

CORPORATIONS AND SUBPENA DUCES TECUM.

posited at a distance: *R. v. Wenborn*, 6 Jurist, 267. And on a trial for murder before Maule, J., at York, 1848, after the opening address of the counsel, it was discovered that in consequence of the detention of the railway train, the witnesses for the prosecution had not arrived in the city, the trial was adjourned, the jury was locked up, a fresh jury was called into the box, and another case was proceeded with:” *R. v. Foster*, 3 C. & K., 201. Now, will it be believed that in neither of these cases was there any adjournment at all; but merely a temporary suspension of the trial for an hour or two; the prisoner being carefully kept in the dock in order to mark more clearly that there was no adjournment, but that the trial was still going on; all the judges being of opinion that there could be no adjournment for such purpose, and no adjournment having ever taken place in a criminal trial, except for necessary rest, and from actual physical necessity. In the one case the trial was suspended for an hour or two while a document, accidentally left behind in the assize town, was being fetched; and in the other case the same course was taken to allow time for the arrival of a witness accidentally delayed by the lateness of a railway train. In both cases there was a very “brief” suspension of the trial on account of an accident, and in no other case was there any at all. In a note to the report in the “Jurist” attention is called to this, and it is stated that the same course is frequently taken at the Old Bailey. So that even although there was no adjournment, the propriety of a suspension of a trial was doubted, and Mr. Justice Willes and Mr. Justice Wightman denied it. (*Re Tempest*, 1 Foster and Finlason; *Re Fitzgerald*, 3 Foster and Finlason); and it was even denied in civil cases, prior to the Common Law Procedure Act, 1854 (*vide* Finlason’s Common Law Procedure Acts). Yet we have it stated, in “Archibald’s Criminal Practice,” edited by Welsby, that it was settled law that a criminal trial might be adjourned in order to obtain evidence, whereas all the authorities clearly show that a trial could not be adjourned, and could only be suspended for a portion of a day, on account of accident, and that even this was always doubted. This is the way in which text books are edited, even those which bear

the names of eminent men. The truth is, however, that such men are often those who have no time to edit books, and have to leave the editing to pupils or young assistants. Thus it was with men like the late Mr. Welsby, whose practice was enormous, and could not afford time to edit books. The publishers got a great name, and that was enough to secure the book a good sale, but in truth the book was edited by some young man who did not know enough of law to know the distinction between a suspension of a trial and an adjournment, and so he abstracted the case according to his own erroneous ideas upon the subject. This is how an enormous quantity of loose or bad law gets into the minds of men, and when it is once in their minds it is difficult to get it out of them, and this bad law gets at last confirmed from the bench.—*The Law Magazine*.

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It is an old saying that a corporation has neither soul nor conscience, and now it appears to have other advantages besides these over private persons. Apparently it enjoys the privilege of defying even a *subpœna duces tecum*, one of the most formidable processes with which the law of England has armed the courts of law and equity. In the celebrated case of *Amey v. Long*, 9 East. 472, Lord Ellenborough, in delivering the unanimous judgment of the Court of Queen’s Bench, repudiated the argument advanced by Sir Vicary Gibbs and Garrow, that that which is commonly called a writ of *subpœna duces tecum* was not of compulsory obligation in the law. Lord Ellenborough then said:—“The right to resort to means competent to compel the production of written as well as oral testimony seems essential to the very existence and constitution of a Court of Common Law, which receives and acts upon both descriptions of evidence, and could not possibly proceed with due effect without them. And it is not possible to conceive that such courts should have immemorially continued to act upon both, without great and notorious impediments having occurred, if they had been furnished with no better means of obtaining