

new partition shall be made and returned as aforesaid, and either party may appeal from the judgment of the court to the court of appeals.

The return should show a strict compliance with the requirements of the law. What the return should show as to notice, incumbrances, the ascertainment of dower, and the privilege of election. (See section 37.) Appeal. Parties. A return under a defective commission is itself defective. *Stallings v. Stallings*, 22 Md. 47; *Phelps v. Stewart*, 17 Md. 241. And see *Cecil v. Dorsey*, 1 Md. Ch. 223.

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. Several objections to the return of the commission considered. *Wilhelm v. Wilhelm*, 4 Md. Ch. 250; *Cecil v. Dorsey*, 1 Md. Ch. 223.

The proceedings of the court in affirming or rejecting the commissioners' return are summary, the proofs not being reduced to writing or introduced into the record. When such proceeding will not give rise to the plea of "*res adjudicata*." *Hardy v. Summers*, 10 G. & J. 322.

If called in question, the commission and return should appear to have been ratified. *Massey v. Massey*, 4 H. & J. 141.

Cited but not construed in *Jenkins v. Simms*, 45 Md. 536.

See sec. 70.

Election.

1904, art. 46, sec. 43. 1888, art. 46, sec. 43. 1860, art. 47, sec. 43.
1820, ch. 191, sec. 17.

43. If the estate consist of things indivisible in their nature, then the commissioners, or a majority of them, shall proceed to appraise and value the said estate, and make return thereof to the court as hereinbefore directed; and if the judgment of the commissioners shall be confirmed by the court, then the person or persons entitled under this article to elect to take other estates at the valuation of the commissioners shall have the same election as it respects the estate provided for in this section.

Division and election apply only to property held by inheritance, and not to property taken by will or by purchase. *Johnson v. Hoover*, 75 Md. 489; *Colston v. Dorchester Court*, 4 H. & McH. 283.

It is a fatal objection to a return, that the value of the estate in money has not been stated. *Cecil v. Dorsey*, 1 Md. Ch. 223.

Cited but not construed in *Jenkins v. Simms*, 45 Md. 536.

See sections 41 and 44.

Ibid. sec. 44. 1888, art. 46, sec. 44. 1860, art. 47, sec. 44.
1820, ch. 191, sec. 9.

44. If the said commissioners, or a majority of them, shall determine that the estate can not be divided without loss or injury to all the parties, they shall make return to the court of their judgment, and the reason upon which the same is formed, and the real value of the estate in current money, subject to the encumbrance, if any, thereon; and if the judgment of the commissioners shall be confirmed by the court, then in the said court and before the expiration of the term next succeeding that in which the return of the commissioners shall have been confirmed, the eldest son, child or person entitled, if of age, shall have election to take the whole estate and pay to the others their just proportions of the value in money.