the Code may deprive the heirs at law of their rights under the Acts to direct descents. It is said that the right of election [13] under these Acts does not arise till the Commissioners determine that the estate cannot be divided without loss or injury to all the parties, Wilhelm v. Wilhelm *supra;* but in Chaney v. Tipton *supra,* the Court of Appeals expressly decided that it vested at the death of the intestate.

Act to direct descents.—As to proceedings in the County Courts under the Acts to direct descents,[14] it is held that the jurisdiction of equity is not ousted where a complainant has equitable rights, or needs a bill of discovery, even by partition made, and a partition or a sale may be set aside if the requirements of those Acts are not complied with, Hardy v. Summers, 10 G. & J. 314; and see Chaney v. Tipton; Tomlinson v. McKaig *supra;* Roser v. Slade, 3 Md. Ch. Dec. 91. As to advancements which an heir may bring into hotchpot, see Warfield v. Warfield, 5 H. & J. 459; Stewart v. the State, 2 H. & G. 114; Clarke v. Wilson, 27 Md. 693; Alexander Ch. Pr. 171.[15] And it may also further be remarked, that a Court of equity is the proper forum for relief against an alleged advancement of real estate, and therefore the Orphans Court has no authority to abate

---

[13] **Election.**—Code 1911, Art. 46, secs. 41, 43-51. Election is but one of the modes of partition provided by law, where the estate is not susceptible of being divided into as many parts as there are persons interested. Where the estate is susceptible of division into as many parts as there are heirs, no right of election exists; in that event the partition is made by allotment of the Commissioners. It is a purely statutory right, belonging only to the eldest heir and, if he refuses, to the next eldest and so on down to the youngest being of age. It is confined to cases of inheritance. It is regarded as intrinsically valuable and may be passed to a grantee. If an elector dies intestate before his election is consummated, his inchoate title descends to his heir at law by whom the election may be perfected. Jenkins v. Simms, 45 Md. 532; Johnson v. Hoover, 75 Md. 486. It was formerly held that the right of election was not confined to the right of choice between parcels but was a right to take the whole estate, if indivisible among the heirs; and to take all or any number of parcels, if divided into parcels less than the number of heirs. Catlin v. Catlin, 60 Md. 573. Cf. Shreve v. Shreve, 43 Md. 391. But this has been changed by the Act of 1884, ch. 50, (sec. 41 *supra*), in cases where the estate is divisible into parts less than the number of heirs without loss or injury.

[14] Code 1911, Art. 46, secs. 32-42. These proceedings may be either at law or in equity. Jenkins v. Simms, 45 Md. 536; Miller's Equity, sec. 437. But see Johnson v. Hoover, 75 Md. 489.

[15] Code 1911, Art. 46, sec. 31; Art. 93, sec. 125; Pole v. Simmons, 45 Md. 246; Graves v. Spedden, 46 Md. 527; Harley v. Harley, 57 Md. 340; Manning v. Thruston, 59 Md. 218; Moale v. Cutting, 59 Md. 510; Dilley v. Love, 61 Md. 603; Love v. Dilley, 64 Md. 238; Wallace v. Du Bois, 65 Md. 153; Franke v. Auerbach, 72 Md. 580; Albert v. Albert, 74 Md. 526; Safe Dep. Co. v. Baker, 91 Md. 297; Baker v. Safe Dep. Co., 93 Md. 368; Baker v. Baker, 94 Md. 627; Justis v. Justis, 99 Md. 69; McCabe v. Brosenne, 107 Md. 490.