

## HUGHES' CASE.

The form and mode of proceeding in Chancery, according to the act of Assembly, to obtain a division of an intestate's real estate among his heirs, where the lands lie in different counties.

Where an act of Assembly authorizes an object to be attained, and the prescribed course of attaining it is deficient, that of the forum resorted to may be pursued for the purpose of supplying such deficiency. If the deficiency cannot be so supplied, with propriety and effect, then the court applied to can have no jurisdiction; and if it cannot be supplied by any other court, then the act of Assembly must be treated as a nullity, because of there being no tribunal competent to execute it.

*George A. Hughes and Christopher Hughes*, by their petition, filed on the 11th of April, 1825, stated, that their father had died intestate, seized of lands lying in Baltimore and Anne Arundel counties, which had descended to the petitioners and his other children, who could not agree upon a division thereof; and that the intestate had left a widow. Whereupon they prayed, that commissioners might be appointed to make partition of the estate, &c.

11th April, 1825.—BLAND, *Chancellor*.—This is a petition founded on the act to direct descents,<sup>(a)</sup> which declares, that where the lands or estate lie in different counties the partition may be made in the mode, therein prescribed, by this court. It is the first case of the kind that has been instituted here.

It may be observed in general, that where an act of the General Assembly directs any thing to be done, the legislature either provides the means to be pursued to effect the object, or it is partially, or wholly silent as to the manner of proceeding. In the first case, the mode provided must necessarily be pursued; but, in the latter, the legislature acts in part, or altogether upon the supposition, that the enactment is, so far as it goes, or entirely, complete in itself; and, that the rules of the courts of common law, or of equity are sufficient to assure to the citizen any right which he may derive from it. If the prescribed means be such as can only be executed at common law, or in equity, then the one, or the other of those tribunals, must be clothed with exclusive jurisdiction accordingly; or the enactment may be such as to allow them to have concurrent jurisdiction. But, if its nature be such, that the prescribed mode can be executed by neither; or the right given be such, that, according to their several limited and settled modes of proceeding, neither of them can grant proper redress, they cannot, in any way, supply the deficiency. Because,

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(a) 1820 ch. 191, s. 13.