

the court, to bring an action to try the title to such estate within such time as the court shall direct, the court shall enter a final judgment that such defendant be forever debarred and estopped from having or claiming any right or title to such estate adverse to such plaintiff and those claiming by, through or under him.

If defendant shall appear and disclaim all right

Sec. 9. If the defendant in the proceedings provided for in section eight thereof, shall appear and disclaim all right and title adverse to the plaintiff he shall recover his costs; if he shall claim title, he shall show cause by answer why he should not be required to bring an action and try such title, and the court shall make such judgment or order respecting the bringing and prosecuting of such action as may seem just.

Act to take effect —when

Sec. 10. This act shall take effect and be in force from and after its passage.

Approved, Jan. 4, 1869.

## PARTITION OF LANDS.

### CHAPTER 16.

#### AN ACT TO PROVIDE FOR THE PARTITION OF LANDS.

*Be it enacted by the Legislative Assembly of the Territory of Dakota:*

When object of action is to effect partition of lands

Section 1. That when the object of an action is to effect the partition of real property among several joint owners the complaint must describe the property, and the respective interests of the several owners thereof, if known.

Sec. 2. If the number of shares or interests is known, but the owners thereof are unknown, or if there are, or are supposed to be any interests which are unknown, contingent or doubtful, these facts must be set forth in the complaint with reasonable certainty.

If number of shares are known, but owners are not

Sec. 3. Creditors having a specific or general lien upon all or any portion of the property must be made parties.

Creditors having specific lien

Sec. 4. If the lien is upon one or more undivided interest of any of the parties, it shall after partition or sale, remain a charge upon those particular interests or the proceeds thereof. But the due proportion of costs is a charge upon such interests paramount to all other liens.

If lien is upon one or more undivided interests

Sec. 5. The answers of the defendants must state among other things, the amount and nature of their respective interests. They or any of them may deny the interest of the plaintiffs or any of them; and by supplemental pleading, if necessary, may deny the interest of the other defendants.

Answer of defendants must state what. May deny interest

Sec. 6. Where there are two or more plaintiffs, they may reply jointly, or either of them may reply to any or all the answers of the defendants.

When two or more plaintiffs may reply—how

Sec. 7. Issues may thereupon be joined and tried between any of the contesting parties, the question of costs on such issues being regulated between the contestants agreeably to the principles applicable to other cases.

Issues may be joined, how tried

Sec. 8. Each of the parties appearing, whether as plaintiff or defendant, must exhibit his documentary proof of title if he has any such, and must file copies thereof with his pleadings.

Parties appearing must exhibit what

Sec. 9. If the statements contained in the complaint and answers are not contradicted in the manner aforesaid, or by the documentary proof exhibited as above required, they shall be taken as true.

Statement not contradicted shall be taken as true

Sec. 10. After all the shares and interests of the parties have been settled and determined in any of the methods aforesaid judgment shall be rendered confirming those shares and interests and directing partition to be made accordingly.

After all shares have been settled judgment shall be rendered

Sec. 11. Upon entering such judgment, the court [must] appoint three commissioners to make partition of the lands into the requisite number of shares, one of which said commissioners shall be a competent surveyor.

Court to appoint three commissioners

May be directed  
to allot. In all  
other cases

Sec. 12. For good and sufficient reasons appearing to the court, the commissioners may be directed to allot particular portions of the land to particular individual parties. In all other cases the shares must be made as nearly as possible of equal value.

Partition cannot  
be made without  
prejudice. Shall  
report to court

Sec. 13. If it appears to the commissioners that a partition cannot be made without great prejudice to the owners of the land, they shall so report to the court, stating clearly in their report the facts in relation thereto.

If satisfied with  
report, court  
shall order

Sec. 14. If satisfied with such report, the court shall cause an order to be entered, directing the commissioners to sell the premises so situated, and shall also in such order fix the terms of sale.

Same notice  
shall be given

Sec. 15. The same notice of sale shall be given as when lands are sold on execution by the sheriff, and the sale shall be conducted in like manner.

Before pro-  
ceeding to sell.  
—Security

Sec. 16. Before proceeding to sell, the commissioners shall each give security, to be fixed and approved by the court or judge thereof, conditioned for the faithful discharge of his duties. At any time thereafter, the court may require farther and better security.

After completing  
said sale, What

Sec. 17. After completing said sale, the commissioners must report their proceedings to the court, with a description of the several parcels of land sold to each purchaser, and the price bid therefor, which report shall be filed with the clerk.

If sales are con-  
firmed by court

Sec. 18. If such sales are confirmed by the court, an order shall be entered, directing the commissioners or any two thereof, to execute conveyances pursuant to such sale. But no conveyances can be made until all the money is paid or secured in such manner as the court may direct.

Conveyances  
valid against  
whom

Sec. 19. Such conveyances so executed being recorded in the county where the premises are situate, shall be valid against all subsequent purchasers, and also against all persons interested at the time, who were made parties to the proceedings in the manner prescribed by law.

If sale dis-  
approved

Sec. 20. If the sales are disapproved, the money paid and the securities given or either, must be returned to the persons respectively entitled thereto.

