

the legislature, which forbids persons in their situation from remaining in the state, unless upon terms incompatible with the unrestricted enjoyment of the devise, the latter must fail.

Looking to the 3d, 4th and 5th sections of the act of 1831, chap. 281, it is manifest, that no slave manumitted since its passage can remain in this state in a condition of freedom. It is true, that the orphans courts may or may not grant slaves so manumitted annual permits to remain, but the privilege of doing so depends upon the discretion of the court, and if withheld, they are liable to be expelled at any time.

The duty of the courts to give effect to devises, if it can be done, is conceded, but the law *quæ nihil frustra* will confer no privilege or right upon a party which he cannot enjoy, and for that reason, will never cast the freehold upon an alien heir who cannot keep it. 2 *Kent's Com.*, 53.

Being satisfied from the terms of this devise, that it was the intention of the testator to provide for these negroes a permanent home, and not to confer upon them a title, of which they could only get the benefit by selling, and as that intention must yield to the legal policy of the state, as declared by the legislature, I should, if no other reason existed, feel bound to declare the devise void.

But there is another reason. It appears that the personal assets are insufficient to pay debts and the pecuniary legacies; and that, consequently, the latter receive dividends only. How then is the house to be erected? Not, certainly, by having recourse to the real estate in the hands of the devisees, for they are equally objects of the bounty of the testator; and there is nothing in the will to show any such intention. *Stevens vs. Gregg*, 10 *Gill & Johnson*, 143. The executor is charged with the duty of erecting the house, which of course was to be done out of the personal assets, and they being deficient, the duty must necessarily remain unperformed, and as the two acres of land were to adjoin the house, that portion of the devise must fail also, there being no house to adjoin.

A decree will be signed for the payment of the pecuniary