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# GENERAL STATUTES

OF THE

# STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE  
THE STATUTES OF THE STATE, BY ACT OF THE  
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## CHAPTER LXXIV.

## ACTIONS FOR THE PARTITION OF REAL PROPERTY.

1 SECTION 1. When two or more persons are interested in  
 2 real property, as joint tenants, or as tenants in common, in  
 3 which one or more of them have an estate of inheritance, or  
 4 for life or years, an action may be brought by one or more  
 5 of such persons against the others, in the district court of  
 6 the proper county, for a partition thereof, according to the  
 7 respective rights and interests of the persons interested  
 8 therein, or a sale of such property, or a part of it, if it ap-  
 9 pears that a partition cannot be had without great prejudice  
 10 to the owner.

c35 1864—p. 84, Sect. 1.

1 SECT. 2. The summons shall be addressed by name to  
 2 all the owners and lien holders who are known, and gene-  
 3 rally to all persons unknown, having or claiming an inter-  
 4 est in the property.

c65 C. S. p. 598, Sect. 2.  
Amended.

1 SECT. 3. The interest of all persons in the property  
 2 whether by way of ownership or lien, and whether such  
 3 persons are known or unknown, shall be set forth in the  
 4 complaint specifically and particularly, as far as known to  
 5 the plaintiff, and if any one or more of the parties or the  
 6 share or quantity of interest of any of the parties is  
 7 unknown to the plaintiff or uncertain or contingent, or the  
 8 ownership of the inheritance depends upon executory de-  
 9 vise, or the remainder is a contingent remainder so that  
 10 such parties cannot be named, that fact shall be set forth in  
 11 the complaint. The complaint shall also contain an allega-  
 12 tion of the cash value of the property, and shall be verified.

C. S. p. 598, Sect. 3.  
Amended.

1 SECT. 4. Such action shall be governed by the rules  
 2 and provisions applicable to civil actions, including the  
 3 right of appeal, except that, when service of the summons  
 4 is made by publication, it shall be accompanied by a brief  
 5 description of the property sought to be divided, and ex-  
 6 cept as herein otherwise expressly provided.

C. S. p. 599, Sect. 7.  
Amended.

1 SECT. 5. Judgment of partition shall not be rendered in  
 2 any case until the title to the property and the rights of  
 3 the parties are established by evidence, unless upon written  
 4 stipulation of the parties to be affected thereby.

New.

1 SECT. 6. The title and rights of the parties, respect-  
 2 ively, being duly proved or admitted, the court shall ren-  
 3 der judgment that partition be made accordingly, and ap-  
 4 point three disinterested and judicious citizens of the coun-  
 5 ty, referees, to make partition of the estate, and set-off  
 6 each share of the several persons interested, according to  
 7 their respective rights as determined in the action.

1 SECT. 7. When partition is made, the referees shall di-  
 2 vide the property, and allot the several portions thereof to  
 3 the respective parties, quality and quantity relatively con-  
 4 sidered, according to the respective rights of the parties, as  
 5 determined by the court, designating the several portions by  
 6 proper land marks, and may employ a surveyor, with the  
 7 necessary assistant, to aid them therein. They shall make  
 8 report of their proceedings, specifying the manner of exe-  
 9 cuting their trust, describing the property divided and the  
 10 shares allotted to each party, with a particular description  
 11 of each share.

C. S. p. 599, Sects. 9  
& 10, combined. c 65

1 SECT. 8. The court may confirm or set aside the report,  
 2 and if necessary appoint new referees; upon the report be-  
 3 ing confirmed, judgment shall be rendered that such parti-  
 4 tion be effectual forever, which judgment is binding and  
 5 conclusive:

6 *First.*—On all the parties named therein and their legal  
 7 representatives who have at the time any interest in the  
 8 property divided as owners in fee, or as tenants for years,  
 9 or as entitled to the reversion, remainder, or inheritance of  
 10 such property, after the determination of a particular estate  
 11 therein, or who by any contingency may be entitled to a  
 12 beneficial interest in the property, or who have an interest  
 13 in an individual share thereof, as tenants for years, for life,  
 14 by the curtesy, or in dower;

15 *Second.*—On all persons interested in the property who  
 16 may be known, to whom notice has been given of the ap-  
 17 plication for partition, by the publication directed by sec-  
 18 tion six; and,

19 *Third.*—On all other persons claiming from such parties  
 20 or persons or either of them.

