

themselves by admissions, or by evidence, if they are incapable of doing so, from minority or other cause.

In this case, the bill does allege that the real estate is not susceptible of partition, and that it will be for the interest and advantage both of the defendants and complainants to sell the same, and divide the proceeds thereof between the parties, in proportion to their respective interests.

This allegation is clearly sufficient to give the court jurisdiction. In the case of *Tomlinson vs M'Kaig*, 5 Gill, the Court of Appeals say the bill could not be sustained, as founded on the Act of 1785, chap. 72, because of the absence of this very allegation ; and the case was remanded to the county court for such proceedings as are there indicated.

In this bill, however, the necessary averment is made, and if it be established by the answers, or by evidence, the power of the court to decree a sale is unquestionable.

This fact is admitted by the demurrer, as are all other facts which are relevant and well pleaded. *Strong's Eq. Pl.*, sec. 452.

The demurrer, then, admits that the land is held by the plaintiffs jointly, or in common with the defendants, and that it will be for the interest and advantage of all of them that it be sold, and the proceeds divided between them, in proportion to their respective interests.

Now, if this be true, and for the purpose of this argument, it is admitted to be true, the case appears to be within the provisions of the Acts of Assembly referred to, and the authority of the court to decree a sale is clear.

Though parties in certain cases have the right to resort to demurrer, and there may be cases in which it is quite proper to do so, it is very certain, that this mode of defence is viewed with suspicion and disfavor, as indicative of an unwillingness fairly to meet the plaintiff's case. *Story's Eq. Pl.*, sec. 454, note 4.

In the case now under consideration, the bill alleges that this defendant, William Mewshaw, has been in possession of the property in question since the year 1834, receiving the profits thereof to his own use, refusing to surrender possession,