

majority of them, shall allot to the several parties their respective shares of the said land(g,) and in case the estate shall consist of houses, the commissioners shall make allotment and partition between the parties; and the commissioners appointed, after having made partition or allotment in manner aforesaid, shall return their proceedings to the next county court to happen thereafter, which shall be ratified or rejected as justice shall dictate, and if ratified, and no appeal by either party, the partition made as aforesaid shall be recorded, and remain and be binding; and if rejected, a new partition shall be made and returned as aforesaid, and either party may appeal to the chancellor from the judgment of the county court; and if the intestate has died possessed of more tracts of land than one, then the division shall be made so as not to split the several tracts of lands, if it can be done consistently with equality, and if it cannot be exactly done by this mode, then so much of the larger or more valuable tracts of land shall be taken and added to the less valuable as will make the portion equal in

health and condition, of the widow, and such award of payment shall bar her of dower, &c. By Nov. 1809, ch. 160, s. 3, if any person shall become entitled as tenant by the curtesy, to an undivided part of the real estate of an intestate, after the return of the commissioners, and before the sale or division thereof, the county court shall order that the commissioners alter and change their return, and the return shall be altered in such manner as that the tenant by the curtesy shall come in for his proportionable share of the intestate's estate with those who by law are entitled to take as heirs of the intestate. By Nov. 1809, ch. 160, s. 4, in case of the sale of the intestate's real estate by the commissioners, they shall proceed to sell the whole real estate of the intestate, agreeably to the terms prescribed to them, disencumbered by any tenancy by the curtesy; and the chancellor, or county court, shall award to the tenant by the curtesy such proportion of the purchase money as he or they shall think just and equitable, according to the age, health, and condition of such tenant, and such award of payment shall bar such tenant from all right, &c. By 1810, ch. 28, s. 2, and 1811, ch. 200, s. 1, where any person is entitled by deed or devise to a life estate in an undivided part of the real estate of an intestate, the same proceedings shall be had as are directed with regard to tenancies by the curtesy by the act of Nov. 1809, ch. 160; and where any person is entitled by deed or devise to the remainder after such life estate, the same proceedings shall be had as are directed where a person is entitled to an undivided part of an intestate's estate, subject to a tenancy by the curtesy.

(g) By Nov. 1812, ch. 68, s. 1, in any case wherein all the commissioners have died, or shall die, before having completely executed the commission, &c. the chancellor or county court, on application by petition, &c. to appoint other discreet and sensible men for the purpose of proceeding in the execution and completion of the commission originally issued, &c. By section 2, the register or clerk is to issue a warrant in the nature of a commission, directed to the persons so appointed commissioners, reciting in substance the facts set forth in the petition, and authorising the said commissioners, or the major part of them, if more than two, forthwith to proceed in the execution and completion of the original commission, &c. and the said commissioners shall repair before a justice of the peace, and severally make oath or affirmation, that they will well and faithfully perform the duties required of them by the said warrant, and proceed in the execution and completion of the original commission therein mentioned, agreeably to the directions and provisions of the act to direct descents, and of its several supplements, without favour, partiality or prejudice, and according to the best of their judgment and understanding, and the said justice shall duly certify the taking of such oath or affirmation, and endorse his certificate on the said warrant, or annex it to the same. By section 3, the commissioners so appointed and qualified are directed to proceed in the execution and completion of the original commission, and to make a true and full return of their proceedings, according to the tenor and command of the warrant, and the acts and proceedings of the commissioners, or the major part of them, under and by virtue of the said warrant, to have the like effect, and be of the same avail in law, as if such persons had been named and appointed by the original commission. By section 4, whenever a majority of the commissioners appointed, &c. shall qualify, they may proceed, &c. in the same manner as they may do when the whole commissioners qualify, &c.