

But although, as in England, the commissioners are, in some respects, to be regarded as the court itself; (*w*) yet there is nothing in our practice, or acts of assembly, which has clothed them with any thing 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 every thing 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. (*x*)

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 unnecessary verbosity, tautology, and scandal, the introduction of which the ancient orders, regulating the English practice, so earnestly and repeatedly endeavour to prevent. (*y*) By our public mode of proceeding, we have been, relieved from all such embarrassments. It is wholly unnecessary, in any case, to file a long formal set of interrogatories to be sent with the commission; unless it should be sent to a distance, or into a foreign country, where the party, or his solicitor cannot attend. But where the party, or his solicitor, who understands the nature of the matters in issue, to which the proofs are to be directed, can be present at the examination of the witnesses, as he always ought to be, the better and more correct mode, instead of sorting the witnesses to whom the respective interrogatories apply, as directed by the English practice, (*z*)

---

lanced 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 discoloured by any party who had been thus, by a public examination, fully informed of the testimony of his antagonist,

(*w*) *Cooth v. Jackson*, 6 Ves. 30.—(*x*) *Whitelocke v. Baker*, 13 Ves. 515.—(*y*) *Beam's Orders*, 25, 71, 184, 272, 311, 492.—(*z*) *Whitelocke v. Baker*, 13 Ves. 515.