1 SECT. 9. But such judgment and partition cannot affect  
 2 tenants or persons having claims as tenants in dower, by  
 3 the curtesy, or for life, to the whole of the property which is  
 4 the subject of the partition; nor can such judgment and par-  
 5 tition preclude any person except such as are specified in  
 6 the last section, from claiming title to the property in ques-  
 7 tion, or from controverting the title of the parties between  
 8 whom the partition is made.

C. S. p. 599, Sect. 12.

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C. S. p. 598, Sect. 5.

1 SECT. 10. When there is a lien on an undivided inter-  
 2 est or estate of any of the parties, such lien, if partition is  
 3 made, is thenceforth a charge only on the share assigned to  
 4 such party, but such share shall be first charged with its  
 5 just proportion of the costs of the partition in preference to  
 6 such lien.

C. S. p. 600, Sect. 13.

1 SECT. 11. The expenses of the referees, including those  
 2 of a surveyor and his assistants, when employed, shall be  
 3 ascertained and allowed by the court, and the amount there-  
 4 of, together with the fees allowed by law to the referees  
 5 shall be paid by the plaintiff, and may be allowed as part  
 6 of the charges.

C. S. p. 599, Sect. 8;  
C. S. p. 600, Sect. 14,  
combined &  
amended.

1 SECT. 12. If it is alleged in the complaint and estab-  
 2 lished by evidence that the property or any part of it is so  
 3 situated that partition cannot be made without great preju-  
 4 dice to the owners, the court, except as provided in the next  
 5 section, may order a sale thereof, and for that purpose may  
 6 appoint one or more referees; or when without such alle-  
 7 gation and proof referees are appointed to make partition,  
 8 who report that the property, or any distinct portion thereof  
 9 is so situated that a partition thereon cannot be made with-  
 10 out great prejudice to the owners, and the court is satisfied  
 11 that such report is correct, it may thereupon by an order  
 12 direct the referees to sell the property or portions so situ-  
 13 ated.

New.

1 SECT. 13. When there are liens on the property amount-  
 2 ing to more than the value thereof as stated in the com-  
 3 plaint, or when, after due examination, it appears probable  
 4 that the property will not sell for a sum in cash equal to the  
 5 amount of the liens thereon existing with costs and expenses  
 6 of sale, no sale shall be made.

New.

1 SECT. 14. When the premises consist of a mill or other  
 2 tenement which cannot be divided without damage to the  
 3 owners, or when any specified part of the estate is of greater  
 4 value than either party's share and cannot be divided with-  
 5 out damage to the owners, the whole estate or the part  
 6 thereof so incapable of division may be set off to any one of  
 7 the parties who will accept it, he paying to any one or more  
 8 of the others such sums of money as the referees award to  
 9 make the partition just and equal, or the referees may as-  
 10 sign the exclusive occupancy and enjoyment of the whole,  
 11 or the part, to each of the parties alternately for certain spe-  
 12 cified times in proportion to their respective interests.

New.

1 SECT. 15. When the whole or any specific part of the  
 2 premises is thus assigned, the person entitled for the time

3 being to the exclusive occupancy, shall be liable to his co-  
 4 tenants for any injury to the premises occasioned by his mis-  
 5 conduct, as a tenant for years under a common lease without  
 6 express covenants would be liable to his landlord; and the  
 7 other tenants in common may have their remedy therefor  
 8 against him by action jointly or severally at their election.

1 SECT. 16. While an estate is in the exclusive occupancy  
 2 of a co-tenant under such an assignment, he shall be enti-  
 3 tled to the same remedy against whoever trespasses upon or <sup>New.</sup>  
 4 otherwise injures the premises as if he held the same under  
 5 a lease for the term for which they were so assigned to him;  
 6 and he and all the other tenants in common shall be entitled  
 7 to recover such other and further damages as they have sus-  
 8 tained by the same trespass or injury, in like manner as if  
 9 the premises had been leased by them. Joint damages re-  
 10 covered by such tenants in common by force of this or the  
 11 preceding section shall be apportioned and divided among  
 12 them according to their respective rights by the court in  
 13 which the judgment is recovered.

1 SECT. 17. When a part of the property only is ordered  
 2 to be sold, if there is an estate by the curtesy, in dower, or <sup>C. S. p. 600, Sect. 17.</sup>  
 3 for life, or years, in an undivided share of the property, the c 65  
 4 whole of such estate may be set-off in any part of the pro-  
 5 perty not ordered to be sold.

1 SECT. 18. In every case proof shall be made of the ex-  
 2 istence, priority and amount of any liens on the property of <sup>C. S. p. 600, Sect. 17.</sup>  
 3 which partition is sought, in such manner and upon such <sup>Amended.</sup>  
 4 notice to those interested as the court shall direct, and if  
 5 said liens do not amount to the value of the premises as ad-  
 6 mitted or proved, a sale may be ordered by referees under  
 7 the direction of the court.

