

the number sufficient to take the whole, and if there be no males, then to the eldest females; and if any person refuses to accept the land as aforesaid, then the same shall be offered to the persons entitled next in seniority, pursuing the rule between males and females as is above directed; and upon such division and acceptance, the persons entitled under the course of descent aforesaid, who may be left without a share of land, shall in lieu thereof have in money the reasonable and moderate value of the land which would have fallen to their share upon a division among all the persons entitled, to be ascertained by the commissioners aforesaid, and returned to the county court for their confirmation or rejection, which money shall be paid to the persons entitled out of such part of the personal estate left by the intestate, as would, upon a distribution thereof, belong to the persons provided for by accepting a share of land as aforesaid, if the same be sufficient, and if not, the deficiency shall be paid equally by the persons having land as aforesaid, and the same shall be a lien and incumbrance on such land until paid, and may be recovered by an action upon the case brought by the parties respectively entitled, wherein it shall be only necessary to charge the person or persons holding the land with money had and received to the use of the plaintiff or plaintiffs, and the sum justly due shall be ascertained and recovered.

By 1799, ch. 49, s. 2, the chancellor or county court shall allow to each commissioner, for every day he shall necessarily attend in the execution of the commission, a sum not exceeding two dollars per day, and to the surveyor employed by them, (when necessary,) a sum not exceeding four dollars per day, for himself and chain-carriers, and such other expenses as they may deem reasonable and proper; all which allowances and expenses, together with the fees on the issuing and return of the commission, shall be paid by the representatives applying for the commission, when the lands, &c. are divided, or by the representative making his or her election to take the estate, and such representative or representatives may charge the other representatives with their respective proportions of the whole sum paid, and each other representative, or his or her guardian, shall be obliged to repay or allow him his or her part thereof respectively; and in case the lands, &c. shall be sold by the commissioners, they shall then pay out of the money arising from the sale, the whole of the expenses attending the execution of their commission, to be allowed as above by the chancellor or county court.

10. This act to commence on the first day of January, seventeen hundred and eighty-eight. Commencement

11. PROVIDED ALWAYS, AND BE IT ENACTED, That if any citizen of this state shall be out of this state at the time when this act takes place, so that such citizen cannot have notice of the same, that then this act, and the course of descent thereby established, shall not extend to such citizen, or his estate, if he shall die intestate during his absence from this state, nor shall this act affect the estate of any citizen of this state, absent as aforesaid, until three months after his return into the state. Not to affect absent citizens &c.

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CHAP. XLIX.

*An Act for the settlement of Public Accounts, and to appoint Persons to collect the Debts due to Persons convicted of Treason, and for a specific performance of certain Contracts made by British subjects previous to the Revolution.* Lib. TBH. No. B. fol. 174. Passed Jan 20 1787

8. AND, whereas there may have been contracts and sales made of lands by persons who were British subjects at the time of the Provision in case of contract, &c.