

CAYMAN 1.~1 ANn~

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THE MERCHANDISE MARKS LAW, 1976

(Law 3 of 1976)

Date of operation: Notice of non-isallowance published in Gazette No. of 1976.

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MEMORANDUM OF OBJECTS AND REASONS

With the introduction of a Pabuts and Trade Marks Law, consequential amendments are required to the Merchandise Marks Law and it is sought to repeal and re-enact it in amended form.

MERCHANDISE MARKS LAW, 1976

ARRANGEMENT OF SECTIONS

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CAYMAN ISLANDS

L.S.

The Merchandise Murks Lu” 3— /976—1

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I assent

T. RUSSELI.

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25<sup>th</sup> March, 1976

THE MERCHANDISE MARKS LAW, 1976

ENACTED by the Legislature of the Cayman Islands.

Shor' mia 1. This Law may be cited as the Merchandise Marks Law, 1976.

2. (1) In this Law—

“trade mark” has the meaning assigned to it by the Patents and Trade Marks Law:

Interpretation

L~w 77 of 1~75

“trade description” means the customs entry relating to imported goods, or any description, statement or any indication, direct or indirect as to—

- (a) the number, quantity, measure, gauge or weight, of any goods; or (b) the standard of quality of any goods, according to a classification commonly used or recognised in the trade; or (c) the fitness for purpose, strength, performance or behaviour of any goods; or
- (d) the place or country in which any goods were made or produced; or
- (e) the mode of manufacturing or producing any goods; or
- f) the material of which any goods are composed; or
- g) any goods being the subject of an existing patent, privilege or copyright,

The Merchandise Marks Law 3—1976

and the use of any figure, word or mark which according to the customs of the trade is commonly taken to be an indication of any of the above matters, shall be deemed to be a trade description within the meaning of this Law;

“false trade description” means a trade description which is false or misleading in a material respect as regards the goods to which it is applied, and includes every alteration of a trade description, whether by way of addition, effacement or otherwise, where that alteration makes the description false or misleading in a material respect, and the fact that a trade description is a trade mark or part of a trade mark shall not prevent such trade description being a false trade description within the meaning of this Law;

“goods” means anything which is the subject of trade, manufacture or merchandise;

“imported goods” does not include—

- (a) goods which since the date of their importation have undergone in the Islands any treatment or process resulting in a substantial change in the goods; or
- (b) goods produced or manufactured in the Islands which after exportation are brought back into the Islands, including any such goods which have undergone outside of the Islands any treatment or process not resulting in a substantial change in the goods;

“indication of origin” means a definite indication of the country in which the goods were manufactured or produced; the indication being given conspicuously;

“person”, “manufacturer”, “dealer” or “trader” and “proprietor”, include any body of persons corporate or unincorporate;

“name” includes any abbreviation of a name.

(2) The provisions of this Law respecting the application of a false trade description to goods shall extend to the application to goods of any such figures, words or marks, or arrangement or combination thereof, whether including a trade

or not, as are reasonably calculated to lead persons to believe that the goods are the manufacture or merchandise of some person other than the person whose manufacture or merchandise they really are.

(3) The provisions of this Law respecting the application of a false description to goods, or respecting goods to which a false trade description is applied, shall extend to the application to goods of any false name or initials of a person, and to goods with the false name or initials of a person, applied in like manner as if such name or initials were a trade description, and for the purpose of this enactment the expression “false name” or “initials” means, as applied to any goods, any name or initials of a person which—

- (a) are with a trade mark or part of a trade mark; and
- (b) are identical with or a colourable imitation of the name or initials of a person carrying on business in connection with goods of the same description, and not having authorized the use of such name or initials; and
- (c) are either those of a fictitious person, or of some person not bona fide carrying on business in connection with such goods.

Law 29 of '75.

The Merchandise Marks Law — 1976—5

(4) Without prejudice to the generality of the definitions of “trade description” and “false trade description” contained in subsection (1), a trade description shall be deemed for the purposes of this Law to be a false trade description if it is calculated to be misunderstood as, or mistaken for, an indication as to the same or some other such matter which would be false or misleading in a material respect as regards the goods to which the description is applied, and anything calculated to be misunderstood as, or mistaken for, an indication of any of those matters shall be deemed for those purposes to be a trade description.

