

CHAP. 239

Notice to be served on witnesses outside State, etc.

any court without the State, either in any State, district or territory of the United States, or in a foreign country, directed to any person, designated by name, title of office or otherwise, in this State, the person so designated as commissioner shall serve notice on the witness or witnesses to be examined under said commission, of the time and place appointed for the execution of said commission at least five days before the day so appointed; and whenever the judge of the court, wherein such action, suit or special proceeding is pending, is satisfied by the affidavit of either party thereto or otherwise, and it be stated in such commission or process in the nature of a commission, that any witness to be examined under such commission or process, has in his possession or control any paper, writing, written instrument, book or other document, which, if produced, would be competent and material evidence for the parties to such suit or action, or either of them, and said paper, writing, written instrument, book or other document be sufficiently described for identification in said commission or process in the nature of a commission, the said commissioner therein appointed shall serve notice as aforesaid of the time and place appointed for the execution of said commission, and therein require said witness to bring with him and produce to said commissioner any such paper, writing, written instrument, book or other document, supposed to be in his possession or control, the same to be described or identified in said notice as in said commission.

Duty of commissioner named in commission.

36 B. If any witness, who shall have been duly notified so to do as prescribed in the foregoing section, shall fail to attend at the execution of said commission, or refuse to testify or to answer such questions as may be propounded to him under such commission, or shall fail to produce, pursuant to said notice, any book, paper or instrument of writing in his possession or control, or shall refuse to subscribe his deposition, it shall be the duty of the commissioner named in said commission, at the request of the court issuing the same, to certify such failure to attend or refusal to testify or subscribe, or to produce books, papers or written instruments, to the Circuit Court for the county or to any judge of the Supreme Bench of Baltimore city, as the case may be, where said commission is to be executed; and the said court or judge, on receiving the said certificate, shall