

commissioners to administer oaths, has been published :—

Numerous and urgent communications have been received by the council of the Incorporated Law Society from commissioners in London and various parts of the country, in which an expression of opinion from the council is asked as to what are the precise duties of commissioners to administer oaths on taking affidavits.

It has been represented by the commissioners that they find themselves in considerable difficulty by reason of the reported *obiter dictum* of one of the judges of the Supreme Court in a recent case, in which his lordship, after observing that the affidavits before him were not read over in the commissioner's presence, and that he took no means to ascertain whether he knew to what the deponents were swearing, said it was the duty of a commissioner, before he administers an oath, to satisfy himself that the witness thoroughly understands to what he is going to swear, and that the commissioner should not be satisfied by anyone but the witness himself. This expression of opinion on the part of the learned judge has taken the profession very much by surprise.

In the view of the council (subject to the exception contained in a Rule of Court which will be referred to presently), all that a commissioner is required to do is to see that the deponent is apparently competent to depose to the affidavit, and that he knows he is about to be sworn by the commissioner as to the truth of the statements it contains, and that the exhibits (if any) are the documents referred to.

The council think that the entire responsibility for the contents of the affidavit rests with the deponent and the solicitor who prepares it.

It is obvious that it would be impossible for the commissioner to determine whether the deponent understood every statement made in the affidavit, unless he himself had read it to the deponent, and had himself mastered the facts of the case.

Such a course would, in the opinion of the council, be impracticable, and beyond what they consider to be the duties of the commissioner.

In all cases in which oaths are administered by officials of the Court, and official persons other than solicitors holding commissions, no such course as that now suggested has ever been adopted. It may be stated in general terms that what is required of the person administering the oath is to ascertain that the deponent is actually in his presence, by inquiring whether the signature to the affidavit before him is the name of the deponent, and is in his own handwriting; and, if the answers are in the affirmative, the oath is administered in the following form (Braithwaite's Oaths in the Supreme Court of Judicature, 4th edition, 1881, p. 58, No. 5): "You do swear that the contents of this your affidavit, are true. So help you God."

The only exception of which the council are aware to this form of taking the oath is that provided by Order XXXVIII, rule 13, of the Rules of the Supreme Court, 1883, which applies solely to the case of blind or illiterate deponents. It appears to the council that if it were necessary, as explained by the learned judge, to see in every case that the deponent understood the contents of his affidavit, there would be no necessity whatever for the rule in question.

The persons authorized to administer oaths to be used in the Supreme Court are those who have received commissions since the passing of the Judicature Act, 1873, and such persons as were previously to that date entitled to administer oaths. Before the year 1853, oaths in London were administered by the judges and by certain officials of the Court and other official persons, and in the country by masters extraordinary in Chancery; and after 1853 also by London commissioners, who were then appointed, and the form in which the oath was taken was the same as that which now obtains.

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At the Brentford County Court, before his Honor Judge Stonor, on December 9, judgment was given in the case of *Barclay v. The Atlas Brick Company*. His Honor said: This is an appeal from an order made by the registrar, in an action under the Employers'