

1904, art. 46, sec. 36. 1888, art. 46, sec. 36. 1860, art. 47, sec. 36.
1820, ch. 191, sec. 50.

36. In cases where a commission may issue from any court to make partition of an intestate's estate, and any of the parties interested reside out of this State, the commissioner, or a majority of them, before they proceed in execution of said commission, shall cause notice thereof to be given by advertisement set up at the door of the court-house of the county or counties or city where the lands may lie, and in such other public places in the county or counties or city, and also by publication in such newspaper or papers as they may direct, at least two months previous to their proceeding to execute such commission.

Matters relative to this section necessary to be stated in the bill or petition filed under section 32. *Hughes' Case*, 1 Bl. 47.
See sec. 47.

Ibid. sec. 37. 1888, art. 46, sec. 37. 1860, art. 47, sec. 37.
1820, ch. 191, sec. 51.

37. In all cases where, by this article, any notice or publication is required, a statement made in the proceedings that due notice, according to law, has been given, or to that effect, shall be *prima facie* evidence that notice was given according to law.

A return that shows that "reasonable" notice was given is not in conformity with this section, or section 34. *Cecil v. Dorsey*, 1 Md. Ch. 228.

Ibid. sec. 38. 1888, art. 46, sec. 38. 1860, art. 47, sec. 38.
1820, ch. 191, sec. 8.

38. The said commissioners, or a majority of them, shall adjudge and determine whether the estate will admit of being divided without injury and loss to all the parties entitled, and ascertain the value of such estate in current money, taking into consideration any encumbrance thereon, and ascertain the value of the estate subject to the encumbrance; and if the estate can, in the opinion and judgment of the commissioners, or a majority of them, be divided without loss and injury to all parties entitled, then they shall divide and make partition of the same, fairly and equally in value, between all the parties interested, according to their several just proportions.

This section requires that incumbrances should be inquired into, and a strict compliance with this section is necessary. *Stallings v. Stallings*, 22 Md. 46.

The judgment of the commission as to whether lands are devisable, though not absolutely conclusive, will not be disturbed in the absence of countervailing proof. *Wilhelm v. Wilhelm*, 4 Md. Ch. 332.

The commissioners have authority to examine witnesses, and should include the depositions with their return. *Cecil v. Dorsey*, 1 Md. Ch. 227.

This section referred to in construing sections 41 and 44. *Catlin v. Catlin*, 60 Md. 580.

Ibid. sec. 39. 1888, art. 46, sec. 39. 1860, art. 47, sec. 39.
1820, ch. 191, sec. 9.

39. If the estate cannot be divided equally and fairly between all the parties interested, according to their several just proportions, then the commissioners, or a majority of them, shall have power to divide the estate into as many parts as it is susceptible of without loss and