

even upon English authority, a court of justice cannot be permitted in any case to legislate; (a) and because, by the constitution of our Republic, (b) the three departments having been directed to be kept for ever separate, the judiciary has been expressly excluded from every species of legislation; and is precluded from supplying any omissions of the legislature, however obvious or necessary it may be for attaining the object in view. Hence, it clearly follows, that in all cases of this kind, even where the courts of common law and of equity have concurrent jurisdiction; the law and course of proceeding of the forum resorted to must be pursued. (c)

The act to direct descents gives to the several heirs of an intestate a right to have a partition of his estate made among them; and has, in part, prescribed the manner in which such partition may be obtained; and, consequently, so far this court must act according to the prescribed mode; but, in all other respects, it must be governed by its own established course of proceeding in so far as it can be modified, and adapted to the positive enactments of the legislature.

In all cases of this kind, as has been done in this instance, it is indispensably necessary, that the petition should state, with sufficient perspicuity, where or in what counties the lands, or estate of the intestate lie; the name of his widow, if she be then living; and the names and description of his heirs, whether adult or infant; and where resident, in or out of the State; to the end, that, if they be inhabitants of the State, notice may be given to them; or if not, that they may be warned by publication as allowed by the 50th section of the act. The commission awarded must, in all cases, exactly recite the petition for the government of the commissioners in their proceedings; and the court will expect, in every case, that the petitioner should, as in this instance, nominate to it some suitable, disinterested, and respectable persons as commissioners. The form of the commission to be issued in this, and all similar cases, shall be as follows.

*"The State of Maryland,*

*"To Joseph Townshend, Henry Stouffer, James Mosher, George Decker, and John Hillen, of Baltimore County, Greeting:*

*"Whereas George Augustus Hughes and Christopher Hughes, by their petition to the Chancellor of Maryland, have set forth, that the late*

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(a) *Weale v. West Middlesex Wa. Comp.* 1 Jac. & Wal. 371; *The Bank of Columbia v. Ross*, 4 H. & M'H. 456.—(b) *Decla. Rig.* art. 6.—(c) 3 Blac. Com. 436.