(5) Notwithstanding anything contained in the definition of “false trade description” in subsection (1), no trade mark, or part of a trade mark, shall by virtue of paragraphs (b) and (c) of subsection (1) and subsection (4) be treated as a false trade description in relation to any goods to which the trade mark is applied, if the following conditions are satisfied, that is to say—

- (a) the trade mark is one currently recorded under the Patents and Trade Marks Law;
- (b) the trade mark is one in respect of which an application for recording under that Law is pending.

(6) Nothing contained in this section shall operate to extend the classes of goods which under section 14 are prohibited to be imported into the Islands, as having a false trade description applied to them.

Offences as to trade marks (1) Whoever—

marks and trade

description—

(a) forges any trade mark; or

(b) falsely applies to goods any trade mark, or any mark so nearly

resembling a trade mark as to be calculated to deceive; or

(c) makes any die, block, machine or other instrument, for the purpose of forging, or of being used for forging a trade mark; or

©applies any false trade description to goods; or

(e) disposes of or has in his possession any die, block, machine or other instrument, for the purpose of forging a trade mark; or

(f) causes any of the things above in this section mentioned to be done, is, subject to the provisions of this Law and unless he proves that he acted without intent to defraud, guilty of an offence.

(2) Whoever sells, or exposes for, or has in his possession for, sale, or any purpose of trade or manufacture, any goods or things to which any forged trade mark or false trade description is applied, or to which any trade mark or mark so nearly resembling a trade mark as to be calculated to deceive is falsely applied, as the case may be, is, unless he proves either—

(a) that, having taken all reasonable precautions against committing an offence against this Law, he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, mark or trade description, and that, on demand made by or on behalf of the prosecutor, he gave all the information in his power with respect to the persons from whom he obtained such goods or things; or

(b) that otherwise he had acted innocently, guilty of an offence.

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~ ~ ~ S;IVt, IS mav otherwise be provided in this lau. every person guilty oi an offence aandlst this Law shall be liable—

~a)on conviction on indictment to imprisonment with or without hard labour. for a term not exceeding two vears. or to a fine. or to both imprisonment and fine; and

b ) on summary conviction to imprisonment with or w ithout hard labour, for a term not exceeding four months, or to a fine not exceeding one thousand dollars. and in the case of a second or subsequent conviction. to imprisonment with or without hard labour. for a term not exceeding six months, or to a fine not exceeding two thousand dollars; and

(c) in any case to forfeit to Her Majesty every chattel. article, instrument or thing, by means of or in relation to which the offence has been committed.

(4) The Court before whom any person is convicted under this section may order any forfeited articles to be destroyed or otherwise disposed of as the (I nurt think~ fit

F o r q ~ n q f r e d e 4. A person shall be deemed to forge a trade mark who either—

(a)without the assent of the proprietor of the trade mark makes that trade mark, or a mark so nearly resembling that trade mark as to be calculated to deceive; or

(b)falsifies any genuine trade mark, whether by alteration, addition, effacement or otherwise;

and any trade mark or mark so made or falsified is in this Law referred to as a forged trade mark:

Provided that in any prosecution for forging a trade mark the burden of proving the assent of the proprietor shall lie on the defendant.

Applying trade 5, (1) A person shall be deemed to apply a trade mark or mark or trade description to goods who—

goods,

(a) applies it to the goods themselves; or

(b) applies it to any covering, label, reel or other thing, in or with which the goods are sold, or exposed or had in possession for any purpose of sale, trade or manufacture; or

(c) places, encloses or annexes, any goods which are sold or exposed or had in possession for any purpose of sale, trade or manufacture, in, with or to any covering, label, reel or other thing, to which a trade mark or trade description has been applied; or

uses a trade mark or mark or trade description in any manner calculated to lead to the belief that the goods in connection with which it is used are designated or described by that trade mark or mark or trade description.

(2) The expression “covering” includes any stopper, cask, bottle, vessel, box, cover, capsule, case, frame or wrapper, and the expression “label” includes any band or ticket.

A trade mark, or mark or trade description, shall be deemed applied whether it is woven, impressed or otherwise worked into, or annexed or affixed

Exemptions of certain persons employed in ordinary course of business

Application of this

Law

The Merchandise Marks Law, 1902, to the goods, or to any covering, label, reel or other thing.

