

CHAP. 45.

And elect to come into partition, &c

5. **AND BE IT ENACTED,** That any child or children of the intestate, or their issue, having received from the intestate any real estate by way of advancement, may elect to come into partition with the other parceners, on bringing such advancement into hotchpot with the estate descended; but such child or children, or their issue, shall not be entitled to claim a share by descent, without bringing such advancement into the common stock or hotchpot, if there be another child or children unprovided for.

Entails, &c not to be affected, &c

6. **AND BE IT ENACTED,** That nothing herein contained shall be construed or taken to alter, or in any manner change the course of descent as heretofore used and established, so as to affect the case of any entail or limitation in tail whatever, made, created and in being, before the commencement of this act, but the same shall, during the continuance of the estate in tail or limitation in tail, and until the same may be legally destroyed or barred, descend according to the course of descent heretofore used and established, nor shall any thing herein be taken or construed to interfere with or alter any limitation, grant or gift, by devise, conveyance or otherwise, to special or particular heirs in a different course of descent from what is by this act specified, but in such cases the descent shall be according to the limitation or form of the gift, devise or grant, until the entail shall be legally barred or destroyed; nor shall this act, or any thing therein contained, be taken or construed to bar or affect any widow's right or dower.

Children legitimized, &c.

7. **AND BE IT ENACTED,** That if any man shall have one or more children by any woman whom he shall afterwards marry, such child or children, if acknowledged by the man, shall in virtue of such marriage and acknowledgment be hereby legitimated, and capable in law to inherit and transmit inheritance as if born in wedlock.

Where parties cannot agree, application may be made to the court &c

8. **AND BE IT ENACTED,** That in case the parties entitled to the intestate's estate cannot agree upon the division thereof, or in case any person entitled to any part be a minor^(a) an application may be made to the court of the county where the estate lies, and the court shall appoint and issue a commission to five discreet sensible men, who before they act shall take an oath, to be annexed to the commission, well and truly, and without favour, partiality or prejudice, to adjudge and determine whether the estate will admit of being divided without injury and loss to all the parties entitled, and to ascertain the value of such estate in current money^(b) and

(a) By 1802, ch. 94, s. 1, where any of the heirs of a person deceased without will, shall sell out their right and title to the intestate's real estate, and the purchaser, and the other heirs, cannot agree upon a division, or in case any person entitled to any part be a minor, in order to obtain a division of the estate, the purchaser or heirs may effect the same agreeably to the directions and provisions of this act. By 1810, ch. 28, s. 3, where a person is entitled to an undivided part of an intestate's real estate by devise in fee, the same proceedings shall be had, &c. By 1814, ch. 109, s. 5, where any person shall have devised, or may hereafter devise, any lands, &c. to two or more persons as joint tenants, or tenants in common, any one or more of such devisees, being of lawful age, may make application to the county court of the county where the lands, &c. may lie, for a commission to divide the same, and upon such application the court shall appoint five judicious and disinterested persons to divide and make partition among all the parties entitled to the same. By section 6 the said commissioners, or a majority of them, are to take the same oath or affirmation, and proceed to divide the lands, &c. among the devisees agreeably to the will of the deceased, &c.

(b) By 1797, ch. 114, s. 6, the commissioners are directed to take into consideration any incumbrance on the lands and report the value of the lands subject to the incumbrance. As to the laying off the widow's dower, and the part or portion of a tenant by the curtesy, &c. see note (f)