

under a regular commission. But the mode of proceeding authorized by the order of the 21st of February, 1829, under which it was proposed to act, amounts substantially to a commission. That order authorized an examination before the commissioners appointed for Baltimore county; or any justice of the peace. The commissioners having been regularly appointed according to the act of assembly; (s) must, therefore, for this purpose, be considered as much the ministerial officers of the court, as if they had been nominated as commissioners in a commission specially directed to them in the ancient form.

In regard to the authority given by the order of the 21st of February, 1829, to take the depositions of witnesses before a justice of the peace, I am aware that there has been some doubt and difference of opinion as to the mode of requiring a witness to attend and testify in such cases; but nevertheless a witness has been compelled to attend before a justice of the peace and to have his deposition taken in a case depending in this court, under an order giving the justice authority thus to act as a commissioner. (t) Of late years there have been a great multitude of instances of such orders; and the convenience and economy of taking testimony in that mode has been felt to a great extent. It has, in my time, given rise to no complaint; and it has been sanctioned and approved by a wide range of experience. (u) I therefore feel myself authorized to place it upon a footing, in all respects, with the mode of taking testimony under a regular commission. And, consequently, whether the order, under which this testimony is proposed to be taken, be considered as amounting to, or in fact as a commission directed to the officers of the court; or as analogous to an examination before the auditor, under a decree or order to account; or as being nothing more than an order authorizing a justice of the peace to take testimony, I shall sanction, aid, and protect the proceedings under them, in like manner as if the authority had been conferred by a regular commission. (w) A late act of assembly affirms the power of this court to enforce the attendance of witnesses before commissioners, or the auditor; and gives a new and additional mode of compelling the witness to attend, (x) which, in

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(s) 1826, ch. 222; 1829, ch. 159; Park. His. Co. Clk. 361.—(t) *Onion v. McComas*, ante 83; *Purvince v. Ogden*, Chancery Proceedings, 1804, fol. 49.—(u) *Townshend v. Duncan*, ante 81.—(w) *Wardel v. Dent*. 1 Dick, 334; *Hennegal v. Evance*, 12 Ves. 201, *Bradshaw v. Bradshaw*, 5 Cond. Chan. Rep. 122; *Bryson v. Petty*, 1 Bland, 182, note; *Forum Rom.* 118; 1 Harr. Prac. Chan. 447.—(x) 1824, ch. 133.