

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 made a party is not affected by partition proceedings. *McCormick v. McCormick*, 104 Md. 326; *Thruston v. Minke*, 32 Md. 574; *Adams v. Produce Exchange*, 138 Md. 661. *Cf. Baker v. Baker*, 108 Md. 273.

By whom and against whom the bill should be filed where a partition of infant's land is desired. *Simpson v. Bailey*, 80 Md. 423; *Benson v. Benson*, 70 Md. 257; *Downes v. Friel*, 57 Md. 536; *Bolgiano v. Cooke*, 19 Md. 392.

The owner of the leasehold interest need not be made a party to a bill for the partition or sale of a ground-rent. *Brendel v. Klopp*, 69 Md. 4.

As to tenants of the property being made parties, see *Thruston v. Minke*, 32 Md. 575.

#### Jurisdiction—Bill.

The jurisdiction under this section does not exist where parties hold separate, consecutive interests—such as a life estate and a reversion—but is confined to cases where the interests are concurrent. *Roche v. Waters*, 72 Md. 269; *Gill v. Wells*, 59 Md. 499; *Forbes v. Littell*, 138 Md. 214. *Cf. Tolson v. Bryan*, 130 Md. 340.

The bill of a concurrent owner held to be in strict conformity with this section. The test of the court's jurisdiction is whether a demurrer will lie to the bill; the court is not divested of its jurisdiction merely because the answer and proof deny the plaintiff's legitimacy. *Barron v. Zimmerman*, 117 Md. 298.

Jurisdiction of equity to order a sale in lieu of partition upheld, although there was no allegation in the bill that a division in kind could not be made without loss or injury. Jurisdiction having been assumed, other suitable relief may be afforded. Bill not demurrable. *Young v. Diedel*, 141 Md. 671.

A bill filed under this section, held not to be multifarious. *Littell v. Littell*, 137 Md. 690.

A bill of complaint held not to be in conformity with this section. Necessary allegations under this section. *Fox v. Reynolds*, 50 Md. 570. *Cf. Slingluff v. Stanley*, 66 Md. 224; *Wilson v. Green*, 63 Md. 548; *Mewshaw v. Mewshaw*, 2 Md. Ch. 13.

The description of the property in the bill, held sufficient. *Thruston v. Minke*, 32 Md. 573.

A bill for partition, and also seeking the enforcement and foreclosure of a mortgage on the same land, is multifarious. *Belt v. Bowie*, 65 Md. 351.

For cases involving the question of whether there is a sufficient allegation that the property "cannot be divided without loss or injury," see *Ballantyne v. Rusk*, 84 Md. 650; *Wilson v. Green*, 63 Md. 548; *Thruston v. Minke*, 32 Md. 576.

#### This section inapplicable.

Where certain parties own a one-fourth undivided interest in property, neither a partition among them nor a sale, under this section, can be had—partial partition cannot be made. A sale cannot be decreed except under such circumstances as justify a partition. *Dugan v. Baltimore*, 70 Md. 5.

Where a testator gives property to trustees to hold for the benefit of his daughter for life, and then (in case of her death without issue), for the benefit of such of his children and descendants, as said daughter might by will appoint, she being, moreover, given the power to dispose absolutely by will of certain money held by the trustees; and the daughter by her will executes the power by giving certain real property to one niece, pecuniary legacies to others and the sum of money which she was authorized to dispose of absolutely, to a third party; held that the trustees upon the death of the life tenant, had no such interest in the property as entitled them to ask for a sale for partition. If the trustees have no money with which to pay the pecuniary legacies, they have an implied power of sale for that purpose, in the absence of an agreement obviating same. *Harrison v. Denny*, 113 Md. 519.

A trustee for the benefit of creditors to whom has been assigned a one-half interest in property, held not authorized to file a bill for partition. *Ritchie v. Munder*, 49 Md. 12.

A mortgagee of an undivided interest cannot file a bill for partition under this section. *Mitchell v. Farrish*, 69 Md. 238. And see *Williams v. Harlan*, 88 Md. 4; *Bannon v. Comegys*, 69 Md. 418.

A Maryland court of equity will not decree partition of lands located in another state. *White v. White*, 7 G. & J. 208.