

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.

P. G. L., (1860,) art. 37, sec 18 1828, ch. 165, sec. 2.

19. Either party in any action depending in said courts, 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 said commissioners, 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.

Bladen's Lessee *v* Cockey, 1 H. & McH. 234 Thomas *v* Claggett, 2 H. & McH. 172. Shank *v*. Clark, 3 H. & McH. 100 Ridgely *v*. Howard, 3 H & McH 321. Brashears' Lessee *v*. Hewett, 4 H. & McH 222. Brydon *v* Taylor, 2 H. & J 396. Patterson *v* Md Ins. Co., 3 H & J. 74 Mitchell *v* Mitchell, 1 Gill, 66. Negro Jerry *v*. Townshend, 9 Md 146 Matthews *v*. Dare, 20 Md. 248. Quynn *v*. Carroll's Admr., 22 Md. 288. Waters *v*. Waters, 35 Md. 531.

Ibid. sec. 19. 1828, ch. 165, sec. 2.

20. 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.

Ibid. sec. 20 1828, ch. 165, sec. 2.

21. All depositions so taken and returned shall be subject to the same exceptions and objections as the testimony of the same witness would be if examined in open court, and shall have the same effect and validity.