

## THE CHANCELLOR :

This case is now brought before the Court, upon the demurrer of William Mewshaw, one of the defendants to the bill, and counsel have been heard in support of and in opposition to the demurrer.

It has been assumed by the defendant, and has been so treated in the argument, as a bill for a partition under the act to direct descents, or as addressing itself to the general power of this court to make partition of estates ; and the objection urged is, that the bill, viewed in either of these aspects, does not conform to the provisions of the Act, and is defective for the reasons stated by the Court of Appeals, in the case of *Chaney & Wife vs Tipton et al*, 11, *G. & J.*, 283.

But this does not appear to me to be a bill for a partition. It is a proceeding founded upon, and authorized by the 7th section of the Act of 1831, Ch. 311, which extends the provisions of the 12th section of the Act of 1782, chap. 72, to parties of full age who have an interest or estate jointly, or in common, or otherwise, concurrently, or in or out of any lands, tenements or hereditaments.

By the 12th section of the Act of 1785, chap. 72, this court is empowered to decree a sale of lands, tenements or hereditaments, in which an infant, &c. has a joint interest, or interest in common, with any other person or persons, upon its appearing that it would be for the interest and advantage of all the parties that a sale should be made ; and frequent decrees of such a character have been passed. The provisions of this section being, by the Act of 1831, extended to cases in which the parties entitled to the land are of full age, it follows, that if the court shall be satisfied that the interests of all parties will be promoted by a sale, that a decree for that purpose may pass.

It is indispensable, however, to give the court jurisdiction under these Acts of Assembly, that the bill should allege that it will be for the interest and advantage of the parties that the lands shall be sold,—*Tomlinson et al vs M'Kaig et al*, 5 *Gill*, 256 ; and of course, it is equally indispensable to the passing of a decree, that the allegation shall be established by the admissions of the parties, if they are capable of binding