

atee. But that the defendant Franciscus had caused himself to be appointed guardian, not only of the defendant Anna G. Bauers, but of the other four supposed infant persons; and had as guardian, retained the sum given to them, and refused to account for or to pay it over to this plaintiff Anna; and that a legacy had been also given to the defendant John H. Rathean.

This bill further stated, that the plaintiff Anna having been indebted before her marriage in the sum of \$636.32, to the plaintiffs Sumwalt and McFarren; after her marriage with the defendant Lewis Helms, and before their separation assigned their interest in her residuary legacy for so much as was necessary to secure the satisfaction of that debt with interest from the 12th August, 1819, and to the extent of which debt they now here claim as plaintiffs in this suit. Upon all which the bill prayed that the defendants Franciscus and Sadtler might be ordered to account with the plaintiffs; and that they might be ordered to pay to Sumwalt and McFarren the amount of their claim, and to the plaintiff Anna the remainder of the residuary legacy due to her, to be settled on her as the Court should direct; and for general relief, &c.

On the 25th of April, 1825, an order of publication was passed warning the absent defendants Lewis Helms, Anna G. Bauers, and Jacob Huber, to appear on or before the 15th day of August, 1825, and shew cause why a decree should not pass. The editor of the * newspaper in which the publication was made certified in the usual manner, that the order had been published **549** as directed; but none of the absent defendants appeared within the time appointed.

On the 14th of June, 1825, Philip B. Sadtler filed his separate answer, in which he admitted, that he was one of the executors of the late Carsten Newhaus: but alleged that the defendant Franciscus had, in all things, been the principally acting executor; that he had retained in his hands the legacies given to the five children of the testator's sister — Bauers, of Bremen; and that by virtue of the acts of Franciscus, and of their settlements with the Orphans' Court as executor and guardian, copies of which he exhibited, this defendant was discharged.

On the 27th of July, 1825, the defendant Franciscus put in his answer, in which he referred to and relied upon his answer to the original bill and said, that he could not admit, that Helms and wife had agreed to live separate; that he did not know to what amount she was indebted to Sumwalt and McFarren; that as guardian of the infants Carsten, John H. and Jacob Newhaus, he had retained the legacies given to them; and had also retained the legacies given to the five children of the testator's sister — Bauers, of Bremen, for whom he was guardian, and who, he understood did exist; that there was a piece of leasehold property