All the depositions taken must be returned, R. v. Simons, 6 C. & P. 540, as well of the witnesses bound over as those not bound over, R. v. Fuller, 7 C. & P. 269, and if there be several depositions, and one only be produced, it cannot be received, Pearson's case, 2 Lew. C. C. 67. And Mr. Russell, 2 Russ. on Crimes, 900, suggests that the evidence for the prisoner ought also to be returned; see Examination of Witnesses, 2 C. & K. 845. They ought to be proved by the justice or coroner, especially in capital cases, R. v. Pikesly, 9 C. & P. 124, but it is enough to prove the handwriting of the justice, the practice having always been for him to sign it, and to show that the examination was of a particular prisoner, and they may be proved by any one who saw them taken.

The examination of the prisoner required by these Acts is in general subject to the sames rules, except, 1°, that he is not to be induced to make any statement by threats or promises, and perhaps the justice ought not to question him; though if he is willing to make a statement it is the *duty* of the justice to receive it, but the prisoner ought to be told that it will be used against him at the trial, R. v. Arnold, 8 C. & P. 621; and 2°, he is not to be examined on oath,[3] and if the magistrate return with the depositions that a prisoner was sworn and made a statement, it cannot be received against him, though a witness state that he was not in fact sworn, R. v. Pikesly *supra*. His language ought to be taken down, too, as near as may be. and if his statement appear in such language as he did not use or could not have used, it will not be admitted. This whole subject is discussed at large in 2 Russ. on Crimes, 872 *et seq.* to which the reader is referred.

The justices are to bind over the witnesses to appear at the next Court, and, in case of their refusal to come or be bound over, may commit, 2 Hale, P. C. 282. In Barnet v. Wilson, 3 M. & S. 1, see Ashton's case, 7 Q. B. 169, it was decided that an action could not be maintained for committing a *feme covert* not finding surety to appear at the trial, and who said "she would not go and nobody should make her." The decision was based on the positive act of refusal, for the justice shewed her some indulgence; but the Court declared that a justice may commit a *feme covert* or infant not finding sureties to appear and give their evidence at the trial. The counsel for the defendant observed that it was the uniform practice in both cases, to require the recognizance of a third person, if they refuse to appear, and, on refusal to give such recognizance, to commit. Yet the party's own recognizance (at the peril of commitment) is all that ought to be required, and therefore a justice is not authorized to commit a witness. willing to enter into a recognizance for his appearance to give evidence against an offender, merely because he is unable to find a surety to join him in the recognizance, and the justice ought not to ask it, 1 Chit. Cr.

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[3] It was held by the Supreme Bench of Baltimore City, in accordance, as it was said, with the later American cases, that a confession otherwise admissible was not rendered inadmissible because given before a committing magistrate under oath, but that this circumstance might be taken into consideration in determining whether or not the confession was voluntary. State v. McCubbin, Daily Record, Jan. 17th, 1911.