

which and the length of time that has elapsed since the death of the late plaintiff, I deem this a case in which it becomes necessary to depart from the general rule.

Whereupon it is, on motion of the defendant by his solicitor, ordered, that unless the said Luke Griffith, or some other legal representative of the said late Samuel G. Griffith, to whom the right belongs, shall come in before the end of the next term and cause this suit to be revived, the said injunction heretofore granted shall stand dissolved after that time.

Under this order the bill was on the 30th of September, 1829, dismissed; but being soon after reinstated by consent, Luke Griffith, the administrator, was admitted as plaintiff in place of his intestate, and Bronaugh, the defendant, filed his answer, to which the plaintiff put in a general replication, and a commission issued to take testimony, which having been returned without any having been taken, the case was set down for final hearing; and on the 18th of January it was decreed, that the injunction be perpetual.

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* SNOWDEN *v.* SNOWDEN.

CHANCERY PRACTICE.—INFANT DEFENDANTS.—STATUTORY CONSTRUCTION.

It is sufficient, that the answer of an adult defendant be sworn to before some Judge or Justice of the Peace within the State. (a)

It was formerly the practice to send the commission to four, but now it is sent to only one commissioner to appoint a guardian and take the answer of an infant defendant within the State. If a person appointed as such a guardian accepts the trust, he may be compelled to answer. But if the infant defendant be out of the State, the commission to appoint a guardian and take his answer must be sent to three persons. (b)

The express provisions of a constitutional Act of Assembly cannot become obsolete, and are of superior authority to any usage or adjudged case whatever. (c)

If a defendant be not in fact a non-resident, the order of publication against him is a nullity.

This bill was filed on the 28th of February, 1829, by Thomas Snowden, Jun'r, John Contee and Ann Louisa his wife, Albert Fairfax and Caroline E. his wife, Timothy P. Andrews and Emily R. his wife, against Richard N. Snowden. The bill states, that the plaintiffs were tenants in common with the defendant of a tract of land, which would not admit of partition without injury

(a) As to the form of the affidavit see *Coale v. Chase*, ante, 136.

(b) See Equity Rule, 9.

(c) See *Binney's Case*, 2 Bland, 99.