

De Sobry v. De Laistre, 2 H. & J. 191; *Owings v. Norwood*, 2 H. & J. 96. (For other cases not referring to the statute, see Brantly's Digest.)

While this section (in connection with article 16, sections 263 and 264), requires the commission to issue to two commissioners unless the parties agree to the contrary, if the defendant receives notice of the name of the plaintiff's commissioner, his neglect to name another commissioner, is a waiver of his right to have two commissioners. *Billingslea v. Smith*, 77 Md. 516; *Sewell v. Gardner*, 48 Md. 182. And as to a waiver of irregularities in the issue of a commission, see *Cherry v. Baker*, 17 Md. 75. *Cf. Brandt v. Mickie*, 28 Md. 447.

Execution of commission.

The depositions must show on their face that they were taken on the day and at the place designated in the notice. *Young v. Mackall*, 4 Md. 362; *Young v. Mackall*, 3 Md. Ch. 404; *Collins v. Elliott*, 1 H. & J. 1.

Where the return of the commission shows that the commissioners took the oath before A. B., the presumption is that the latter had authority to administer the oath. *Snavely v. McPherson*, 5 H. & J. 155. And see *Wilson v. Mitchell*, 3 H. & J. 91; *State v. Levy*, 3 H. & McH. 591.

The authority to commissioners to take testimony is special and must be pursued. The commissioners named in the commission alone must act, and no other questions than those sent out with the commission must be asked. *Maryland Ins. Co. v. Bossiere*, 9 G. & J. 157; *Chappeau v. Middleton*, 1 H. & G. 159; *Young v. Mackall*, 4 Md. 362.

It is not necessary that the commissioners should appoint a clerk. *Beard v. Heide*, 2 H. & J. 442.

There is no express provision in this section requiring witnesses to sign their deposition—see notes to section 17. *Potomac Works v. Barber*, 103 Md. 511.

Generally.

Depositions taken under this section may be used upon a second trial. *Woodruff v. Munroe*, 33 Md. 155; *Consolidated Ry. Co. v. O'Dea*, 91 Md. 514.

The return of a commission held sufficient, although the signatures of the commissioners were not accompanied by their seals on the return itself, but only on the cover enclosing it. *State v. Levy*, 3 H. & McH. 591.

This section is not applicable to non-resident parties except in the discretion of the court upon satisfactory proof of permanent inability to attend the court in person. (See section 18.) *Goodman v. Wineland*, 61 Md. 456; *Clark v. Callahan*, 105 Md. 610.

Depositions taken under this section, held, in the light of article 16, sections 265 and 266, to be admissible in evidence under a rule of the circuit court for Cecil county providing for the filing of interrogatories with the clerk and the service of a copy thereof upon the adverse party or his counsel. *Turner v. Piercy*, 40 Md. 219.

This section referred to in construing section 17—see notes thereto. *Garrett v. Kerney*, 107 Md. 514; *Clark v. Callahan*, 105 Md. 610.

This section contrasted with section 21—see notes thereto. *Consolidated Ry. Co. v. O'Dea*, 91 Md. 512.

As to commissions to take testimony from other states, see sec. 36.

See notes to sec. 21.

As to witnesses and testimony in equity, see art. 16, sec. 252, *et seq.*

1904, art. 35, sec. 17. 1888, art. 35, sec. 16. 1860, art. 37, sec. 16. 1888, ch. 545.

17. In addition to the mode prescribed in the preceding section, the testimony of non-resident witnesses may be taken by either party to any case in any court of this State, or before any justice of the peace of this State, upon giving notice of not less than five days to the opposite party of the time and place, when and where the testimony of such non-resident witnesses is proposed to be taken, and the name of the commissioner, notary public, or justice of the peace before whom the same is proposed