the proceedings in this cause, the said testatrix devised the remainder of her estate including her estate in the land proposed to be demised as aforesaid or in so much thereof as she had title to, to the said Daniel J. Foley for the use and benefit of her son Charles Carroll MacTavish during his life without impeachment of waste, and from and immediately after his decease then for the use and benefit of all and every the children and child of the said Charles Carroll MacTavish and their descendants (to take per stirpes) who should be living at his death, their heirs, executors, administrators and assigns forever, the shares of such children and descendants who shall be females being devised to their sole and separate use; that the said Charles Carroll MacTavish survived his mother but died in or about the month of March 1868, leaving him surviving four children all of whom are now over the age of twenty one years namely Mary MacTavish Emily MacTavish, Charles C. MacTavish and Virginia MacTavish, and no other descendants; and that three of the said children, namely, Mary, Emily and Charles had attained said age of twenty one years, before the filing of the bill of complaint in this cause, and that inasmuch as upon the death of the said Charles Carroll MacTavish the fee of the said land vested by force of the will of the said Emily MacTavish the elder, in his said son Charles C. MacTavish and his three daughters aforesaid none of whom are married; the continuance thereafter, and more especially after the said children or any of them had attained the age of twenty one years, of a leasing power such as is claimed on the part of the said Daniel J. Foley, the complainant, over the same land, cannot be considered as existing consistently with the rules of law and the nature of the estate so devised to the said Children of

Charles Carroll MacTavish deceased.

And your petitioners further show that by the terms of the power of leasing given in the last will of Emily MacTavish deceased, even if it were capable of operating after the death of Charles Carroll MacTavish aforesaid and after his children had severally attained the age of twenty one years upon land devised to them in fee, the complainant at the time of filing his bill was not entitled to the relief therein prayed, and is not now entitled thereto, for the further reason that as provided in the will of the said testatrix and the first codicil thereto, the exercise of the said power was made subject to the condition of the obtention of the approbation to such leasing of the Orphans Court of Baltimore City; and at the time of the filing of the said bill of complaint in such approbation had been obtained, and so far as appears such approbation has not even yet been obtained.

And your petitioners further show that none of the matters of defence and points above set forth, and particularly the defect of title and want of power of the said complainant to make the said contemplated lease, have heretofore been brought to the notice of, or judiciously passed upon in any manner by the Court of Appeals now decided by said Court, as by reference to the proceedings and the opinion and decree of the said Court of Appeals in the premises will fully appear.

Wherefore and also for other grounds and reasons disclosed in the said former petition of your petitioners filed conjointly with the said Supplem and not heretofore considered passed upon or decided by the Court of Appeals, and because the said children of said Charles Carroll MacTavish are not parties to this cause and the said