

No. 451

AN ACT

Modifying the common-law rule relating to property hereafter acquired by husband and wife as tenants by entireties, where such husband and wife as subsequently divorced; providing for the sale of property held by husband and wife as tenants by entireties where they have been divorced; and directing the distribution of the proceeds of such sale.

Tenants by entireties.

Section 1. Be it enacted, &c., That whenever any husband and wife, hereafter acquiring property as tenants by entireties, shall be divorced, either of such tenants by entireties may bring suit in the court of common pleas, sitting in equity, of the county where the property is situate, against the other to have the property sold and the proceeds divided between them. The summons in such suit shall be served in the same manner and with like effect as in cases of partition at law.

Suit for division in case of divorce.

Service of summons.

Witnesses.

At the hearing on such suit both husband and wife shall be competent witnesses. The value of the property shall be proven by the testimony of at least two impartial and disinterested witnesses.

Appointment of trustee.

Section 2. If satisfied that the relief asked for is proper, the court of common pleas, sitting in equity, shall order a trustee to be appointed by the court to make public sale of said property. Said order shall provide that before making sale the trustee shall give bond in double the estimated value of the property, and shall advertise the same in one or more newspapers of general circulation in the community in which the property is located, and by handbills posted on the property and in other public places once a week for four consecutive weeks before the day of the sale. The order of sale shall be returnable as provided by rules of court, and, when confirmed, such sale shall have the same effect in all respects as a public sale in proceedings in partition of real estate.

Bond.

Sale to be advertised.

Return and confirmation.

Interest of tenants after divorce.

Section 3. In any case where a husband and wife shall hereafter acquire property as tenants by entireties, and shall be divorced, the interest of each of the respective tenants by entireties, subsequent to said divorce, shall be conclusively deemed to be one-half of the value of the property, and, to accomplish the provisions of this act, the common-law rule relating to entireties is hereby modified. The proceeds of any sale had under the provisions of this act, after the payment of the expenses thereof, shall be equally divided between the tenants by entireties, subject, however, to the deduction therefrom of the amount of any lien entered of record jointly against both of the respective tenants by entireties, together with any interest due thereon and docket costs, which shall be paid by the trustee appointed by the court to make sale of such property to the person or persons to whom the same is due and payable; and the amount of any liens entered of record against either of such tenants by entire-

Division of proceeds.

Joint liens.

Individual liens.

ties, together with interest due and costs taxed thereon, shall be deducted from the share of the tenant by entireties against whom such lien is filed, and paid by such trustee to the person or persons to whom the same is due and payable: Provided, however, That no decree of divorce as aforesaid shall be effective to change the existing law relating to liens upon property held by tenants by the entireties, except a decree of divorce that is valid in this Commonwealth, and not until the said decree of divorce, or a certified copy thereof, shall be recorded in the office of the recorder of deeds of the county where the property is situate, which decree shall be indexed in the grantor's index against each of the said tenants by the entireties.

Proviso.

If the whereabouts of the defendant is unknown, his or her share shall be paid into court, to be disposed of according to law under the direction of the court.

Payment into court.

Section 4. If property held by tenants by entireties, sought to be sold under the provisions of this act, is located in more than one county, proceedings may be had in any county where any of such land is located: Provided, That in such cases all advertising required by this act shall be done in each county where any portion of such land is located, and a certified copy of the record shall be filed in the office of the prothonotary of each of such counties, and shall be received in evidence with like effect as the records of the court where filed.

Property in more than one county.

Proviso

Section 5. Nothing herein contained shall repeal or in anywise affect any of the provisions of the act, approved the twenty-fourth day of May, one thousand nine hundred and twenty-three (Pamphlet Laws, four hundred and forty-six), entitled "An act authorizing the sale of real estate held by entireties by husband and wife when an order of support has been secured against the husband who has neglected to comply with the same, or whose whereabouts is unknown, or who has absented himself from this Commonwealth; prescribing the procedure to be followed; permitting husband and wife to testify; providing for the disposition of the proceeds of such sale; and granting a divorced woman the same rights under this act as a wife."

Act of May 24, 1923 (P. L. 446), not affected.

The act, approved the thirteenth day of May, one thousand nine hundred and twenty-five (Pamphlet Laws, six hundred and forty-nine, number three hundred and fifty), entitled "An act providing for the sale of property held by husband and wife as tenants by entireties where they have been divorced, and directing the distribution of the proceeds of such sale," is hereby repealed, saving proceedings instituted under its provisions.

Act of May 13, 1925 (P. L. 649, No. 350), repealed.

All other acts or parts of acts inconsistent herewith are hereby repealed.

Inconsistent acts repealed.

APPROVED—The 10th day of May, A. D. 1927.

JOHN S. FISHER