1 SECT. 19. The proceeds of the sale of the incumbered  
 2 property shall be applied, under the direction of the court,  
 3 as follows: <sup>C. S. p. 600, Sect. 23.</sup>  
 4 *First.*—To pay its just proportion of the general costs of  
 5 the action;  
 6 *Second.*—To pay the costs of the reference;  
 7 *Third.*—To satisfy and cancel of record the several liens,  
 8 in their order of priority, by payment of the sums due, and  
 9 to become due, the amount remaining due to be verified by  
 10 affidavit at the time of payment;  
 11 *Fourth.*—The residue among the owners of the property  
 12 sold, according to their respective shares.

1 SECT. 20. The proceedings, to ascertain the amount of  
 2 incumbrances, and to determine their priority, as above <sup>C. S. p. 600, Sect. 24.</sup>

3 provided, or those herein authorized to determine the rights  
4 of parties to funds paid into court, shall not delay the sale  
5 nor affect any other party whose rights are not involved in  
6 such proceedings.

c 65 C. S. p. 601, Sect. 26. 1 SECT. 21. When the proceeds of sales of any shares or  
2 parcels, belonging to persons who have become parties to  
3 the action, and who are known, are paid into court, the ac-  
4 tion may be continued as between such parties, for the de-  
5 termination of their respective claims thereto, which shall  
6 be ascertained and adjudged by the court; further testi-  
7 mony may be taken in court, or by a referee, at the discre-  
8 tion of the court, and the court may if necessary, require  
9 such parties to present the facts or law in controversy, by  
10 pleadings as in an original action.

C. S. p. 601, Sect. 27.  
Amended. 1 SECT. 22. All sales of real property made by referees  
2 under this chapter, shall be made by public auction to the  
3 highest bidder for cash, upon notice published in the man-  
4 ner required for the sale of real property on execution; the  
5 notice shall state the terms of the sale, and if the property,  
6 or any part of it is to be sold subject to a prior estate,  
7 charge, or specific lien, that shall be stated in the notice.

C. S. p. 601, Sect. 30. 1 SECT. 23. When the estate of a tenant in dower, or by  
2 the curtesy, or for life, or years, in the whole or any part  
3 of the property in question, has been admitted by the par-  
4 ties, or ascertained by the court to be existing at the time  
5 of the order for sale, and the person entitled to such estate  
6 has been made a party to the action, such estate may be  
7 first set-off out of any part of the property, and a sale made  
8 of such parcel, subject to the prior unsold estate of such ten-  
9 ant therein; but if in the judgment of the court, a due re-  
10 gard to the interest of all the parties requires that such es-  
11 tate be also sold, the sale may be so ordered.

C. S. p. 601, Sect. 31. 1 SECT. 24. If a sale of the property including such es-  
2 tate is ordered, the estate and interest of every such tenant  
3 or person passes thereby; and the purchaser, his heirs and  
4 assigns, shall hold the property, discharged from all claims,  
5 by virtue of such estate or interest, whether the same relate  
6 to the individual share of a joint tenant, or tenant in com-  
7 mon, or to the whole, or any part of the property sold.

C. S. p. 602, Sect. 32. 1 SECT. 25. The persons entitled to such estate, in dower,  
2 tenancy by curtesy, or tenancy for life or years, whose es-  
3 tate has been sold, are entitled to receive such sum in gross  
4 as may be deemed upon principles of law applicable to an-  
5 nualties, a reasonable satisfaction for such estate, and which  
6 the person so entitled may consent to accept instead there-

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7 of, by an instrument under seal duly acknowledged or  
8 proved, in the same manner as deeds for the purpose of  
9 record.

1 SECT. 26. If such consent is not given at or before the  
2 report of sale, the court shall ascertain and determine what  
3 proportion of the proceeds of the sale, deducting expenses, C. S. p. 602, Sect. 33.  
4 will be a just and reasonable sum to be invested for the  
5 benefit of the person entitled to such estate in dower, by  
6 the curtesy, or for life, and order the same to be deposited  
7 in court for that purpose.

