

concealment or artifice, and corroborate it by the testimony of all his witnesses, should be improved.

The usual mode of proceeding, in our Courts, in ordinary cases, preparatory to the examination of a witness, is to swear him in chief. But if an objection is made as to his competency, he should be examined on the *voir dire*.

Since the abolition of incompetency on the ground of interest, infamy, and want of religious belief, the only grounds of incompetency are defect of understanding, and in criminal proceedings, that the party against whom the evidence is offered is the husband or wife of the witness.*

The question of competency is one for the decision of the Judge, and the inquiry may be by examination of the proposed witness on oath on the *voir dire*, or by sworn evidence *aliunde* (*vide* Archbold, Crim. Plead., 23rd ed., p. 387). But where the incompetency arises from defect of understanding, as in the case of lunatics, idiots, young children, etc., the preliminary inquiry cannot, upon the *voir dire*, be upon oath so far as the proposed witness is concerned, for the reason that the very ground of incompetency assumes that the proposed witness has no perception of the obligation of an oath.

In the case of *The Queen against Hill*, 2 Den. 254;

* The position is now this:—In criminal cases by virtue of the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), s. 1, the husband or wife of a prisoner is a competent witness *for the defence*, if called with the consent of the prisoner.

But the prosecution may not call the husband or wife of the prisoner, except in the case of prisoners charged with offences under the Vagrancy Act, 1824, the Offences against the Person Act, 1861, ss. 48—55, the Married Women's Property Act, 1882, ss. 12, 16, the Criminal Law Amendment Act, 1885, and the Prevention of Cruelty to Children Act, 1894, and in cases of the prisoner having assaulted, etc., his or her wife or husband.

In civil cases the husbands and wives of parties to a suit are both competent and compellable to give evidence (Evidence Amendment Act, 1853 (16 & 17 Vict. c. 82), s. 1).

But both in civil and criminal cases communications between husband and wife are privileged from disclosure in evidence; *vide* s. 3 of that statute as to civil cases, and s. 1 (d) of the Criminal Evidence Act, 1898 (61 & 62 Vict. c. 36), for criminal cases.