

dants had been legally married; of the other allegations of 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 become bound in all respects, as the next friend of the plaintiff *Anna*.

1st September, 1826.—BLAND, *Chancellor*.—It is clear that any one, so long as he stands before the court as the next friend of an infant or a *feme covert* plaintiff, being liable for costs, is therefore an interested and incompetent witness. (a) But where the object is not to favour the escape of such a next friend from any liability, arising from the suit's having been improperly instituted or conducted by him, he may be made a competent witness by being discharged, and having another put in his place; and the court will, on application, at any time before the final hearing, allow a

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(a) *Head v. Head*, 3 Atk. 547.