

CHAP. 191. sell their right and title to the intestate's real estate, and the purchaser or purchasers, and the other heir or 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 purchasers, heir or heirs, may proceed as the heir or heirs of the deceased, according to the provisions of this act.

Where person entitled to make election is absent, court to cause notice to be published, &c. on non-appearance person next entitled may elect, &c.

30. *And be it enacted,* That if any person or persons 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 or her election as aforesaid; and on proof being made to the satisfaction of the court of the due publication as aforesaid, and on the nonappearance of the person so absent as aforesaid, it shall and may be lawful for the person next entitled, to come in and make election in the same manner as if the person so absent had appeared and refused to take the estate, or any part thereof, at the valuation of the commissioners.

If an idiot, &c. person next entitled may elect, &c.

31. *And be it enacted,* That if any person or persons entitled to make election as aforesaid, shall be an idiot, *non compos mentis*, deaf and dumb, or otherwise disqualified to declare his or her intention, in such case the person next entitled shall be authorised to make his or her election, in the same manner as if the person disqualified as aforesaid had refused to make election as aforesaid.

Commissioners to execute deeds to persons electing, &c.

32. *And be it enacted,* That in all cases where an election shall be made by any person or persons under and in virtue of this act, or by the husband in right of his wife, and the valuation of the land of the said intestate hath been paid to the heir or heirs of the deceased, by the person or persons so electing, the commissioners, or a majority of them, or the survivors or survivor of them, shall under the direction of the court to which the return or returns shall have been made, make and execute to the person so electing, at his expense, a good and valid deed of bargain and sale in fee simple.

If eldest male is not of age to make election, eldest female, if of age, may elect, &c.

33. *And be it enacted,* That in case the eldest male shall not be of age to make his election, it shall and may be lawful for the eldest female, if of age, to elect to take the land at the valuation of the commissioners, notwithstanding the existence of any male minor, any thing herein contained to the contrary notwithstanding; *Provided always,* that no female shall be permitted to make an election unless she shall be of the age of twenty-one years.

The part of a tenant by the curtesy to be laid off where estate will admit of division, &c.

34. *And be it enacted,* That whenever any person shall become entitled as tenant by the curtesy, to any part of the real estate of an intestate, and the commissioners appointed in virtue of this act shall determine that the estate will admit of division, then the said commissioners shall be and they are hereby empowered and directed to ascertain and lay off the part or portion of such

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