

confirmation. The Auditor reports that none of the witnesses speak of the health of Richard Gambрил as of the day of sale, the period to which the proof should be directed; and no proof has been taken in reference to the health of his wife, to whom an allowance is made for the value of her contingent life interest. Now, inasmuch as the amount of each of these allowances depends upon the age and state of health of the parties at the time of the sale, the case must go back to the Auditor, that the necessary evidence may be supplied.

R. J. BRENT, for the Exceptants.

A. H. GAMBRIЛ, for the other parties.

AUGUSTA HITCH
 vs.
 JACOB G. DAVIS, AND OTHERS.

} MARCH TERM, 1858.

[POWER OF THE COURT TO DECREE DEVISES UNDER ACT OF 1831, CH. 811.]

It is not necessary that the party who applies to this Court to order a demise under the 5th section of the Act of 1831, ch. 811, should be the tenant in possession: the tenant of any particular estate, of full age, whether in possession or not, may apply under that section.

But the Court is not at liberty to order a demise under that act, unless it is made to appear affirmatively that the interest and advantage of all parties would be promoted by it.

A testator devised land, *in trust*, for his daughter for life, remainder to his granddaughter, the complainant, for life, remainder to the lawful issue of such granddaughter, in fee, if any such be living at the time of her death; but if none, then remainder to his daughter, M. D., for life, remainder in fee to her son, S. B. D. Upon a bill by the complainant, under the Act of 1831, ch. 811, to have the land leased, it appearing by the proof that those who might be ultimately entitled in remainder would be injured by such lease, the bill was dismissed.

[Solomon Betts devised by his will his country-place, containing about fifty acres, situated within the limits of the city