(3) Goods delivered in pursuance of a request made by reference to a trade mark or trade description appearing in any sign, advertisement, invoice, wine list, business letter, business paper or other commercial communication, shall, for the purposes of paragraph (d) of subsection (1), be deemed to be goods in connection with which the trade mark or trade description is used.

(4) A person shall be deemed to falsely apply to goods a trade mark or mark who, without the consent of the proprietor of a trade mark, applies such trade mark, or a mark so nearly resembling it as to be calculated to deceive; but in any prosecution for falsely applying a trade mark or mark to the goods the burden of proving the assent of the proprietor shall lie on the defendant.

6. Where a defendant is charged with making any die, block, machine or other instrument, for the purpose of forging or being used for forging a trade mark, or with falsely applying to goods any trade mark, or any mark so nearly resembling a trade mark as to be calculated to deceive, or with applying to goods any false

trade description, or causing any of the things in this section mentioned to be done and proves—

- (a) that in the ordinary course of his business he is employed on behalf of other persons to make dies, blocks, machines or other instruments, for making or being used in making trade marks, or, as the case may be, to apply marks or description to goods, and that in the case which is the subject of the charge he was so employed by some person resident in the Islands, and was not interested in the goods by way of profit or commission dependent on the sale of such goods; and
- (b) that he took reasonable precautions against committing the offence charged; and
- (c) that he had, at the time of the commission of the alleged offence, no reason to suspect the genuineness of the trade mark, or trade description; and
- (d) that he gave to the prosecutor all the information in his power with respect to the persons on whose behalf the trade mark, mark, or description was applied, he shall be discharged from the prosecution, but shall be liable to pay the costs incurred by the prosecutor unless he has given due notice to him that he will rely on the above defence.

7. Where a watch case has thereon any words or marks which constitute, or are by common repute considered as constituting, a description of the country in which the watch was made, and the watch bears no description of the country where it was made, those words or marks shall prima facie be deemed to be a description of that country within the meaning of this Law, and the provisions of this Law with respect to goods to which a false trade description has been applied, and with respect to selling, or exposing for, or having in possession for sale, or any purpose of trade or manufacture, goods with a false trade description, shall apply accordingly; and for the purposes of this section the expression “watch” means all that portion of a watch which is not the watch

Trade mark, how 8. In any indictment, pleading, proceeding or document in which any trade

description mark or forged trade mark is intended to be mentioned, it shall be sufficient,

plea ~ng without further description and without any copy or facsimile, to state that

trade mark or forged trade mark to be a trade mark or forged trade mark.

8—The Merchandise Marks Law 3—1976

Provisions as to evidence in prosecutions under this Law

9. In any prosecution for an offence against this Law evidence of the port of shipment shall be prima facie evidence of the place or country in which the goods were made or produced.

Punishment 10 Any person who, being within the Islands, procures, counsels, aids, abets, or

accessory to the commission without the Islands of any act which, if committed in the Islands, would under this Law be a misdemeanour, shall be guilty of that misdemeanour as a principal, and be liable to be indicted, proceeded against, tried and convicted, in the Islands, as if the misdemeanour had been committed in the Islands.

Search warrant and forfeiture of goods

11. (1) Where, upon information of an offence against this Law, a Justice has issued either a summons requiring the defendant charged by such information to appear to answer to the same or a warrant for the arrest of such defendant, and either the said Justice on or after the issuing of the summons or warrant, or any other Justice, is satisfied by information on oath that there is reasonable cause to suspect that any goods or things by means of or in relation to which such offence has been committed are in any house or premises of the defendant, or otherwise in his possession or under his control in any place, such Justice may issue a warrant under his hand, by virtue of which it shall be lawful for any constable named or referred to in the warrant to enter such house, premises or place, at any reasonable time by day, and to search there for, and seize and take away, those goods or things, and any goods or things seized under any such warrant shall be brought before a court of summary jurisdiction for the purpose of its being determined whether the same are not liable to forfeiture under this Law.

