

day actually employed; to be paid by the party at whose instance the service may have been rendered. And it shall be the duty of such examiners, in making their returns to the court, in each case, to certify the time that they have been actually employed, and at whose instance, and the amount taxable to each party for services rendered.

As to testimony in injunction cases, see sec. 83.

As to commissions to take testimony outside of Maryland, see art. 35, sections 16, 17 and 18 and notes.

As to commissions at law to take testimony in this state, see art. 35, sec 19, *et seq.*

1904, art. 16, sec. 235. 1888, art. 16, sec. 217. Rule 37.

253. Whenever any cause is at issue involving matter of fact, or whenever any evidence is required to be taken, to be used in any proceeding in equity, it shall be competent to the party desiring to take evidence, by leave of the court or judge thereof, to notify one of the regular examiners, or any special examiner that may be appointed, of such desire, and to furnish him with the titling of the cause and the names of witnesses to be summoned to testify; and the examiners so applied to shall fix some reasonable day or days for the examination of witnesses, and the taking of evidence, of which he shall give due notice to the parties concerned, or those entitled to receive such notice, as if he were proceeding under a commission to take testimony, under former practice. He shall issue subpoenas for witnesses for either party, except where he is required to proceed *ex parte*; and he shall cause to come before him all witnesses subpoenaed, at the time appointed to be examined; and their attendance and duty to testify may be enforced by attachment, to be issued and returned as provided in section 268.

Ibid. sec. 236. 1888, art. 16, sec. 218. Rule 38.

254. All examinations of witnesses before the examiners shall be conducted in the presence of the parties, or their solicitors, if they think proper to be present; and the mode of examination shall be either by written interrogatories filed with the examiner, to be by him propounded to the witnesses, and the answers thereto written down by him, as has heretofore been the practice of commissioners in taking testimony; or the witnesses may be examined by the parties, or their solicitors, *viva voce*; and in such case, the answers of the witnesses shall be reduced to writing by the examiner, and the questions also, if necessary to the understanding of the answers of the witness, or if it be required by either party. The testimony produced by both parties shall be taken before the same examiner, unless, for special reasons, it be otherwise directed by the court or judge thereof, and all *viva voce* examinations shall, as near as may be, be conducted in the manner and order of the examination of witnesses in the trials of fact in the courts of common law. The defendant shall not be compelled to proceed with the taking of his testimony until the plaintiff has finished or declared he has none to take; nor shall the plaintiff be compelled to proceed with the rebutting testimony until the defendant has completed the testimony on his part.