been adduced to shew, that this legislative rule has become obsolete, or that another and equally efficacious parallel mode of proceeding had been in force, and is now in use. All the precedents, I have seen, of commissions for taking answers abroad, are those of adult defendants; in all of which the commission, as in England, was directed to four commissioners. I have been referred to no example of a commission to take the answer of an infant defendant who resided in a foreign country or any other State of our Union; nor have I met with any. But prior to and about the year 1797, it was the practice, as well in cases of infant defendants within, as of adult defendants out of the State, to send the commission to four or at least a plurality of commissioners; and hence the first legislative enactment, in relation to this matter, 1797, ch. 114, s. 5, cannot be regarded as in any sense leaving an old and parallel practice in full force; since it was the practice in all cases to send the commission to a plurality of commissioners. The cases that have arisen since the passage of that Act, can therefore only be regarded as evidence of a departure from the legislative rule, and not as proof of a co-existing parallel practice. There have been only four cases adduced as the shewing a departure from the directions of the Act; and all of them are cases of commissions directed to one commissioner only, in the District of Columbia, to take the answers of infants resident there. *Low* v. *Dawson*, *MS.* 20*th September*, 1818; *Burgess* v. *The Bank of Columbia*, *MS.* 13*th April*, 1820; *Law* v. *Law*, *MS.* 6*th December*, 1824; *Shaaf* v. *Taney*, *MS.* 10 *May*, 1826. All of those cases manifestly appear to have passed *sub silentio;* and, I can readily conceive how easily such a proceeding, which had become the established mode of obtaining an answer from an infant defendant within this State, should have been pursued as a correct way of getting an answer from an infant defendant residing in Washington County of the District of Columbia, which had formerly been a part of this *State. Such precedents are generally considered to be of the lowest class; but when adduced for the purpose of **558**

within eighteen months, and the first decree is of course not final. The reason of which might be, that there could be no certainty of the absent defendant having seen the publication. The Act of 1799 makes the first decree final, provided the subpœna is proved to be served. There is no doubt a considerable difficulty in making this service and proof, where the party is out of the State; but the complainant, in any case, has his choice of the two modes of proceeding. The difficulty of serving the subpœna is greater as to the infants. And the reason does not apply to them, for after such service, the eighteen months is still allowed to them. The Act of 1795 allows the publication, which by the fourth section of the Act of 1799 applied to the infant defendants in this case. The order may be considered as made under either Act, according as the subpœna might or might not be served, and the service might have been directed with that view.