(2) If the owner of any goods or things which, if the owner thereof had been convicted, would be liable to forfeiture under this Law, is unknown or cannot be found, an information or complaint may be laid for the purpose only of enforcing such forfeiture; and a court of summary jurisdiction may cause notice to be advertised, stating that unless cause is shown to the contrary at the time and place named in the notice, such goods or things will be forfeited and at such time and place the court, unless the owner or any person on his behalf, or other person interested in the goods or things, shows cause to the contrary, may order such goods or things or any of them to be forfeited.

(3) Any goods or things forfeited under this section or under any other provision of this Law, may be destroyed or otherwise disposed of in such manner as the court by which the same are forfeited may direct, and the court may, out of any proceeds which may be realized by the disposition of such goods (all trade marks and trade descriptions being first obliterated), award to any innocent party any loss he may have innocently sustained in dealing with such goods.

Cost of Prosecution 12. On any prosecution under this Law the court may order costs to be paid to

or defence the defendant by the prosecutor, or to the prosecutor by the defendant, having

regard to the information given by and the conduct of the defendant and prosecutor respectively.

Time limit of 13. No prosecution for an offence against this Law shall be commenced after the expiration of three years next after the commission of the offence, or one year next after the first discovery thereof by the prosecutor, whichever expiration first happens.

Prohibition of 14. (1) In order to make further provision for prohibiting the importation of goods which, if sold, or the exportation of goods prohibited to be exported certain goods

Law 2, d 1971i.

Law 4 d 1-e71.

The Merchant Marine Law 3—1971-9

which, it shipped, put off or water-borne to be shipped, would be liable to forfeiture—

(a) all goods which, if sold, would be liable to forfeiture under the Law, and also all goods not manufactured within the Islands, bearing any trade mark recorded under the Patents and Trade Marks Law, as the trade mark of any manufacturer, dealer or trader in the Islands, unless such trade mark is accompanied by a definite indication of the country in which the goods were made or produced, are hereby prohibited to be imported into the Island and, subject to the provisions of this section, shall be included among goods prohibited to be imported as if they were specified in section 10 of the Customs Law, 1971;

(b) all agricultural produce, the exportation of which is or shall be prohibited under or by virtue of any law relating to the protection of produce, or under or by virtue of any order made under any such Law, shall be subject to the provisions of this section;

Before detaining any such goods, as hereinbefore mentioned, or taking any further proceedings with a view to the forfeiture thereof under the Law relating to the Customs, the Collector of Customs may require the regulations under this section, whether as to information, security, conditions or other matters, to be complied with, and may satisfy himself in accordance with those regulations, that the goods are such as are prohibited to be imported or exported as the case may be;

(d) the Governor in Council may from time to time make, revoke and vary regulations either general or special, respecting the detention and forfeiture of goods, the importation or exportation of which is prohibited, and the conditions, if any, to be fulfilled before such detention and forfeiture, and may by such regulations determine the information, notices and security to be given, and the evidence requisite for any of the purposes of this section, and the mode of verification of such evidence;



- (e) where there is on any goods a name which is identical with or a colourable imitation of the name of a place in the Islands, that name unless accompanied by the name of the country in which such place is situate, shall be treated for the purposes of this section as if it were the name of a place in the Islands;
  - (f) such regulations may apply to all goods the importation or exportation of which is prohibited, or different regulations may be made respecting different classes of such goods, or of offences in relation to such goods;
  - (g) the Collector of Customs in administering the regulations and generally in the administration of this section, whether in the exercise of any discretion or opinion or otherwise, shall act under the control of the Financial Secretary;
  - (h) the regulations may provide for the informant reimbursing the Collector of Customs all expenses and damages incurred in respect of any detention made on his information, and of any proceedings consequent on such detention.
- (2) Where any goods which, if sold, would be liable to forfeiture under this Law, are imported into the Islands, and the goods bear any name or trade mark being or purporting to be the name or trade mark of any manufacturer, dealer, or trader in the Islands, and the Collector of Customs is, upon representations made to him, satisfied that the use of the name or trade mark is fraudulent, he may require the importer of the goods, or his agent, to produce any documents in his possession relating to the goods, and to furnish information as to the name and address of the person by whom the goods were consigned to the Islands, and the name and address of the person to whom the goods were sent in the Islands; and, if the importer or his agent fails within fourteen days to comply with any such requirement, he shall, for each offence, forfeit the sum of one thousand dollars.
- Law 14 OT 1971.
- Import of goods purporting to be of rawmanian origin  
 Contrivention of T cedinn 1'
- (3) Any information obtained from the importer of the goods or his agent under subsection (2), or from any other source, may be communicated by the Collector of Customs to any person whose name or trade mark is alleged to have been used or infringed.
  - (4) This section shall have effect as if it were part of the Customs Law, 1971.
15. (1) It shall not be lawful to sell, expose for sale, or, by way of advertising, goods of some other kind, distribute in the Islands, any imported goods to which there is applied any name or trade mark being, or purporting to be, the name or trade mark of any manufacturer, dealer or trader or the name of any place or district in the Islands, unless the name or trade mark is accompanied by an indication of origin.
- (2) For the purposes of this section—

