

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(c.) 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, 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(d.) and if all refuse, then the estate shall be sold under

(c) By Nov. 1809, ch. 160, s. 5, the commissioners are empowered to divide the estate into as many parts as it is susceptible of, without injury and loss to all the parties entitled, and to ascertain the value of each part of such estate in current money.

(d) By 1805, ch. 119, s. 2, in case the eldest male shall not be of age to make his election, it shall be lawful for the eldest female, if of age, to elect to take the land at the valuation, notwithstanding the existence of any male minor. By Nov. 1809, ch. 160, s. 5, where the estate is divided into as many parts as it is susceptible of, the right of election to take the several parts into which the estate may be divided shall be according to the rules of this act. By 1797, ch. 114, s. 6, 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. By 1802, ch. 94, s. 3, if any person entitled to make election to take the estate shall be absent from the county at the time when such election ought to be made, 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, for such absent person to appear in court and make his or her election; and on proof being made, &c. and on the nonappearance of the person so absent, it shall be lawful for the person next entitled, to make election, &c. By 1802, ch. 94, s. 4, if any person entitled to make election 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. &c. By 1802, ch. 94, s. 6, where an election hath been made by the husband in right of his wife, and the valuation of the land of the intestate hath been paid or secured to be paid, unto the heirs of the deceased, the commissioners, or a majority of them, or the survivors or survivor of them shall, under the direction of the court, make and execute to the person so electing, at his expense, a good and valid deed of bargain and sale in fee simple. By 1802, ch. 94, s. 2 and 3, and Nov. 1809, ch. 160, s. 6, the person making an election to take the estate, or any part of the estate, at the valuation of the commissioners, at the time of making the election, shall give bonds, with two or more sureties, to be approved by the court, to the other person or persons entitled to the estate, for their several proportions of the sum of money at which the estate is valued, which bonds shall bear interest from the date of the said election, and shall be made payable in such instalments as the court shall direct, and shall be a lien on the lands until they shall be wholly paid. By 1815, ch. 205, it shall be necessary, if the county court deem it for the interest of all persons concerned, that bonds should be given to each of the representatives of the intestate; but a bond may be given to the state in such penalty and with such surety as the court may direct, conditioned for payment of the valuation or purchase money to the legal representatives of the intestate, in such proportions as each may be entitled agreeably to the order of the court, &c. By Nov. 1812, ch. 181, whenever any person is entitled as tenant by the curtesy to a life estate in an undivided part of the real estate of an intestate, which cannot be divided, &c. the chancellor ar