

wards put to the test of an oath, a sense of shame may prevent him from retracting; and it is obvious that a witness may answer every question correctly which may have been put to him, and very properly swear to the truth of the statement so taken down, as far as it goes,—and yet such evidence may not contain the whole truth; and the most important part of the witnesses' testimony may thus remain unknown—the witness himself being either unconscious of its importance to the case under enquiry, or being determined to assist as little as possible in the elucidation of the case. For these and similar reasons, the Judges have of late often reprobated the system of taking examinations of witnesses before they are sworn."

"It is also material," says the same writer, "that the witnesses should be sworn and examined in the presence of the prisoner or the defendant, if he appear to the summons, that he may confront them, and prepare himself to cross-examine them; and should a witness be examined in the absence of the defendant and the defendant afterwards appear, it will not be sufficient to read over the deposition in the defendant's presence but the witness must also be re-sworn.[2]

Witness refusing to be sworn.—Should any witness, summoned to give evidence, unlawfully refuse, or having been sworn, improperly refuse, &c., to take the oath, or having been sworn, improperly refuse to answer such questions as may be put to him touching the case, the Magistrates are armed with ample powers to coerce him to do so, or to punish for refusal;—the 6th sec. of the Statute 16 Vic., cap. 178, thus enacting:—

"And if on the appearance of any such person so summoned before the said last mentioned Justice or Justices either in obedience to such summons or upon being brought before him or them by virtue of the said warrant, such person shall refuse to be examined upon oath or affirmation concerning the premises, or shall refuse to take such oath or affirmation, or having taken such oath or affirmation, shall refuse to answer such questions concerning the premises as shall then be put to him, without offering any just excuse for such refusal—any Justice of the Peace then present and having jurisdiction may, by warrant under his hand and seal, commit the person so refusing to the common gaol for the Territorial Division where such person shall then be, there to remain and be imprisoned for any time not exceeding ten days, unless he shall in the meantime consent to be examined and to answer concerning the premises."

It will be well to try what effect the reading of the above will have on refractory witnesses, before a Magistrate proceeds to make out the order of commitment. It will in general produce the desired effect; should he still persevere in refusing to be sworn or examined, the Magistrate will have no alternative but to commit him, for he cannot allow the administration of Justice to be trifled with. The following form is given in the Act, Schedule G. 4:—

PROVINCE OF CANADA, }
(County or United Counties, } To all or every of the Con-
as the may be) of ——— } stables, or other Peace officers
in the said (County or United
Counties, as the case may be) of ———, and to the keeper of
the Common Gaol of the said (County or United Counties, as
the case may be) at ———

Whereas information was laid (or complaint was made) before
(me) ——— (one) of Her Majesty's Justices of the Peace in
and for the said (County or United Counties, or as the case
may be) of ———, for that (&c., as in the summons), and one
E. F., now appearing before me, such Justice as aforesaid, on
——, at ———, and being required by me to make oath or
affirmation as a witness in that behalf, hath now refused to do
so, (or) being now here duly sworn as a witness in the matter
of the said information (or complaint) doth refuse to answer a
certain question concerning the premises which is now here
put to him, and more particularly the following question, (here
insert the exact words of the question) without offering any
just excuse for such his refusal: These are therefore to com-
mand you, or any of the said Constables or Peace officers to
take the said E. F., and him safely to convey to the Common
Gaol at ——— aforesaid, and there deliver him to the said
keeper thereof, together with this precept; and I do hereby
command you the said keeper of the said Common Gaol to re-
ceive the said E. F. into your custody in the said Common Gaol,
and there imprison him, for such his contempt, for the space of
—— days, unless he shall in the meantime consent to be
examined and to answer concerning the premises, and for so
doing this shall be your sufficient warrant.

Given under my hand and seal, this ——— day of ———,
in the year of our Lord ———, at ——— in the (County, or as
the case may be) aforesaid.

J. S. [L.S.]

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

(For the Law Journal.—By V.)

CONTINUED FROM PAGE 143.

Duties in Court (continued.)—Should there be a Jury, the Bailiff calls the names as given him from the Clerk's list until five Jurors have answered; he then causes the five Jurors to stand up and each to place his right hand on the Testament, while the Clerk administers the oath to them as already spoken of respecting witnesses. When the Clerk addresses the Jury to ascertain if all have been sworn, the Bailiff counts *one, two, &c.*, as each Juror says, "sworn." Should the Jury or any of them retire by leave of the Court, *and it is deemed necessary* for the Bailiff to take charge of them, his duty in this particular will be sufficiently explained by the language of the oath usually administered to the Bailiff in such cases.

When a Jury returns into Court, as the Clerk calls over their names, the Bailiff counts as before.

Should it become necessary to take a recess during the day or to adjourn the Court to the following

[2] And see Reg. v. Vipont, 2 Bur. 1100; Reg. v. Crowther, 1 T. R. 175.