(a) a name or trade mark shall be deemed to be applied to goods if it is applied either to the goods themselves or to any covering, label, reel or other thing in or with which the goods are sold or exposed for sale; and

(b) the expression "trade mark" means a mark which is used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of the mark by virtue of manufacture, selection, certification, dealing with, or offering for sale.

(3) If the Governor is satisfied, after considering such representations (if any) as may be made to him by any persons appearing to the Governor to have a substantial interest in the matter, that, having regard to the special circumstances of the trade, difficulties would arise if this section applied to goods of any class or description, or goods sold under any particular designation, and that public interests in the Islands would not be materially prejudiced by exempting such goods from the operation of this section, he may direct that this section shall not apply to such goods, or that goods shall not be treated as falling under this section by reason only that they are so designated.

Every such direction shall be gazetted, and published in such other manner as the Governor may deem suitable.

(4) This section shall not have effect in respect of the application of a name or trade mark to articles used or to be used for any of the following purposes that is to say, as coverings, labels, reels, or otherwise as articles in or with which goods manufactured or produced in the islands are or are to be sold or exposed for sale if the name or mark so applied is the name or trade mark of a manufacturer or of a dealer or trader in those goods in the Islands and the name or mark was applied with his consent.

16. Whoever sells, exposes for sale or distributes by way of advertisement, any goods in contravention of the provisions of section 15 is guilty of an offence and is liable on summary conviction to a fine not exceeding fifty dollars and in the case of a second or subsequent offence to a fine not exceeding two hundred dollars and the court may in the case of a second or subsequent offence order the goods in relation to which the offence has been committed to be forfeited:

When provisions of this Law as to false descriptions are not to apply

The Merchandise Marks Law 1969

liable on summary conviction to a fine not exceeding fifty dollars and in the case of a second or subsequent offence to a fine not exceeding two hundred dollars and the court may in the case of a second or subsequent offence order the goods in relation to which the offence has been committed to be forfeited:

Provided that—

(i) in the case of the sale wholesale of any goods, it shall be a good defence to proceedings under this section if the person charged with the offence satisfies the court that the goods were sold to the purchaser on an undertaking in writing that they would be exported or sold for exportation to a place outside the Islands and any such undertaking in writing, if it purports to be signed by the purchaser and specifies the usual business address of the purchaser, shall be admissible as evidence of the facts appearing therein;

( ii ) a person shall not be treated as being guilty by virtue of this section of,` an offence if he proves—

(a)that having taken aD reasonable precautions against committing such an offence he had at the time of the commission of the alleged offence no reason to suspect that the goods were goods to which this Law applied, and that on a demand made by or on behalf of the prosecutor he gave all the information in his power with respect to the persons from whom he obtained the goods; or  
(b)that otherwise he had acted innocently.

17. On the sale or in the contract for the sale of any goods to which a trade mark or mark, or trade description, has been applied, the vendor shall be deemed to warrant that the work is a genuine trade mark, and not forged or falsely applied, or that the trade description is not a false trade description within the meaning of this Law, unless the contrary is expressed in some writing signed by or on behalf of the vendor, and delivered at the time of the sale or contract to and accepted by the vendee.