Sec. 21. When a partition of the land is deemed proper, the commissioners must mark the shares by visible monuments and permanently establish the boundaries thereof.

Must mark shares by visible monuments

Sec. 22. The report of the commissioners must be in writing and signed by at least two of such commissioners. It must particularly describe the respective shares and be accompanied with a correct plat of the premises.

Report must be in writing

Sec. 23. Unless the shares are allotted to their respective owners by the commissioners as hereinbefore contemplated, the clerk shall number the shares and then draw the names of the future owners by lot, which allotment shall be made in the presence of the court and under its direction.

Unless shares are allotted. Proceedings

Sec. 24. When partition can conveniently be made of part of the premises, but not of all, one portion may be partitioned and the other sold as hereinbefore provided.

When partition can be made of part of premises not of whole

Sec. 25. For good cause shown, the report of the commissioners may be set aside and the matter again referred to the same or other commissioners.

Report of commissioners may be set aside

Sec. 26. Upon the report of the commissioners being confirmed, judgment thereon shall be rendered that the partition so made be firm and effectual forever.

If confirmed, judgment thereon

Sec. 27. When the parties in interest have been duly notified to appear and answer, either by the service of a summons, or by the publication prescribed by law, any of the proceedings in this act authorized, shall be binding and conclusive upon them all. If only a portion of such parties be served, they only shall be bound by such proceedings.

When parties in interest are notified to appear by service of summons &c.

Sec. 28. A judgment of partition shall be presumptive evidence of title in all cases, and as between the parties themselves it is conclusive evidence thereof, subject however to be defeated by proof of a title paramount to, or independent of, that under which the parties held as joint tenant or tenants in common.

Judgment of partition, presumptive evidence. Subject however

Sec. 29. The costs in partition cases shall be paid by all the parties in proportion to their respective interest, except those costs which are created by contests herein provided for.

Costs in partition. How paid

Person claiming to hold incumbrance, on his own proper motion, party thereto.

Sec. 30. Any person claiming to hold an incumbrance or lien upon any portion of the property involved in the suit, may upon his own proper motion be made a party thereto and have his interests determined therein.

If incumbrance be ascertained to exist

Sec. 31. If any incumbrance be ascertained to exist the proceeds of the sale of that portion so encumbered, or so much thereof as is necessary, shall, if the owner consent, be paid over to the incumbrancer.

If owner object to payment, money retained

Sec. 32. If the owner object to the payment of such incumbrance, the money shall be retained or invested by order of the court, to await final action in relation to its disposition; and the court may direct an issue to be made up between the incumbrancer and the owner which shall be decisive of their respective rights.

Estate for life

Sec. 33. If an estate for life or years be found to exist as an incumbrance upon any part of such property, and if the parties cannot agree upon the sum in gross which they will consider an equivalent for such estate, the court shall direct the avails of the incumbered property to be invested, and the proceeds thereof to be paid to the incumbrancer, during the lifetime of such incumbrance.

Contingent or equitable interests

Sec. 34. Persons having contingent or equitable interests in such property may be made parties to the proceedings, and the proceeds of the property so situated or the property itself, in case of partition, shall be subject to the order of the court until such interests shall be fully determined and the title of such property vested by due process of law.

Shall not delay distribution

Sec. 35. The proceedings in relation to incumbrances shall not delay the distribution of the proceeds of other shares in respect to which no such difficulties exist.

Court shall make such orders as it may deem necessary respecting. In case of absent owners

Sec. 36. The court shall from time to time as occasion may require, make such orders as it may deem necessary, respecting the distribution of any or all moneys arising out of the sale of any property under the provisions hereof. And in case of absent owners shall retain the share or shares of such absentee in the hands of the court, and if the same be money the court shall cause the same to be invested for the use and benefit of such absentee, but if partition be made and a share be allotted to the absentee, the court shall appoint some discreet person to

manage and take charge of the same, who shall account annually to the court the results and condition thereof.

Sec. 37. Such absentee, his heirs, executors or assigns, may at any time take possession of such property, upon application to and with the permission of the court.

Absentee may take possession upon application.

Sec. 38. Questions of title, incidentally arising in proceedings under the provisions of this act, may be fully determined as in actions brought for the recovery of real property and under like issues and evidence.

Questions of title. How determined.

Sec. 39. The proceedings provided for herein shall not be joined with proceedings for the recovery of real property in one and the same action.

Not joined with proceedings for recovery.

Sec. 40. The rules of pleading and practice prescribed by the code of civil procedure shall obtain in all proceedings under the provisions of this act, except as herein changed.

Rules of pleadings and practice prescribed by code of civil procedure shall obtain.

Sec. 41. This act being deemed of immediate importance shall take effect and be in force from and after its passage and approval.

Act to take effect, when.

Approved, Jan. 5, 1869.

## POOR.

### CHAPTER 17.

#### AN ACT FOR THE RELIEF OF THE POOR.

*Be it enacted by the Legislative Assembly of the Territory of Dakota :*

Section 1. That the county commissioners of the several organized counties of this Territory, shall be the overseers of the poor within their respective counties, and shall perform all the duties with reference to the poor within their respective counties, that may be prescribed by law.

County commissioners, overseers. Duty of.