

An. Code, sec. 44. 1904, sec. 44. 1888, sec. 44. 1820, ch. 191, sec. 9.

19. If the said commissioners, or a majority of them, shall determine that the estate can not be divided without loss or injury to all the parties, they shall make return to the court of their judgment, and the reason upon which the same is formed, and the real value of the estate in current money, subject to the encumbrance, if any, thereon; and if the judgment of the commissioners shall be confirmed by the court, then in the said court and before the expiration of the term next succeeding that in which the return of the commissioners shall have been confirmed, the eldest son, child or person entitled, if of age, shall have election to take the whole estate and pay to the others their just proportions of the value in money.

Election to take the whole estate and a settlement therefor vests the legal title in party electing without a deed from the commissioners, and this is true although election is made by husband in the right of his wife. The party electing takes as a purchaser, and not by descent. *Stevens v. Richardson*, 6 H. & J. 156.

Under this section, the eldest son may either take a part or the whole of the estate, if he so elects. This section contrasted with prior acts governing the same subject. *Catlin v. Catlin*, 60 Md. 580.

The eldest son's right of election is a valuable right, but only applies in case the commission determines that the estate cannot be divided without loss, etc. *Wilhelm v. Wilhelm*, 4 Md. Ch. 333.

A purchaser of the interest of the eldest son is entitled to his election under this section. (See sec. 21.) *Jarrett v. Cooley*, 6 H. & J. 258; *Chaney v. Tipton*, 11 G. & J. 255.

The return of the commissioners should show that the parties entitled were allowed the right of election. *Stallings v. Stallings*, 22 Md. 47.

For a case involving the correction of an error in an appraisal of real estate elected to be taken by an heir, see *Gibbs v. Clagett*, 2 G. & J. 14.

For cases involving act of 1786, ch. 45, see *Stevens v. Richardson*, 6 H. & J. 156; *Warfield v. Warfield*, 5 H. & J. 459; *Wilhelm v. Wilhelm*, 4 Md. Ch. 332.

Cited but not construed in *Jenkins v. Simms*, 45 Md. 536.

See notes to secs. 16 and 17; see also sec. 23, *et seq.*

An. Code, sec. 45. 1904, sec. 45. 1888, sec. 45. 1820, ch. 191, sec. 9.

20. If the eldest child or person entitled refuses to take the estate and pay to the others money for their proportions, then the next eldest child or person entitled, being of age, shall have the same election, and so on to the youngest child or person entitled.

The return of the commissioners should show that the parties entitled were allowed the right of election. *Stallings v. Stallings*, 22 Md. 47.

This section referred to in construing secs. 16 and 19. *Catlin v. Catlin*, 60 Md. 580.

Cited but not construed in *Jenkins v. Simms*, 45 Md. 536.

See secs. 16, 18 and 19.

An. Code, sec. 46. 1904, sec. 46. 1888, sec. 46. 1820, ch. 191, sec. 31. 1829, ch. 32.

21. In all cases where a person is entitled by purchase or otherwise to the undivided estate of an heir to a person dying intestate, and any such person can not agree with the other heirs or persons entitled upon a division, or in case any party entitled is an infant, or *non compos mentis*, then any such person shall have the right to proceed under this article, and the same right of election as the heir would have had under whom he claims.

Where an heir has elected to take a certain portion of the estate but dies before giving bond, his heir succeeds to the original heir's rights, and it is not necessary to go into equity to complete proceeding. What proceedings are necessary in such case. *Jenkins v. Simms*, 45 Md. 536. And see *Chaney v. Tipton*, 3 Gill, 334.