

The Legal News.

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LEGISLATION.

The session of Parliament is an annual period of terror. While it lasts there is no security for a day that some abnormal measure will not be introduced and become law before anyone well knows what it means, or ventures to face the whirlwind of popularity by which it is swept along. One of the most popular subjects of experiment for legislative theorists, during the last few years, has been criminal law. The present session has lasted about a month, and already seven bills have been introduced to affect the criminal law, either by creating new offences or by rendering its application more arbitrary and uncertain. It is hardly an exaggeration to say that, with the exception of one small and unimportant measure, there is not a disposition in all these acts which is not either useless or mischievous.

Mr. Robertson (Hamilton) has a bill "for the further amendment of the law of evidence in certain cases." Its dispositions are introduced by a preamble setting forth the great principle, that "the discovery of truth in courts of justice has been signally promoted by the removal of restrictions on the admissibility of witnesses." The truth of this doctrine is not obvious, and a hostile critic would probably be justified in maintaining that it is not probable. The first section of the bill for which its author has thus bespoken a favorable reception, is in these words:—"If any person called to give evidence in any criminal proceeding, or in any civil proceeding in respect of which the Parliament of Canada has jurisdiction in this behalf, objects to take an oath or is objected to as incompetent to take an oath, such person shall, if the presiding judge is satisfied that the taking of an oath would have no binding effect on his conscience, make the following solemn promise and declaration."

The law, as it stands, permits persons to affirm, who, from conscientious scruples re-

fuse to take an oath. (32 & 33 Vic., c. 29, s. 61) Under cover of the repetition of what is already law, it is now sought to introduce a novelty as though it were the continuation of a principle already admitted. This is scarcely candid. What Mr. Robertson desires Parliament to declare is that those who have no conscientious belief in the binding character of an oath, will be considered to be bound in conscience by "a solemn promise and declaration."

An "Act to further amend the law of evidence in criminal cases," is introduced by Mr. Cameron (West Huron). This is an old friend in something of a new dress. It is as curious from its literary as from its legislative peculiarities. To avoid uninteresting verbal criticism, we shall venture to give in a slightly amended form what the learned member probably means to say:—"Any person charged with having committed an offence shall be a competent witness in his own behalf at his trial for such offence, or on the preliminary investigation thereof before a justice or justices of the peace or other magistrate or magistrates, whether such person is charged, arraigned or tried alone or jointly with another or other persons; and the wife or husband, as the case may be, of the person so charged, shall, in like manner, be a competent witness on such preliminary investigation or trial."

Section 3 is an idle clause. Section 4 is as follows:—"Provided also, that no person so charged, being a witness on any hearing of such charge, shall have the right to refuse to answer any question, on the ground that it would tend to criminate him or her, as to the offence charged, *unless the court before whom such hearing shall take place, shall think fit*" (to order otherwise.)

One cannot help asking why should it be necessary to surround the testimony of the accused with so many reserves? Have the advocates of this innovation no faith in their own theories? The arguments against the principle of allowing an accused to testify in his own favour are too self-evident to require their annual repetition, we therefore refer to 8 Leg. News, p. 129.

Mr. Robertson (Hastings) has brought in a modification of a bill introduced by him last