examine the witness. This point, decided on March 3rd, at Taunton, is somewhat unusual in practice, but apparently the decision is correct. The case which is nearest to it is that of *Wood* v. *Mackinson*, 2 M. & Rob., 273. There the counsel for the plaintiff called a witness, who went into the box and was sworn in the usual way, but before any questions were put to him the counsel said he had been misinstructed as to what this witness was able to prove, and that he would not examine him at all. Lord Coleridge, C.J. (then J.), in deciding that the witness was not liable to cross-examination, said: "The learned counsel explains that there has been a mistake, which consists in this, that the witness is not found able to speak at all as to the transaction which was supposed to be within his knowledge. That is, I think, such a mistake as entitles the party calling the witness to withdraw him without his being subject to cross-examination. If, indeed, the witness had been able to give evidence of the transaction which he was called to prove, but the counsel had discovered that the witness, besides that transaction, knew other matters inconvenient to be disclosed, and therefore attempted to withdraw him, that would be a different case." The report adds that the witness was accordingly withdrawn, and was subsequently called and examined in chief by the defendants as one of their witnesses.

The rule seems to be, that if a person other than the person intended, through some mistake or other, steps into the box and is sworn: *Clifford* v. *Hunter*, 3 C. & P., 16; *Simpson* v. *Smith*, Notts Summer Ass., 1882, M.S., referred to by Lord Coleridge, C.J. (then J.), in *Wood* v. *Mackinson*; or if a witness under simply a *subpœna duces tecum* steps into the box and is sworn unnecessarily by the officer of the court: *Rush* v. *Smith*, 1 C.M. & R., 94; or if counsel calls a witness who is sworn, and then learns that the witness is unable to speak as to the transaction in question, and that therefore there has been a genuine mistake in calling him: *Wood* v. *Mackinson*, 2 M. & Rob., 273; in all these cases, if there has been no examination-in-chief, the opposite side has not a right to cross-examine. But if, as was apparently the case in the recent Taunton incident, counsel, after calling a witness and allowing him to be sworn, then changes his mind, and puts no question to him, though he knows he can speak to the transaction, then the counsel on the opposite side can successfully assert his right to cross-examine.

In practice, therefore, the course would seem to be that the counsel who called the witness, allowing him to be sworn and refusing to examine him, would, if called upon by the other side, have to state his reason for not doing so. Then the court would have to decide whether the reason advanced brought the case within the exceptions.—*Law Times.*

TRUST AGREEMENTS.—The recent cases on "trusts" suggest, among other more important things, the question whether it is material that the subject-matter of the "trust agreement" be an article of necessity. In the case of the *People* v. *The North River Sugar Refining Co.*, 7 N.Y.Sup.Ct., 406, some twenty cases are cited and the result summed up in the following sentence: "In all these cases,