

## LAW OF EVIDENCE IN ONTARIO.

## DIARY FOR JULY.

1. Sat. *Dominion Day.* Long Vacation begins. Last d. for Co. Coun. to equ. assessm. rolls. Last for Co. T. to cer. taxes due on occup. lands.
2. SUN. *4th Sunday after Trinity.*
3. Mon. Co. Court Term (ex. York) begins. Heir and Devisee Sittings commence.
4. Tues. Last day for notice of trial for Co. Court, York.
8. Sat. County Court Term (except York) ends.
9. SUN. *5th Sunday after Trinity.*
11. Tues. Gen. Sessions and County Ct. Sittings of York. Last d. for Master and Reg. in Chan. to remit fees to P. T.
15. Sat. *St. Swithin.*
16. SUN. *6th Sunday after Trinity.*
18. Tues. Heir and Devisee Sittings end.
23. SUN. *7th Sunday after Trinity.*
25. Tues. *St. James.*
30. SUN. *8th Sunday after Trinity.*

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## LAW OF EVIDENCE IN ONTARIO.

A great change in the law of evidence has been made in this Province, and, so far, the result seems to have been, on the whole, satisfactory. It is to be hoped that the evils which were anticipated by many will not necessitate what could only be looked upon now as a retrograde movement; but it is perhaps too soon to form any opinion on the subject from the little light as yet given by the experience of the working of the act in this country.

The advance has been in the direction of abolishing all exceptional cases, and making the admissibility of all evidence the rule, and leaving the credibility of that evidence to constitute the true test of its value. The technical rules as to amount of interest are no longer in force. Being a party upon the record is no longer an objection. Plaintiffs and defendants may examine themselves and their opponents, their co-plaintiffs and their co-defendants to the hearts' content of each and all of them. There seems good hope that in the long run the cause of truth and justice will be served by the late legislative action, which has been taken in the direction indicated.

There are yet, however, five classes of exceptions, preserved by the Ontario Act, 33 Vic. chap. 13 sec. 5, as to some of which we propose to make a few observations—but do so only on the assumption that the change has been a step in the right direction, which however we do not propose further to discuss.

Sub-division *a* provides that nothing in the Act 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. In other words, the law, as it stood before this statute, is not interfered with. And that law was the old common law rule that neither husband nor wife is competent to give evidence for or against the other, that other being a party, plaintiff or defendant. This rule was avowedly founded on principles of public policy. It was to secure, as has been well said, "the maintenance of peace and union in domestic life, whose quiet would be disturbed, and whose whole order and economy would be overthrown, if the confidences that exist between man and wife were to be rudely dragged before the public eye." The rule was well expounded by Mr. Serjeant Best in arguing *Monroe v. Twisleton*, Peak. Add. Cas. 219, "When two persons are placed in the situation of man and wife, the law precludes every inquiry from either, which might break in upon the comfort and happiness of the married state, and therefore it will not suffer one to give evidence which may affect the other, because such evidence might, as Lord Hale expresses it, create implacable quarrels and dissensions between them."

This rule, however, has, of late, been infringed upon in England to this extent, that husband and wife are now competent witnesses for or against the other except in so far as regards *communications* between them during coverture, which are held privileged. This may, perhaps, be the correct limit of the rule so far as it is founded on reasons of public policy, and the further extension of the privilege may be of doubtful propriety. A subsequent Parliament of Ontario may possibly re-consider the point whether it is necessary for us to retain the rule as at common law; thereby rendering the husband or wife of a party in any suit a totally incompetent witness for such party in that suit.

It has been held at common law that the disability to give evidence as to matters occurring during coverture continues, even after the marriage has been dissolved by death. Thus in *Doker v. Hasler*, 1 Ry. & Moo. 198, Best, C.J., held that in an action by an executor, the testator's widow could not be called for the defendants to give evidence of a conversa-