

defendants who are in default, as if the same was taken under an *ex parte* order.

Under this section, a complainant has authority under the commission in chief, to take all necessary testimony as well against defaulting as other defendants, and the necessity of an *ex parte* commission is dispensed with. *Higgins v. Howitz*, 9 Gill, 344.

Proof taken under *ex parte* commission, cannot be read against defendants who answered original bill, though they fail to answer bill of revivor, and interlocutory decree is passed against them. *Kerr v. Martin*, 4 Md. Ch. 343.

Testimony taken under a commission issued by consent of certain of the defendants, cannot be read against other defendants. *Kipp v. Hanna*, 2 Bl. 26; *Clary v. Grimes*, 12 G. & J. 31. *Cf. Smith v. Baldwin*, 4 H. & J. 331.

See sec. 18.

An. Code, sec. 270. 1904, sec. 252. 1888, sec. 234. 1888, ch. 486.

289. The incorporation in this article of the rules prescribed by the court of appeals shall not deprive the said court of the power to rescind or modify any of said rules, or to pass additional rules, in their discretion.