ed upon by the Court at the hearing.

2d. Because the same is not confined to matters of form.

3d. Because there is nothing returned with it to show from what the said amended return was made, or how the Commissioners were enabled to set forth the same.

4th. Because the notice as appearing by copy filed is defective.

5th. Because the amended return sets forth a different state of facts from what appears among the original proceedings and return of the Commissioners.

6th. Because of the same reason heretofore assigned, and for others to be set forth at the hearing.

All of which is respectfully submitted.

W. F. Wharton,

Solicitor for Mayor and City Council of Baltimore

Exceptions of Mayor, &c.

(Filed Oct. 18, 1884.)

Presstman vs. Dugan. } Cirt. Ct. Balt. County, in Equity.

The Mayor and City Council of Baltimore hereby except to the ratification and confirmation of the return of the commission, as made and filed in this Court on the 1st day of July, 1884, because the Court had not jurisdiction to pass the decree passed in this cause on the 31 day of July, 1882.

Bernard Carter

W. F. Wharton,

For M. & C. C. of Bal.

Opinion.

(Filed Nov. 25, 1884.)

Emma Presstman, by her next friend, &c., vs. Cumberland Dugan, et al. } In Equity.

This cause has been argued with so much zeal and ability by the counsel of the respective parties, and is so important both as regards the amount involved, as well as the questions of law which were discussed at the hearing, that it is entitled to, and has received the most careful consideration I have been able to give it. Numerous exceptions were taken by the Mayor and City Council of Baltimore to the confirmation of the return of the Commissioners who were appointed under the decree of this Court to make partition of the land mentioned in the proceedings. But the view I am forced to take of this case, renders it necessary to discuss now only one of these many exceptions, being satisfied that whatever may be said in regard to the others, the one exception that I shall now proceed to briefly consider, goes to the merits of the whole proceedings, is based upon a fundamental error on the part of the Commissioners, and is fatal to their return.

The Mayor and City Council of Baltimore owns one undivided half of the land in question, and the other undivided half is the property of the remaining defendants in certain proportions not important to state, the city of Baltimore alone excepting to the return, while all the other parties to the cause contend the partition is fair and just. It appears that about the year 1873, the exceptant erected, at its own expense, certain improvements,