

If upon this testimony the chancellor was satisfied that the contract of *Henry Pitesell*, the father, with his daughter *Elizabeth*, was sufficiently established to entitle her to a decree for a specific performance, it would be unnecessary to go into the inquiry as to the error of the decree against the petitioner, in order to determine whether such decree ought to have been directed. But his view of the result of the testimony being different, the inquiry, however unpleasant, must be made. Though it may be remarked, that his predecessor, if the present case had come before him, would have been bound to examine into his decree, and to determine accordingly, if any error was found in it, and so also in cases of bills of review.

On the established principles of equity, an infant cannot be bound by the answer of his guardian, if he shows his dissent to it within the proper time, although such answer will be evidence against him, if at such time he neither amends nor makes a new answer, which he may do. Lord *Hardwicke*, in the case of *Bennett vs. Lee*, (2 *Atk.* 531,) remarked, that the infant was justified in saying that his guardian had mistaken his case entirely, and that the court could not refuse his putting in a better answer, and making the best defence he could.

The petition in this case must be considered as tantamount to making a better answer than that of the guardian, and a better defence to the former suit; and if considered in opposition to the bill, without other evidence, will show, that if such had been the answer, the decree would not have been made, and without further evidence cannot be supported. If the petitioner (setting aside the present evidence,) is entitled to relief from the decree having been made on the answer, to which he now dissents, his claim will be strengthened by attending to the manner in which the answer was put in, independent of the interest, alleged to be proved under the commission, which the chancellor is willing to put out of the case, as to the guardian.

The bill filed in October 1796, charges that *Henry Pitesell* expressly, in consideration of the services rendered by *Elizabeth*, his daughter, (and so particularly alleged at the time by him,) and of his natural love and affection for her, and her son, did promise to, and contract with her, to make over and convey in fee simple a parcel of land as therein described, which by the said promise and contract

1810.

Prutzman
vs
Pitesell