



ANNO QUADRAGESIMO QUARTO ET QUADRAGESIMO QUINTO.

VICTORIÆ REGINÆ.

A.D. 1881.

No. 203.

An Act to amend the Law relating to Partition.

[Assented to, September 28th, 1881.]

WHEREAS it is expedient to amend the law relating to partition—Be it therefore Enacted by the Governor of the Province of South Australia, with the advice and consent of the Legislative Council and House of Assembly, in this present Parliament assembled, as follows: Preamble.

1. This Act may be cited as "The Partition Act, 1881." Short title.
2. In this Act the term "the Court," means the Supreme Court of South Australia. As to the term "the Court."
3. In an action for partition, where, if this Act had not been passed, a decree for partition might have been made, then if it appears to the Court that, by reason of the nature of the property to which the action 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 circumstance, 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, if it thinks fit, on the request of any of the parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions. Power of Court to order sale instead of division.

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Sale on application of certain proportion of parties interested.

4. In an action for partition, where, if this Act had not been passed, a decree for partition might have been made, then if the party or parties interested, individually or collectively, to the extent of one moiety or upwards in the property to which the action relates, 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, direct a sale of the property accordingly, and give all necessary or proper consequential directions.

As to purchase of share of party desiring sale.

5. In an action for partition, where, if this Act had not been passed, a decree for partition might have been made, then, if any party interested in the property to which the action relates 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, if it thinks fit, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting a sale, direct a sale of the property, and give all necessary or proper consequential directions, and in case of such undertaking being given the Court may order a valuation of the share of the party requesting a sale in such manner as the Court thinks fit, and may give all necessary or proper consequential directions.

Authority for parties interested to bid.

6. On any sale under this Act the Court may, if it thinks fit, 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 seem reasonable.

Court to declare what parties are trustees of lands comprised in any suit, and as to the interests of persons unborn.

7. In any action for partition where an order shall be made by the Supreme Court for the sale instead of the partition of the lands, it shall be lawful for the said Court to declare that any of the parties to the said suit wherein such decree is made are trustees of such lands or any part thereof within the meaning of this Act, or to declare concerning the interests of unborn persons who might claim under any party to the said suit, or under the will or voluntary settlement of any person deceased who was during his lifetime a party to the contract or transaction concerning which such decree is made, that such interests of unborn persons are the interests of persons who, upon coming into existence, would be trustees within the meaning of this Act, and thereupon it shall be lawful for the said Court to make such order or orders as to the estates, rights, and interests of such persons, born or unborn, as the said Court might, under the provisions of this Act, make concerning the estates, rights, and interests of trustees born or unborn.

Payment and application of moneys arising from sales, or set aside out of rent, &c., reserved on mining leases.

8. All moneys to be received on any sale effected under the authority of this Act, when the property sold is a settled estate, may, if the Court shall think fit, be paid to any trustees of whom it shall approve,

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approve, or otherwise the same shall be paid into Court *ex parte* the applicant in the matter of this Act, and such money shall be applied as the Court shall from time to time direct to some one or more of the following purposes, namely—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 as trusts, or the purchase of other hereditaments to be settled in the same manner as the hereditaments in respect of which the money was paid ; or the payment to any person becoming absolutely entitled.

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

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

10. Until the money shall be directed by the Court to be applied as aforesaid, the same shall be invested as the Court shall direct in some or one of the investments in which cash under the control of the Court is for the time being authorised to be invested, and the interest and dividends of such investments 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.

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

11. Where any purchase-money paid into Court under the provisions of this Act shall have been paid in respect of any lease or any estate in lands less than the whole fee-simple thereof, or of any reversion dependent on any such lease or estate, the Court may, on the petition of any party interested in such money, order that the same shall be laid out, invested, accumulated, and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Court may direct application of money in respect of leases or reversions as may appear just.

12. The term "settled estates," as used in this Act, shall signify all hereditaments of any tenure, and all estates or interests in any such hereditaments, which are or shall be the subject of a settlement ; and for the purpose of this Act a tenant-in-tail after possibility of issue extinct shall be deemed to be a tenant for life.

Interpretation of "settled estates."

All estates or interests in remainder or reversion not disposed of by the settlement, or reverting to a settlor, or descending to the heirs, executors, or administrators of a testator, shall be deemed to be estates coming to such settlor or heirs, executors, and administrators under or by virtue of the settlement.

In determining what are settled estates within the meaning of this Act, the Court shall be governed by the state of facts, and by the

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the trusts or limitations of the settlement at the time of the said settlement taking effect.

Parties to partition suits.

13. Any person who, if this Act had not been passed, might have maintained an action for partition, may maintain such action against any one or more of the parties interested, without serving the other or others (if any) of those parties; and it shall not be competent to any defendant in the action to object for want of parties; and at the hearing of the cause 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; but all persons who, if this Act had not been passed, would have been necessary parties to the action, 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 action, and shall be deemed parties to the action; and all such persons may have liberty to attend the proceedings; and any such person may, within a time limited by general orders, apply to the Court to add to the decree or order.

Costs in partition actions.

14. In an action for partition, the Court may make such order as it thinks just respecting costs.

As to general orders under this Act.

15. Section 29 of the "Supreme Court Act 1878," relative to the making of general orders, shall have effect as if it were repeated in this Act, and in terms made applicable to the purposes hereof.

In the name and on behalf of Her Majesty, I hereby assent to this Bill.

WM. F. DRUMMOND JERVOIS, Governor.