

and the next in order the second choice, and so on in regular succession of right until all the parts are taken or refused.

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.

The return of the commissioners should show that the parties entitled were allowed the right of election. *Stallings v. Stallings*, 22 Md. 47.

The eldest son has the election to take all or any parcel or parcels of the estate. *Catlin v. Catlin*, 60 Md. 582.

An election, so far as it went, held to be in strict accord with this article. *Jenkins v. Simms*, 45 Md. 535.

See notes to sec. 19; also sec. 23, *et seq.*

An. Code, sec. 42. 1904, sec. 42. 1888, sec. 42. 1820, ch. 191, sec. 12.

17. The commissioners appointed as aforesaid, or a majority of them, after having made partition or allotment in manner aforesaid, shall return their proceedings to the next court to happen thereafter; and the same shall be ratified or rejected, as justice shall dictate; and if ratified, and no appeal by either party, the partition made as aforesaid shall be recorded and remain and be binding; and if rejected, a 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 sec. 12.) 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. 45 and notes to sec. 10.

Election.

An. Code, sec. 43. 1904, sec. 43. 1888, sec. 43. 1820, ch. 191, sec. 17.

18. 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 secs. 16 and 19.