

prior to the commencement of the seventeenth century, were almost always appointed from among the dignitaries of the then established catholic church of England; and those ecclesiastical Chancellors gave to the Chancery Court, as a court of equity, its general outline and substantially fashioned its modes of proceeding. (n)

Hence it is fair to conclude, that this mode of collecting testimony, under a solemn injunction of secrecy, was an ecclesiastical contrivance; and that it may be regarded as one of the papal perversions of the mode of administering justice. (o) A slight review of the English authorities upon this subject will be sufficient to show, that this rigid obligation of secrecy in taking testimony is always inconvenient, and often attended with great expense and delay, besides being sometimes made the instrument of the most grievous fraud. (p)

The mode of collecting testimony in the Court of Chancery of Maryland has been altered and materially improved. The whole proceedings under a commission to take testimony have been thrown open; all secrecy has been abolished; and each party is required to be notified, and has a right to be present, and to have his interrogatories publicly propounded to the witnesses. (q)

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(n) 3 Blac. Com. 54; Park's His. Co. Chan. 20, 49.—(o) 1 Bro. Civ. Law, 478; The William and Mary, 4 Rob. Ad. Rep. 381.—(p) Cooth v. Jackson, 6 Ves. 12.—(q) In Maryland, as in England, in all cases where evidence was proposed to be collected, under an ordinary commission for that purpose, the commissioners and clerk's oath, sent with the commission, required them to swear, that they would not publish, disclose, or make known to any person the contents of any of the depositions until publication should be passed; *Kent v. Emory*, 22d May, 1769, *Chancery Proceedings*, lib. W. K. No. 1, fol. 332; *Mackall v. Morsell*, 5th March 1770; *ibid*, fol. 224; *Cockey v. Hammond*, 26th August, 1774, *ibid*, fol. 332; *Howell v. Fell*, 21st May, 1783, *Chancery Proceedings*, No. 2, fol. 17; *Usher v. Brown*, 28th February, 1786, *ibid*. 591. And the oath directed to be taken by the register of the High Court of Chancery of Maryland in the year 1670, required him also to swear, that he would not publish or shew, directly or indirectly, the depositions to any person, before publication, without warrant from the court, *Chancery Proceedings*, lib. C. D. fol. 34. In the year 1824, an eminent London solicitor, in speaking of the course of chancery proceedings in England, in this respect, declared, 'that no real remedy for the present evils of the equity jurisdiction existed, but in the general substitution of public  *viva voce* testimony for the present system of secret written evidence,' *Park's His. Co. Chan.* 453, 561, 566. But, in Maryland, under a commission to audit and settle accounts, neither the commissioners nor their clerks were sworn to secrecy; and therefore, in such cases, the depositions of witnesses brought before such commissioners were always taken publicly in presence of the parties if they chose to attend; *Clayham v. Thompson*, 1 Bland, 123, note; *Dorsey v. Dulany*, 1 Bland, 465, note. Nor, as it would seem, was there any injunction of secrecy in taking testimony under a