

Partition.

1904, art. 16, sec. 129. 1888, art. 16, sec. 116. 1860, art. 16, sec. 99. 1785, ch. 72, sec. 12. 1790, ch. 38. 1794, ch. 60, sec. 8. 1797, ch. 114, sec. 5. 1800, ch. 67, sec. 3. 1818, ch. 193, sec. 11. 1820, ch. 191, sec. 48. 1831, ch. 311, secs. 1, 9. 1832, ch. 302, sec. 4. 1886, ch. 232. 1900, ch. 205. 1904, ch. 535.

137. The court may decree a partition of any lands, tenements or hereditaments, or any right, interest or estate therein, either legal or equitable, on the bill or petition of any joint tenant, tenant in common, or any parcener or any concurrent owner, whether claiming by descent or purchase, or if it appear that said lands, tenements or hereditaments, or right, interest or estate thereon cannot be divided without loss or injury to the parties interested, the court may decree a sale thereof, and a division of the money arising from such sale among the parties, according to their respective rights; this section to apply to cases where all the parties are of full age and to cases where all the parties are infants, and to cases where some of the parties are of full age and some infants, and to cases where some or all of the parties are *non compos mentis*, and also to apply to cases where any or all of the parties are non-residents; and any party, whether of full age, infant or *non compos mentis* may file a bill under this section, an infant by his guardian or *prochein ami*, and a *non compos mentis* by his committee, and if any contract hath been made for the sale of any lands, tenements or hereditaments held as aforesaid, or any interest therein for or on behalf of any infant, idiot or person *non compos mentis* which the court, upon hearing aforesaid and examination into all the circumstances, shall think for the interest and advantages, both of such infant, idiot or person *non compos mentis*, and of the other person or person-interested therein to be confirmed, the court may confirm such contract, and all sales and deeds made in pursuance of and agreeably to an order of the court in the exercise of the above power shall be good and sufficient in law to transfer the estate and interest of such infant, idiot or person *non compos mentis* in such lands, tenements or hereditaments, according to the true intent and meaning of such deeds, respectively; and in all cases of deeds executed in the exercise of the above power, the same shall be executed and acknowledged by such person or persons as the court may appoint for the purpose. And wherever any bill or petition is filed under the provisions of this section for the sale of lands, persons holding mortgages and other incumbrances on the said lands or an undivided interest therein may be made parties to said bill, and the said lands or interests therein shall be sold free and clear of such mortgages or other incumbrance, and the rights of the lienors shall be protected in the distribution of the proceeds of the sale of such lands.

Parties.

A partition will not be decreed unless all co-tenants are parties. *Dugan v. Baltimore*, 70 Md. 5.

Prior to the act of 1904, ch. 535, an incumbrancer, such as a mortgagee or judgment creditor, was not a proper party to partition proceedings; *contra* since said act. The act of 1904, ch. 535, held not applicable, the judgment creditor not being made a party as such. A judgment creditor who is not