

State. Such precedents are generally considered to be of the lowest class ; but when adduced for the purpose of controlling or abrogating an act of Assembly, they cannot be allowed the weight of a feather.

The original act(*j*) speaks of an infant residing out of the State ; and the mode which it prescribes, for obtaining the answer of such an infant, is clearly one which may now be, and was formerly very commonly pursued for obtaining the answer of an infant within the State ; and therefore, whether the infant is considered as being at the time a nonresident, in every sense of that term, or not, is unimportant. It is sufficient, that he is then, when the answer is taken, in the state or country to which the commissioner is directed : for, if he has a guardian appointed by whom his answer is taken in the most formal manner, so as to warrant its being received whether he is considered as a resident within or out of the State ; then the answer, being in a form to suit either alternative, it becomes unnecessary to decide whether he was, at the time of its being taken, a mere sojourner abroad, or actually "residing out of the State," or not.

The case of *publication* against a nonresident, presents an entirely different question ; because the publication is to stand in the place of actual notice only in case the party be in truth a nonresident ; and therefore, if he does not, in fact, at the time, reside out of the State, such a substitute for the actual service of process cannot be resorted to, for the purpose of enabling the court to act upon the case ; and therefore, the decree will be void : since the *publication* against a nonresident can, in no way, be fashioned, like a commission to take the answer of an infant defendant, to suit both alternatives of a residence, or a non-residence ; and consequently, if the *publication* be not valid upon the ground of the actual nonresidence of the party, it is a nullity to all intents and purposes whatever.

Whereupon it is ordered, that a commission issue as prayed by the said petition of the plaintiffs filed on the 15th instant.

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A commission was issued and an answer returned accordingly ; after which, on the 8th May 1829, it was decreed that the real estate be sold, &c.