

a very doubtful one on the evidence. The expressions of *Henry Pitesell* seem to be rather proofs of an intention, than of an agreement. The particular mode of conveyance intended or agreed is not shown by the evidence. The bill states, that the land was to be conveyed so as to secure a separate estate therein to *Elizabeth* for her life, with remainder in fee to her infant son; and the decree was for a conveyance to the son in trust, for the sole use of *Elizabeth* during her life, which, though substantially the same in effect, shows that the agreement relied on was not precise in its terms. The part performance of this parol agreement by giving possession, is not clearly established. The moving his daughter to the land in question, to reside on a part of it, and suffering her to receive the rents, might, from their relationship, have taken place without an agreement to convey; and the father appears, notwithstanding some of his declarations, to have exercised acts of ownership on the land, particularly from the evidence on the last commission; and the improvements relied on are not of a very valuable kind. And on these grounds the chancellor is not satisfied that there was such an agreement to convey as would have bound the father in his lifetime. The consideration of the services of *Elizabeth*, if material as to her, cannot extend to her son. There is also another circumstance against the right of the present defendants, under the decree in the former suit. The first bill^(a) stated, that *Henry Pitesell* promised to convey to *Elizabeth*, a parcel of land, being 100 acres of *The Resurvey on Smith's Hap*, which 100 acres were to run up to a road called *Weller's school road*. The second bill stated the land to have been resurveyed, and the part contracted for to have been, (as in the other bill,) in the tenancy of *Daniel Fry*, and to be accurately and particularly described in the courses and plot exhibited. This plot makes the

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(a) There had been a bill filed in the name of *Elizabeth Prutzman*, against the present petitioner, on the 10th of February 1791, the proceedings upon which were exhibited in the present case. The answer of the then guardian of the petitioner did not admit the contract as stated, and a commission issued, and testimony was taken. In November 1795, the then chancellor, by his order, considered that the contract had not been established by the testimony taken, and proposed that the complainant, with the consent of the guardian, should take further testimony before a single magistrate, if she had any, &c. But that if nothing further was done, the bill should be dismissed at the next term. Nothing further appears to have been done.