

contract of 1849, has been removed by the filing of the original contract, which shows, that the "Kittery contract," as it is called, had been purchased,—the expenses connected with that purchase being expressly provided for.

Upon the best reflection I can give the subject, I am of opinion, that the injunction must be dissolved. To continue it, would unavoidably involve the necessity of putting in a Receiver. And it appears to me, that there is no principle applicable to this extraordinary exercise of the power of the court, which would justify such a course.

BUCHANAN & M'LAUGHLIN for plaintiff.

HORWITZ for defendant.

CHARLES MEWSHAW ET AL, }
 vs. } SEPT. TERM, 1849.
 WILLIAM MEWSHAW ET AL. }

[ACTS OF 1785, CHAP. 72, SEC. 12, and 1831, CHAP. 311, SEC. 7—ALLEGATION—DEMURRER—DESCRIPTION OF LAND.]

BILL for a sale of lands held in common by Plaintiffs and Defendants. Demurrer on the ground that the bill was for a partition under the Act to direct descents—or was addressed to the general power of court to make partition,—and that the bill was not in proper form under the Act of Descents, and was otherwise defective. Also, that the name of the land to be sold was not given. HELD, that—

It is a proceeding under the Act of 1831, chap. 311, sec. 7. By the Act of 1785, chap. 72, sec. 12, the court is empowered to sell lands in which infants are interested. That provision is extended by the Act of 1831 to cases where the parties are of full age. To give the court jurisdiction under these Acts, the bill should allege that a sale would be for the advantage of the parties,—and the allegation must be established by admission, if the parties are of age, or by evidence, if not of age,—and if so established, the court has power to decree a sale.

Though parties have a right to resort to demurrer, this mode of defence is viewed with suspicion and disfavour. The claim of the plaintiff must be stated with clearness. But if the case is so stated as to apprise the opposite party of the claim, he would not be permitted to object on the ground of uncertainty, though every particular circumstance is not stated. General certainty is sufficient.