

to the issue, or to answer any bill of discovery only which may be filed by the second court after the appearance court, in cases and under circumstances where they might be compelled to produce said original books or writings or answer such bill of discovery by the ordinary rules of proceeding in chancery; and if a plaintiff shall fail to comply with any such order to produce such books or writings, or answer such bill of discovery, it shall be lawful for the said courts on motion to give the like judgment for the defendant as in cases of nonsuit; and if a defendant shall fail to comply with such order to produce books or writings, or to answer any bill for discovery only, it shall be lawful for the court on motion as aforesaid, to give judgment against him by default; *provided*, that any plaintiff or defendant may, in compliance with any rule for producing extracts of such books or papers, bring into court the original books or papers.

**19.** At the trial of any suit instituted upon the bond of any clerk or register for neglect of duty, it shall be the duty of the clerk or register, when required, to exhibit to the court his dockets, records and fee books, and the measure of damages shall be the sum or sums he has charged for services he has not performed, unless special damage has been suffered by some person, and if so the jury shall in addition allow for such special damage.

Id s 70.  
1825, c 208, s 2.  
Clerks and  
registers when  
to produce fee  
books.

#### COMMISSIONS TO TAKE TESTIMONY IN THIS STATE.

**20.** Either party in any action depending in the Circuit Courts for the counties and the courts of civil jurisdiction in the city of Baltimore, after due notice to the other party or his attorney, agreeably to such rule as shall be made by the said courts respectively, may take the deposition of any witness before any of the commissioners appointed by said court to take testimony as prescribed in article LIX of this Code, subtitle Commissioners to take Testimony at Law, to be used as testimony on the trial of such action, in case only of the death of such witness, or on proof to the satisfaction of the court of the inability of the party to procure the attendance of such witness at the time of trial, and the probable continuance of said inability until and at the next term, before the court shall permit such testimony to be used, and the opposite party shall be entitled to cross-examine any witness whose deposition shall be so taken, or to examine him or her on notice, before the same or any other commissioner.

Art 37, s 18  
1828, c 165, s 2.  
Commission to  
take testimony  
to be used on  
trial of action  
pending, where  
witness unable  
to attend  
20 Md 248,  
35 Md 531

**21.** All depositions and examinations taken by such commissioner shall be certified and returned by the commissioner taking them, under his hand, to the clerk of the court in which it shall be intended to use them; and if such court shall be any other than that by which such commissioner was appointed, there shall be annexed to his return a certificate by the clerk, under the seal of the court, that he is commissioner.

Id s 19  
1828, c 165, s 2.  
How such depo-  
sitions to be  
certified and  
returned