

Depositions taken in accordance with this section after due notice, and opposing counsel being present and cross-examining the witnesses, are admissible in evidence. *Jackson v. Jackson*, 80 Md. 194.

While the practice in regard to taking depositions under this section has not been definitely established, a party upon whom notice has been served may attend in person and cross-examine witnesses; and if he does so, he waives all objection to admissibility of depositions as a whole. *Goodman v. Sapperstein*, 115 Md. 681.

A deposition, taken at a time while there was a decree *pro confesso* against the plaintiff and when he was not in a position to intervene in the taking of testimony and was therefore deprived of his right to cross-examine, should not have been admitted, as the decree *pro confesso* was subsequently stricken out. *Harris v. Harris*, 159 Md. 630.

Where deposition taken in irregular manner, it should be excluded on proper motion. *Bright v. Kelley*, 168 Md. 110.

See notes to Sec. 21.

Cited but not construed in *Abramson v. Horner*, 115 Md. 235.

An. Code, 1924, sec. 18. 1912, sec. 18. 1904, sec. 18. 1898, ch. 399, sec. 16A.

23. The testimony of non-resident parties to a cause, may be taken, whether in their own behalf or by the opposite party, in the same manner as the testimony of other non-resident witnesses; this is to apply to courts of law and equity and to proceedings before magistrates; subject, however, to the provisions of law in respect to the competency of witnesses.

The purpose of this section was to do away with all discrimination between non-resident parties and other non-resident witnesses as to the taking of testimony, and also to permit the taking of testimony of any witnesses in courts of equity as well as in courts of law under any method open to non-resident witnesses not parties to the cause. *Clark v. Callahan*, 105 Md. 610.

Cited but not construed in *Abramson v. Horner*, 115 Md. 235.

See notes to secs. 21 and 22.

Commissions to Take Testimony in This State.

An. Code, 1924, sec. 19. 1912, sec. 19. 1904, sec. 19. 1888, sec. 17. 1828, ch. 165, sec. 1.

24. Each of the circuit courts, or the judge thereof, shall appoint not more than three commissioners for the county in which such court is held, and each of the courts of civil jurisdiction in the city of Baltimore shall appoint two commissioners to take the depositions of witnesses, on such notice to the opposite party and in such manner as the court shall prescribe.

Where a written notice of the taking of testimony under this section on Monday is given on the Saturday before, but in such notice the case is wrongly entitled, and it appears that the attorney for the opposite party knew "inferentially" what case was referred to and was informed of the witnesses to be examined and signified his intention to be present, the notice was held sufficient. *Matthews v. Dare*, 20 Md. 266.

This section does not confer upon a commission appointed for the circuit court for Harford County the power to take depositions in the city of Baltimore. (See sec. 36.) Object of this and the following sections. *Brandt v. Mickle*, 28 Md. 446.

See notes to sec. 26.

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

Re. issue by the clerk of commissions to take testimony, see art. 17, sec. 44.

Re. depositions of masters of vessels and other transient persons, see art. 84, sec. 9.

An. Code, 1924, sec. 20. 1912, sec. 20. 1904, sec. 20. 1888, sec. 18. 1828, ch. 165, sec. 5.

25. Every commissioner so appointed, before he proceeds to act as such, shall take an oath before some judge or justice "that he will faithfully and impartially execute the duties of commissioner aforesaid, according to the best of his judgment"; a certificate of which oath shall be recorded among the records of the court by which such commissioner is appointed.

Where oath is administered in open court before the clerk, it is in contemplation of law taken before the judge. The filing of the certificate of qualification by the clerk is a recording of it within meaning of this section; failure to record the certificate, however, would not impair the qualification of commissioner. *Quynn v. Carroll*, 22 Md. 293.