

1937

## c 157 Partition Act

Ontario

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## CHAPTER 157.

## The Partition Act.

## INTERPRETATION.

Interpreta-  
tion.**1.** In this Act,

"Court."

(a) "Court" shall mean the Supreme Court;

"Land."

(b) "Land" shall include lands, tenements, and hereditaments, and all estate and interests therein. R.S.O. 1927, c. 142, s. 1.

## PARTITION.

Who may be  
compelled to  
make parti-  
tion or sale.**2.** All joint tenants, tenants in common, and coparceners, all dowresses, and parties entitled to dower, tenants by the curtesy, mortgagees or other creditors having liens on, and all parties interested in, to or out of, any land in Ontario, may be compelled to make or suffer partition or sale of the land, or any part thereof, whether the estate is legal and equitable or equitable only. R.S.O. 1927, c. 142, s. 2.Who may  
take pro-  
ceedings for  
partition.**3.**—(1) Any person interested in land in Ontario, or the guardian appointed by a surrogate court of an infant entitled to the immediate possession of any estate therein, may take proceedings for the partition of such land or for the sale thereof under the directions of the Court if such sale is considered by the Court to be more advantageous to the parties interested.When pro-  
ceedings  
may be  
commenced.

(2) Where the land is held in joint tenancy or tenancy in common or coparcenary by reason of a devise or an intestacy no proceedings shall be taken until one year after the decease of the testator or person dying intestate in whom the land was vested. R.S.O. 1927, c. 142, s. 3.

Appointment  
of guardian  
to estate of  
person un-  
heard of for  
three years.**4.**—(1) Where any person interested in the land has not been heard of for three years or upwards, and it is uncertain whether such person is living or dead, the Court upon the application of any one interested in the land may appoint a guardian to take charge of the interest of such person and of those who, in the event of his being dead, are entitled to his share or interest in the land.

(2) The guardian shall, in the proceedings, represent such absent person and those who, should he be dead, are entitled to his share or interest in the land, and whether they or any of them are infants or otherwise under disability, and his acts in relation to such share or interest shall be binding on such absent person and all others claiming or entitled to claim under or through him, and shall be as valid as if done by him or them.

Powers  
of such  
guardian.

(3) The Court upon proof of such absence of such person as affords reasonable ground for believing such person to be dead, upon the application of the guardian, or any one interested in the estate represented by the guardian, may deal with the estate or interest of such person, or the proceeds thereof, and may order payment of the proceeds, or the income or produce thereof, to the person who, in the event of such absent person being dead, appears to be entitled to the same.

Power of  
the Court to  
deal with  
the estate.

#### SALES.

5.—(1) In any action or proceeding for partition or administration, or in any action or proceeding in which a sale of land in lieu of partition is ordered, and in which the estate of any tenant in dower or tenant by the curtesy or for life is established, if the person entitled to the estate is a party, the Court shall determine whether the estate ought to be exempted from the sale or whether the same should be sold, and in making such determination regard shall be had to the interests of all the parties.

Sales,  
including  
estates in  
dower or by  
the curtesy  
or for life.

(2) If a sale is ordered including such estate, all the estate and interest of every such tenant shall pass thereby, and no conveyance or release to the purchaser shall be required from such tenant, and the purchaser, his heirs and assigns, shall hold the premises freed and discharged from all claims by virtue of the estate or interest of any such tenant, whether the same be to any undivided share or to the whole or any part of the premises sold.

What to  
pass to  
purchaser.

(3) The Court may direct the payment of such sum in gross out of the purchase money to the person entitled to dower or estate by the curtesy or for life, as may be deemed, upon the principles applicable to life annuities, a reasonable satisfaction for such estate; or may direct the payment to the person entitled of an annual sum or of the income or interest to be derived from the purchase money or any part thereof, as may seem just, and for that purpose may make such order for the investment or other disposition of the purchase money or any part thereof as may be necessary.

Compensa-  
tion to  
owners of  
particular  
estates.

R.S.O. 1927, c. 142, s. 5.

Determining  
value of  
claim to  
inchoate  
right of  
dower.

**6.** Where a married woman is a party to such action or proceeding in respect to an inchoate right of dower, the Court shall, in case of sale, determine the value of such right according to the principles applicable to deferred annuities and survivorships, and shall order the amount of such value to be paid; or shall order the payment to such married woman of an annual sum, or of such income or interest as is provided in section 5 and such payment shall be a bar to any right or claim of dower. R.S.O. 1927, c. 142, s. 6.

Effect upon  
persons  
under a  
disability.

**7.** A partition or sale made by the Court shall be as effectual for the apportioning or conveying away of the estate or interest of any married woman, infant or mentally incompetent person, party to the proceedings by which the sale or partition is made or declared, as of a person competent to act for himself. R.S.O. 1927, c. 142, s. 7.

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