

ble to furnish specific directions as to the different alternative modes of making partition; we can but declare the rights of the parties, and leave to the Court below the important duty of executing our decree according to the best guides to be obtained." The power of the Commissioners to divide includes the power to assign the parts, *Corse v. Polk supra*, and in *Canning v. Canning*, 2 Drew. 434, the Court pointed out some of the circumstances which ought to be taken into consideration there to guide the Commissioners in their allotments, saying, that when looking into the matter they must exercise their discretion and give the lots with reference to such a state of circumstances. And they may annex a right of way to one allotment over another; direct fences to be made at the expense of the parties to divide the allotments, award the mansion-house to the heir at law, though his allotment be at a distance, &c., *Lister v. Lister*, 3 Y. & Coll. 540. In *Cecil v. Dorsey*, 1 Md. Ch. Dec. 223, an objection that the Commissioners assigned by their own discretion and not by lot was overruled. In *Corse v. Polk supra*, the Chancellor said that if the Commissioners omitted to make the assignment the Court will make it by lot, but admitted that there was no express authority for dividing by lot. However, in *Canning v. Canning supra*, a partition between two sisters, the Commissioners divided the property into two moieties, but were unable to agree as to which moiety should go to each. The Court directed them to make a separate return, and, on their continuing to disagree, directed a new Commission and appointed a third Commissioner to avoid the necessity of drawing lots. In partitions under the acts to direct descents, each of the parties takes his share subject to the advantages and disadvantages under which the ancestor held it, as if a mill is allotted to A. with part of a dam covering B.'s portion, A. has a right to use the mill as the ancestor used it, the presumption of the law being that the Commissioners gave B. an equivalent, *Kilgour v. Ashcom*, 5 H. & J. 82, and the like principle would extend to other cases of partition. And after partition by decree, the Court cannot give a party any right in the property which the certificate of the Commissioners or the deeds of partition do not give him, nor will it reform the deeds to give him a more convenient use or enjoyment of his share of \*the property, *Bur-* 316  
*ley v. Moore*, 5 L. J. Chan. 120. In *Story v. Johnson*, it was held that gross error in judgment without positive proof of partiality was sufficient to cause the Court to set aside the adjudication of the Commissioners, and see *Wilhelm v. Wilhelm*, 4 Md. Ch. Dec. 330.<sup>11</sup> In England exceptions do not lie to the return on the ground of inequality of value, but a motion must be made to suppress the return, *Jones v. Totty*, 1 Sim. 136. It seems that here the practice is otherwise, *Alexander's Ch. Pr.* 166. Under the Acts to direct descents the Commissioners are held strictly to the requirements of the law in their return, as the proceedings, whether *ex-parte*, or on bill and answer, are special, *Phelps v. Stewart*, 17 Md. 231, (see *Lawes v. Lumpkin*, 18 Md. 334,) where it was held that the Commissioners must shew by their return that they have laid off the widow's dower, unless the sale is made with her assent, see *Stallings v.*

<sup>11</sup> See note 10 *supra*.