

Act No. 24, 1900.

An Act to consolidate enactments relating to
Partition. [22nd September, 1900.]

PARTITION.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the "Partition Act, 1900."

2. (1) The Act forty-first Victoria number seventeen is hereby repealed.

(2) All rules of Court made under the authority of such Act and in force at the passing of this Act shall be deemed to have been made under the authority of this Act.

(3) All suits for partition pending at the passing of this Act shall be continued under the provisions of this Act.

3. In the interpretation of this Act the term "Court" means the Supreme Court of New South Wales in its equitable jurisdiction. "Court."
41 Vic. No. 17, ss.
3, 20.

4. (1) In a suit for partition where but for this Act or the Act hereby repealed a decree for partition might have been made,— Power to Court to
order sale instead
of division.
Ibid. s. 4.

(a) if it appears to the Court that, by reason of the nature of the property to which the suit relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstances, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court may, on the request of any of the parties interested, or on their behalf as hereinafter provided, and notwithstanding the dissent or disability of any others of them, order a sale of the property accordingly;

(b) if parties interested collectively to the extent of one moiety or upwards, or some persons as hereinafter provided on their behalf, request the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court shall, unless it sees good reason to the contrary, order a sale of the property accordingly; Sale on application
of certain
proportions of
parties interested.
Ibid. s. 5.

(c)

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As to purchase of share of party desiring sale.
1 Vic. No. 17, s. 6.

(c) if any party interested, or some person on his behalf as hereinafter provided, requests the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court may, unless the other parties interested in the property or some of them, or some persons on behalf of such parties respectively as hereinafter provided, undertake to purchase the share of the party requesting a sale, order a sale of the property.

(2) If such undertaking is given, the Court may order a valuation of the share of the party requesting a sale in such manner as the Court thinks fit.

(3) The Court when making any order under this Act shall give all necessary consequential directions.

Authority for parties interested to bid.
Ibid. s. 7.

5. On any sale under this Act the Court may allow any of the parties interested in the property to bid at the sale on such terms as to non-payment of deposit or as to setting off or accounting for the purchase money or any part thereof instead of paying the same or as to any other matters as to the Court may seem reasonable.

Application of Trustee Act, 1898.
Ibid. s. 8.

6. Section thirty-five of the Trustee Act, 1898, shall extend and apply to cases where in suits for partition the Court directs a sale instead of a division of the property.

Court may appoint trustees to receive and apply moneys arising from sales otherwise the moneys to be paid into Court.
Ibid. s. 9.

7. (1) All money to be received on any sale under the authority of this Act may, if the Court thinks fit, be paid to any trustees of whom it approves, or otherwise the same shall be paid into Court.

(2) Such money shall be applied as the Court directs to some one or more of the following purposes, namely:—

(a) the discharge or redemption of any incumbrance affecting the hereditaments in respect of which such money was paid or affecting any other hereditaments subject to the same uses and trusts; or

(b) the purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid; or

(c) the payment to any person becoming absolutely entitled.

Trustees may apply moneys in certain cases without application to Court.
Ibid. s. 10.

8. The application of the money in manner aforesaid may, if the Court so directs, be made by the trustees (if any) without any application to the Court, or otherwise shall be made upon an order of the Court upon the application of the person who would be entitled to the possession or to the receipt of the rents and profits of the land if the money had been invested in the purchase of land.

Until money can be applied to be invested and dividends to be paid to parties entitled.
Ibid. s. 11.

9. (1) Until the money can be applied as aforesaid the same shall be dealt with as provided for by the rules of Court relating to the deposit and investment of moneys in Court.

(2)

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(2) The interest and proceeds shall be paid to the person who would have been entitled to the rents and profits of the land if the money had been invested in the purchase of land.

10. (1) Any person who, but for this Act or the Act hereby repealed, might have maintained a suit for partition may maintain such suit against any of the parties interested without serving the others (if any) of those parties, and it shall not be competent for any defendant in the suit to object for want of parties.

Parties to partition to suits.
41 Vic. No. 17, s. 12.

(2) At the hearing of the suit the Court may direct such inquiries as to the nature of the property and the persons interested therein and other matters as it thinks necessary or proper with a view to an order for partition or sale being made on further consideration.

(3) All persons who if this Act or the Act hereby repealed had not been passed would have been necessary parties to the suit shall be served with notice of the decree or order on the hearing, and after such notice shall be bound by the proceedings as if they had been originally parties to the suit and shall be deemed parties to the suit.

(4) All such persons may have liberty to attend the proceedings, and any such person may within a time limited by rule of Court apply to the Court to add to the decree or order.

11. (1) Where notice of the decree or order on the hearing of the suit cannot be served on all the persons on whom that notice is hereinbefore required to be served, or cannot be so served without expense disproportionate to the value of the property to which the suit relates, the Court may, on the request of any of the parties interested in the property, and notwithstanding the dissent or disability of any others of them, by order dispense with that service on any person or class of persons specified in the order, and instead thereof may direct advertisements to be published at such times and in such manner as the Court thinks fit calling upon all persons claiming to be interested in such property who have not been so served to come in and establish their respective claims in respect thereof before the Judge in chambers or the master in equity as may be directed by the Court, within a time to be thereby limited.

Power to dispense with service of notice of decree or order in special cases.
Ibid. s. 13.

