

1810.

Prutzman  
vs  
Pitesell

contents 166 acres, and it does not appear from what *data* the courses were run, or when or by what authority it was made, or wherefore the number of acres should have been more than 100 as at first claimed, and as proved to be the quantity intended, by the bulk of the testimony, and particularly by that of *Thomas Petty*, who says that *Henry Pitesell* intended the 100 acres to run up the branch to *John Weller's* school road, and he allowed that it would contain 100 acres, and if to said road did not contain 100 acres, then it should go over the road so as to include that number. The exhibit No. 1, could not be considered as evidence, except by the admission in the answer, which has already been remarked, and it is plain from the evidence of *Kuhn*, under the last commission, that he had no actual knowledge of the correctness of this survey. The opinion of the late chancellor upon the effect of the evidence, was given to the counsel in writing; and it may have been owing to that circumstance that they did not procure the testimony of the same, or other witnesses, and also to the opinion taken up and expressed in the submission, that no evidence was necessary. No reasons were assigned in the decree, and it may be presumed that this submission, and the agreement, formed the reasons; but as to the evidence, the reasons are expressed, and should have their due weight in deciding on the same evidence, or on evidence rather lessened than increased by the last commission, and it appears to be just to put the parties in their former situation. From these concurring objections to the decree, sufficient, as the chancellor conceives, to show cause why the said conveyance ought not to have been ordered or directed, the present petitioner is entitled to a decree of this court for a reconveyance of the land so conveyed, and for a full account of the rents and profits thereof. The hardship of the case as to *Elizabeth Prutzman*, or the demerit of the present application, are circumstances which the chancellor cannot suffer to influence his decision against the evidence, and the principles of equity applicable to the case. Such cases have frequently occurred, and the hardship to the persons intended to be benefitted by the ancestor, and the consequent benefit to the heir at law, were the result of the rules of inheritance formerly in force, but now altered by our act of descents. But as to the petitioner, he was entitled to the protec-