

No. 266, A.]

[Published May 6, 1899.]

CHAPTER 336.

AN ACT relating to the partition of land, and the assignment of dower and homestead rights therein, and to amend section 3102 of the statutes of Wisconsin.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

SECTION 1. Strike out all of section 3102 of the Wisconsin statutes of 1898, after the word "owned," in the twenty-second line, and insert in place thereof the following: "Every person having an interest, as aforesaid, whether in possession or otherwise, and every person having an estate of dower whether admeasured or otherwise, or an estate by the courtesy, or having a homestead right for life, in such premises or in any part thereof may be made a party to such action." So that such section as amended shall read as follows:

Who may be made parties to actions.

Complaint; Parties. Section 3102. The complaint in such action shall particularly describe the lands sought to be partitioned and shall set forth the rights and titles of all persons interested therein, so far as the same are known to the plaintiff, including the interest of any tenant for years, for life, by the courtesy or in dower and of the persons entitled to the reversion, remainder or inheritance, after the termination of any particular estate therein; and of every person who by any contingency, contained in any devise, grant or otherwise, or as having an inchoate right of dower may be or become entitled to any beneficial interest in the premises; but in case any such person or his share or interest be unknown to the plaintiff, or be uncertain or contingent, or the ownership of the inheritance shall depend upon an executory devise, or

Complaint, what to contain.

the remainder shall be a contingent remainder, so that such person or his interest cannot be named or set forth, the same shall be stated in the complaint; but no person whose title or interest appears of record or who is in the actual possession or occupancy of any of such lands shall be considered or proceeded against as an unknown owner. The complaint shall demand judgment for a petition of the premises according to the respective rights of the parties interested therein and for a sale thereof, if it shall appear that partition of the land cannot be made without great prejudice to the owners thereof; and when the complaint does not pray partition of all the lands owned by the parties either of them may have the complaint so amended as to affect all the lands so owned. Every person having an interest, as aforesaid, whether in possession or otherwise, and every person having an estate of dower whether admeasured or otherwise, or an estate by the courtesy, or having a homestead right for life, in such premises or in any part thereof may be made a party to such section [action].

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Duties of
commissioners
in partition-
ing land.

SECTION 2. A new section of such statutes is hereby enacted which shall be known as section 3113a which shall read as follows: Section 3113a. In case actual partition of the premises shall be directed by the court, the commissioners shall first set off to any party to the action, who may be entitled to a homestead during life in the premises, of any part thereof, or who may be entitled to dower therein which has not been set off, or admeasured according to law, such homestead and shall admeasure and assign such dower to the party or parties entitled thereto, in severalty, according to their respective rights, and thereafter said commissioners shall, in dividing said real estate among the parties to the action, as directed by the judgment, and as provided by section 3113, include in such division and partition, the reversionary interest in the real estate held in common by the parties, so set off as a homestead, or admeasured or assigned as dower, or held by any tenant by the courtesy, they determining the

value of such reversionary interest or estate for the purpose of such partition, by deducting from the entire value of the land, the value of the life estate so created or existing therein ascertained by the annuity table, contained in the circuit court rules, and they may allot the whole or any part of such reversionary estate to any of the parties to the action in severalty having due regard to the value thereof ascertained as aforesaid as the whole or as a part of the share or allotment of any such party or parties in the real estate to be partitioned. If the court shall have determined that actual partition of the premises cannot be made between the parties, without great prejudice to the owners, in that case if the person or persons entitled to a homestead for life, or dower, or an estate by the courtesy, in the said real estate or any part thereof, shall file with the clerk of the court where such partition proceedings are pending, written consent therefor, signed, witnessed and acknowledged, as deeds are required to be, if entitled to record, in that case the entire estate may be sold, as provided by the judgment of the court, free and clear from the incumbrance or lien of any such life estate, whether set off and admeasured or otherwise, and the value of any such life estate shall be ascertained by the said annuity table in such manner as the court may direct, and the value of such estate or estates shall be paid to the owner or owners thereof from the avails of the sale and such owner or owners shall execute therefor, a release in writing which shall be witnessed, executed and acknowledged by such party, so as to be entitled to record, of all estate right or claim in the premises so sold, describing them, which may be recorded, and shall constitute a perfect bar to any further claim by any such releasor, or any person claiming under him or her, to any such life estate or right in the premises in such release described. In case the owner of any such homestead right for life, or any person so entitled to dower or estate by the courtesy in the real estate to be partitioned or any part thereof, refuses

Where partition cannot be made without great prejudice.

When lands cannot be actually partitioned.

or fails to file any such written consent, or from minority or other incapacity cannot do so, and the court finds that the lands sought to be partitioned cannot be actually partitioned among the owners thereof according to their respective interests and such homestead for life or dower has not been set off or admeasured, the court shall first appoint commissioners to set off such homestead and to assign and admeasure such dower, which, when confirmed by the court shall be final and conclusive between the parties, and binding upon them and all persons claiming under them. The court shall then direct the remaining premises, together with the reversionary estate in the lands so set off to tenants for life as aforesaid, to be sold as in other cases, and shall order the proceeds of such sale to be divided among the owners thereof according to their respective rights therein as determined and fixed by the court, they giving such receipts or releases therefor as the court may direct. Any purchaser receiving a deed from the sheriff or other officer conducting such sale, shall be vested with all the estate, title and interest of all the parties to the action and those claiming under them, to all the real estate sold, subject only to the life estates therein set off and admeasured as herein provided. And such purchasers shall be entitled to the possession of such real estate as provided in other cases of sales of real estate in partition proceedings, except as to such real estate so set off and admeasured to life tenants thereof, of which the said purchaser shall be entitled to the possession at the termination of such life estate therein and not before.

Title vested by deed from sheriff.

SECTION 3. All acts or parts of acts conflicting or inconsistent with the provisions of this act are hereby repealed.

And this act shall take effect and be in force, from and after its passage and publication.

Approved May 3, 1899.