

A writ of *habere facias possessionem* was accordingly issued and a return made upon it by the sheriff, that Mr. Wills, as agent of Campbell & Ritchie, had been put in possession.

HOWARD'S CASE.

PARTITION.

A direction by a testator in his will, that his estate shall be valued and divided among his devisees by persons to be appointed by the Chancellor, amounts to no more than saying, that a partition may be obtained by bill in Chancery: it cannot authorize a judicial proceeding *ex parte* by any of the devisees. (a)

The recommendations of the parties and their solicitors may be heard as to the persons most suitable to be appointed commissioners to make partition of the estate.

George Howard and Benjamin C. Howard, the sons and executors of John Eager Howard, deceased, by their petition, filed on the 16th of November, 1827, stated, that their father had, by his last will, made on the 9th of October, 1827, devised his real estate to be divided among his descendants, as therein set forth; that they had made some progress in the payment of the debts of the deceased; and that although they had not fully satisfied all his creditors, yet as from the great difficulty in making a division of a large estate, situated as was that of the deceased, much delay must arise, they had deemed it advisable to apply, at once, for the appointment of commissioners, who might commence, immediately to make the necessary preparatory examinations, &c. Whereupon they prayed, that commissioners might be appointed, &c.

So much of the will of the late John Eager Howard as is material to this case, is in these words: "It is my will and desire, that all my real estate which may remain after the payment of my debts, should be valued by persons to be appointed by the Chancellor of the State of Maryland; in which valuation shall be included all the real estate which I may at any time heretofore have conveyed to any of my children; rating the same at its present value, and
367 *deducting therefrom the value of the improvements which have been made upon said property during its possession by my said children, or the possession of any other person under them; and that upon such valuation, the whole shall be divided by the persons to be named as aforesaid, into eight equal shares or parts, whereof each of my children, viz. George, Benjamin C., William, James, Sophia now Sophia Read, and Charles, is to have one part, to them and their heirs for ever; and my grandchildren, John

(a) Cited in *Phelps v. Stewart*, 17 Md. 240.