

It is true, that when partition is made by agreement of parties, one of the modes known to the common law is, by drawing lots, and the course of proceeding in such cases, is pointed out in *Coke Littleton*, 167, a. This is when the parties agree that partition shall be made, but do not agree as to the division of the separated parts, which each shall take; but I do not find any authority for saying, that when a compulsory partition is made by judicial proceedings, recourse must be had to lots, or ballots, to determine the portion which each is to take; on the contrary, it appears to be very clear, that the officers employed by the law for this purpose, are clothed with full authority to make partition among the parties, in the exercise of a sound discretion.

Upon the common law writ *de partitione facienda*, the sheriff, by the oath of a jury, makes partition, and assigns to each party his share of the estate. *Coke*, 168, b. *Allnutt on Partition*, 70, 71.

And the inquisition of the partition thus made, is returned by the sheriff under his seal, and the seals of the jurors, which, when confirmed by the court, is final; the judgment under which the writ issued being only interlocutory. *Allnutt*, 173.

In truth, the proceedings at common law under the writ of partition, and the proceedings by bill in equity in this state, have a near resemblance, the only material difference being, the substitution of commissioners for the jury of view, according to the course of the common law.

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[The Chancellor after referring to the case of *Corse vs. Polk*, wherein a similar objection was disallowed by the then Chancellor, (*Kilty*,) proceeds:]

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Cases have been laid before me, in which the commissioners appointed by this court, have made partition by lot, but in these same cases, they have also made the assignment of other parcels of the estate, in the exercise of their own discretion; the case of *Dorsey vs. Dorsey* decided in 1829, is one of this description.