

1810.

Frutzzman
vs
Futsell

plainant and the defendants, arises under the act of *November 1773, ch. 7*, for the amendment of the law, being a petition for the reconveyance of land, which it appears was on the second of March 1797, decreed to be conveyed in a suit in which the present defendants were complainants, and the petitioner, then an infant, the defendant. The petition is not in form exactly according to the act, or to the proviso in the decree, and the decree itself is only incidentally mentioned, and is not made a part of the petition. But this defect is supplied by the answer in which the decree is referred to, and the petition may be considered as an application, to be permitted to show cause why the said conveyance ought not to have been ordered or directed. The chancellor is not apprised of any decision, or former suit, under this act, and he must therefore be left to form his own opinion as to the construction of it, on which the counsel very widely differ. His opinion is, that in order to show cause, the party who was an infant may, under this act, examine the proofs for the said decree, and resort to any error on the face of the decree, tending to show that the conveyance therein decreed ought not to have been ordered or directed, and therefore that the decree and proceedings therein cannot be pleaded in bar of the present relief prayed, as is contended by the plea put in with the answer of the defendants. Such a plea would entirely frustrate the intent and object of the act, and would be, as is expressed in the case of *Fountain vs. Caiac and Jeffs*, (1 P. Wms. 504), at the same time that the court gave him liberty to show cause, to tie up his hands from showing cause. In a case where such a plea was allowed, (*Gregory vs Molesworth, 3 Atkyns, 626,*) the bill had been brought by an infant, by his *prochein amy*, and of course the complainant could not have the benefit of a proviso similar to the one in the present decree; and in *Napier vs. Effingham*, (2 P. Wms. 401,) an infant complainant was allowed to show cause after he came of age.

The chancellor considers also, that the petitioner is not confined to the former proceedings only, but may, by further proceedings, show himself entitled to relief. This however is not a very material inquiry at present, as the parties have consented to the admission of the testimony exhibited in the first suit, and a commission has issued in this case.