

construed as to confine them to those cases only where it is proper and necessary to sell the infant's estate for his maintenance and education; that the general terms, "for the interest and advantage of such infant," used in the first section, must be limited to mean, "for the maintenance and education of the said infant," as spoken of in the latter sections of them; 1816, ch. 154, s. 1, 6 and 8; 1818, ch. 133, s. 2, and consequently, in order * to authorize a sale of an infant's estate, under these laws, it must be stated **207** and shewn, that he has no other property; that he has no other means of obtaining a maintenance and education from his property, from a parent or otherwise; and that, under all circumstances, a sale of that, his only property, is indispensably necessary to place it in safety, and to secure to him, from it, a maintenance and education; and it is moreover my opinion, that all other and more latitudinous interpretations and applications of these laws, must be deemed unconstitutional and void.

These general and standing Acts of Assembly extending to the utmost verge, and in some respects beyond the constitutional competency of the General Assembly, have clothed this Court, unassociated with any other tribunal, with a large, entirely new, and exceedingly delicate discretionary power, as to the disposition of the real estates of infants. It is a power which can, in no case, be carried into effect, with the same degree of confidence as those which the Court exercises in controversies between litigating adults; for, in whatever manner a suit of this kind may be instituted, it is obvious, that the whole proceeding must be substantially, and in fact, conducted without the actual appearance, or any expression of opinion from the only person whose interest and advantage is alone to be considered. It is a sort of judicial proceeding which may easily be got up, and brought before the Court by persons actuated by motives entirely at variance with the interests of the infant; and which sinister motives cannot be so seasonably detected as to prevent the designed sacrifice of the infant's interests. For, according to the general practice, in all cases where an infant is made a defendant, the plaintiff, or petitioner, names the commissioner, and has the carriage of the commission for taking the infant's answer by guardian; and, in cases of this kind, the Chancellor having no means of obtaining information, but through the petitioner, is under a sort of necessity of accepting his nomination of three freeholders, to whom the commission of view and valuation is to be directed. There evidently, therefore, can be no security that a correct description of all the several component parts of the infant's real and personal estate has been given in the petition, or shewn in any way, (g) or that all the * material facts and circumstances of the case have been **208**

(g) It is stated in this petition, that these infants had "no other source of revenue than this farm;" whence it might be inferred, that they had no