

States, or any territory thereof, or where application is made by the guardian or *prochein ami* of any non-resident infant to sell, lease, mortgage or exchange the real or personal property of such infants on the prayer or petition of the complainant or petitioner, a commission may be issued, without any previous process or notice, to any two persons, in the discretion of the judge of the court in which said suit is brought, who reside near such infants, authorizing them, or either of them, to appoint a guardian to answer for such infant or infants, and take the answer of such infants by their said guardian, and the said judge may prescribe the mode of authenticating the execution of such commission, and the answer of every infant so taken in any case, when returned to the court issuing the commission, shall be as effectual as if taken under a commission duly executed within the jurisdiction of such court; *provided*, that if in any such suit the party or parties Proviso. complainant shall allege, and prove by oath or affirmation, that the whereabouts of the infant defendants is unknown to him, her or them, and that he, she or they have made diligent inquiry to ascertain the same, (the said oath or affirmation, where there is more than one complainant, to be made by any one, any number, or all of such parties, in the discretion of the court,) or when a commission may have been issued, as herein provided, and the party or parties to whom such commission may have been issued, shall refuse or neglect to execute or return the same according to the exigency thereof, beyond a reasonable length of time, to be judged of by the court issuing such commission, then the said infant defendants, being non-residents, may be proceeded against by notice given, as provided for in the preceding section of this article, for other non-residents, but in no case shall a bill or petition be taken *pro confesso* against an absent infant defendant.

In force and approved March 28, 1868.