

same, or if the same were granted in open court, then for any judge of that court, in vacation, to issue an attachment against the said person for a contempt, upon his being brought before the said judge, unless he shall disprove, or purge the said contempt, the said judge may, in his discretion, commit him to jail until the sitting of the court in which the said injunction is pending, or take bail for his appearance in the said court at the next term thereof, to answer for the said contempt, and to abide the order of the court thereon.

SEC. 13. Upon the filing of an answer, it shall be in order at any time, in term, to move for the dissolution of the injunction, and upon such motion it shall be lawful for the parties to introduce testimony to support the bill and answer, the court shall decide such motion upon the weight of testimony, without being bound to take the answer as absolutely true. If after such dissolution is moved for the plaintiff in the bill will satisfy the court by his own affidavit, or the affidavit of any disinterested person, that the answer, or any material part thereof (to be specified in such affidavit), is untrue, and that he has witnesses whose testimony he believes he can procure by the next term of the court who will disprove the said answer, or such material part thereof as shall be specified as aforesaid, and that he has had no opportunity to procure such testimony since the coming in of the answer, it shall be lawful for the court to grant a continuance of the said motion until the next term. The testimony to be heard on such motions, aside from the bill and answer, shall be by deposition in writing, taken as in other cases in chancery proceedings, except the affidavits which may have been filed with the bill or answer, which may be read on such motion as heretofore, and the depositions taken to dissolve an injunction may be read on the final hearing of the cause in which they have been taken.

APPROVED, January 25, 1839.

PARTITION.

AN ACT to provide for the partition of real property.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That any one or more joint tenants or tenants in common of any

- lands, tenements, or hereditaments, being entitled to the present possession thereof, may commence suit in the district court of the county where the premises are situated for a partition thereof.
- Petition and affidavit.** SEC. 2. Such application shall be by petition, describing the property and the respective interests of all the joint owners thereof, if known, and if unknown, stating that fact also, which petition shall be verified by affidavit, and filed in the office of the clerk of the court.
- Who must be parties to the suit.** SEC. 3. All persons having interest in such property liable to be affected by the proceedings, whether they be in possession, expectancy, or by way of incumbrance, must, as far as known, be made parties to the suit, either as petitioners or defendants. If not included at first, their names may be inserted at any time during the progress of the cause.
- Infant owners.** SEC. 4. If any of such joint owners be an infant, or otherwise legally incapable of acting for himself in the premises, the person, to whom the care of his share of the joint property is by law intrusted, shall, so far as regards the proceedings authorized by this act, be deemed the owner thereof.
- Court may appoint guardian.** SEC. 5. If such incapable person shall have no one legally authorized to act for him as aforesaid, the court may, for that purpose, appoint a guardian *ad litem*, who shall give such security for the faithful discharge of his duties as the court may direct.
- Summons.** SEC. 6. After filing the petition aforesaid, a summons shall issue which shall be served and returned as in other cases.
- Notice to unknown defendants.** SEC. 7. If said summons be returned "not found" as to any of the defendants, or if the petitioners believe it at all probable that there may be joint owners not known and not named in the petition, the court may, upon their application, direct the clerk to make out a notice to such defendants not known or not found as aforesaid, to be signed by him, and furnished to the petitioners, or their attorney, on demand.
- What it shall contain.** SEC. 8. Such notice shall state concisely the objects of the petition aforesaid, and the names of the parties thereto, and shall require all persons interested in the property therein described (whether such persons are named in said petition or not), to appear and answer said petition on or before the first day of the court, or that the proceedings had in the cause thereafter will be binding and conclusive on them forever.

SEC. 9. The publication of such notice once in Publication of the notice. each week, for twelve weeks successively, in some newspaper printed most conveniently to the place where the court is held, and for four successive weeks in some newspaper printed at the seat of government for the Territory (such publications to be made as soon as practicable after the issuing of such notice), shall be considered in all respects equivalent to a personal service of the summons aforesaid.

SEC. 10. The answer of the defendants may be Defendant's answer. either joint or separate, and must state the amount and nature of each of their respective interests.

SEC. 11. Or it may deny the right of either and What it may deny. all the petitioners to any part of said property, or that, having an interest, they had no right to present possession, or any other matter which would bar the right of the petitioners to commence the suit; and if such answer be admitted or found true, the proceedings shall be dismissed at the cost of the petitioners.

