



1914

## c 114 Partition Act

Ontario

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### Bibliographic Citation

*Partition Act*, RSO 1914, c 114

### Repository Citation

Ontario (1914) "c 114 Partition Act," *Ontario: Revised Statutes*: Vol. 1914: Iss. 1, Article 117.

Available at: <http://digitalcommons.osgoode.yorku.ca/rso/vol1914/iss1/117>

## CHAPTER 114.

An Act respecting the Partition and Sale of  
Real Estate.

**H**IS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

- Short title.      **1.** This Act may be cited as *The Partition Act*. 3-4 Geo. V. c. 23, s. 1.
- Interpre-  
tation.  
Court.            **2.** In this Act,  
                      “Court” shall mean the Supreme Court.
- “Land.”            “Land” shall include lands, tenements, and hereditaments, and all estates and interests therein. 3-4 Geo. V. c. 23, s. 2.
- Jurisdiction  
of Court          **3.** In regard to the partition and sale of estates of joint-tenants, tenants in common and co-parceners, the Court, in addition to the powers hereinafter conferred, shall possess the same jurisdiction as by the laws of England on the 10th of August, 1850, was possessed by the Court of Chancery in England, and also as by the laws in force in Ontario was possessed by the Courts of King’s Bench and Common Pleas. 3-4 Geo. V. c. 23, s. 3.

## PARTITION.

- Who may be  
compelled to  
make parti-  
tion or sale.      **4.** All joint tenants, tenants in common, and co-parceners, 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. 3-4 Geo. V. c. 23, s. 4.
- Who may  
take pro-  
ceedings for  
partition.          **5.**—(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 or of a Judge thereof if such sale is considered by the Court or Judge to be more advantageous to the parties interested.

(2) No such proceedings shall be taken until one year next after the decease of the testator or person dying intestate in whom the land was vested. 3-4 Geo. V. c. 23, s. 5. When proceedings may be commenced.

6.—(1) If 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 or Judge upon the application of anyone interested in the land may, on such terms and conditions as may be deemed proper, 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. Appointment of guardian to estate of person unheard of for three years.

(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. 3-4 Geo. V. c. 23, s. 6. Power of the Court to deal with the estate.

#### SALES.

7.—(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 or Judge 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.

Compensation to owners of particular estates.

(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. 3-4 Geo. V. c. 23, s. 7.

Determining value of claim to inchoate right of dower.

8. 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 the preceding section and such payment shall be a bar to any right or claim of dower. 3-4 Geo. V. c. 23, s. 8.

Effect upon persons under a disability.

9. 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 lunatic, party to the proceedings by which the sale or partition is made or declared, as of a person competent to act for himself. 3-4 Geo. V. c. 23, s. 9.

#### TRANSFER TO SUPREME COURT OF MONEY AND SECURITIES IN HANDS OF REAL REPRESENTATIVE.

Transmission of money by real representative.

10.—(1) All money and all securities for money and investments paid to or taken by the real representative in the course of any proceeding under the authority of any former Act now in or which shall hereafter come into the hands of such real representative shall be paid and transmitted by him without delay to the Accountant of the Supreme Court, together with an office copy of the order for partition or sale and report under which such money or securities have been paid or taken.

Duty of Accountant.

(2) Such money shall be dealt with by the Accountant in the same manner as it would be dealt with if it had been paid into court in a matter originally brought and carried on in the Supreme Court.

Vesting.

(3) All securities for money and investments so transmitted to the Accountant shall, without any formal or other transfer, be vested in the accountant and shall be dealt with by him in the same manner as they would be dealt with if taken in a proceeding originally brought and carried on in the Supreme Court. 3-4 Geo. V. c. 23, s. 10.

**11.** Chapter 123 of the Revised Statutes of Ontario, 1897, <sup>Repeal—</sup> is repealed, but, subject to the next preceding section, all <sup>saving</sup> proceedings heretofore commenced under that Act, or under <sup>clause.</sup> any Act for which the same was substituted, for the partition or sale of land, shall be carried on and completed and the land and the proceeds thereof shall be dealt with in all respects as if this Act had not been passed. 3-4 Geo. V. c. 23, s. 11.

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