

all events to issue a Warrant empowering the officer to detain the prisoner, in which warrant the nature of the offence charged and the time and place at which the offender is again to be brought up should be stated. The form of *Warrant of Committal for safe custody during an adjournment of the Hearing*, which will be given below, may be varied for that purpose.

(Of Compelling the Attendance of Witnesses.)

Previously to the passing of the 16 Vic., c. 178, Magistrates possessed no general power to compel the attendance of witnesses before them; some few Acts certainly authorized them expressly to summon witnesses and proceed against them in default, but it was rarely this provision was contained; so the Justice might summon, but had no authority to enforce the witnesses attendance. The practice recommended in such cases was to sue out a "Criminal Subpœna" from the Crown Office, which, if disobeyed, might be followed by Attachment; [3] and in cases which do not come within the 16th Vic. as the same absence of general authority exists, the same practice should be resorted to, serving the witness with a criminal subpœna.

However now, as a general rule, if a party whose evidence is necessary in support of an information or complaint, is unwilling to attend before the Magistrate at the hearing, he can be served with a "Subpœna Summons," for by the 16 Vic., c. 173, ample powers are conferred upon Magistrates for enforcing the attendance of any one as a witness in all cases of summary proceedings before them when the witness is within their jurisdiction; by sec. 6 it is thus enacted:—

"That if it shall be made appear to any Justice of the Peace by the oath or affirmation of any credible person that any person within the jurisdiction of such Justice is likely to give material evidence on behalf of the prosecutor or complainant or defendant, and will not voluntarily be and appear as a witness at the time and place appointed for the hearing of such information, such Justice may and he is hereby required to issue his summons to such person under his hand and seal requiring him to be and appear at a time and place mentioned in such summons, before the said Justice or before such other Justice or Justices of the Peace for the same Territorial Division as shall be there to testify what he shall know concerning the said information or complaint."

Should the party summoned as a witness neglect or refuse to appear in obedience to the summons without offering any just excuse, the Justice before whom he was summoned to appear may issue a Warrant to compel his attendance to testify in the case; which warrant may be backed if necessary, in order to its being executed out of the jurisdiction of the Justice, in the same manner as a Warrant to compel the appearance of a person charged with an

offence, as before described. Before issuing a Warrant to compel the attendance of a witness, however, there must be proof before the Justice upon oath or affirmation that such summons was served upon the witness either personally or by leaving the same for him with some person at his last or most usual place of abode; but it would seem that it is not absolutely necessary to make any tender of his expenses to the witness. In a subsequent part of the same section, power is given to the Justice to issue his Warrant, *in the first instance* without a previous summons, against a witness; in cases in which the Justice shall be satisfied by oath or affirmation that the witness is an unwilling one, and that it is probable he will not attend to give evidence without being compelled so to do, such warrant, if necessary may be also backed as before mentioned.

It will thus be seen that with a view either to obtaining a summons or warrant to compel the attendance of a witness, there must be a previous deposition on oath that the party is likely to give material evidence that he will not voluntarily appear for the purpose of being examined as a witness, and that he resides or is within the jurisdiction of the Justice; and in case of a warrant in the first instance, *in addition to the foregoing*, that it is probable that such person will not attend to give evidence without being compelled so to do, suitable forms are subjoined.

MANUAL, ON THE OFFICE AND DUTIES OF
BAILIFFS IN THE DIVISION COURT.

(For the Law Journal.—By V.)

CONTINUED FROM PAGE 46.

APPOINTMENT—QUALIFICATION—SECURITIES.

The right of appointing to the office of Bailiff is vested in the Judge by the ninth section of the Division Courts Act, which enacts that for every Court there shall be "one or more Bailiffs, and the Judge of the County Court shall from time to time appoint, and at his pleasure remove the Bailiffs of the Courts holden by him."

No qualification for the office of Division Court Bailiff is prescribed by the Statute, but the section referred to provides that, "no person other than a subject of Her Majesty shall be so appointed." By implication of law also the right of the Judges is limited to their appointing only such persons as are qualified by Common Law. As a general rule, "all persons of sane mind are capable of holding office,"

[3] Reg. v. Greenway, 7 Q. B. 126; R. Carney 7 Q. B. 126; Comer's Pr. C. 222.