

expected to influence the minds of such witnesses. If the fear of temporal punishment ceases to exist in the mind of a witness who has a motive in testifying falsely, then one great counter-acting influence to the motive to testify falsely is lost. The effect of the fear of eternal punishment will be considered later in this article. As a rule, however, an unscrupulous witness has his mind directed more towards winning the suit than saving his soul, and, if influenced by fear at all, would be apt, at the moment of testifying, to fear a present penitentiary more than a future hell.

It may, perhaps, be said that the disinclination of a private suitor to initiate a prosecution for perjury has been recognized by our law-makers, and that the difficulty has been met by enacting s. 4 of c. 154 of the Revised Statutes of Canada, which section has been continued in force by the Code. That section which was adapted from s. 19 of the Imperial statute, 14 & 15 Vict., c. 100, provides, in substance, that any judge before whom any trial is held may, "if it appears to him that any person has been guilty of wilful and corrupt perjury," in any evidence given before him, direct such person to be prosecuted for such perjury, "if there appears to such judge a reasonable cause for such prosecution," and may commit such person.

It is a significant fact, however, that the power conferred by this section has been rarely, if ever, exercised in England or in Canada, and the provision must be considered as having failed in its purpose. A commitment under this section by a judge would be almost as damaging to the character of a witness as an actual conviction, and there will always be a disinclination to exercise such a dangerous power unless the perjury of the witness is absolutely conclusive and unmistakable, and this can rarely be conclusively determined by the judge, in trying another issue. It is possible that what may appear to be a false oath, taken *malo animo*, can be shewn ultimately to be the result of honest mistake, due to that treacherous faculty the memory, or to the imperfect understanding of the witness, or to a reprehensible lack of taking pains to be exact, rather than to a deliberate intent to lie.