

Where a standing rule of the court requires a certain notice to be given of the taking of testimony, it is not competent for the court to decrease such notice by special order. *Quynn v. Carroll*, 22 Md. 294.

This section contemplates a case where both plaintiff and defendant are in existence and parties to the litigation upon the record at the time the notice is given by the commissioner and the depositions taken. Where the defendant is dead and no new party has been made, depositions are improperly taken and are not admissible in evidence. *Mitchell v. Mitchell*, 1 Gill, 83.

A voluntary affidavit or protest of the captain of a vessel, held not to be a deposition *de bene esse*. *Patterson v. Maryland Ins. Co.*, 3 H. & J. 74.

See notes to sections 24 and 29.

As to testimony *de bene esse* in equity, see art. 16, sec. 260.

1904, art. 35, sec. 22. 1888, art. 35, sec. 20. 1860, art. 37, sec. 19.
1828, ch. 165, sec. 2.

22. 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.

See notes to sec. 19.

Ibid. sec. 23. 1888, art. 35, sec. 21. 1860, art. 37, sec. 20.
1828, ch. 165, sec. 2.

23. 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.

Ibid. sec. 24. 1888, art. 35, sec. 22. 1860, art. 37, sec. 21. 1779, ch. 8,
sec. 2. 1828, ch. 165, sec. 3. 1832, ch. 111, sec. 2.

24. Any person may have the deposition of any witness who may have knowledge of any fact, in proving which such person may apprehend himself to be interested, taken before any of said commissioners upon ten days' notice to each party against whom such depositions shall be intended to be used, or to his agent, attorney or guardian if such party be a minor if within this State, and the court in which the same is offered in evidence shall be satisfied that such notice has been given before such deposition is permitted to be offered in evidence.

The act of 1779, ch. 8, held to relate only to witnesses who were residents of the state at the time when their depositions were taken, but who afterwards left the state or died before the trial. *Shane v. Clarke*, 3 H. & McH. 100.

As to notice of the taking of depositions, see notes to sections 19 and 21.

Ibid. sec. 25. 1888, art. 35, sec. 23. 1860, art. 37, sec. 22.
1832, ch. 111, sec. 1.

25. If any minor be interested in any depositions to be taken under the preceding section and has no guardian the court by whom the commissioners were appointed before whom it is proposed to take such depositions, or the judge thereof, upon application of the plaintiff, his agent, attorney or guardian shall appoint a guardian for the purpose.