out loss or injury to the parties interested, the Court may decree a sale thereof and a division of the proceeds among the parties according to their respective rights—the section to apply where all parties are of full age, where they are all infants, where some are of age and some infants, and where some or all of the parties are *non compos mentis*, and also where

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party. Foos v. Scarf, 55 Md. 301. The lessee of an undivided share of the estate for a long term should be made a party to a partition suit in order that he may be required to join the lessor in a deed of severance, *contra* in cases of sale. Thruston v. Minke, 32 Md. 575. It was formerly held that as a general rule an incumbrancer, such as a mortgagee or judgment creditor, was not a proper party, but that if there were any doubt as to the extent of the liens the court should, before decree or before sale, direct an ascertainment of them so that no deception might be practiced or prejudice done any party concerned in the sale. Thruston v. Minke, 32 Md. 571. See also Gilpin v. Carroll, 92 Md. 44. This, however, is changed by the amendatory Acts of 1900, ch. 205, and 1904, ch. 535, under which any incumbrancer, either of the whole property or of an undivided interest therein, may be made a party, in which case a sale is to be made free of the incumbrance, the lien being transferred to the proceeds. Code 1911, Art. 16, sec. 137. As to the effect of not making such incumbrancers parties, see McCormick v. McCormick, 104 Md. 325. Cf. Numsen v. Lyon, 87 Md. 31.

Infants as parties.—The Code provision contemplates that the suit must be in the names of one or more of the parties entitled. Where an infant is made a plaintiff, he should appear in his own name by his next friend. Downs v. Friel, 57 Md. 531; Simpson v. Bailey, 80 Md. 423. It is not necessary that he should be made a defendant and a *guardian ad litem* appointed for him. Koontz v. Koontz, 79 Md. 361. Where an infant is entitled to a share of the proceeds of sale, the money should be paid to his guardian. Benson v. Benson, 70 Md. 253. Where an infant joins in a partition deed, he is bound by it if the division so made is fair and equitable. Amey v. Cockey, 73 Md. 297.

Allegations of bill.—Where the bill asks for a sale for purposes of partition, it must allege, in order to confer jurisdiction on the court, that the property cannot be divided without loss or injury to the parties interested. Fox v. Reynolds, 50 Md. 564; Johnson v. Hoover, 75 Md. 486. Though it is not necessary that the allegations of the bill should follow the exact language of the statute. Thruston v. Minke, 32 Md. 571; Wilson v. Green, 63 Md. 547; Slingluff v. Stanley, 66 Md. 220; Ballantyne v. Rusk, 84 Md. 649. Cf. Benson v. Benson, 70 Md. 253. The true test of jurisdiction is whether a demurrer will lie to the bill. Slingluff v. Stanley, 66 Md. 220; Johnson v. Hoover, 75 Md. 492. Where the bill prays for a sale for partition and for general relief, and the evidence shows that a partition in kind is feasible, the court has jurisdiction, under the prayer for general relief, to decree a partition. Rowe v. Gillelan, 112 Md. 108. So where the bill is for a partition, "or such other and further relief as the case may require," and the commissioners report that it is impossible to