

THE EXAMINATION OF WITNESSES.

CHAPTER I.

PRELIMINARY STEPS.

IT was a maxim of the Common Law that "no man is bound to arm an adversary against himself." But the effect of this maxim has been very largely discounted by the modern provisions for Discovery. And the success or failure of the advocate in examining and cross-examining the parties and witnesses at the trial depends so often on the judicious use of these provisions for Discovery, that a short sketch of the manner in which they should be employed has been given.

Documentary evidence, in the shape of correspondence, or otherwise, forms an ever-increasing and ever more important part of the evidence in all kinds of actions. And at the commencement of an action a litigant and his advisers generally find that several documents, which are material to his case, are in the possession of his opponent. It is, therefore, vital that he should have an opportunity of inspecting these documents and of taking copies of them, where necessary.

The means of doing this are provided by the Rules of the Supreme Court, and especially by Order XXXI.

Order XXXI., Rule 12, provides that:—

Any party may, without filing any affidavit, apply to the Court or Judge for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court