make partition as coparceners; see Campbell v. Lowe, 9 Md. 500.[1] But the technical distinction between tenants in common and parceners is still recognized in Maryland, Gilpin v. Hollingsworth, 3 Md. 190;[2] the heirs of an intestate are treated as parceners, and there is, under our laws to direct descents, a different course of proceeding in partitions between them from that which obtains amongst tenants in common generally. These statutes are construed to include several instances where the party was not entitled at common law to a partition, though holding with parceners. Thus they apply to the case of the alienee of a parcener, (who was held at common law to be not entitled to the writ, because he took only an undivided share, though the writ lay against him,) for he is a tenant in common; and the latter Statute to the case of a tenant by the curtesy, who is neither joint tenant nor tenant in common, but yet, being in equal mischief with *those to whom the Statute gives remedy, is considered within its equity, Co. Litt. 175 a. b. **313**

Present practice.—An instance of a writ of partition at law will be found in Lloyd v. Gordon, 2 H. & McH. 254. But the remedy at law both in England and here has long fallen into disuse, a suit in equity being a much easier and more satisfactory proceeding, except under the Acts to direct descents, when proceedings may be and often are had *ex-parte* on the law side of the Court. In Corse v. Polk, 1 Bl. 233 *n.* Chancellor Kilty referred to the provisions of the common law regarding partitions and exercised by the Court of Chancery as recognized by the Act of 1794, ch. 60. And in Phelps v. Stewart, 17 Md. 231, the Court observed that under the Acts to direct descents, however the practice originated, the jurisdiction of the Court of Chancery and of the county Courts as Courts of equity in cases of partition, where the land is situate in one county only, (jurisdiction being given to the Court of Chancery, where the land lay in two counties, by the Act of 1820, ch. 191,[3] see Hughes' case, 1 Bl. 46,) was too well established to be disturbed. The proceedings may be by *ex-parte* petition or by bill and answer, but in both instances they must conform to the requirements of the descent laws, though the Court may appoint a trustee to make the sale if it becomes necessary. In cases of

[1] Partition under these Statutes was an absolute matter of right and the court was bound to decree it without regard to whether it was beneficial or injurious to the parties. It had no power to decree a sale and distribution of the proceeds. It was to remedy this that our statutes provided for a sale, if a partition could not be made without loss or injury to the parties. But this is the only modification of the old doctrine and partition is still a matter of right unless it be proved that a partition in kind cannot be had without such loss and injury. Thruston v. Minke, 32 Md. 571; Wilson v. Green, 63 Md. 547; Brendel v. Klopp, 69 Md. 1; Dugan v. Baltimore, 70 Md. 1; Roche v. Waters, 72 Md. 271; Johnson v. Hoover, 75 Md. 486; Rowe v. Gillelan, 112 Md. 108; Willard v. Willard, 145 U. S. 116.

[2] Thomas v. Farmers Bank, 32 Md. 57; Venable's Real Property, 91.

[3] But under the Code of 1860 jurisdiction in such case is given to the court of that county where the greater part of the land lies. Code 1911, Art. 46, sec. 32.