

If an adult defendant reside abroad or beyond the jurisdiction of the court it has been the practice, where he himself wishes or is willing to answer, to issue a commission, on petition, for taking his answer to *four* commissioners. And the course of proceeding in such case appears to be substantially similar to the English mode of obtaining the answer of a defendant who resides abroad or at a greater distance than twenty miles from London.(g)

It would seem, that, according to the course of proceeding in the English Court of Chancery, there may be a material distinction between a guardian *ad litem* of an infant defendant, and a guardian having no other concern with the case than merely to answer the bill. The guardian *ad litem* must not only answer the bill, but is bound to inform himself of all circumstances, and to make as good a defence for his ward as the nature of his case will admit; while on the other hand, as it would seem, the duty of a guardian to answer only, extends no further than merely to the making and filing of an answer.(h) But however this may be in England, I have met with no clear unequivocal evidence of any such distinction ever having prevailed here.(i) In all cases in this court the guardian of an infant defendant, whether appointed by a special order, or under a commission, has always been considered and treated as a guardian *ad litem*, appointed for the purpose of answering and defending the suit, and whose duty it is not only to answer the bill, but to make the best defence he can according to the circumstances, for the benefit of his ward; and this appears to have been recognised as the duty of such a guardian by our acts

(g) *Hornby v. Pemberton*, Mosely, 57; *Prout v. Slater*, MS. 3d April, 1799, Chan Proc. lib. S. H. H. No. 7, fol. 25; Chan. Proc. 1761, lib. D. D. No. J. fol. 59.
(h) 1 Newl. Chan. 105, 138; 2 Newl. Chan. 152; 1 Harr. Pra. Chan. 708.

(i) *CHAPMAN v. BARNES*.—This was a creditor's bill filed against the heir and administrator of the late Richard Barnes to have his land sold for the payment of his debts. The bill stated, that Mary E. Barnes, the heir of Richard her father, was an infant, and prayed a *subpœna* against her as well as against the administrator; a *subpœna* was issued accordingly, and afterwards a commission was issued in the usual way to take the answer of the infant, under which her answer was returned and filed on the 24th of February 1814.

19th March, 1814.—*KILTY, Chancellor*.—A motion was made by counsel for the appointment of a guardian to defend for the infant Mary Elizabeth Barnes, according to the practice in England. The Chancellor is not apprised of its having been done in this State; but such a practice appearing to be equitable and probably necessary, it is hereby ordered, that John Barnes, of Charles county, be and he is hereby appointed guardian for the said Mary Elizabeth Barnes, to defend on her behalf the said suit.