18. Where, at the passing of this Law, a trade description is lawful and generally applied to goods of a particular class, or manufactured by a particular method, to indicate the particular class or method of manufacture of such goods, the provisions of this Law with respect to false trade descriptions shall not apply to such trade description when so applied:

Provided that where such trade description includes the name of a place or country, and is calculated to mislead as to the place or country where the goods to which it is applied were actually made or produced, and the goods are not actually made or produced in that place or country, this section shall not apply unless there is added to the trade description, immediately before or after the name of that place or country, in an equally conspicuous manner with that name, the name of the place or country in which the goods were actually made or produced, with a statement that they were made or produced there.

Savings. 19. (1) This Law shall not exempt any person from any action, suit or other

proceeding, which might, but for the provisions of this Law, be brought against him.

~2) Nothing in this Law shall entitle any person to refuse to make a com

plete discovery. or to answer any question or interrogatory in any action, but

such discovery or answer shall not be admissible in evidence against such

12—TheMerchand~seMar\*sLaw3—1976 person in any prosecution for an offence against this Law.

(3) Nothing in this Law shall be construed so as to render liable to any prosecution or punishment any servant of a master resident in the Islands, who bona fide acts

in obedience to the instructions of such master, and, on demand made by or on behalf of the prosecutor, has given full information as to his master.

Falsa tatlon Warrant

represen 20. Whoever falsely represents that any goods are made by a person holding a

t. R.Y8' Royal Warrant or for the service of Her Majesty, or any of the Royal Family, or any Government Department, is guilty of an offence and liable on summary conviction to a fine not exceeding two hundred dollars.

CaD. tS repealed 21. The Merchandise Marks Law is hereby repealed.

Passed the Legislative Assembly this 11<sup>th</sup> day of March, 1976.

T. RUSSELL Procirlr nt

SYBIL McLAUGHLIN

Clerk of the Legislative Assembly.

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Partition [CAP. 117:1669

CHAPTER 117 Jamaica

Cap. 279.

THE PARTITION LAW

[5<sup>th</sup> June, 1873]

1. This Law may be cited as the Partition Law. Short title.

2. (1) In this Law— Interpretation  
“action” includes a suit; “on.

“Judge” means Judge of the Grand Court;

“judgment” includes a decree or order;

“thing” means a thing, and the thing (in, out)

(2) For the purposes of this Law, an action for partition shall include an action for sale and distribution of the proceeds; and in addition an action for partition it shall be sufficient to claim a sale and action for distribution of the proceeds, and it shall not be necessary to claim a partition.

3. In a suit of partition, where, if this Law had not been passed, a Power of decree for partition might have been made, then if it appears to the Court that by reason of the nature of the property to which the suit relates, or of the number of the parties interested or presumptively interested therein, or of the absence or disability of some of those parties, or of any other circumstance, a sale of the property and a distribution of the proceeds would be more beneficial for the parties interested than a division of the property between or among them, the Court may, if it thinks fit, on the request of any of the parties interested, and notwithstanding the dissent or disability of any others of them, direct a sale of the property accordingly, and may give all necessary or proper consequential directions.

4. In a suit for partition, where, if this Law had not been passed, a decree for partition might have been made, then if the party or of parties interested, individually or collectively, to the extent of one moiety or upwards in the property to which the suit relates, requests the Court to direct a sale of the property, and a distribution of the proceeds, instead of a division of the property between or among the parties interested, the Court shall, unless it sees good reason to the

1670 CAP. 1171 Partition

As to purchase of share of party desiring sale.

As to request for sale or undertaking to purchase on behalf of persons under disability.

As to terms on which parties interested may bid.

contrary, direct a sale of the property accordingly, and give all necessary or proper consequential directions.

5. In a suit for partition, where, if this Law had not been passed, a decree for partition might have been made, then if any party interested in the property to which the suit relates requests the Court to direct a sale of the property and a distribution of the proceeds instead of a division of the property between or among the parties interested, the Court may, if it thinks fit, unless the other parties interested in the property, or some of them, undertake to purchase the share of the party requesting a sale, direct a sale of the property, and give all necessary or proper consequential directions, and in case of such undertaking being given the Court may order a valuation of the share of the party requesting a sale in such manner as the Court thinks fit, and may give all necessary or proper consequential directions.

6. In an action for partition a request for sale may be made, or an undertaking to purchase given, on the part of an infant, person of unsound mind, or person under any other disability, by the next friend, guardian, committee in lunacy (if so authorized by order in lunacy), or other person authorized to act on behalf of the person under such disability; but the Court shall not be bound to comply with any such request or undertaking on the part of any infant unless it appear that the sale or purchase will be for his benefit.

