

under the seal of any such Judge to one or more Commissioners to take the examination of such persons, due notice being given to the adverse party to the end that he may cause such witness to be cross-examined.

How the Com-
missions shall
be returned
and their
effect.

V. In case of witnesses residing without the limits of Upper Canada, such Commission or Commissions, with the examination of the witness or witnesses taken pursuant thereto, shall be returned to the said Judge, with an affidavit of the due taking thereof thereto annexed, sworn before and certified by the Mayor or Chief Magistrate of the City or place where the same shall or may be taken, clos. under the hand and seal or hands and seals of one or more of such Commissioners, and shall be taken *prima facie* to have been duly executed and returned, and shall be received as evidence in the said cause; Provided always, that such examination or examinations shall not be read or given in evidence in the said cause, in case the deponent or deponents respectively shall be living within Upper Canada, and of sound mind, memory and understanding, at the time such examination or examinations shall be offered to be given in evidence, and provided it is made to appear to the Court before which such examination or examinations is or are put in, that the same has or have not been duly taken.

Proviso: Evi-
dence so taken
not to be used
in certain
cases.