

if I ought to commit him till he is sworn, the verdict may be set aside for breach of duty by the judge. Witness refuses to be sworn; Mr. Stevens seemed to want to be sworn in a qualified way, and not to receive the general oath, but knowing of no such precedent, I did not permit it. I think he should be sworn generally and the court should protect him under his privilege not to implicate himself criminally. But the witness refused to be sworn." George Gurnett took the same objection. "I explained to him my opinion of the law—of his rights and duty and of his privilege when a witness, but not from being a witness. There is no proof of his being an accomplice further than he himself states; taken for granted." Dr. Baldwin in his argument in term says Gurnett "impudently addressed" the judge as follows: "My Lord, I have a duty to perform superior to and independent of all personal considerations, which makes it impossible for me to give evidence upon this trial"—but the judge's notes do not set this out. Allan N. McNab, an attorney of the court and of counsel for the defendants, took the same objection. "Means to say that he can give no evidence that has not a tendency to implicate himself criminally."

The attorney for the defendants, Mr. Chewett, was also called and took the same position; none of the last named three had been subpoenaed. None of these witnesses was sworn or committed, as it was argued they should have been. There were four witnesses for the defence, and the jury found against Col. Simons and Dr. Hamilton, assessing damages at £40 (\$160.00), and acquitted Robertson. The plaintiff was not satisfied with the result, but moved in term. The following is the official record:—

"Michaelmas Term, 8 George IV., Nov. 9, 1827 (Praes. Campbell, C.J., Sherwood and Willis, JJ.): *Rolph v. Titus G. Simons, James Hamilton and Alexander Robertson*. Motion for a rule to shew cause why the verdict rendered in this cause at the last assizes in the district of Gore should not be set aside and a new trial granted, the plaintiff having lost important testimony from the contumacy of certain witnesses in refusing to be sworn when required so to be by the learned judge who