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1 SECT. 27. The proportions of the proceeds of the sale to  
2 be invested, shall be ascertained and determined in the sev- C. S. p. 602, Sect. 34.  
3 eral cases, as follows :

4 *First.*—If an estate in dower is included in the order of sale,  
5 its proportions shall be one-third of the proceeds of the sale of  
6 the property, or of the sale of the individual share in such  
7 property, upon which the claim of dower existed ;

8 *Second.*—If an estate by the curtesy, or other estate for  
9 life, or years, is included in the order of sale, its proportion  
10 shall be the whole proceeds of the sale of the property, or  
11 of the sale of the individual share thereof in which such es-  
12 tate may be. And in all cases the proportion of the ex-  
13 penses of proceedings shall be deducted from the proceeds  
of the sale.

1 SECT. 28. If the persons entitled to such estate in dow- C. S. p. 602, Sect. 35.  
2 er, by the curtesy, or for life, or years, are unknown, the  
3 court shall provide for the protection of their rights, in the  
4 same manner, as far as may be, as if they were known and  
5 had appeared.

1 SECT. 29. In all cases of sales in partition, when it ap-  
2 pears that a married woman has an inchoate right of dower  
3 in any of the property divided or sold, or that any person C. S. p. 602, Sect. 36.  
4 has a vested or contingent future right or estate therein, the  
5 court shall ascertain and settle the proportional value of  
6 such inchoate, contingent or vested right or estate, accord-  
7 ing to the principles of law applicable to annuities and sur-  
8 vivorships, and direct such proportion of the proceeds of  
9 the sale to be invested, secured or paid over in such man-  
10 ner as to protect the rights and interests of the parties.

1 SECT. 30. A married woman may release such right,  
2 interest, or estate to her husband, and acknowledge the C. S. p. 602, Sect. 37.  
3 same in the manner required by law, in respect to the ac-  
4 knowledgment of deeds by married women, before any offi-  
5 cer authorized to take acknowledgement of deeds, or if ex-  
6 ecuted out of this state, before any officer residing in the

7 state, territory, district or county, where the acknowledg-  
 8 ment is made, who is authorized to take the acknowledg-  
 9 ment of deeds, to be recorded in this state. Upon the re-  
 10 lease, the share of the proceeds of the sale arising from her  
 11 contingent interest, shall be paid to her husband, and the  
 12 release, or the payment, investment, or otherwise securing  
 13 of a share of the proceeds of a sale, shall be a bar against  
 14 such right, estate or claim.

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C. S. p. 602, Sect. 38.

1 SECT. 31. The terms of the sale shall be made known  
 2 at the time; and if the premises consist of distinct farms or  
 3 lots, they shall be sold separately.

C. S. p. 602, Sect. 39.

1 SECT. 32. Neither of the referees, nor any person for the  
 2 benefit of either of them, can be interested in the purchase,  
 3 nor can a guardian of an infant party be interested in the  
 4 purchase of any real property, being the subject of the ac-  
 5 tion, except for the benefit of the infant. All sales contra-  
 6 ry to the provisions of this section are void.

C. S. p. 603, Sect. 40.

1 SECT. 33. After completing the sale, the referees shall  
 2 report the same to the court, with a description of the dif-  
 3 ferent parcels of land sold to each purchaser, the name of the  
 4 purchaser, the price paid or secured, the terms and condi-  
 5 tions of the sale; the report shall be filed in the office of the  
 6 clerk of the district court of the county where the property  
 7 is situated.

C. S. p. 603, Sect. 41.

1 SECT. 34. If the sale is confirmed by the court, an or-  
 2 der shall be entered, directing the referees to execute con-  
 3 veyances, which they are authorized to do; such order may  
 4 also give directions to them respecting the disposition of the  
 5 proceeds of the sale.

C. S. p. 603, Sect. 42.

1 SECT. 35. When a party, entitled to a share of the  
 2 property, or an incumbrancer entitled to have his lien paid  
 3 out of the sale, becomes a purchaser, the referees may take  
 4 his receipt for so much of the proceeds of the sale as be-  
 5 longs to him, and shall also pay over to the plaintiff or his  
 6 attorney, and take his receipt for the costs and charges of  
 7 the action.

C. S. p. 603, Sect. 43.

1 SECT. 36. The conveyance shall be recorded in the  
 2 county where the premises are situated, and shall be a bar  
 3 against all persons interested in the property in any way,  
 4 who have been named as parties in the action, and against  
 5 all such parties and persons as were unknown, if the sum-  
 6 mons has been properly served, and against all persons  
 7 claiming from them or either of them.

1 SECT. 37. The conveyances shall also be a bar against  
 2 all persons having specified or general liens or incumbran- C. S. p. 603, Sect. 44. c65  
 3 ces, by judgment, on any undivided share or interest in the  
 4 premises sold, or who have been served with notice, as pre-  
 5 scribed by section eighteen, and also against all persons  
 6 having specific liens of any undivided share or interest there-  
 7 in, who have been made parties to the action; but no cred-  
 8 itor having such specific lien can be affected by the sale or  
 9 conveyance, unless he has been made a party.

