

with his petition had not been taken ; and he therefore prayed that a commission might be issued for that purpose.

21st July, 1830.—BLAND, *Chancellor*.—*Ordered*, that this case stand continued to the next term ; and that the plaintiff have a commission to take testimony as prayed : *Provided*, that the testimony be taken, and the commission returned on or before the first day of September next. And it is further *Ordered*, that all the costs and expense of the said commission and of executing the same be borne by the plaintiff.

After the commission thus granted had been returned, the plaintiff by his petition on oath, set forth, that the deposition of *Charles Snithen*, a witness competent and proper, had not been taken, by whom he expects to prove, that certain promissory notes given by the defendants, and also certain notes given by *Thomas Clagett*, one of the defendants, were given for goods, &c.; and also, that certain responsibilities were assumed and notes given by the plaintiff to the creditors of *Thomas Clagett*; that there were certain documents, in the city of Baltimore, which it was deemed important for the witness to prove ; and that the petitioner had used all reasonable diligence to have the witness before the commissioners ; but could not do so, because he had gone beyond the jurisdiction of this court ; and had only come again into this state, since the return of the commission. Upon which he prayed for a commission, &c. This petition was submitted on the part of the defendants with a mere denial of the plaintiff's right to a petition.

6th September, 1830.—BLAND, *Chancellor*.—After a case has been set for hearing, or stands so according to the course of the court, no new commission to take testimony, or further time for that purpose can be allowed to either party, but by a special order. To obtain such an order the party must by a petition, on oath, state the name of the witness, without whose testimony he cannot safely proceed to hearing ; the points to which he can materially depose ; and the reason why he has not been previously examined, if it should not sufficiently appear from the nature and circumstances of the case. (*j*) Here, however, the plaintiff has laid a sufficient foundation for granting the prayer of his petition.

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(*j*) 1 Vern. 334 ; *Jessup v. Duport*, Barnar. 193 ; *Oldham v. Carleton*, 4 Bro. C. C. 88 ; *Rougemont v. The Royal Exchange Assurance Company*, 7 Ves. 304 ; *Mendizabel v. Machado*, 1 Cond. Cha. Rep. 553.