

[The Chancellor after applying the principles laid down in *Boyer vs. Turner*, 3 H. & J., 285, and *Lewis, use of Ringgold's admr's vs. Hoblitzell's admr's*, 6 G. & J., 260, to the facts of this case as stated above, to show neglect on the part of the assignee, in consequence of which and in the absence of any excuse, there could be no recovery, against the assignor, goes on to say :]

It would, therefore, seem to follow, that no recovery could be had upon these notes against Martin, the assignor, and that, consequently, the claim, as to him, must be regarded as satisfied, and the lien of the vendor extinguished. That lien existing for his security, this view of the case, brings it expressly, within the principle decided by the Court of Appeals, in *Schnebly and Lewis vs. Ragan*, before referred to.

[No appeal was taken from this decree.]

OWEN CECIL
vs.
MARY ANN DORSEY ET AL. } MARCH TERM, 1848.

[PARTITION—RETURN OF COMMISSIONERS—PRACTICE.]

An objection to a return made upon a commissioner for partition, that the commissioners did not distribute the estate by lot, but at their own discretion, assigned the several shares to the parties interested, cannot be sustained, either by the practice of the court, the act of Assembly, or the rule of the English Court of Chancery in similar cases.

When partition is made by agreement of parties, one of the modes known to the common law is, by drawing lots ; but, there is no authority for saying, that when a compulsory partition is made by judicial process, recourse must be had to lots to determine the portion which each party is to take.

The legislature did not mean to confine the commissioners to a particular mode of making the partition ; they may, if they please, award to each of the parties his share of the thing to be divided, or they may, at the proper stage of the proceedings, draw lots ; and their return, otherwise unexceptionable, will not be set aside because they have adopted either of these modes.

It is a fatal objection to a return, that the value of the estate, in money, has not been stated by the commissioners.