

It seems to me, to be quite apparent, that the revising power of this court, cannot be wisely exercised, and the return ratified or rejected as justice shall dictate, unless the value of the whole estate, and the value of the several parts, as ascertained by the commissioners, is reported. The great object to be attained, is a partition among the parties interested, fairly and equally in value, according to their several just proportions, and I cannot understand how the court can see that this is done, if the commissioners, may, or may not, show by their return, the value they have put upon the entire estate, and of each part thereof. The commission in this case, did not direct the commissioners to take evidence, and in that respect, as is usual, conforming to the interlocutory decree, but my opinion is, that the clause added to the form of commissions by the late Chancellor, and to be found in the Maryland Chancery Practice, 323, should be always added. With regard to the power which it gives, to take the depositions of witnesses, it will be found to agree with the English precedents. *Allnutt on Partition*, 212; *Manners vs. Charlesworth*, 8 *Eng. Cond. Ch. Rep.*, 377.

I cannot bring myself to think, that the legislature intended to refer so important a matter, as the value of the estate, exclusively to the judgment of the commissioners. They are to ascertain its value, and if incumbered, then its value subject to the incumbrance, and to do this, it is indispensable they should have authority to examine witnesses, and the depositions of these witnesses, as a part of their proceedings, are to be returned to the court, that an enlightened judgment may be formed upon the question of ratification or rejection.

The court, it is true, reposes great confidence in the judgment of the commissioners, who, according to Lord Brougham, are viewed in the capacity of witnesses, as well as arbitrators, but, to enable them to discharge their important and delicate functions, satisfactorily and safely, they should be clothed with the supplementary power of calling for the testimony of others, and then, that the court may see, that the conclusion to which they come upon their own personal observation, and upon the testi-