

Eager Howard, the son of my deceased son John, and James Howard McHenry, the son of my daughter Juliana McHenry, now deceased, one share each to them and their heirs for ever; subject, nevertheless, as to the two last mentioned devises, to the following conditions, viz. that if either of my said grandchildren John Eager Howard, or James Howard McHenry, should die before arriving at the age of twenty-one years, then the share of such grandchild so dying is to go and revert to such of my children and grandchildren as may be alive at the death of such grandchild, in equal parts to them and their heirs for ever."

"In cases where I may have given bonds of conveyance for real property which I may have sold or contracted to sell, it is my will and desire, that my executors should be, and they hereby are fully authorized to execute all necessary deeds to complete said contracts."

BLAND, C., 17th November, 1827.—It would seem, that the devisees of the residuum of the testator's real estate take in the manner and upon the terms specified, as tenants in common. The direction, that the Chancellor shall appoint the persons to make the division among them, amounts to no more than saying what the law had already said, that a partition of the estate so devised might be obtained by a bill in Chancery. All concerned must be brought before the Court, or have an opportunity of being heard; from which a majority of them would be precluded by the *ex parte* procedure proposed by this petition.

It may be inferred from this petition, that the parties concerned are anxious to have the estate of the deceased finally settled, and divided in the manner he has directed by his will. If so, a bill embracing the whole subject, and asking a petition, is the surest, cheapest, and most expeditious mode of proceeding that can be adopted. The defendants may answer at once, without waiting to be summoned; an account may be taken if called for; and a commission may issue, in the usual form, to divide the residue of \* the real estate with as little delay as the nature of the case may require. This petition is entirely irregular and unsuited **368** to what appears to be the object in view. Whereupon it is ordered, that the petition be and the same is hereby dismissed with costs.

Afterwards, on the 2d of January, 1828, George Howard, Benjamin C. Howard, William Howard, James Howard, Charles Howard, and James Howard McHenry by his guardian and next friend Charles Howard, filed their bill against William George Read and Sophia his wife, and John Eager Howard, an infant, stating that the parties were the devisees of the real estate of the late John Eager Howard, as specified in his will. Whereupon the plaintiffs prayed that a partition thereof might be made among them.