sons in the State where the infant resides, authorizing them or any two of them to appoint a guardian to answer and to return his answer.(u) In these particulars therefore the practice of the court has been established by positive legislative enactment. The course is prescribed in cases where it is said to have been doubtful whether or not there was any method of proceeding whereby the object might be attained. The mode thus pointed out, cannot be considered as an addition to any antecedent one, since it is expressly declared, that it was prescribed in order to remove all uncertainties upon the subject; and not for the purpose of introducing a new form of proceeding in addition to an existing one. It does not give a cumulative remedy, but unalterably settles and defines a previous ambiguous practice, so that the court might safely and readily exercise its then existing powers. Taking this view of the subject it clearly follows, that the court can have no authority to pursue a course of proceeding different from that which has been thus laid down by the legislature. Any practice established by the court itself may be altered for good reasons; or by usage such practice may, and in many instances has gradually glided into a new or different course; but the positive enactments of the General Assembly can never be disregarded.

By an English statute enacted in 1346,(v) it was declared, that the justices of gaol delivery should take an oath before the Chancellor, &c. yet no such oath is now taken, and the statute is considered as obsolete;(w) and by an act of Parliament, passed in 1416,(x) it was declared, that no one should sue out a *subpœna* in chancery until he had given security for costs in case he failed to sustain his bill. It is said, that this statute has in England by degrees grown out of use, and is now entirely vanished.(y) And against a statute passed in the year 1705,(z) a practice of no more than seven years was allowed to prevail.(a) A statute passed in 1413,(b) directed, that none should be elected members of parliament who were not at the time resident of the place from which they were returned. This is another instance wherein the principle of desuetude has been avowedly set up against an unrepealed legislative enactment.(c) And our own

(u) 1818, ch. 193, s. 11 & 12; 1831, ch. 311, s. 8.—(v) 20 Edw. 3, c. 3.—(w) Jurisd. Court Chan. 13.—(x) 15 Hen. 6, c. 4.—(y) 1 Harr. Pra. Chan. 200; 2 Com. Dig. 371.—(z) 4 & 5 Anne.—(a) Regina v. Ballivos de Bewdley, 1 P. Will. 223; Money v. Leach, 3 Burr. 1755.—(b) 1 Hen. 5, c. 1.—(c) 2 Hall. Mid. Ages, 156.