

VII: 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.

C H A P.
XLV.
Children legitimated, &c.

VIII: 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, 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, and if the estate can, in the opinion and judgment of the commissioners, or a majority of them, be divided without loss and injury to all the parties entitled, that they will then divide and make partition of the same fairly and equally in value between all the parties interested, according to their several just proportions; and if the said commissioners, or a majority of them, shall determine that the estate cannot be divided without loss to all the parties, then they shall make return to the county court of their judgment, and the reasons upon which the same is formed, and the real value of the estate in current money, (a) and if the judgment of the commissioners shall be confirmed by the county court, then 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; and 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, (b) and if all refuse, then the estate shall be sold under the direction of the said commissioners, (c) or a majority of them, for money or upon credit, as they, with a majority of the persons interested, who are of age, and the guardians of such as may be minors, shall determine to be most advantageous to all concerned; and the purchase money shall be justly divided among the several persons interested according to their respective titles to the estate; but if all the parties entitled shall be minors at the death of the intestate, the estate shall not be sold until the eldest arrives to age, and the profits of the estate shall be equally divided in the mean-time; and if the commissioners, or a majority of them, shall determine that the land or estate can be divided without loss and injury to all the parties, they shall cause the lands to be surveyed and laid out by the county surveyor, or such other person as they may think qualified, for the several parties, in case the estate consists of lands; and the commissioners appointed as aforesaid, or a majority of them, shall allot to the several parties their respective shares of the said land; 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 value; and if lands, or other estate lie in different counties, then an application may be made to the chancellor, who shall appoint commissioners to make the whole examination and division, or commissioners for each county where the lands or other estate lie, as to him may seem most convenient; and the commissioners by him appointed shall proceed in the same manner as directed for commissioners appointed by the county courts, and shall make returns to the chancellor for his confirmation or rejection, and similar proceedings shall be had in the chancery court upon a commission issued from that court, as are before directed upon commission issued from the county

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

(a) By 1797, ch. 114, the commissioners are directed to take into consideration any incumbrance on the lands, and report the value of the land, subject to the incumbrance.

(b) By 1797, ch. 114, the election shall be made in the court from which the commission issued, before the expiration of the term next succeeding the term in which the return of the commissioners shall have been confirmed.

(c) By 1797, ch. 114, all sales under this act shall be made agreeably to the order of the court from which the commissions issued, and shall not be valid until ratified by the said court. By 1799, ch. 49, section 2, provision is made for paying the commissioners, the surveyor and other expences, out of the estate. By section 3, the commissioners, after payment of the purchase money, and ratification of the sales, are to convey to the purchasers. By section 4, the commissioners are, (on a sale on credit,) to take bonds to the several representatives for their proportions. By section 5, provision is made for laying off the widow's dower in such lands by the commissioners; and by section 6, on the consent of the widow to sell the whole estate, the proportion arising from such sale may be awarded to the widow by the chancellor or county court in the manner therein prescribed.