

relation to it. The mode of obtaining such a commission, and of selecting the commissioners, to whom it is to be directed, are, in some particulars, different, in England, from those which, by usage, the rules of the court, and legislative enactments, have been prescribed for attaining the same objects here. All which may, however, be passed over as unimportant as regards the matter now under consideration.

In England, the interrogatories, intended to be propounded to the witnesses, must accompany the commission, or be handed to the commissioners before they actually begin to execute it. (c) And according to the ancient orders, and the long established practice, they must be so drawn as to call forth only those facts which may be used as evidence in the cause. To prevent the introduction of impertinence and scandal, it is directed, that they shall be drawn or sanctioned by counsel; that they shall be penned with care, so that they be pertinent, and only to the points necessary; and that the witnesses be sorted and examined on those interrogatories only to which their testimony extends, without the needless interrogatories of matters unnecessary or immaterial; as well to avoid the expense of superfluous examinations, as that apt interrogatories, which are the very life of the case, may be exhibited. (d) The party, who applies for and obtains a commission, has the carriage of it; and it is his duty to give notice to the commissioners and to the opposite party, of the time and place, when and where it is to be executed. (e) At which time and place, the witnesses also are summoned to convene; and if they neglect or refuse to do so, on the fact being represented to the court, they may be compelled to attend.

When the commissioners have met, and they and their clerk, have taken the prescribed oath, which requires them to keep the testimony taken by them secret, until it shall be legally published, and they are prepared to proceed, they then exclude every one else from the apartment in which they sit, and call in only one witness at a time, to whom they propound the interrogatories in succession. And, after examining the witness on each interrogatory, they carefully take down in writing what he declares in relation thereto. (f)

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(c) *Forum Rom.* 127.—(d) *Beam's Orders*, 184; 1 *Harr. Prac. Chan.* 456, 485.—(e) 1 *Harr. Prac. Chan.* 441.

(f) 3 *Blac. Com.* 449; 1 *Harr. Prac. Chan.* 462. In the year 1707, among many other complaints made against the proceedings in chancery, it was alleged, 'that commissioners to examine witnesses, and their clerks, were not upon oath, which lets them at liberty to discover evidence, and introduces perjury, new commissions,