

of descent laws. What commission should require, and return show, relative to widow's dower. *Phelps v. Stewart*, 17 Md. 239; *Bennett v. Bennett*, 5 Gill, 463. And see *Hardy v. Summers*, 10 G. & J. 322.

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; *Ruhl v. Wagner*, 146 Md. 599 (bill defective).

Act of 1820, ch. 191, must be strictly complied with. A commission held not to be in compliance with the law, and hence invalid. *Stallings v. Stallings*, 22 Md. 46.

If oath is not annexed to the commission, and the commission and return do not appear to have been ratified, the commission is invalid. *Massey v. Massey*, 4 H. & J. 141.

The court will not be prevented from issuing a commission by purchase of interests of several of heirs, including a purchase from husband of one of heirs, of his wife's interest, no binding conveyance having been procured from wife. *Chaney v. Tipton*, 3 Gill, 334.

For a case involving the question of "*res adjudicata*," as applicable to a proceeding under this section, see *Hardy v. Summers*, 10 G. & J. 316.

History of acts dealing with "division and election" down to and including act of 1820, ch. 191. Intent and construction of these acts. *Catlin v. Catlin*, 60 Md. 574.

An. Code, 1924, sec. 9. 1912, sec. 33. 1904, sec. 33. 1888, sec. 33. 1820, ch. 191, sec. 8.

9. Whenever a majority of the commissioners to be appointed in virtue of this article shall qualify they may proceed in the execution of the same in the same manner as they may do when the whole commissioners qualify as aforesaid.

An. Code, 1924, sec. 10. 1912, sec. 34. 1904, sec. 34. 1888, sec. 34. 1820, ch. 191, sec. 14.

10. In the execution of this article, and before any proceeding is had by the commissioners, they, or a majority of them, shall cause notice to be given to all parties concerned 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 as they may direct, at least thirty days previous to their proceeding to execute the said commission.

While the interests of the heirs are protected from the consequences of a substantial departure from the procedure pointed out in this and the following sections, sec. 45 expressly provides against the proceedings being set aside for unsubstantial and formal irregularities. Return of commissioners held to show that the required notice was given. Commissioner held qualified. Duty of commissioners. Return upheld. Oath. Object and purpose of this section and secs. 13, 18 and 46. *Basford v. Cranford*, 125 Md. 19.

The commissioner's return should affirmatively show what notice was given and how it was given. *Stallings v. Stallings*, 22 Md. 46. *Cf. Cecil v. Dorsey*, 1 Md. Ch. 223. And see sec. 13.

Matters relative to this section necessary to be stated in the bill or petition filed under sec. 8. *Hughes' Case*, 1 Bl. 47.

See secs. 12, 13 and 23.

An. Code, 1924, sec. 10A. 1912, sec. 35. 1904, sec. 35. 1888, sec. 35. 1820, ch. 191, sec. 15.

11. If any minor shall be interested who hath not a guardian then the court from which the commission issues shall appoint a guardian for the purpose.

See Art. 72A.

An. Code, 1924, sec. 11. 1912, sec. 36. 1904, sec. 36. 1888, sec. 36. 1820, ch. 191, sec. 50.

12. 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