

tions; then the commissioners, or a majority of them, shall have CHAP. 191. power to divide the estate into as many parts as it is susceptible of, without loss and injury, to all the parties entitled, and to ascertain the value of each part of such estate in current money, subject to any incumbrance thereon.

9. *And be it enacted,* That 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, 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, subject to the incumbrance if any thereon, and if the judgment of the commissioners shall be confirmed by the county 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; 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, and if all refuse, then the estate shall be sold by the said commissioners, or a majority of them, for money or upon credit, and in the manner and agreeably to the terms and conditions which the court from which the commission issued shall prescribe and direct, and no sale so to be made, shall be valid until ratified by the said court, 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.

If estate cannot be divided without loss, &c commissioners to make return of their judgment, &c.

Election given to the children (if of age) successively to take estate and pay the others, &c.

If all refuse, then the estate to be sold, &c and the purchase money divided, &c.

10. *And be it enacted,* That if the commissioners, or a majority of them, shall determine that the land or estate can be divided, in either of the ways herein before mentioned, without loss and injury to all the parties, then 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 if the estate shall be equally divided between all the parties interested, according to their several just proportions, then the commissioners, 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, or a majority of them, shall make allotment and partition between the parties; and if the estate cannot be divided into as many parts as there are persons interested, but shall be divided into as many parts as it is susceptible of, and the judgment of the commissioners shall be confirmed by the court, the right of election to take the several parts into which the estate may have been divided shall be according to the rules herein before mentioned.

Where the land can be divided, the same shall be surveyed and laid out by county surveyor, &c.

If estate is divided into as many parts as it is susceptible of, the right of election to be as before mentioned.

11. *And be it enacted,* That if all or any of the parties of age, as the case may be, and entitled to elect to take any part into which the estate may have been divided by the commissioners, at the valuation thereof, shall refuse to take the same at such valuation,

Where parties entitled to elect shall refuse, estate not taken to be sold, &c.