

before they shall proceed to divide or value the same, and the said commissioners shall make the ascertainment and location of such part or portion of the tenant by the courtesy a part of their return to their commission, and the chancellor, or the county courts, as the case may be, shall determine thereon, and confirm or reject the same, as in other cases under this act.

Where estate cannot be divided, and there is no election, &c. the same shall be sold disencumbered by any tenancy by the courtesy and the court shall award to such tenant a proportion of purchase money, &c.

SEC. 35. *And be it enacted*, That whenever any person shall become entitled as tenant by the courtesy as aforesaid, and the commissioners aforesaid shall determine and so certify to the chancellor or county court, that the estate cannot be divided without loss and injury to all the parties entitled, and the return of the said commissioners shall be confirmed by the chancellor or county court, and the persons entitled to elect to take the said estate at the valuation made by the commissioners shall all refuse, then the estate shall be sold by the said commissioners agreeably to the terms prescribed to them, disencumbered by any tenancy by the courtesy; and the chancellor or the county court to which the return is made, shall award to the tenant by the courtesy such proportion of the purchase money as he or they shall think just and equitable, in lieu of such tenancy by the courtesy; and in decreeing such proportion of the said purchase money to the said tenant, the chancellor, or county court, as the case may be, shall be directed by the age, health and condition, of such tenant, and such award of payment shall be sufficient to bar such tenant from all and every right or title, by such courtesy, which such tenant may claim to the lands and tenements of such intestate.

Where there is an election, &c. the person so electing to hold disencumbered by any tenancy by the courtesy and court to award such tenant money in lieu thereof.

SEC. 36. *And be it enacted*, That whenever any person may be entitled as tenant by the courtesy to a life estate, in an undivided part of the real estate of an intestate, and the commissioners shall determine, and so certify to the court in their return, that the said estate cannot be divided without loss and injury to all the parties concerned, the chancellor, or the county court, to which the said return is made, shall proceed to award to such tenant such sum in current money as he or they shall think just and equitable, in lieu of such tenancy by the courtesy; and in decreeing such value to the said tenant, the chancellor, or the county court, (as the case may be,) shall be directed by the age, health and condition, of such tenant; and such award of value shall be sufficient to bar such tenant from all and every right or title by such courtesy, which such tenant may claim to the lands and tenements of such intestate; and the person making the election to take the estate at the valuation of the commissioners, and under the award of the chancellor or the county court, shall hold the estate, disencumbered by any tenancy by the courtesy.