7. On any sale under this Law the Court may, if it thinks fit, allow any of the parties interested in the property to bid at the sale on such terms as to non-payment of deposit, or as to setting off, or accounting for the purchase money, or any part thereof, instead of paying the same, or as to any other matters, as to the Court seem reasonable.

Part 8. Any person who, if this Law had not been passed, might have maintained a suit for partition, may maintain such suit against any proceeding by one or more of the parties interested, without serving the other or

therein. others (if any) of those parties; and it shall not be competent to any

defendant in the suit to object for want of parties; and at the hearing of the cause the Court may direct such enquiries as to the nature of the property, and the persons interested therein, and other matters, as it thinks necessary or proper, with a view to an order for partition

Pertition [CA~. 1171671

or sale being made on further consideration; but all persons who, if this Law had not been passed, would have been necessary parties to the suit, shall be served with notice of the decree or order on the hearing, and after such notice shall be bound by the proceedings as if they had been originally parties to the suit, and shall be deemed parties to the suit; and all such persons may have liberty to attend the proceedings; and any such person may, within a time limited by general orders, apply to the Court to add to the decree or order.

9. (1) Where, in an action for partition, it appears to the Court that notice of the judgment on the hearing of the cause cannot be served on all the persons on whom that notice is by this Law required to be served, or cannot be so served without expense disproportionate to the value of the property to which the action relates, the Court may, if it thinks fit, on the request of any of the parties interested in the property, and notwithstanding the dissent or disability of any others of them, by order dispense with that service on any person or class of persons specified in the order, and instead thereof may direct advertisements to be published, at such times and in such manner as the Court shall think fit, calling upon all persons claiming to be interested in such property who have not been so served to come in and establish their respective claims in respect thereof, before the Judge in Chambers, within a time to be thereby limited.

(2) After the expiration of the time so limited, all persons who shall not have so come in and established such claims, whether they are within or without the jurisdiction of the Court (including persons under any disability), shall be bound by the proceedings in the action as if, on the day of the date of the order dispensing with service, they had been served with notice of the judgment service whereof is dispensed with; and thereupon the powers of the Court under section 10 shall extend to the interests of all such persons in the property to which the action relates as if they had been parties to the action; and the Court may, if it shall think fit, direct a sale of property, and give all necessary or proper consequential directions.

Power to Court in certain cases to dispense with service of notice of judgment.

10. Where any decree shall be made in any partition suit for a sale Power to or partition of any lands, it shall be lawful for the Court to declare paCruese that any party to the suit wherein such decree is made, is a trustee Of trustees; and such lands, or of any part thereof, and thereupon it shall be law-fur o°rders for the Court to make such orders as to such trustees and lands as it thereon mi~ht make concerning any other trustees or lands held in trust.

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tProvi5iondasf 11. Where an order is made under this Law dispensing with

sales of property or service of notice on any person or class of persons, and property is  
perq where sold by order of the Court, the following provisions shall have  
effect— service of

notice is (a) The proceeds of sale shall be paid into Court to abide the  
disposition

with further order of the Court.

(b) The Court shall, by order, fix a time at the expiration of which the proceeds  
will be distributed, and may from time to time, by further order, extend that time.

(c) The Court shall direct such notices to be given, by advertisements or  
otherwise, as it thinks best adapted for notifying to any persons on whom service  
is dispensed with, who may not have previously come in and established their  
claims, the fact of the sale, the time of the intended distribution, and the time  
within which a claim to participate in the proceeds must be made.

(d) If at the expiration of the time so fixed or extended the interests of all the  
persons or classes of persons interested have been ascertained, the Court shall  
distribute the proceeds in accordance with the rights so ascertained.

