

are called upon under a requisition of the parties; and the commissioner shall also be required to act as clerk, without extra compensation, unless a clerk is asked for by one of the parties contestant.

The execution of the commission by one of the commissioners, upheld under this section. *Purner v. Piercy*. 40 Md. 219.

See notes to sec. 264.

1904, art. 16, sec. 248. 1888, art. 16, sec. 230. 1860, art. 16, sec. 144.
1785, ch. 72, sec. 15. 1795, ch. 88, sec. 4. 1818, ch. 193, sec. 3.

266. With a view to the speedy execution and return of commissions to take testimony, the court, or any judge thereof, shall prescribe such rules as the nature of the case may require; each commissioner to take testimony shall be allowed four dollars *per diem* for every day he shall actually serve in the execution of such commission, to be paid by the parties, according to the time that such commissioner serves in taking the testimony of such parties respectively, and to be taxed as part of the costs of the suit; and the clerk to any commissioner to take testimony shall be allowed two dollars and fifty cents *per diem*, to be paid as the *per diem* to the commissioner is directed to be paid, and to be taxed as aforesaid.

The examiner must be present when the testimony is taken. Held that there was nothing to show that evidence was taken by the clerk out of the presence of an examiner. *Canton v. McGraw*. 67 Md. 589.

Cited but not construed in *Purner v. Piercy*. 40 Md. 219.

Ibid. sec. 249. 1888, art. 16, sec. 231. 1860, art. 16, sec. 145. 1785, ch. 72, sec. 16.

267. A witness attending an examiner or commissioner, under a summons by him issued, or at the request of either of the parties, shall be allowed seventy-five cents per day for every day's attendance, and itinerant charges, to be ascertained by the examiner or commissioner, which allowance shall be paid by the party summoning or requesting such witnesses to attend, and shall be taxed as part of the costs of suit.

The court has power to enforce the attendance of witnesses before a commissioner. *Deale v. Estep*. 3 Bl. 439.

As to the compensation of witnesses at law. see art. 35. sec. 11.

Ibid. sec. 250. 1888, art. 16, sec. 232. 1860, art. 16, sec. 146. 1824, ch. 133.

268. When any witness is summoned by an examiner or commissioner to take testimony in a chancery suit or proceeding, to appear before such examiner or commissioner to give testimony in such suit or proceeding, and such witness shall refuse or neglect to attend, or attending, shall refuse to answer such interrogatories as are propounded to him, in all such cases the examiner or commissioner, at the request of either party to such suit or proceeding, shall immediately certify such default or neglect, under his hand as such examiner or commissioner, to the clerk of the court where such suit or proceeding is pending, who, upon the receipt thereof, shall forthwith issue an attachment against the person named in such certificate, and the court may allow such process to compel such witness to attend and give evidence in open court in such suit or proceeding, at such term of the court thereafter