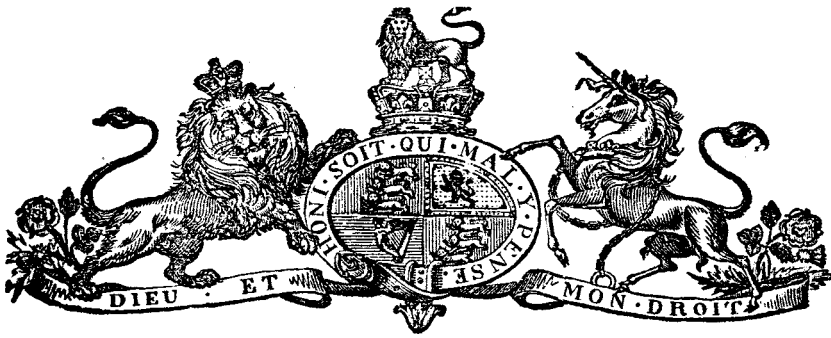


T A S M A N I A



1869.

ANNO TRICESIMO-TERTIO

VICTORIÆ REGINÆ,

No. 11.

AN ACT to amend the Law relating to Partition.
[22 October, 1869.]

BE it enacted by His Excellency the Governor of *Tasmania*, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

- 1 This Act may be cited as “The Partition Act, 1869.” Short Title.
- 2 In this Act the term “the Court” means the Supreme Court in its Equity Jurisdiction. As to the term “the Court.”
- 3 In a Suit for Partition instituted or to be instituted, 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 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 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 to Court to order a Sale instead of a Division.
- 4 In a Suit for Partition instituted or to be instituted, 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 Suit 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 Sale on application of certain proportion of parties interested.

Partition.

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 a Suit for Partition instituted or to be instituted, 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 Suit 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 seems reasonable.

Application of Section 30 of 16 Vict. No. 18.

7 Section Thirty of "The Trustee Act, 1852," shall extend and apply to cases where, in suits for Partition, the Court directs a sale instead of a division of the property.

Application of Sections 23, 24, 25, of 20 Vict. No. 29.

8 Sections Twenty-three to Twenty-five (both inclusive) of the Act 20 *Victoria*, No. 29, "to facilitate Leases and Sales of settled Estates," shall extend and apply to money to be received on any sale effected under the authority of this Act

Parties to Partition Suits.

9 Any person who, if this Act had not been passed, might have maintained a Suit for Partition, may maintain such suit 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 Suit to object for want of parties; and at the hearing of the cause the Court may direct such enquiries 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 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; 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: Provided, that in case the Court is satisfied that any person who would have been a necessary party to the Suit cannot be found, the Court may proceed by Partition or Sale in the absence of such party.

Costs in Partition Suits.

10 In a Suit for Partition the Court may make such Order as it thinks just respecting Costs up to the time of the hearing.

As to General Orders under this Act. 27 Vict. No. 21.

11 Section Eight of *The Equity Procedure Act, No. 2*, relative to the making of General Orders, shall have effect as if it was repeated in this Act, and in terms made applicable to the purposes thereof.