

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 secs. 16 and 19. *Catlin v. Catlin*, 60 Md. 580.

An. Code, sec. 39. 1904, sec. 39. 1888, sec. 39. 1820, ch. 191, sec. 9.

14. 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 injury to all parties entitled, and to ascertain the value of each part of such estate in current money, subject to any encumbrance thereon.

Cited but not construed in *Catlin v. Catlin*, 60 Md. 580.

An. Code, sec. 40. 1904, sec. 40. 1888, sec. 40. 1820, ch. 191, sec. 10.

15. If the commissioners, or a majority of them, shall determine that the land or estate can be divided, in either of the ways hereinbefore mentioned, without loss or injury to all the parties, they shall cause the lands to be surveyed and laid out by the county surveyor, or such other person as they may think qualified, for the several parties, in case the estate consists of lands; and if the estate shall be equally divided between all the parties interested, according to their several just proportions, then the commissioners, or a majority of them, shall allot to the several parties their respective shares of the said land; and in case the estate shall consist of houses, the commissioners, or a majority of them, shall make allotment and partition between the parties.

Where lands are divided in kind, the widow cannot be assigned a portion of the land equal to her dower in the whole. (See sec. 37.) *Wilhelm v. Wilhelm*, 4 Md. Ch. 334.

Cited but not construed in *Catlin v. Catlin*, 60 Md. 580.

An. Code, sec. 41. 1904, sec. 41. 1888, sec. 41. 1820, ch. 191, sec. 10. 1884, ch. 50.

16. If the estate cannot be divided into as many parts as there are heirs, but exists in separate parcels, or can be divided into parts less than the number of heirs, without loss or injury, then it shall be divided into as many parts as it is susceptible of, and each parcel shall be separately valued; then, upon the ratification by the court of such division and valuation, the person first entitled to election, under the provisions of this article, shall have the first choice of one of the parcels at the valuation,