

titions of any lands or tenements, 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 by purchase, or if the said lands, &c. cannot be divided with-

and the rights of the lienors shall be protected in the distribution of the proceeds of the sale of such lands." Code 1911, Art. 16, sec. 137.

The Act of 1908, ch. 242 adds the following: "The right to a partition or a sale under section 137 shall include the right to a partition or a sale of any one or more of several separate lots or tracts of land held as mentioned in said section, and it shall not be necessary for the bill or petition to pray for a partition or a sale of all of the several lots or tracts so held." Code 1911, Art. 16, sec. 138.

Mr. Alexander's note, in so far as it discusses partition and sale for partition under our Maryland statutes, lacks something of his usual clearness and fullness of treatment and is therefore difficult to annotate intelligently. The reader is referred to the admirable treatise on the subject in Miller's Equity, chaps. 20 & 24.

Jurisdiction.—Even though the property be susceptible of partition, yet if partition cannot be made without loss and injury to the parties, a sale will be decreed. *Thruston v. Minke*, 32 Md. 571. And if the parties will not agree, the court must decree a sale, though the costs will be greater than the proceeds. *Brendel v. Klopp*, 69 Md. 1. Where the tenants in common by agreement sell a part of the tract, a partition of the remainder, if susceptible of it, may be demanded; and the same rule applies to separate properties. *Claude v. Handy*, 83 Md. 225. Cf. Code 1911, Art. 16, sec. 138, *supra*. As to the appointment of a receiver as incident to a bill for sale for partition, see *Baker v. Baker*, 108 Md. 269. As to a bill for sale for partition treated by agreement somewhat in the nature of a creditor's bill, see *Duckworth v. Duckworth*, 98 Md. 92. As to attachments against parties to partition suits, see *Western Bank v. National Bank*, 91 Md. 613. Cf. *Mattingly v. Grimes*, 48 Md. 102. As to the requisite notice of sale, see *Brillhart v. Mish*, 99 Md. 447.

Parties plaintiff.—A mortgagee of an undivided interest of one tenant in common has no right to file the bill. *Mitchell v. Farrish*, 69 Md. 235. Nor has an assignee of such interest for the benefit of creditors, where the deed does not give him a right to do so. *Ritchie v. Munder*, 49 Md. 10. See also *Bannon v. Comegys*, 69 Md. 411; *Savary v. Da Camara*, 60 Md. 139. Cf. *Gill v. Wells*, 59 Md. 499; *Long v. Long*, 62 Md. 86; *Roche v. Waters*, 72 Md. 269; *Harrison v. Denny*, 113 Md. 509.

Parties defendant.—The wife of one of the tenants in common is not, it seems, a necessary party either to a partition suit, or to a suit for sale for purposes of partition. *Lumpkin v. Lumpkin*, 108 Md. 493; *Mitchell v. Farrish*, 69 Md. 238; *Rowland v. Prather*, 53 Md. 232; note 21 to 9 Hen. 3, c. 7. Where the proceeding is for a partition or sale of a reversion, the owner of the leasehold interest is not a necessary party; similarly, where the property is leasehold, the reversioner need not be made a party. *Brendel v. Klopp*, 69 Md. 1. But in the latter case the administrator of the person under whom the claim is made is a necessary