

This section gives a new and additional mode of compelling the attendance of witnesses, in some respects not so clear or energetic as the old proceeding. *Winder v. Diefenderffer*, 2 Bl. 196. And see *Deale v. Estep*, 3 Bl. 436.

See art. 35, sec. 12.

An. Code, 1924, sec. 288. 1912, sec. 269. 1904, sec. 251. 1888, sec. 233. 1836, ch. 128, sec. 2.

300. In all cases where any of the defendants have appeared and an order to take testimony before an examiner has issued, and there are other defendants who are in default for not appearing or answering, and against whom an order to take testimony *ex parte* might issue, it shall not be necessary to pass such order, but the plaintiff may take all his testimony before the examiner, and such testimony shall be as available against the defendants who are in default, as if the same was taken under an *ex parte* order.

Under this section, a complainant has authority under the commission in chief, to take all necessary testimony as well against defaulting as other defendants, and the necessity of an *ex parte* commission is dispensed with. *Higgins v. Howitz*, 9 Gill, 344.

Proof taken under *ex parte* commission, cannot be read against defendants who answered original bill, though they fail to answer bill of revivor, and interlocutory decree is passed against them. *Kerr v. Martin*, 4 Md. Ch. 343.

Testimony taken under a commission issued by consent of certain of the defendants, cannot be read against other defendants. *Kipp v. Hanna*, 2 Bl. 26; *Clary v. Grimes*, 12 G. & J. 31. *Cf.* *Smith v. Baldwin*, 4 H. & J. 331.

See sec. 19.

An. Code, 1924, sec. 289. 1912, sec. 270. 1904, sec. 252. 1888, sec. 234. 1888, ch. 486.

301. The incorporation in this article of the rules prescribed by the court of appeals shall not deprive the said court of the power to rescind or modify any of said rules, or to pass additional rules, in their discretion.