1 SECT. 38. When there are proceeds of sale belonging  
 2 to an unknown owner, or to a person without the state, who C. S. p. 603, Sect. 45.  
 3 has no legal representative within it, or when there are  
 4 proceeds arising from the sale of an estate subject to the  
 5 prior estate of a tenant in dower, or by the curtesy, or ten-  
 6 ant for life, or years, which are paid into court or deposited  
 7 with an officer, by order of the court, the same shall be in-  
 8 vested in securities on interest, for the benefit of the persons  
 9 entitled thereto.

1 SECT. 39. When an investment of any such proceeds is  
 2 made, it shall be done, except as herein otherwise provided, C. S. p. 603, Sect. 46.  
 3 in the name of the clerk of the district court of the county  
 4 where the papers are filed, and his successors in office, who  
 5 shall hold the same for the use and benefit of the parties in-  
 6 terested, subject to the order of the court.

1 SECT. 40. The clerk by whom an investment is made,  
 2 and his successors in office, shall receive the interest and C. S. p. 603, Sect. 48.  
 3 principal as it becomes due, and apply and invest the same  
 4 as the court may direct; and shall file in his office, all se-  
 5 curities taken, and keep an account book provided and  
 6 kept for that purpose, in the clerk's office, free for inspec-  
 7 tion by all persons, of investments and moneys received by  
 8 him thereon, and the disposition thereof.

1 SECT. 41. When it appears that partition cannot be  
 2 made equal between the parties, according to their respec-  
 3 tive rights, without prejudice to the rights and interest of C. S. p. 604, Sect. 49.  
 4 some of them, the court may adjudge compensation to be  
 5 made by one party to another for equality of partition;  
 6 but such compensation cannot be required to be made to  
 7 others by owners unknown, nor by infants, unless in case  
 8 of an infant it appears that he has personal property suffi-  
 9 cient for that purpose, and that his interest will be promo-  
 10 ted thereby:

1 SECT. 42. When the share of an infant is sold, the pro-  
 2 ceeds of the sale may be paid by the referees making the C. S. p. 604, Sect. 50.  
 3 sale, to his general guardian, or to the special guardian ap-

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4 pointed for him in the action, if such general or special  
5 guardian, before the payment of such share into court, has  
6 given the security required by statute.

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C. S. p. 604, Sect. 51.

1 SECT. 43. The guardian who is entitled to the custody  
2 and management of the estate of an insane person, or other  
3 person, adjudged incapable of conducting his own affairs,  
4 whose interest in real property has been sold, may receive  
5 in behalf of such person, his share of the proceeds of such  
6 real property from the referees, if the guardian, before the  
7 money is paid into court, has executed with sufficient sure-  
8 ties, an undertaking approved by the judge of the district  
9 court, that he will faithfully discharge the trust reposed in  
10 him, and will render a true and just account to the person  
11 entitled or to his legal representative.

C. S. p. 604, Sect. 52.

1 SECT. 44. The general guardian of an infant, and the  
2 guardian entitled to the custody and management of the es-  
3 tate of an insane person, or other person adjudged incapa-  
4 ble of conducting his own affairs, who is entitled to real es-  
5 tate held in joint tenancy, or in common, or in any other  
6 manner, to authorize his being made party to an action for  
7 the partition thereof, may consent to a partition without ac-  
8 tion, and agree upon the share to be set-off to such infant, or  
9 other person entitled, and may execute a release in his be-  
10 half to the owners of the shares of the parts to which  
11 they may be respectively entitled, upon an order from the  
12 court.

C. S. p. 604, Sect. 53.

1 SECT. 45. The state may be made a party to an action for  
2 the sale or partition of real property, in which case the  
3 summons and complaint shall be served upon the attorney  
4 general, who shall appear on behalf of the state.

C. S. p. 604, Sect. 54.

1 SECT. 46. The costs of partition, including fees of ref-  
2 errees and other disbursements, shall be paid by the parties  
3 respectively entitled to share in the lands divided, in pro-  
4 portion to their respective interests therein, and may be in-  
5 cluded and specified in the judgment; in that case they are  
6 a lien on the several shares, and the judgment may be en-  
7 forced by execution against the parties separately. Where  
8 however, a litigation arises between some of the parties on-  
9 ly, the court may require the expense of such litigation to  
10 be paid by the parties thereto, or any of them.