SEC. 12. Any of the parties in interest, who shall Issue formed. have appeared as aforesaid either as petitioners or defendants, may reply to the answer of any other party, and whenever an issue is formed the court shall direct it to be entered on the record.

SEC. 13. The different issues of fact may be tried Juries. by separate juries, or any portion thereof by the same jury at the discretion of the court.

SEC. 14. After an amendment affecting the inter- Amendment. ests of any party, the court may allow further pleadings and the making up of other issues.

SEC. 15. After the introduction of new parties, as When new parties introduced. authorized by section third, unless notice shall have been given by publication as hereinbefore provided, the same proceedings in relation to such new parties shall be pursued, by summons or publication, as has been prescribed for the commencement of the suit.

SEC. 16. All issues of fact shall be tried by a jury Issues of fact. unless the parties interested shall otherwise agree.

SEC. 17. In all cases, each of the parties appearing, whether as petitioners or defendants, shall be required to exhibit his proof of title, and authentic copies of the conveyances by which the same is held, each of which (or copies thereof) shall be filed with the clerk. What each of the parties to exhibit.

SEC. 18. If the statements in the petition are not When statements to be taken as true. contradicted by some of the defendants, or by the

- aforesaid proofs themselves, such statements shall be taken as confessed and true.
- Judgment.** SEC. 19. After all the shares and interests of the parties shall have been settled in any of the methods aforesaid, judgment shall be rendered, confirming such shares and interests, and that partition be made accordingly.
- Parties not appearing.** SEC. 20. The shares and interests of all those parties who shall not have appeared as aforesaid, shall, as between such parties, remain undivided.
- Incumbrance.** SEC. 21. Any incumbrance on the undivided share of any party shall, after partition, be confined to the particular share of such party.
- Commissioners** SEC. 22. After judgment of partition shall have been rendered as aforesaid, the court shall appoint three reputable citizens of the county to act as commissioners for making such partition, and shall specify, in an order of court, the number and nature of the shares into which the property shall be divided.
- Vacancy.** SEC. 23. If any of the persons so appointed shall die, resign, or neglect to serve, the court, or the judge thereof in vacation, may fill the vacancy.
- Affidavit by commissioners** SEC. 24. Each of such commissioners, before proceeding to act, shall make affidavit that he will honestly and impartially execute the trust reposed in him, which affidavit shall be filed with the clerk of the court.
- Acts of majority valid.** SEC. 25. All the commissioners must meet together in the performance of their duties, but the acts of a majority so met shall be valid, subject, however, to the revision of the court.
- If partition would be prejudicial.** SEC. 26. If it shall appear to the commissioners that a partition of the property cannot be made without great prejudice to the owners thereof, they shall report that fact to the court.
- Partition according to value.** SEC. 27. Where a partition is deemed proper, it shall be made according to value, and not according to quantity. The commissioners shall designate the shares by permanent monuments, and may employ the county surveyor and necessary assistants to aid them therein.
- Report.** SEC. 28. The report of the commissioners shall be in writing, signed by at least two of them. It shall describe the respective shares with as much accuracy as would be necessary in a deed, and shall be accompanied with a plat of the premises. It shall also contain an item of their charges.

SEC. 29. Where the case will admit, the court shall direct the commissioners merely to make the partition into shares. The clerk, in open court, shall make the allotment of those shares, by first numbering the shares, and then drawing the names of the corresponding owners. after the manner of selecting a petit jury. Allotment of shares.

SEC. 30 Where the case requires, the commissioners may make a partition of a part of the property in the manner aforesaid and, as to the remainder, may report as provided in section twenty-eight. The proceedings, in relation to each of the two portions thus divided or undivided, shall be the same, respectively, as is by this act provided for property in either of the two predicaments. Partition of part of the property.

SEC. 31 The court shall allow the commissioners two dollars per diem for their services and expenses, as well as for the surveyor and other necessary assistants. Allowance to com.

SEC. 32. All the costs of partition shall be paid in the first instance by the petitioners, but eventually by all the parties in proportion to their interests. Costs.

SEC. 33. Said report, if not presented in court by the commissioners themselves, must be acknowledged or proved in the same manner as required in the case of deeds to entitle them to be recorded. It shall then be filed with the clerk. Report to be acknowledged.

