

merits of the case, of which the court alone is to judge. 21 C. 1. B. R.

And the matter sworn to must be *positively* set forth, with all material circumstances attending it, that the court may judge whether the deponents conclusion be just or not. 1 New. Abr. 66.

Therefore on a motion to put off a trial, for want of a material witness, it must appear in the affidavit that sufficient endeavours have been made to have him at the time appointed, and that he cannot possibly be present, though he may be, on further time given. 7 Mod. 121. Comb. 421. 422.

When an affidavit is read in court, it ought to be filed with the proper officer, that the adverse party may see it and take a copy. Pasch. 1655.

The affidavit must be made before a judge or commissioner of the court where the cause or matter is pending. Sty. 455.

An Affidavit improperly entitled cannot be read, as no indictment thereon will lie for perjury. Salk. 461.

Affidavits in aggravation of punishment are not receivable in cases of felony. R. v. Ellis. 6. B. & C. 148.

Any person making, or knowingly using a false affidavit, purporting to be taken abroad before a *foreign magistrate*, for the purpose of misleading our own courts, is guilty of a *misdemeanor*, in attempting to pervert public justice, and is punishable by indictment. Omealy v. Newell. 8 East. 364.

*Affidavit of being prevented by illness from attending the Sessions*, [to be made by a medical man, if convenient,] *in order to move to continue a party upon his recognizance.* (Toone.)

Home District, } A. B. of — in the said District, Surgeon,  
to wit. } maketh oath, and saith, that C. D. of —  
yeoman, is confined to his house by severe illness, and that this deponent saw the said C. D. yesterday, and verily believes he is incapable of travelling without manifest danger of his life.  
Sworn, &c. A. B.

## AFFRAY.

AN affray signifies the fighting of two or more persons in some public place, to the *terror of His Majesty's subjects*. 3 Inst. 158. 4 Bl. Com. 144. 1 Burn. Just. Affray. 1.

An affray differs from a riot, in this: that two persons only may be guilty of it; whereas *three* persons, at least, are necessary to constitute a riot. 1 Haw. c. 65. § 1.