

yet unsold, and which he held as part of the assets of the testator; that he had no knowledge of any assignment of any interest in any property in Germany to his testator, but that he had received and held the proceeds of such property which belonged to his wards, the children of the late John Newhaus; and that he had accounted with the Orphans' Court for and paid a larger amount than had come to his possession of the late Carsten Newhaus' estate.

On the 31st of August, 1825, the defendant John H. Rathean, filed his answer, in which he admitted, that the legacy given to him had been paid; and that the testator's sister —— Bauers, of Bremen, never had but one child, Anna G. Bauers, as stated in the supplemental bill. The other allegations, he left the plaintiffs to substantiate by proof.

On the 5th of October, 1825, the defendants Muller and wife, filed their answer, in which they positively denied that she had ever made such assignment of her interest in the estate of her first husband, John Newhaus' estate, as was set forth by the plaintiffs; that her second husband was dead; and that these defendants * had been legally married; of the other allegations of **550** the plaintiffs, they knew nothing.

On the 10th of January, 1826, the infant defendants Carsten Newhaus, John H. Newhaus, and Jacob Newhaus, answered by their guardian *ad litem*, and admitted the will of the testator; that the executors had obtained letters testamentary; and that John Franciscus had been appointed their guardian; but as to all else, knowing nothing, they left the plaintiffs to sustain their case by proof.

By a writing filed on the 11th of April, 1826, it was agreed between the solicitors of the plaintiffs, and the solicitor of the defendant Franciscus, that a commission should issue to four persons named, of Baltimore, to take testimony; a commission was accordingly issued, testimony taken and returned; and no exceptions were taken to it. And on the 13th of July, 1826, it was, on the petition of the plaintiffs, ordered that a commission issue to the four persons named, to take testimony in Bremen, unless before the 27th instant, the defendants name, and strike commissions, which they having failed to do, a commission issued accordingly.

The plaintiffs, by their petition, stated, that Frederick A. Wandelohr, who had been made a plaintiff only, as the next friend of the plaintiff Anna, was a material and important witness for them; but being, as he then stood, interested in the event of the suit, and therefore incompetent; they prayed that he might be discharged; and that Charles F. Mayer should be allowed to take his place; the said Mayer having consented to do so, and to