

in the state, unless upon terms incompatible with the unrestricted enjoyment of the devise, the latter must fail.

Slaves manumitted since the act of 1831, ch. 281, cannot remain in this state in a condition of freedom, though the Orphans Courts may, in their discretion, give them annual permits to remain, as by said act is provided.

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[The principal question presented by this case, the facts of which will sufficiently appear in the opinion of the Chancellor, was, whether certain negroes, manumitted by will since the act of 1831, chap. 281, and consequently incapable of residing within the state, were entitled to a devise of certain real estate, made to them by the same will:]

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THE CHANCELLOR :

Without meaning to decide that a master may not, since the act of 1831, chap. 281, manumit his slaves by will, and, at the same time make to them an effectual devise of real estate, I am yet of opinion, that the devise in the will of Ignatius Semmes, upon which the question in this case arises, must fail.

The will was executed in April, 1843, and the testator died soon afterwards. By it he gives freedom to several of his slaves, to each of whom he bequeathed a pecuniary legacy of three hundred dollars, of which several of them have received the sum of two hundred and fifty-nine dollars and fifty-four cents, that being the dividend of the personal assets applicable to the purpose, and it is not understood that the claim of the unsatisfied legatees to that extent is controverted.

But, in addition to the bequest of freedom, and the pecuniary legacy, the will contains the following clause: "I will and devise, that my executor shall cause to be erected on some part of my farm, called Rose Hill, (the place to be selected by the above manumitted negroes,) a good substantial dwelling house, with one brick chimney, which house, together with two acres of land adjoining thereto, I give and devise to the above manumitted negroes and their heirs forever."

Now, it seems to me, that the testator intended by this devise, to provide the negroes in question, with a habitation to live in, and, as this intent comes in conflict with the policy of