in regard to these Courts, "that on the hearing or trial of any action, or on any other proceeding under this Act, the parties thereto, their wives and all other persons, may be examined either on behalf of the plaintiff or defendant, upon oath or solemn affirmation" (9 & 10 Vic. c. 95).

The experiment of universal competency having been found satisfactory as to County Courts, the English Legislature in 1851, except as to husbands and wives, repealed the Proviso to the Act of 1846, and thus in effect rendered all persons, plaintiffs or defendants, in any court, superior or inferior, in England competent and compellable to give evidence for and against themselves (14 & 15 Vic. cap. 99).

In Upper Canada we followed the footsteps of the English Legislature, but in course of time found it prudent in some measure to retrace our steps.

In 1849 the Canadian Legislature passed an Act (12 Vic. cap. 70), which may be shortly described as a transcript of the English Statute 6 & 7 Vic. cap. 43, containing both the Rule and the exceptions created by that Statute.

In 1851 the Canadian Legislature passed a second Act, in effect the same as the English Act of 14 & 15 Vic. cap. 99, our Act being 14 & 15 Vic. cap. 66; the English Act was passed on 7th August, 1851, and our Act on 30th August, 1851.

The admissibility of parties to a cause to give evidence on their own behalf was not in Upper Canada found to be conducive to the ends of public morality, and the Canadian Legislature at its next session repealed the Act of 14 & 15 Vic. cap. 66, and re-enacted the 12 Vic. cap. 70 (16 Vic. cap. 19). The result is, that our law of evidence is on the same footing as was the English law in 1846. Parties to a cause are not now competent to give evidence on their own behalf, but are compellable to give evidence at the instance of their opponents (Consol. Stat. U. C., chap. 32, ss. 3 & 4).

In the Canadian Act of 1851 a provision was made to the effect, that any party to a suit, &c. might be examined at the instance of the opposite party, provided that a subpœna were served, or at least eight days notice given prior to the time of the examination. It was also provided, that if the party should not attend the non-attendance might be taken as an admission *pro confesso* against him (14 & 14 Vic. cap. 66, s. 2).

The latter provision is still the law, and as we propose to make some practical observations upon it, we publish the clause in words at length :—

"Whenever any party in such proceeding desires to call the opposite party as a witness, he shall either subpœna such party, or give to him or his attorney at least eight days notice of the intention to examine him as a witness in the cause, and if such party does not attend on such notice or subpœna, such non-attendance shall be taken as an admission *pro confesso* against him in any such suit or action, unless otherwise ordered by the Court or Judge in which or before whom such examination is pending, and a general finding or judgment may be had against the party thereon, or the plaintiff may be non-suited, or the proceedings in the action, or such suit may be postponed by the Court or Judge on such terms as the Court or Judge see fit." (Con. Stat. U. C. cap. 32, sec. 15.)

The reading of this enactment suggests the propriety of some remarks on the enactment itself. It provides that a party to a suit may call his opponent as a witness,—it prescribes the means by which that object is to be effected,—it describes the effect of non-attendance,—it raises the question as to relief, if any, from the effect of non-attendance, and suggests an enquiry as to the effect of attendance.

It has been held that the operation of the section is restricted to parties to an action or suit resident within the jurisdiction of the court. (See *Patchin* v. *Davis*, 10 U.C. Q.B. 639; *Tyre* v. *Wilkes*, 18 U.C. Q.B. 46.) Where a party is resident without the jurisdiction, the only course to be taken would seem to be the ordinary one of issuing a commission to examine him. (*Ib.*)

The object of the enactment may be attained by either one of two courses—either to subpœna the party, or to cause a notice to examine to be served at least eight days before the time appointed for the examination. The subpœna must be personally served, but the notice to examine may be either served on the party himself or his attorney. Though the statute is silent on the point, it is only proper that at the time of service, expenses should be tendered. A suitor is under no obligation to be in court when his cause is tried. He may be living at a distance, and may be poor, or infirm, and unable to travel on foot. It is now very much a matter of course for one party to give a notice to the opposite party to attend and be examined, though in many cases, when he attends, he is not put in the box. In cases in which the party who has brought his opponent to court does not call him at the trial, the party attending has no opportunity of exacting his expenses, as he might do if called to the book to be sworn. It should therefore be understood that when the tender of expenses is omitted, the party giving the notice