(e) If at the expiration of the time so fixed or extended the interests of all the  
persons interested have not been ascertained, and it appears to the Court that they  
cannot be ascertained, or cannot be ascertained without expense disproportionate  
to the value of the property or of the unascertained interests, the Court shall  
distribute the proceeds in such manner as appears to the Court to be most in  
accordance with the rights of the persons whose claims to participate in the  
proceeds have been established, whether all those persons are or are not before the  
Court, and with such reservations (if any) as to the Court may seem fit in favour of  
any other persons (whether ascertained or not) who may appear, from the evidence  
before the Court, to have any prima facie rights which ought to be so provided  
for, although such rights may not have been fully established, but to the exclusion  
of all other persons; and thereupon all such other persons shall, by virtue of this  
Law, be excluded from participation in those proceeds on the distribution thereof;  
but, notwithstanding the distribution, any excluded person may recover from any  
participating person any portion received by him of the share of the excluded  
person.

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12. Any money to be paid under any sale made under this Law, How said may, if  
the Court thinks fit so to direct, be paid to any trustees be paid approved by the  
Court, or be paid into the Treasury to attend the orders of the Court under any  
Law enabling the Court to invest at interest the moneys of suitors in the  
Government Savings Bank, or otherwise as the Court may direct.

13. Where in an action for partition two or more sales are made, Provisions in if  
any person who has by virtue of this Law been excluded from partici- more sales  
pation in the proceeds of any of those sales establishes his claim to of property  
participate in the proceeds of a subsequent sale, the shares of the other persons  
interested in the proceeds of the subsequent sale shall abate to the extent (if any)

to which they were increased by the non-participation of the excluded person in the proceeds of the previous sale, and shall to that extent be applied in or towards payment to that person of the share to which he would have been entitled in the proceeds of the previous sale if his claims thereto had been established in due time

14. Commissioners appointed by the Court in any suit for partition Powers and shall have the powers of the Judge of the Grand Court to summon and examine witnesses and to call for the production of books, plans, and documents in suits, and to examine witnesses and parties concerned on oath; and no Commissioner shall be liable to any action or suit for any matter or thing done by him as such Commissioner. All summonses Form of for the attendance of witnesses or other persons, or the production of Schedule documents, may be in the Form given in the Schedule, and shall be signed by one of the Commissioners, and oaths may be administered by any one of the Commissioners.

15. All persons summoned to attend and give evidence, or to produce books, plans, or documents at any sitting of any Commissioners appointed by the Court in any suit for partition, shall be bound to obey the summons served upon them as fully in all respects as witnesses are bound to obey subpoenas issued from the Grand Court. Every person refusing or omitting without sufficient cause to attend at the time and place mentioned in the summons served on him, and every person attending but leaving the commission without permission of the Commissioners, or refusing without sufficient cause to answer, or to answer fully and satisfactorily to the best of his knowledge and belief all questions put to him by or with the con

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Costs of Commissions and witnesses.

Power as to

costs.

Power to make general orders, and effect thereof.

Form of summons to witnesses.

Section 14.

currence of the Commissioners, or refusing or omitting without sufficient cause to produce any books, plans, or documents in his possession or under his control, and mentioned or referred to in the summons served on him; and every person who shall at any sitting of the commission, wilfully insult any Commissioner, or wilfully interrupt the proceedings of the Commission, shall be liable to a penalty not exceeding thirty pounds to be recovered in a summary manner, and in default of payment to imprisonment, with or without hard labour, for a period not exceeding three months.

16. The costs of all proceedings under any Commission shall be in the discretion of the Court, and shall be taxed as other costs are taxed, and the witnesses before the Commissioners shall be entitled to the same remuneration as that to which they



would be entitled for giving evidence under similar circumstances in the suit before the Court.

17. In any suit for partition the Court may make such order respecting costs as it thinks fit.

18. It shall be lawful for the Judge from time to time to make general orders for carrying out, in proceedings in the Court, the provisions of this Law, and such orders may also prescribe the mode in which Commissions under any decree in any partition suit shall be executed, and the number of Commissioners that shall be appointed for executing such Commissions. All such orders shall take effect as general orders of the Court.

#### SCHEDULE

Summons to [fitnesses]

To A.B. (name of person summoned, and his calling and residence, if known).

You are hereby summoned to appear before (here name the Commissioners), appointed by the Grand Court to enquire (state briefly the subject of enquiry) at (place) upon the day of , 19

at o'clock, and to give evidence respecting such enquiry.

(If the person summoned is to produce any document add) And you are required to bring with you (specify the books, plans and documents required). Therefore fail not at your peril.

Given under the hand of , Commissioner, this  
day of , 19