

summon, or to have the defendant before the court to answer the complaint of the plaintiff; but it is always addressed, personally, to the defendant himself, commanding him to appear and answer. It does not appear, that this first process in equity was ever required in England to be executed by a sheriff, who is the officer of the court, or by the messenger, as its immediate officer; (b) but it might be executed by any one, so that the court was satisfied by proof of its having been duly served. (c) If, after a *subpœna* has been served the defendant fails to appear, then the next process is an attachment; which is a writ directed to the sheriff, commanding him to attach the defendant so as to have him before the court. And if the defendant still persists in his contumacy, the several subsequent writs, which may be issued to compel an appearance, are all, in like manner, directed to the sheriff. (d) But as a sheriff is a mere local officer, having no authority beyond the bounds of his county, he cannot bring a defendant, who he has so taken into his custody, into the court while it is sitting in a remote or different county. And therefore upon his return of the fact of the defendant having been attached, the court, on application, will order him to be brought before it by a special messenger. (e)

In England when a commission issued to take testimony, as the commissioners were specially directed to call the witnesses before them, they might and most usually did so, by a process signed by two or more of them. But it was thought to be more regular and effectual to issue a *subpœna ad testificandum*, from the court itself, commanding the witnesses to attend upon the commissioners. This *subpœna*, as well as the *subpœna duces tecum*, which seems to be now little used in England, (f) like the leading process of the court, was not addressed to the sheriff, but to the witness himself, and might be served by any one. But if a witness failed or refused to attend, or to testify; and the court was satisfied by a certificate of the commissioners, and an affidavit of the fact, that the writ had been served, an attachment might be issued, directed to the sheriff, commanding him to attach the witness, who, on being taken by the sheriff, might, as on an attachment consequent upon a *subpœna ad respondendum*, be brought before the court by a special messenger. (g)

(b) Forum Rom. 35.—(c) Forum Rom. 37, 41.—(d) 1 Harr. Pra. Chan. 229.—
 (e) Forum Rom. 70; 1 Harr. Pra. Chan. 234.—(f) Prac. Reg. 346.—(g) Forum
 Rom. 118; 1 Harr. Pra. Chan. 445; 2 Fowl. Exch. Pra. 89; Wardel v. Dent, 1
 Dick. 334; Hennegal v. Evance, 12 Ves. 201.