

RIDDELL, J., IN CHAMBERS.

OCTOBER 21ST, 1912.

WELSH v. HARRISON.

*Partition—Sale under Order—Payment into Court—Interest—
Costs in Addition to Commission—Payment out of Court—
Consent.*

Motion on behalf of all parties to a partition proceeding for distribution of the moneys in Court in accordance with the report of the Local Master at Whitby.

J. A. Campbell, for all parties.

RIDDELL, J.:—On the 7th December, 1908, an order was made herein by Mr. Justice Britton, at the Whitby Assizes, for partition or sale of lands. Paragraphs 2, 3, and 4 of the order correspond with paragraphs 2, 3, and 4 of Form 158—with a reference to the Master at Whitby: paragraph 5 directs an account of rents and profits received by four of the defendants; and paragraph 6 an account of the goods and chattels of the deceased received by the said defendants. The plaintiff and the defendants were tenants in common of the land.

The Master directed a sale of the lands, and an advertisement was issued for a sale by auction on the 20th March, 1909. The defendant Catherine Harrison was declared the highest bidder, but her offer was accepted subject to the consent of the others interested, she being a party to the action. I do not know why this was necessary: Con. Rule 725: but no one complains of this, and there may have been some good reason.

It proved impossible to get this consent, and subsequent attempts were made to sell by auction on the 7th May, 1910, and by tender on the 1st July, 1910, 15th June, 1911, and 1st August, 1911, all of which attempts proved abortive.

Catherine Harrison's bid had been \$3,650: she paid at the time \$365 to the plaintiff's solicitors, and he paid it into Court. Subsequently the lands were sold by tender in separate parcels to four persons—one of them Catherine Harrison—and by a perfectly proper agreement her payment of \$365 was allowed on her purchase-money. All the purchase-money was paid into Court, and vesting orders have been issued therefor. The Master's report has become absolute by lapse of time.

The Master has properly allowed a commission in lieu of costs, under Con. Rule 1146.