In Maryland the forms of these writs are the same as in England, they are always addressed to the party to answer or to testify; (*h*) and as in England they may be executed by any one, so that the court be satisfied, by affidavit, that they have been served. (*i*) Here as in England, the commission to take testimony directs the commissioners 'to cause to come before them all such evidences as shall be named to them by either the plaintiff or defendant.' Under this authority, which has been expressly recognized by positive legislative enactment, (*j*) the commissioners have always, when necessary, summoned the witnesses to come before them; and on their failing to attend, there seems to have been no doubt, at any time, that they might, on their contumacy being shewn to the court, be forced by attachment to attend and testify, even under a commission from a foreign tribunal. (*k*) And although the Legislature has provided a new and additional form of compelling the attendance of witnesses before commissioners authorized to take evidence, they have not introduced a more cheap and expeditious mode of proceeding. (*l*)

But, to clear away the difficulty which has been presented in this case, it will be necessary to ascertain how far the sheriffs of the several counties can be considered as the executive officers of this court for the purpose of serving writs of *subpœna* as well as of attachments.

It may be safely assumed, that where the Legislature has specifically allowed to a sheriff a particular fee for the execution of any process, that such allowance of a fee may be considered as a virtual declaration, that it is his official duty to execute such process. The last provincial act of Assembly by which officers' fees were regulated, makes a clear distinction between a *subpœna ad respondendum*, and a *subpœna ad testificandum*, by designating the first specially; and then, in the same section, allowing to the secretary a different fee for 'every *subpœna* and return.' But as the secretary was then the register in Chancery, as well as the clerk to the higher courts of common law, it may be supposed, that these last

(*h*) 1 Harr. Pra. Chan. 195; 2 Harr. Ent. 772.—(*i*) Hoye *v.* Penn, 1 Bland, 29; Taylor *v.* Gordon, 1 Bland, 132, note.—*Showell v. Showell*, 1713.—Service of the *subpœna* proved before Col. Williams.—*Chancery Proceedings, lib. P. L. fol.* 8.—(*j*) 1785, ch. 72, s. 16.—(*k*) Gibson *v.* Tilton, 1 Bland, 354; Bryson *v.* Petty, 1 Bland, 182, note; Contee *v.* Dawson, 2 Bland, 283; Maccubbin *v.* Matthews, 2 Bland, 252; Harris *v.* Saunders, 10 Com. Law Rep. 373; Thurit *v.* Faber, 18 Com. Law Rep. 136; Turnbull *v.* Moreton, 18 Com. Law Rep. 215; Clay *v.* Stephenson, 30 Com. Law Rep. 225.—(*l*) 1824, ch. 133.