

Generally.

Where a non-resident is temporarily in Maryland, her testimony may be taken before a notary public under this section. See notes to sec. 22. *Mitchell v. Slye*, 137 Md. 103.

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 court in person. (See sec. 23.) *Goodman v. Wineland*, 61 Md. 456; *Clark v. Callahan*, 105 Md. 610.

In the absence of a showing to the contrary, it will be presumed that the Court ruled correctly in admitting depositions taken under Secs. 21-23 and that the proceedings were formal and regular. *France v. Safe Dep. & Tr. Co.*, 176 Md. 307.

Depositions taken under this section, held, in the light of art. 16, secs. 296 and 297, 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 sec. 22—see notes thereto. *Garrett v. Kerney*, 107 Md. 514; *Clark v. Callahan*, 105 Md. 610.

This section contrasted with sec. 26—see notes thereto. *Consolidated Ry. Co. v. O'Dea*, 91 Md. 512.

As to commissions to take testimony from other states, see sec. 41.

As to witnesses and testimony in equity, see art. 16, sec. 281, *et seq.*

See notes to sec. 26.

An. Code, 1924, sec. 17. 1912, sec. 17. 1904, sec. 17. 1888, sec. 16. 1888, ch. 545.

22. 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 to be taken, together with the names of the witnesses proposed to be examined; and the deposition of any such witnesses taken pursuant to such notice and duly certified by the officer taking the same, under his hand and seal, shall be admitted as evidence at the trial of the case as fully to all intents and purposes as if the same had been taken under a commission as prescribed in the preceding section. Depositions when taken under this section shall be signed by the witnesses unless their signature shall be waived by consent of the parties, and returned to the court in which the case is pending; and shall be treated in all respects as if taken under a commission regularly issued by said court, and shall be subject to the like exceptions as testimony taken under commission. It shall be competent for the parties to any case to dispense with formal notice of time and place and name of the officer before whom such depositions are to be taken, and by agreement to provide for the taking of such depositions; and the provisions of section 35 shall be applicable to all depositions taken under this section.

Evidence taken under this section while the case is on trial, upheld, discretion of court. Exception as to notice not passed on, as no rule of court or certificate on that subject was in record. *Rasst v. Morris*, 135 Md. 254.

This section does not affect the classification of witnesses whose testimony may be taken under sec. 21—see notes to sec. 21. *Mitchell v. Slye*, 137 Md. 103.

This section read in connection with sec. 21, applies to courts of law only, but when taken in connection with sec. 23, applies to courts of equity also. *Clark v. Callahan*, 105 Md. 610.

This section requires depositions to be signed by witnesses; separate certificates at conclusion of entire testimony signed by each witness, held a sufficient signature. *Potomac Works v. Barber*, 103 Md. 511.

When depositions are taken *ex parte* under this section, interrogatories should be filed with notary, and returned with depositions. Agreement of counsel. *Garrett v. Kerney*, 107 Md. 513.