

be taken down or inserted in the record, but the party offering such testimony may accompany the offer of the same with a statement of the facts proposed to be shown in connection therewith, and such statement shall be considered by the Court in connection with the question objected to, and the Court of Appeals, upon appeal from any final order in the case, shall consider and determine, upon the record, all objections to testimony taken and reserved during the progress of the cause, and no bills of exception shall be required.

Duty of court, in equity cases, to consider evidence as a court of chancery would do. *Tillinghast v. Lamp*, 168 Md. 41.

Cited in *France v. Safe Dep. & Tr. Co.*, 176 Md. 321.

Testimony taken as provided in this section. *Sterling v. Sterling*, Daily Record, Dec. 4, 1939.

See art. 5, secs. 38 and 39.

An. Code, 1924, sec. 280. 1912, sec. 261B. 1914, ch. 377.

292. Whenever a case has already been before the Court of Appeals, it shall not be necessary, upon any subsequent appeal, to copy into the transcript of the record any other proceedings than those occurring in the Court below, subsequent to the preceding appeal; but the record of the proceedings in the previous appeal shall be taken and considered as part of the record in the subsequent appeal the same as though actually copied therein.

See art. 5, secs. 38, 39 and 48.

An. Code, 1924, sec. 281. 1912, sec. 262. 1904, sec. 244. 1888, sec. 226. Rule 42.

293. Upon any petition, motion, or other interlocutory application, for the hearing and determination of which evidence may be required, the court or judge thereof may order testimony to be taken before an examiner, or before a justice of the peace, upon such notice, and in such manner as the court or judge may think proper to direct, to be used at the hearing of such matter.

An. Code, 1924, sec. 282. 1912, sec. 263. 1904, sec. 245. 1888, sec. 227. 1826, ch. 222, sec. 1.

294. All commissions which shall be issued to take testimony in causes pending in any court of equity of this State shall be issued and directed to two persons to be named and appointed by the said court, or the judge thereof.

See notes to sec. 285.

As to the issue of commissions by the clerks of the courts having jurisdiction, see art. 17, sec. 44.

An. Code, 1924, sec. 283. 1912, sec. 264. 1904, sec. 246. 1888, sec. 228. 1795, ch. 88, sec. 4. 1799, ch. 79, sec. 6. 1829, ch. 159. 1840, ch. 109, sec. 5. 1852, ch. 173, sec. 2.

295. A commission to take testimony may issue to one person with consent of the parties.

If a defendant receives notice of name of plaintiff's commissioner, his neglect to name another commissioner is a waiver of his right to have two commissioners. *Billingslea v. Smith*, 77 Md. 516; *Sewell v. Gardner*, 48 Md. 183.

Commissioners regularly appointed under this and the preceding section, are for this purpose as much ministerial officers of court as if they had been nominated in a commission in ancient form. *Winder v. Diffenderffer*, 2 Bl. 196.

Held that 27th rule of court of common pleas of Baltimore City could not be construed to contravene secs. 294, 295 and 296. *Sewell v. Gardner*, 48 Md. 182.

An. Code, 1924, sec. 284. 1912, sec. 265. 1904, sec. 247. 1888, sec. 229. 1841, ch. 22, sec. 6. 1842, ch. 229, sec. 6. 1878, ch. 202.

296. Where a commission to take testimony in chancery shall issue to two commissioners, only one shall act on the same day, unless both are called