

An ACT to establish a mode to perpetuate testimony.

Preamble.

WHEREAS it frequently happens, that material evidence is lost for want of an easy mode to perpetuate the same ;

Persons may take depositions before a judge, &c.

II. *Be it therefore enacted, by the general assembly of Maryland,* That it shall and may be lawful for any person or persons to take the deposition or depositions of any witness or witnesses, who may have knowledge of any fact, in proving which such person or persons may apprehend him, her or themselves, interested, before a judge of the general court or justice of the county where such witnesses respectively reside, first giving twenty days notice to the party or parties against whom such depositions are intended to be used, or, in case of absence or minority, to his, her, or their agent or attorney, if any, and in case of absence, if no agent or attorney, setting up a notice in writing at the court-house of the county where such deposition or depositions are intended to be taken, twenty days before such depositions are taken ; which deposition or depositions so taken, with proof of such notice, shall be lodged with the clerk of the county where the same are taken, to be recorded, and such clerk shall record the same, and receive for his service at the same rate per side as for recording any other matter.

Which may be read in evidence, &c.

III. *And be it further enacted, by the authority aforesaid,* That all such depositions, or a transcript thereof, under seal, whether taken before or after any suit or action commenced, may be read in evidence on any arbitration or trial at law or in equity, if such deponent or deponents die before such arbitration or trial, or cannot be had to attend the same, of which satisfactory proof shall be made.

Proviso.

IV. *Provided always,* That nothing in this act is meant or intended to extend to proving the boundaries of land, or in any manner to alter the law now in force for that purpose.

Proviso.

V. *Provided always,* That in case of minors who have no guardian or trustee, and in case of absentees who are residents of this state, and of all other absentees residents of other of the United States, or residing in foreign states in amity with the United States, where such absentees have no trustee, guardian, agent or attorney, the common and usual mode of perpetuating testimony shall be adopted, and no other, any thing herein contained to the contrary notwithstanding.

Proviso, in case of sickness, &c.

VI. *Provided also, and be it enacted,* That in all cases where testimony may be perpetuated by this act, and where it shall be made appear, to the satisfaction of the judge or justice, by affidavit of the party, that his witness or witnesses are sick and not likely to live, or may be about to march out of this state on the public service as a soldier or militia-man, it shall and may be lawful to take the deposition or depositions of such witness or witnesses, on giving such notice less than twenty days, as the judge or justice may think reasonable, all circumstances considered, so that the party interested, his guardian, trustee, agent, or attorney, may have convenient time to attend.

Judge, &c. to give a certificate, &c.

VII. *And be it enacted,* That the judge or justice shall and he is hereby required to give the party a certificate of having made affidavit, and of the number of days appointed for notice, which shall be lodged with the deposition or depositions, and an attested copy of such deposition or depositions, and of such certificate, shall be taken as good evidence of the truth of the facts therein contained.

Commission may issue to perpetuate testimony. &c.

VIII. *And, for regulating the chancery practice in the case of perpetuating testimony ; Be it enacted,* That commission shall and may issue to perpetuate testimony on bill for that purpose, before any appearance of the party defendant, to such four persons, in the usual manner, as the chancellor may approve ; and on return of said commission, if no good objection be made thereto, in twelve months from the time of such return, the chancellor shall and may order the same to be recorded in perpetual memory, any law or usage to the contrary notwithstanding.

IX. This