

other estates at the valuation of the commissioners, shall have the same election as it respects the estate provided for in this section.

44. If the said commissioners, or a majority of them, shall determine that the estate cannot be divided without loss and injury to all the parties, they shall make return to the court of their judgment, and the reasons 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.

45. 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.

46. 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 cannot 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.

47. If any person entitled to make election to take the estate of any intestate as aforesaid, shall be absent from the county, or not residing therein at the time when such election ought to be made, and shall not appear in court and elect, or refuse to elect to take the said estate, or any part thereof, as the case may be, the court shall pass an order to be published in some convenient newspaper at least four weeks successively, giving notice of the return and confirmation of the commission, and appointing some day in the term next succeeding that in which the said order shall be passed, for such absent person to appear in court and make his election as aforesaid; and on proof being