

CRIMINAL LAW—EVIDENCE OF GIRL, NOT GIVEN UPON OATH—INDECENT ASSAULT.—48 & 49. VICT., c. 69—(53 VICT., c. 37, s. 13, D.).

The *Queen v. Paul*, 25 Q.B.D., 202, may be usefully referred to as throwing light on the law of evidence in criminal cases. By an English statute (48 & 49 Vict., c. 69; (and see now a similar provision in the recent statute, 53, Vict., c. 37, s. 13, D.) it is provided that upon a trial of a charge of unlawfully and carnally knowing or attempting to have unlawful carnal knowledge of any girl under thirteen, the evidence of the girl, if she be of too tender years to understand the nature of an oath, may be received without oath. The prisoner was charged with an attempt to have carnal knowledge of a girl under thirteen, and also with an indecent assault. The evidence of the girl was taken without oath, and the jury acquitted the prisoner of the first charge, and on the second charge it was contended that the evidence not under oath was not admissible, but the Judge submitted it to the jury, and the prisoner was convicted of the assault. This the Court for Crown cases reserved (Lord Coleridge, C.J., Hawkins, Mathew, Day, and Grantham, JJ.), held was erroneous, and they quashed the conviction; and, notwithstanding a passage in Hale's *Pleas of the Crown*, vol. I, p. 634, to the contrary, Hawkins, J., lays it down that whatever may have been done in particular cases before the Act in question, no testimony whatever could in a criminal trial be received except upon oath, and that the Act made the unsworn evidence admissible only on the two specific charges, and it was left as it was before the Act, as regards the charge of indecent assault, and therefore as to that it was inadmissible, and could not be considered by the jury.

PRACTICE—OFFICIAL REFEREE—APPEAL—POWER OF COURT TO ENTER JUDGMENT—ORD. XXVI., r. 52, ORD. XL., r. 10—(ONT. RULES 37, 755).

*Clark v. Sonnenschein*, 25 Q.B.D., 226, may be referred to for the purpose of pointing out a difference which exists between the English rule, Ord. xxvi., r. 52, and Ont. Rule 37. Under the former a referee, to whom a cause is referred, has power to order judgment to be entered, but under the Ont. Rule 37, this part of the English rule is omitted. In the present case it was held that on an appeal from an official referee, who has ordered judgment to be entered for the plaintiff, a Divisional Court has power, not only to set aside the judgment, but also, under Ord. xl., r. 10, to enter judgment for the defendant. Ont. Rule 755.

PRACTICE—APPEAL—JURISDICTION—"CRIMINAL CAUSE OR MATTER"—STRIKING SOLICITOR OFF THE ROLLS.

*In re Eede*, 24 Q.B.D., 228, the Court of Appeal (Lord Esher, M.R., and Lindley, L.J.) hold that an order striking a solicitor off the rolls, for having permitted his name to be used by an unqualified person, is not a criminal cause or matter, and is therefore appealable to the Court of Appeal.

PRACTICE—TIME—NOTICE OF MOTION—"APPLICATION."

*In re Gallop & C.Q.M. Export Co.*, 25 Q.B.D., 230, is a case upon the construction of the rule regulating the time for moving against an award, in which Den-