until all the testimony within their reach can be taken, *Forum Rom.* 129; 1785, *ch.* 72, *s.* 14; or another commission, for any such purpose, may be at once obtained to any other place, where the requisite testimony may be had. (*l*)

190 * But although, as in England, the commissioners are, in some respects, to be regarded as the Court itself, *Cooth* v. *Jackson*, 6 *Ves.* 30; yet there is nothing in our practice, or Acts of Assembly, which has clothed them with anything more than mere ministerial powers, for the purpose of taking the examination under the commission. It is their duty to propound the interrogatories as written and handed to them by the respective parties, or their solicitors; and to take down all that the witness declares in answer thereto, rejecting everything irrelevant to the interrogatory; but nothing more. They have no authority whatever to decide finally upon the competency or credibility of any witness presented to them for examination; nor can they undertake absolutely to determine upon the relevancy of any interrogatory, or the pertinency of any testimony to the points in issue between the parties; because, although the commissioners are not bound to divest themselves entirely of all discretion as to what is or is not legal evidence; it is yet finally and exclusively the province of the Court to pass judgment upon all such matters. *Whitelocke* v. *Baker*, 13 *Ves.* 515.

It is evidently as a consequence of the rule which requires the testimony of the witnesses to be taken in secret, that the English practice has rendered it necessary to have all the interrogatories delivered to the commissioners before the examination is begun; and hence, it is almost impossible to avoid that senseless and un-

(*l*) These observations may seem to be at variance with that general rule of law, by which all our Courts of justice are governed, in all cases, by which each party has thrown upon him the burthen of supporting his own case, and of meeting that of his adversary without knowing, before hand, by what evidence the case of his adversary was to be established, or his own opposed. *Wigram on Discovery*, 93; *Willan* v. *Willan*. 19 Ves. 591; *The King* v. *Holland*. 4 T. R. 691. That rule however, operates only so far as to protect a party from being compelled to set forth the proofs and circumstances he means to offer in support of his own case at the trial. But in Courts of common law nothing is more frequent, than, after a witness has been examined, to call another to discredit or contradict what the previous witness had testified. The only difference between that mode of proceeding, and this, under a commission, is, that, under a commission, time may be allowed to send for and take the opposing testimony; but, that, in a Court of common law, such testimony must be introduced during the trial and without delay. It might seem, that the removal of the mischief of surprise, by a public examination, would be more than counterbalanced by the danger of perjury: but no instance has occurred, within my recollection, in which it has been intimated, that the proofs had been falsified, or even discolored by any party who had been thus, by a public examination, fully informed of the testimony of his antagonist.