

dollars and fifty cents *per diem*, to be paid as the *per diem* to the commissioner is directed to be paid, and to be taxed as aforesaid.

The examiner must be present when the testimony is taken. Held that there was nothing to show that evidence was taken by the clerk out of the presence of an examiner. *Canton v. McGraw*, 67 Md. 589.

Cited but not construed in *Purner v. Piercy*, 40 Md. 219.

An. Code, sec. 267. 1904, sec. 249. 1888, sec. 231. 1785, ch. 72, sec. 16.

286. A witness attending an examiner or commissioner, under a summons by him issued, or at the request of either of the parties, shall be allowed seventy-five cents per day for every day's attendance, and itinerant charges, to be ascertained by the examiner or commissioner, which allowance shall be paid by the party summoning or requesting such witnesses to attend, and shall be taxed as part of the costs of suit.

The court has power to enforce the attendance of witnesses before a commissioner. *Deale v. Estep*, 3 Bl. 439.

As to the compensation of witnesses at law, see art. 35, sec. 11.

An. Code, sec. 268. 1904, sec. 250. 1888, sec. 232. 1824, ch. 133.

287. When any witness is summoned by an examiner or commissioner to take testimony in a chancery suit or proceeding, to appear before such examiner or commissioner to give testimony in such suit or proceeding, and such witness shall refuse or neglect to attend, or attending, shall refuse to answer such interrogatories as are propounded to him, in all such cases the examiner or commissioner, at the request of either party to such suit or proceeding, shall immediately certify such default or neglect, under his hand as such examiner or commissioner, to the clerk of the court where such suit or proceeding is pending, who, upon the receipt thereof, shall forthwith issue an attachment against the person named in such certificate, and the court may allow such process to compel such witness to attend and give evidence in open court in such suit or proceeding, at such term of the court thereafter as the party applying for such attachment shall request, and such process shall be directed to the sheriff or coroner of the county or Baltimore city wherein the person to be attached resides; and after return is made, such process may be renewed from term to term, as the case may require; provided, that the party obtaining such process shall give written notice to the opposite party, or his counsel, of the time of the return thereof.

This section is to be regarded as a mere affirmation of the pre-existing powers of the court. *Maccubbin v. Matthews*, 2 Bl. 253; *Winder v. Diffenderfer*, 2 Bl. 196.

This section gives a new and additional mode of compelling the attendance of witnesses, in some respects not so clear or energetic as the old proceeding. *Winder v. Diffenderfer*, 2 Bl. 196. And see *Deale v. Estep*, 3 Bl. 436.

See art. 35, sec. 8.

An. Code, sec. 269. 1904, sec. 251. 1888, sec. 233. 1836, ch. 128, sec. 2.

288. In all cases where any of the defendants have appeared and an order to take testimony before an examiner has issued, and there are other defendants who are in default for not appearing or answering, and against whom an order to take testimony *ex parte* might issue, it shall not be necessary to pass such order, but the plaintiff may take all his testimony before the examiner, and such testimony shall be as available against the de-