

Permanent residence of a witness is not necessary for the purpose of taking his deposition under this section; a temporary or transient residence is sufficient. Fact of residence need not be placed on record. *Bryden v. Taylor*, 2 H. & J. 398.

See notes to sec. 26.

An. Code, 1924, sec. 30. 1912, sec. 30. 1904, sec. 30. 1888, sec. 28. 1828, ch. 165, sec. 3.

35. If any person against whom the depositions herein authorized to be taken are to be used in evidence shall attend the taking of the same, either in person or by agent, attorney or guardian, then such depositions shall be admitted in evidence without proof of notice to the party to attend the taking thereof.

This section applied. *Real Estate Trust Co. v. Union Trust Co.*, 102 Md. 55.

The law was in accordance with this section prior to its adoption—see notes to sec. 26.

An. Code, 1924, sec. 31. 1912, sec. 31. 1904, sec. 31. 1888, sec. 29. 1826, ch. 222. 1828, ch. 165, sec. 1. 1829, ch. 159.

36. Any commissioner appointed by a court having common law and equity jurisdiction, whether such commissioner be appointed to take depositions in chancery or depositions to be used at law, may take depositions under this article; but no commissioner shall take depositions out of the county or city for which he was appointed, except by consent of the parties in writing, to be returned with the commission.

Commissioners regularly appointed under this section are ministerial officers of the court just as though they had been nominated in a commission specially directed to them. *Winder v. Diffenderfer*, 2 Bl. 196.

See notes to sec. 24.

Commissions to Perpetuate Boundaries of Lands.

An. Code, 1924, sec. 32. 1912, sec. 32. 1904, sec. 32. 1888, sec. 30. 1723, ch. 8, sec. 2.

37. Upon petition of any person seized or possessed of lands in his own or any other right to the circuit court for the county where the land lies, or the superior court of Baltimore City, if the land lies in the city of Baltimore, for a commission to examine evidences to prove or perpetuate the memory of any of the bounds of such lands, or of any other lands whereon the lands he shall be so seized or possessed of shall depend or whereto they relate, the court to which such petition shall be preferred may grant a commission to four substantial and capable freeholders within the said county or city, not being in any way related to any of the parties or interested in the land, empowering them, or any three or two of them, (they having first taken an oath before the said court or some justice of the peace, duly and impartially to examine and certify such evidences), to issue summons for all such evidences as shall be to them named by the petitioner or other person concerned, to appear before them at a certain day by them to be appointed, upon the lands, the boundaries whereof are to be proved or perpetuated, and to examine all such evidences upon their corporal oaths, to be administered by such commissioners, of their knowledge concerning the several bounds of such lands, and carefully to reduce what the evidences shall declare into writing, in the presence of all the parties concerned that shall be there present and return the same to the said court to be recorded in perpetual memory.

A commissioner to bound lands cannot declare in evidence anything which was taken down in writing as the deposition of a witness sworn before him, since the deposition itself would be better evidence. Return of a commission to bound lands may be read in evidence for what it is worth, although five years have not elapsed since the recording thereof. *Lowe v. Holbrook*, 1 H. & J. 153.

As to bounding lands, see art. 15.