

Md. 375.⁶ If the title is denied or not clearly established, the bill will be retained until it is established at law, unless the defence is equitable when of necessity the Court of equity will decide the question of title, *Campbell v. Lowe supra*; *Boone v. Boone*, 3 Md. Ch. Dec. 497.⁷ Otherwise, on ordinary principles, the complainant must prove his title as laid, *Warfield v. Gambrill*, 1 G. & J. 503.

General jurisdiction of chancery.—Under the jurisdiction assumed by Chancery, however, the right of parties to a partition was affirmed just as broadly as at law. In the case of *Abel v. Heathcote*, 2 Ves. Jun. 100, the Lord Chancellor said that an estate of a tenant in common could not be so settled on the marriage of one as to deprive the others of their part-
314 tion. *And accordingly, the English rule has been that a partition will be decreed wherever there is a right, whatever its effects upon the relative interests of the parties, if it be practically possible. In *Baring v. Nash*, 1 Ves. & Bea. 551, which was a bill for partition by a lessee for years of one-tenth part of the premises, the reversioner not being joined, the Court said that no objection could arise from the minuteness of the interest, the inconvenience, or the reluctance of the other tenants in common, partition being a matter of right where the title is clear and not suspicious, whatever may be the difficulty and inconvenience, and that the habit was, as at law, not to give costs to the hearing, and to divide the expense of the conveyance and partition in proportion to the interests, as settled on great consideration in *Agar v. Fairfax*, 17 Ves. Jun. 533, and the same doctrine is laid down in *Campbell v. Lowe supra*. Of course in *Baring v. Nash* the partition was binding only during the term. And in *Wills v. Slade* the Lord Chancellor thought it clear, that a tenant for life of a settled estate was entitled to a limited partition during life and, as it seems, also, that it would bind those in remainder not *in esse*; see *Gaskell v. Gaskell*, 6 Sim. 643. So it has been held that a party having a life estate, determinable on his marriage, in one-fifth of an estate is entitled to a decree for partition, though it will be confined to his *aliquot*

⁶ See note 4 *supra*.

⁷ *Brendel v. Klopp*, 69 Md. 1. Cf. *Hecht v. Colquhoun*, 57 Md. 563; *Cowman v. Colquhoun*, 60 Md. 127; *Gittings v. Worthington*, 67 Md. 145. A bill for partition is not designed to settle adverse rights and cannot be made to serve the purpose of an action of ejectment. *Savary v. Da Camara*, 60 Md. 139. As to the power of a court of equity to decree a partition when complainants are not in possession and their title is denied by the defendants, see *Gittings v. Worthington*, 67 Md. 139.

Where the title of the complainant in a partition suit is denied and a decree is finally passed in his favor, the parties stand in the same position, on taking an account of *mesne* profits, as if the complainant had, after recovery in ejectment, brought an action for *mesne* profits. *Worthington v. Hiss*, 70 Md. 172. A tenant in common has no lien against his cotenant's interest for rents in excess of his share collected and retained by the latter before partition. *Flack v. Gosnell*, 76 Md. 88. *Contra*, as to expenditures for taxes, ground rent, encumbrances and repairs, *Hogan v. McMahon*, 115 Md. —.