a disability from sickness so as to be unable to travel is now, in England, put on the same footing as death, by Stat. 11 & 12 Vict. c. 42, s. 17. But if the witness be permanently disabled, as if bed-ridden, R. v. Hogg, 6 C. & P. 176; R. v. Wilshaw, 1 C. & M. 145; or insane, though temporarily only, R. v. Marshall, 1 C. & M. 147, provided he be shown to be sane when his examination was taken, R. v. the Inhabitants of Eriswell, 3 T. R. 720, 721, (and see R. v. Cockburn, 26 L. J. M. C. 136,) his deposition is admissible. But the mere absence of the witness, as at sea, R. v. Hagan, 8 C. & P. 167; or his residence in a foreign country, R. v. Austin, 25 L. J. M. C. 48, or inability to find him, R. v. Scaife, 17 Q. B. 238, is no ground for admitting it.

To make such depositions admissible in such cases, they must appear to have been taken on oath and in the presence of the prisoner, that he may have had an opportunity for cross-examination, Errington's case, 1 Lew. C. C. 142. It has been held that a deposition taken in his absence, and afterwards read over in his presence to the deceased, who was re-sworn in his presence, and assented to by the latter, is admissible, even upon the trial of an indictment against the prisoner for a different offence from that with which he was then charged, R. v. Smith, 2 Stark. 208, and see note of the reporter; S. C. Holt N. P. 614; but in R. v. Beeston, 24 L. J. M. C. 5, Alderson B., who had been counsel for the prisoner, said that he still thought he was right in the objection to a deposition so taken, though as to the other point depositions were admitted, not taken on the same technical charge, but in the same case, the prisoner having had full opportunity of cross-examination. Depositions taken by a coroner are said to be excepted from this rule so far as the presence of the prisoner is required, but Mr. Starkie, 2 Stark. Ev. 277, contends against it, and Mr. Phillips, 2 Phill. Ev. 75, 8th ed., has altered his opinion expressed in the previous edition to accord with that of Mr. Starkie. It should seem, too, that depositions ought to be taken in the presence of the justice, as well as of the prisoner, and an examination of the witnesses and writing down their answers in his absence would be irregular, except of course under 2 & 3 P. & M. c. 13, which gives the justice two days in which to put the examination in writing. Only the material parts of the witnesses' statements are required to be put down in writing, R. v. Coveney, 7 C. & P. 667; but if the prisoner makes any statement, during the examination of a witness in support of the charge, it ought to be taken down, R. v. Weller, 2 C. & K. 223.

The law presumes that the evidence of the witnesses wes reduced to writing until it is shown that it was not, and parol evidence will not be admitted to add to or vary the deposition, see R. v. Edmunds, 6 C. & P. 164; Phillips v. Wimburn, 4 C. & P. 273; R. v. Feershire, 1 Leach, 202; R. v. Jacobi, *ibid.* 309, and R. v. Weller, *supra*, nor can blanks left in them be supplied, R. v. Morse, 8 C. & P. 605. A separate caption *or head- **373** ing to each deposition is not required, R. v. Johnson, 2 C. & K. 354, and it was held not to hurt, where in the caption the word, "unlawfully," was omitted in describing a charge of obtaining money, &c. by false pretences, R. v. Langbridge, *ibid.* 975. So several depositions with one *jurat* may be read, R. v. Osborne, 8 C. & P. 113.

The usual practice is for the witness to sign the depositions, but it is not necessary under the Statute. See the case of Flemming and Windham, 2 Leach, 996.