SEC. 34. On good cause shown, the report may be set aside, and new commissioners appointed by the court as often as the case may require, who shall proceed as above directed. May be set aside.

SEC. 35. Upon the report of commissioners being confirmed, judgment shall thereon be rendered that such partition be firm and effectual forever. Confirmation.

SEC. 36. Where all the parties in interest shall have been duly notified to appear and answer the petition. either by the service of the summons, or by the publications, or by the publication herein before prescribed, the judgment aforesaid shall be binding and conclusive upon all persons whatsoever. In what cases judgment to be conclusive.

SEC. 37. In other cases it shall only bind those who shall have been duly served with the summons as aforesaid. Other cases.

SEC. 38. If the said commissioners shall report that the whole or any portion of the property is so situated that a partition thereof cannot be made without great prejudice to the owners, the court, if satisfied that such report is correct, may cause an order to be Court may order sale of property.

- entered, directing the commissioners to sell the premises so situated at public auction, to the highest bidder, and also fixing the terms of sale.
- Security.** SEC. 39. Before the commissioners proceed to sell as aforesaid, they shall give security, to be approved by the court, or judge thereof, conditioned for the faithful discharge of their duties as such commissioners. And at any time thereafter, upon good cause shown, such court or judge may require further or better security.
- General incumbrance.** SEC. 40. After making the order of sale as aforesaid, the court shall direct the clerk to ascertain and report whether there be any general incumbrance by mortgage, judgment, decree, or otherwise, upon any portion of said property.
- Holders to be parties.** SEC. 41. If such incumbrance be ascertained to exist, the holders thereof shall be made parties to the proceedings, and the same course pursued in relation thereto as directed in section nineteenth.
- Notice of sale.** SEC. 42. The commissioners shall give the same notice of sales to be made by them, as is required where lands are sold by the sheriff on execution.
- Report to be filed.** SEC. 43. After completing such sale, the commissioners shall report their proceedings to the court, with a description of the different parcels of land sold to each purchaser, and the price paid by him, which report shall be filed with the court.
- Conveyances.** SEC. 44. If such sales be approved and confirmed by the court, an order shall be entered directing the commissioners, or any two of them, to execute conveyances pursuant to such sales: *Provided*, That no such conveyances shall be made until all the money is paid, without receiving from the purchaser a bond and mortgage of the land so conveyed.
- If sales disproved.** SEC. 45. If such sales be disproved, the moneys paid, and the securities given, shall be returned to the respective purchasers.
- Conveyance to be recorded.** SEC. 46. Such conveyances, so executed as aforesaid, shall be recorded in the county where the premises are situated, and shall be a bar to all persons interested in such premises, who shall have been duly summoned or notified as hereinbefore directed.
- Share of party under legal disability.** SEC. 47. Where any of the parties are under any legal disabilities, as mentioned in section fourth, his share of the proceeds shall be paid over to the person who has represented him in the suit, to be invested for the benefit of the said owner, and to be

subject to the laws relative to real property until after such disability has ceased.

SEC. 48. Where the holder of an incumbrance shall have appeared pursuant to the provisions of section forty-one, he shall make proof of such incumbrance and the exact amount thereof, and if any issue of fact be thereon joined, it shall be tried as hereinbefore directed.

SEC. 49. If an estate for life or years be found to exist as an incumbrance upon any part of said property, and if the parties cannot agree upon the sum in gross which shall be considered an equivalent for such estate, the court shall direct such sum to be calculated according to the principles of law applicable to annuities, and which the person entitled thereto shall consent to accept in lieu thereof, by an instrument under his hand and seal, and acknowledged or proved in the manner required in case of deeds to entitle them to be recorded.

SEC. 50. If such consent be not given on demand, the court shall direct the proceeds of the whole share, upon which the incumbrance existed, to be invested, and the same disposition to be made of the proceeds thereof as though such instrument had remained real property after partition.

SEC. 51. The proceedings in relation to incumbrances, as above provided, shall not delay the distribution of the proceeds of those shares in regard to which no such proceedings are necessary.

SEC. 52. Any person claiming to hold an incumbrance upon any portion of the property, in relation to which the suit is brought, may, in default of the owner thereof, appear and act as his representative in any of the proceedings under this act.

