

681, note; 4 *Laing's His. Scotland*, 254. (i) This publicity of judicial proceeding, which existed in all parts of Europe governed by the Roman law, *Adams' Rom. Ant.* 241, 255; *Kennett's Rom. Ant.* 153; and under those governments which arose immediately out of the fall of the Roman empire, was first abolished, by the papal decretals, towards the close of thirteenth century. The Pope believed, that the secrecy of judicial proceedings would furnish him with a more certain means of extirpating heretics; and the civil tribunals adopted, in succession, an innovation which relieved them from public censure, by concealing the errors they were liable to commit; while the veil of mystery, which enveloped their proceedings, was calculated, in the eyes of the vulgar, to invest them with an air of great importance. 1 *Hallam's Mid. Ages*, ch.

**188** 7; 1 *Lond. Jurist*, 251. The English Chancellors, \* prior to the commencement of the seventeenth century, were almost always appointed from among the dignitaries of the then established Catholic church of England; and those ecclesiastical Chancellors gave to the Chancery Court, as a Court of equity, its general outline and substantially fashioned its modes of proceeding. 3 *Blac. Com.* 54; *Parks' His. Co. Chan.* 20, 49.

Hence it is fair to conclude, that this mode of collecting testimony, under a solemn injunction of secrecy, was an ecclesiastical contrivance; and that it may be regarded as one of the papal perversions of the mode of administering justice. 1 *Bro. Civ. Law*, 478; *The William and Mary*, 4 *Rob. Ad. Rep.* 381. A slight review of the English authorities upon this subject will be sufficient to show, that this rigid obligation of secrecy in taking testimony is always inconvenient, and often attended with great expense and delay, besides being sometimes made the instrument of the most grievous fraud. *Cooth v. Jackson*, 6 *Ves.* 12.

The mode of collecting testimony in the Court of Chancery of Maryland has been altered and materially improved. The whole proceedings under a commission to take testimony have been thrown open; all secrecy has been abolished; and each party is required to be notified, and has a right to be present, and to have his interrogatories publicly propounded to the witnesses. (k)

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(i) "It is, however, to publicity more than to every thing else put together, that the English system of procedure owes its being the least bad system as yet extant, instead of being the worst. It is for want of this essential principle, more than anything else, that the well meant labors of Frederick and Catharine, in the field of justice, have fallen so far short of the mark at which they aimed," *per Bentham, Park. Hist. Co. Chan.* 5. "I know that it is one of the best securities for the honest exercise of a Judge's duty, that he is to discharge that duty in public."—*Per ELDON*, Chancellor; *Wellesley v. Beaufort*, 3 *Cond. Chan. Rep.* 9.

(k) In Maryland, as in England, in all cases where evidence was proposed to be collected, under an ordinary commission for that purpose, the commissioners and clerk's oath, sent with the commission, required them to swear,