

**26.** In every suit in chancery, by bill or petition, where the defendants, or any of them, shall be infants residing out of this State, 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 infant, on the prayer or petition of the complainant or petitioner, a commission may be issued, without any previous process or notice, to any 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 executed within the jurisdiction of such court; *provided*, that if in any such suit the party or parties complainant shall allege and prove, by oath or affirmation, that the whereabouts of the infant defendant 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.

1878, c 322.  
How answer of  
non-resident  
infant defend-  
ant taken  
81 Md 476

Where where-  
abouts of infant  
defendant un-  
known.

Or where  
parties to whom  
commission  
issued fail to  
execute or re-  
turn the same  
within reason-  
able time.

**27.** In all cases in chancery, if any person *non compos mentis*, and not residing in this State, is a defendant, the court may order notice to be given to such non-resident, by publication in some newspaper, to appear and answer such bill or petition, and, upon the failure of such non-resident to appear and answer the bill or petition, such decree may be passed as the circumstances of the case may require; *provided*, no decree shall pass unless the allegations in the bill or petition are fully proved, under a commission to be issued for that purpose; the court, at the time of issuing the commission to take testimony, shall assign a solicitor for such non-resident defendant or defendants to cross-examine the witnesses, which solicitor shall be paid by the plaintiff, or out of the estate of the defendant, at the discretion of the court.

Art 16, s 90  
1795, c 88, s 1,  
1842, c 216, s 1  
Case to be  
proved against  
non-resident  
*non compos  
mentis*

**28.** Where a decree has passed for the specific execution of any contract or agreement for the sale or conveyance of real or personal estate, or any interest therein, against a non-resident defendant, without his having answered, such non-resident may file a bill of

Id s 91  
1778, c 7, s 4,  
1787, c 30, s 3,  
1792, c 41, s 5,  
1795, c 88, s 1,  
1799, c 79, s 4.  
Right to review