

or loss; that the defendant is an infant; and that he "is a citizen of Ann Arundel County, but is at this time in the State of New York." Upon which they prayed, that the land might be sold to effect a division; and that a subpoena might issue against the defendant. The plaintiffs sued out a commission in the usual form directed to Benjamin Allen alone, of the State of New York, authorizing him to appoint a guardian, and to take the infant's answer by such guardian. Which he did, and returned the answer accordingly. The whole proceeding being in precisely the same form as if such a commission had gone to one commissioner only within the State, to obtain the answer of an infant defendant residing here.

BLAND, C., 18th April, 1829.—On advertig to the Act of Assembly in relation to this matter, 1797, ch. 114, s. 5, I deemed this proceeding erroneous: whereupon the plaintiffs on the 15th instant filed their petition praying for a commission to three persons therein named, and again submitted their case upon the notes of their solicitor, which with the proceedings were read and considered.

According to the English course of proceeding it would seem to be a general rule, that the defendant must appear in person and swear to his answer before one of the masters in Chancery. This * was greatly inconvenient to defendants who resided at any distance from the place where the Court was held. Hence at first as an indulgence and by a special order, but now and for a long time past, where a defendant resides more than twenty miles from London, or is unable to travel, it is a matter of course to issue a *dedimus potestatem* to take his answer. 1 Harr. Pra. Chan. 283; 1 Newl. Chan. 124. And the four commissioners, to whom the *dedimus* is directed, are named by the parties, and approved in like manner as commissioners for taking testimony; any three or two of whom are to take the answer. 1 Harr. Pra. Chan. 288. **551**

With regard to an infant defendant, however distant within the kingdom he may reside, he must be brought in; because the Court must see, from inspection and observation, that he is an infant, for whom it is necessary, that a guardian should be appointed by whom he may answer. But if the infant be abroad, or unable to attend, a commission must go to appoint a guardian and take his answer by such guardian. The *dedimus* or commission, in such case is similar; the four commissioners are appointed in the same way as, and it is executed in all respects like, that which goes to take the answer of an adult defendant who resides more than twenty miles from London. *Marlborough v. Marlborough*, 1 Dick. 74; *Jongsma v. Pfiel*, 9 Ves. 357; *Tappen v. Norman*, 11 Ves. 563.