person well known to the witness and whose statement the witness believes to be true."

Sub-sections 4 and 5 of section 39 as it now stands are bald in the extreme. Surely the expunged clauses which are given above would, if nothing else, have been useful in suggesting the sort of information which may still be given with advantage. If it were provided that the witness *must* swear to a knowledge of the parties to the instrument, or one of them, we could understand what was intended, though such a provision would occasionally be one of great inconvenience. But it is only necessary to state that the witness knew the parties "*if such be the fact.*"

Various other questions and difficulties have been started respecting this act to which we cannot now refer. We shall be glad to hear from any one interested in the subject as to these or any other points which admit of or require discussion. Upon the whole we do not think the act has been quite as carefully drawn up as the public had a right to expect, considering the time that it has been under discussion by the legislature, and the numerous suggestions that have from time to time been made with reference to it by competent persons; but many of which, it is alleged, have been overlooked, or have not been sufficiently carefully worded.

ESCAPE OF PRISONERS ON TECHNICAL GROUNDS.

In looking over some of our old country exchanges we notice in the *Scottish Law Magazine* some sketches of narrow escapes of prisoners from punishment, owing to the very strict manner in which the rules of criminal law were interpreted in Scotland some years ago. We make a selection from these which we think will be perhaps instructive and certainly amusing to many of our readers, though they do not we are happy to say give any idea of the way in which criminal law is administered in this country in the year of grace 1866.

The first we shall refer to was with reference to the subpœnaing of a witness at a trial for murder at Perth, in 1823. On the first witness being called, it was objected to his citation, and to the citation of all the other witnesses in the case, that, when they were cited, the messenger had not the warrant of citation *on his person.* The designation of the witness was correct, and the citation otherwise unexceptionable; but the fact objected to having been verified, the witness was not allowed to be examined, and the jury, in consequence, found the prisoner *not guilty* of the charge of murder. This objection was founded on a formerly established principle, that if a witness appear without having been cited with all legal formality, he must be rejected, on the ground that he had shown an undue desire to appear as a witness, and that he must be held to appear without due legal compulsion if any error, however trifling, could be discovered in the mode of citation or the messenger's execution.

In another case on a witness being called for the prosecution, it was objected for the panel that the witness resided at No. 158 Trongate street, Glasgow, and not at 128, as designed in the list of witnesses. The objection of erroneous designation was sustained, and as the case could not be established without this witness, no farther evidence was led, and the panel was dismissed with a verdict of not guilty. What made this case particularly absurd was the fact that the incorrect information was quite superfluous and could not possibly mislead any one.

In 1840 a man was charged with having committed an assault in a house in Edinburgh possessed by a certain man named; but during the proof it came out that the house was possessed by the *wife* of that man, from whom she was separated. The court stopped the case, and the Lord Justice (Clerk) directed the jury to return a verdict of not guilty, which they accordingly did. This might be said to be carrying out the idea of woman's rights in quite a novel direction. The next case is, if possible, more technical and seems to go to the extreme length of strictness, and this case was tried no longer ago than the year 1857. A woman was indicted for a theft *within* a certain house; but it appeared from the evidence that the articles were stolen from a *closet* in a lobby of the house. The prisoner's counsel claimed an acquittal on the ground that the theft proved was not the one libelled, and she was acquitted accordingly. The lawyer in this case must have used very ingenious arguments to prove that a closet in the lobby of a house was not within the house. The greater includes the less, though not the less the greater.