

equitable estates a writ of partition does not lie at law, *Coale v. Barney*, 1 G. & J. 324. In *Heaton v. Dearden*, 16 Beav. 147, where one of two tenants in common of an estate had agreed to grant a lease of the mines under it, the lessee was held entitled to a decree for specific performance and for a partition of the estate, and so is *Young v. Frost*, 5 Gill, 287; S. C. 1 Md. 377. See however *Chaney v. Tipton*, 11 G. & J. 253; S. C. 3 Gill, 327. As to partitions between tenants in common of an equity of redemption, see *Swan v. Swan*, 8 Price, 518; *Walton v. Copeland*, 7 Johns. Ch. 140, but a partition is said to be improper in a suit by them for redemption, *Watkins v. Williams*, 3 Mac. & G. 622. And now Art. 16, sec 99<sup>4</sup> of the Code, gives Courts of Equity the power decreeing par-

<sup>4</sup> This section was amended by the Acts of 1886 ch. 232, 1900 ch. 205 and 1904 ch. 535. It is now as follows: "The court may decree a partition of any lands, tenements or hereditaments, or any right, interest or estate therein, either legal or equitable, on the bill or petition of any joint tenant, tenant in common, or any parcener or any concurrent owner, whether claiming by descent or purchase, or if it appear that said lands, tenements or hereditaments, or right, interest or estate thereon cannot be divided without loss or injury to the parties interested, the court may decree a sale thereof, and a division of the money arising from such sale among the parties, according to their respective rights; this section to apply to cases where all the parties are of full age and to cases where all the parties are infants, and to cases where some of the parties are of full age and some infants, and to cases where some or all of the parties are *non compos mentis*, and also to apply to cases where any or all of the parties are non-residents; and any party, whether of full age, infant or *non compos mentis* may file a bill under this section, an infant, by his guardian or *prochein ami*, and a *non compos mentis* by his committee, and if any contract hath been made for the sale of any lands, tenements or hereditaments held as aforesaid, or any interest therein for or on behalf of any infant, idiot or person *non compos mentis* which the court, upon hearing aforesaid and examination into all the circumstances, shall think for the interest and advantages, both of such infant, idiot or person *non compos mentis*, and of the other person or persons interested therein to be confirmed, the court may confirm such contract, and all sales and deeds made in pursuance of and agreeably to an order of the court in the exercise of the above power shall be good and sufficient in law to transfer the estate and interest of such infant, idiot or person *non compos mentis* in such lands, tenements or hereditaments, according to the true intent and meaning of such deeds, respectively; and in all cases of deeds executed in the exercise of the above power, the same shall be executed and acknowledged by such person or persons as the court may appoint for the purpose. And wherever any bill or petition is filed under the provisions of this section for the sale of lands, persons holding mortgages and other incumbrances on the said lands or 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,