

had not answered. Whereupon they prayed a *subpœna* against him; which was ordered accordingly.

The infant defendant *Andrew Hanna*, on the 3d of May, 1824, put in his answer by guardian *ad litem*, in which he stated, that he had been informed and believed, that his father had executed the conveyance as set forth in the bill; but he averred, that it was made for a valuable consideration, and at a time when he was solvent, &c.

Under the commission which had been issued upon the order of the 24th of April, 1823, the depositions of witnesses were taken, and several instruments had been authenticated, all of which were returned and filed on the 8th of June, 1824; and after the commission had remained on file the time required, the plaintiffs entered on the docket, a rule hearing next term; and the case was accordingly brought before the court.

18th March, 1825.—BLAND, *Chancellor*.—The counsel for the defendants insisted that the case was not in a situation to have been set down for hearing; and therefore, that the rule hearing was erroneously or improvidently entered upon the docket. And they also objected, that the defendant *Sarah*, the wife of *Alexander*, should not have been made to answer separately, but jointly with her husband; of that, however, the Chancellor deems it unnecessary now to say any thing. It is obvious, that the case is not now ready either for a reference to the auditor, or for a final hearing.

After which, the attention of the court was again called to the case, with a request to reconsider this matter.

28th April, 1825.—BLAND, *Chancellor*.—The Chancellor has again carefully looked over the papers, as requested by the plaintiffs' solicitor, and finds nothing to remove the objections taken to the manner in which the commission was issued under which the testimony has been taken. It appears that the defendant *Andrew Hanna*, could not have given his consent to the order of the 24th of April, 1823, either in person or by counsel; and therefore as to him, and as to all the other defendants, not represented by the solicitor who assented to the issuing of that commission, it could only have been issued in the regular mode of conducting adverse proceedings, which was not the case; and consequently, the testimony, as taken, can be of no avail against any but the three defendants, with the consent of whose solicitor it was taken, and the case is not in a situation to have the bill taken *pro confesso*, against