(2) After the expiration of the time so limited all persons who have not so come in and established such claims whether they are within or without the jurisdiction of the Court (including persons under any disability) shall be bound by the proceedings in the suit as if on the day of the date of the order dispensing with service they had been served with notice of the decree or order service whereof is dispensed with, and thereupon the powers of the Court under the Trustee Act, 1898, shall extend to their interest in the property to which the suit relates as if they had been the parties to the suit, and the Court may thereupon, if it thinks fit, direct a sale of the property and give all necessary consequential directions.

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Proceedings where
service is dispensed
with.
41 Vic. No. 17, . 14.

12. Where an order is made under this Act dispensing with service of notice on any person or class of person, and property is sold by order of the Court, the following provisions shall have effect:—

- (a) The proceeds of sale shall be paid into Court to abide the further order of the Court.
- (b) The Court shall by order fix a time at the expiration of which the proceeds will be distributed and may from time to time by further order extend that time.
- (c) The Court shall direct such notices to be given by advertisement or otherwise as it thinks best adapted for notifying to any person on whom service is dispensed with who may not have previously come in and established their claims the fact of the sale, the time of the intended distributions, and the time within which a claim to participate in the proceeds must be made.
- (d) If at the expiration of the time so fixed or extended the interests of all the persons interested have been ascertained, the Court shall distribute the proceeds in accordance with the rights of those persons.
- (e) If at the expiration of the time so fixed or extended, the interests of all the persons interested have not been ascertained, and it appears to the Court that they cannot be ascertained or cannot be ascertained without expense disproportionate to the value of the property, or of the unascertained interests, the Court shall distribute the proceeds in such manner as appears to the Court to be most in accordance with the rights of the persons whose claims to participate in the proceeds have been established whether all those persons are or are not before the Court, and with such reservations (if any) as to the Court may seem fit in favour of any other persons (whether ascertained or not) who may appear to have any *primâ facie* right which ought to be so provided for although such right may not have been fully established, but to the exclusion of all other persons, and thereupon all such other persons shall by virtue of this Act be excluded from participation in those proceeds on the distribution thereof, but notwithstanding the distribution any excluded person may recover from any participating person any portion received by him of the share of the excluded person.

Provision for case of
successive sales in
the same suit.
Ibid. s. 15.

13. Where in a suit for partition two or more sales are made if any person who has by virtue of this Act been excluded from participation in the proceeds of any of those sales establishes his claim to participate in the proceeds of a subsequent sale, the shares of the other persons
interested

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interested in the proceeds of the subsequent sale shall abate to the extent (if any) to which they were increased by the non-participation of the excluded person in the proceeds of the previous sale, and shall to that extent be applied in or towards payment to that person of the share to which he would have been entitled in the proceeds of the previous sale if his claim thereto had been established in due time.

14. (1) In a suit for partition a request for sale may be made or an undertaking to purchase given on the part of—

- (a) an infant by his next friend or guardian ad litem;
- (b) an insane patient, as defined by the Lunacy Act, 1898, by the Master in Lunacy;
- (c) an insane or incapable person as defined by that Act, by the person entrusted with the care and management of his estate, if authorised so to do by the Master in Lunacy;
- (d) any other person of unsound mind by his next friend or guardian ad litem;
- (e) any other person under disability by the person authorised to act on his behalf.

Request by married woman, infant, or person under disability.
41 Vic. No. 17, s. 16.

(2) The Court shall not be bound to comply with any such request or undertaking on the part of any such person unless it appears that the sale or purchase will be for his benefit.

15. Wherever the Court orders a sale under this Act it may order such sale to be effected—

- (a) by the Court; or
- (b) out of Court subject to such restriction as the Court thinks fit; or
- (c) altogether out of Court.

Sales, how effected.

16. In any suit for partition where by this Act the Court is empowered to direct a sale of the property to which the suit relates, the Court may, if it thinks fit, direct a sale of a portion of the property, and a partition of the remainder.

Power to Court to direct sale of portion of property and partition of the remainder.
Ibid. s. 17.

17. For the purposes of this Act a suit for partition shall include a suit for sale and distribution of the proceeds, and in a suit for partition it shall be sufficient to claim a sale and distribution of the proceeds, and it shall not be necessary to claim a partition.

Suit for partition to include suit for sale and distribution of the proceeds.
Ibid. s. 18.

18. In a suit for partition the Court may make such order as it thinks just respecting costs up to the time of the hearing.

Costs in suits for partition.
Ibid. s. 19.

19. The Judges of the Supreme Court or any three of them may make rules—

Supreme Court may make rules for procedure and for regulating fees.
Ibid. s. 21.

- (a) for carrying the purposes of this Act into effect, and for regulating the times, and forms, and mode of procedure, and generally the practice of the Court in respect of the matters to which this Act relates; and

(b)

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(b) for regulating the fees and allowances to all officers of the Court and solicitors thereof, in respect to such matters; and

(c) for altering, as far as may be found expedient, the course of proceeding hereinbefore prescribed in respect to the matters to which this Act relates, or any of them.

Rules and orders to
be laid before Parlia-
ment.

41 V c. No. 17, s. 22.

20. (1) All rules made in pursuance of the powers contained in this Act shall, immediately after the making and issuing thereof, be laid before both Houses of Parliament within one month after the making thereof if Parliament be then sitting, or if Parliament be not then sitting, within one month after the commencement of the then next Session of Parliament.

(2) If either of the Houses of Parliament, by any resolution passed within one month after such rules have been laid before such Houses of Parliament, resolves that the whole or any part of such rules ought not to continue in force, in such case the whole or such part thereof as is so included in such resolution shall from and after such resolution cease to be binding.