SEC. 53. Persons having a contingent interest in said property may be made parties to the proceedings herein authorized, and the proceeds of the share so situated shall be invested until such contingent interest vests in some ascertained owner.

SEC. 54. In all cases the ascertained share of any absent or unknown owner shall also be invested for his benefit.

SEC. 55. Before the proceeds of any sales hereby authorized shall be paid over or invested, the due proportion of the expense of the aforesaid proceedings shall first be deducted.

SEC. 56. The proceedings authorized by this act being intended as a substitute for all partitions in

chancery as well as at law, the court is authorized to exercise equity powers, except as herein otherwise provided.

Security to refund.

SEC. 57. The court may, in its discretion, require all or any of the parties, before they shall receive the moneys arising from any sale as aforesaid, to give satisfactory security to refund such moneys, with interest, in case it shall afterwards appear that said parties were not entitled thereto.

Security to be by bond.

SEC. 58. Whenever by this act security is required to be given, it shall, unless otherwise provided, be by bond to the clerk of the court, and filed in his office, and if the conditions thereof be broken, it shall be prosecuted by him, or his successors, for the use of the parties aggrieved, whenever required by them so to do.

How investments to be made.

SEC. 59. All investments under the provisions of this act shall be made upon bond and mortgage of real estate, of the clear unincumbered value of at least twice the value of the investment, and the security shall be given, and the breach thereof presented, as provided in the preceding section.

Discharge, &c., of security.

SEC. 60. No such security shall be discharged, transferred, or impaired, by any act of the clerk, without an order from the court entered on the minutes thereof.

Clerk to receive and apply moneys, &c.

SEC. 61. Such clerk shall receive all moneys as they become due, and apply or re-invest the same, according to the circumstances of the case, as the court shall direct; and shall once in each year, or oftener if required by the court, render to said court an account in writing, and on oath, of all moneys received by him, and of the application thereof.

In what cases petitioners to pay costs.

SEC. 62. If the petitioners for any partition shall become nonsuit, or suffer a discontinuance, or a verdict shall pass against them, or judgment shall be rendered against them on demurrer, they shall pay costs, to be recovered and collected as in personal actions.

Writ of error may be bro't.

SEC. 63. Upon any final judgment, rendered pursuant to the provisions of this act, a writ of error may be brought by any of the parties to such judgment, either jointly or separately, in the same manner as in personal actions.

What errors may be assigned thereon.

SEC. 64. Errors may be assigned upon such writ for any erroneous adjudication upon the rights of any of the respective parties, and the court shall direct the person, whose interest is affected by such adju-

dication, to appear in such cause as a defendant in error.

SEC. 65. Judgment may be given by the court above either for affirmance or reversal in part, or in whole, or a new adjudication of the matter may be directed in the court below. The proceedings in other respects shall be the same as in personal actions.

APPROVED, January 4, 1839.

PARTNERSHIPS.

AN ACT relative to limited Partnerships.

SEC. 1. *Be it enacted by the Council and House of Representatives of the Territory of Iowa,* That limited partnerships for the transaction of any agricultural, mercantile, mechanical, mining, smelting, or manufacturing business, within this Territory, and for no other purpose, whatever, may be formed by two or more persons, upon the terms, with the rights, and powers, and subject to the conditions, liabilities herein prescribed.

Limited partnerships, by whom, and for what purposes, formed.

SEC. 2. Such partnerships shall consist of one or more persons, who shall be called general partners, and who shall be jointly and severally responsible, as general partners now are by law, and of one or more persons who shall contribute, in actual cash payment, a specific sum, as capital to the common stock, who shall be called special partners, and who shall not be liable for the debts of the partnership beyond the fund so contributed by him or them.

General and special partners, and their respective liabilities

SEC. 3. The general partners only, shall be authorized to transact business and sign for the partnership, and to bind the same.

General partners to transact business, &c.

SEC. 4. The persons desirous of forming such partnership, shall make and severally sign a certificate, which shall contain: first, the name, or firm, under which such partnership is to be conducted: second, the general nature of the business intended to be transacted: third, the names of all the general and special partners interested therein, distinguishing which are general and which are special partners, and their respective places of residence: fourth, the amount of capital which each special partner shall have contributed to the common stock: fifth, the period at which the partnership is to commence, and the period that it will terminate.

Certificate, to contain name of firm, nature of business, general and special partners, their residence, the amount of capital, and period of connection.