

a sum of money advanced by a father to a son to purchase real estate, which was purchased accordingly, from the latter's distributive share of his father's personal estate, *Hayden v. Burch*, 9 Gill, 79, and cases there cited.

If a portion only of the property be incapable of division it may be sold, *Winder v. Diffenderfer*, 2 Bl. 166. And a complainant is entitled to a partition or sale, according to the evidence, if he prove his title as tenant in common. Therefore in *Campbell v. Lowe supra*, where the bill averred that the land was incapable of division, that the defendant refused to divide or to unite in a sale, and that it would be for the interest and advantage of the parties to have it sold, and prayed for a sale and *general relief*, and the complainant proved his title as tenant in common but did not prove that a sale would be advantageous, the Court held that the cause must be remanded under the Act of 1832, ch. 308, sec. 6,¹⁶ for further proceedings or proof, the inconsistent averments of the bill not affecting the right to relief under the general prayer, and see *Tomlinson v. McKaig supra*; *Watson v. Goodwin*, 4 Md. Ch. Dec. 25; *Earle v. Turton*, 26 Md. 23.

Those parts of the Statute of 8 & 9 W. 3, c. 31, relating to the sheriffs are not in force here. The sheriff therefore must discharge his duty in person, though, after a return that he was there in person received and filed, no averment will be received to the contrary, *Clay's case*, Cro. Eliz. 10. The form directed by the Statute applies only to cases where the defendant does not appear; *Dyer v. Bullock*, 1 B. & P. 344. For the proceedings on the default of the tenant, see *Halton v. Earl of Thanet*, 2 W. Black. 1134, 1159.

Partition of personal property.—Partition of personal property can, in general, only be obtained in a Court of equity, and if it cannot be made in kind the Court may order a sale and divide the proceeds, *Crapster v. Griffith*, 2 Bl. 1. An exception exists where partition is decreed of a surplus of the personal estate of an intestate in the hands of an administrator, when ordinarily a Court of equity will not interfere with the jurisdiction of the Orphans Courts, and it is held that the lunacy of one of the parties is not such a special circumstance as to justify the action of a Court of Chancery, *Hewitt's case*, 3 Bl. 184; *Williams v. Holmes*, 9 Md. 281.

To *dereign* used in the last section means to *prove*. "Perhaps the word *dereign*, and the word *dereignment* derived from it, may be used in the sense of *to prove* and *a proving*, by disproving of what is asserted in opposition to truth and fact," *Jacob Law Dict. hoc verb.*

¹⁶ Code 1911, Art. 5, sec. 38.