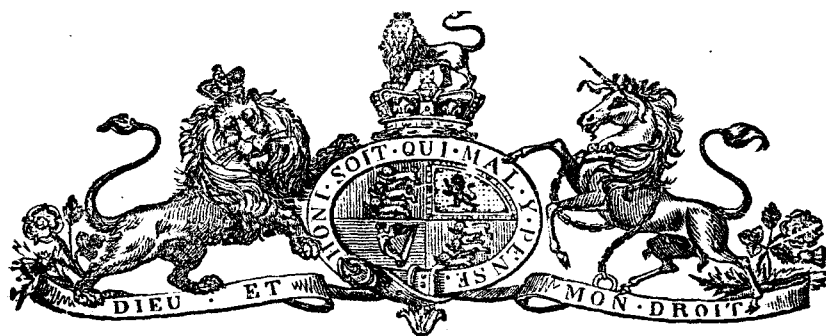


T A S M A N I A.

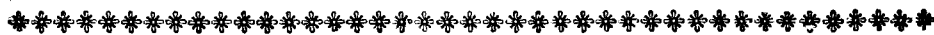


1877.

ANNO QUADRAGESIMO-PRIMO

VICTORIÆ REGINÆ,

No. 12.



AN ACT to amend "The Partition Act, 1869." A.D. 1877.
[11 December, 1877.]

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, 1877," and shall be read as one with "The Partition Act, 1869." Short title.

2 This Act shall apply to suits pending at the time of the passing of this Act, as well as to suits commenced after the passing thereof. Application of Act.

3 Where in a suit for partition it appears to the Court that notice of the decree cannot be served on all the persons on whom that notice is, by "The Partition Act, 1869," required to be served, or cannot be so served without expense disproportionate to the value of the property to which the suit relates, the Court may, if it thinks fit, on the request of any of the parties interested in the property, and notwithstanding the dissent or disability of any others of them, by order, dispense with that service on any person or class of persons specified in the order, and, instead thereof, may direct advertisements to be published at such times and in such manner as the Court shall think fit, calling upon all persons claiming to be interested in such property who have not been so served to come in and establish their respective Power to dispense with service of notice of decree or order in special cases.

Partition Act Amendment.

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claims in respect thereof before a Judge in Chambers within a time to be thereby limited. After the expiration of the time so limited all persons who shall not have so come in and established such claims, whether they are within or without the jurisdiction of the Court (including persons under any disability), shall be bound by the proceedings in the suit as if on the day of the date of the order dispensing with service they had been served with notice of the decree, service whereof is dispensed with; and thereupon the powers of the Court under "The Trustee Act, 1852," shall extend to their interests in the property to which the suit relates as if they had been parties to the suit; and the Court may thereupon, if it shall think fit, direct a sale of the property and give all necessary or proper consequential directions.

Proceedings
where service is
dispensed with.

4 Where an order is made under this Act dispensing with service of notice on any person or class of persons, and property is sold by order of the Court, the following provisions shall have effect:—

- (1.) The proceeds of sale shall be paid into Court to abide the further order of the Court:
- (2.) The Court shall, by order, fix a time, at the expiration of which the proceeds will be distributed, and may from time to time, by further order, extend that time:
- (3.) The Court shall direct such notices to be given by advertisements or otherwise as it thinks best adapted for notifying to any persons on whom service is dispensed with, who may not have previously come in and established their claims, the fact of the sale, the time of the intended distribution, and the time within which a claim to participate in the proceeds must be made:
- (4.) If at the expiration of the time so fixed or extended the interests of all the persons interested have been ascertained, the Court shall distribute the proceeds in accordance with the rights of those persons:
- (5.) If at the expiration of the time so fixed or extended the interests of all the persons interested have not been ascertained, and it appears to the Court that they cannot be ascertained, or cannot be ascertained without expense disproportionate to the value of the property or of the unascertained interests, the Court shall distribute the proceeds in such manner as appears to the Court to be most in accordance with the rights of the persons whose claims to participate in the proceeds have been established, whether all those persons are or are not before the Court, and with such reservations (if any) as to the Court may seem fit in favour of any other persons (whether ascertained or not) who may appear from the evidence before the Court to have any *prima facie* rights which ought to be so provided for, although such rights may not have been fully established, but to the exclusion of all other persons, and thereupon all such other persons shall by virtue of this Act be excluded from participation in those proceeds on the distribution thereof, but notwithstanding the distribution any excluded person may recover from any participating person any portion received by him of the share of the excluded person.

Partition Act Amendment.

5 Where in a suit for partition Two or more sales are made, if any person who has by virtue of this Act been excluded from participation in the proceeds of any of those sales establishes his claim to participate in the proceeds of a subsequent sale, the shares of the other persons interested in the proceeds of the subsequent sale shall abate to the extent (if any) to which they were increased by the non-participation of the excluded person in the proceeds of the previous sale, and shall to that extent be applied in or towards payment to that person of the share to which he would have been entitled in the proceeds of the previous sale if his claim thereto had been established in due time.

A.D. 1877.

Provision for case of successive sales in same suit.

6 In a suit for partition a request for sale may be made or an undertaking to purchase given on the part of a married woman, infant, person of unsound mind, or person under any other disability, by the next friend, guardian, committee in lunacy (if so authorised by order in lunacy), or other person authorised to act on behalf of the person under such disability ; but the Court shall not be bound to comply with any such request or undertaking on the part of an infant unless it appear that the sale or purchase will be for his benefit.

Request by married woman, infant, or person under disability.

7 For the purposes of "The Partition Act, 1869," and of this Act, the mortgagee of the undivided share of any person who would have been entitled to maintain a suit for partition under the said Act or this Act shall be entitled to maintain such suit in like manner as the mortgagor might have done.

Mortgagee may bring partition suit.

The term "mortgagee" in this Section shall include any person or persons in whom the legal right to receive the money secured by any mortgage may be vested at the time of the commencement of any such suit; and the provisions of this Section shall be applicable to all mortgages whether executed before or after the passing of the said Act or of this Act.

8 For the purposes of "The Partition Act, 1869," and of this Act, a suit for partition shall include a suit for sale and distribution of the proceeds; and in a suit for partition it shall be sufficient to claim a sale and distribution of the proceeds, and it shall not be necessary to claim a partition.

Suit for partition to include suit for sale and distribution of the proceeds.

