

*The Provincial Statutes of Lower-Canada, Being the fourth session of the eleventh Provincial Parliament of Lower-Canada.* Quebec: P. E. Desbarats, Printer to the King's Most Excellent Majesty, 1824.

4 George IV – Chapter 30

**An Act to partition the Common of the Seigniorie of Varennes, among the Co-proprietors thereof. (9th March, 1824.)**

Whereas divers Inhabitants of the Seigniorie [Seigneurie] of Varennes in the County of Surrey, are Proprietors in common of a certain tract of Land in the said Seigniorie, commonly called the Common of Varennes; and whereas the said Proprietors have, by Petition, represented that it would be more for the benefit of all persons concerned in the said Common, that partition of the same should be made among them, according to their respective rights therein, and that each of them should hold and dispose of his ascertained and divided portion of the said Common, which they are unable to effect without the sanction of the Legislature; May it therefore please Your Majesty that it may be enacted, and be it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Assembly of the Province of Lower-Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of Great-Britain, intituled, "An Act to repeal certain parts of an Act passed in the fourteenth year of His Majesty's Reign, intituled, 'An Act for making more effectual provision for the Government of the Province of Quebec, in North-America,' and to make further provision for the Government of the said Province;"—And it is hereby enacted by the authority of the same, that immediately after the passing of this Act, it shall be the duty of the Trustees for the said Common, or in default of them, it shall be lawful for any five of the Co-proprietors thereof, to cause to be published at the door of the Church of the Parish of Varennes, after Divine Service, notice requiring the Co-proprietors of the said Common, to meet within a space of time which shall not be less than fifteen days thereafter, at such place as shall then be appointed in order to proceed to choose, a proper person as Commissioner for the purposes of this Act, not having any right in the said Common nor being allied to any of the Co-proprietors of the same, in manner herein after-mentioned.

II. And be it further enacted by the authority aforesaid, that on the day and at the place so appointed by the said notice, it shall be lawful for the Co-proprietors in the said Common, as soon as a majority of them shall have assembled to proceed to choose the said Commissioner by a majority of votes, of which choice, and of the proceedings of the meeting an Acte shall be passed before some Notary and Witnesses attended at the said Meeting for this purpose, and it shall be the duty of such Notary to notify the person chosen as Commissioner of his election pursuant to this Act.

III. And be it further enacted by the authority aforesaid, that in case the person chosen at such Meeting, as Commissioner, shall not accept of the charge, or accepting thereof shall afterwards resign the same, or shall absent himself from the Province, or shall die, it shall then be lawful for the Co-proprietors of the said Common, to proceed to the nomination of a new Commissioner in the manner herein above-prescribed.

IV. And be it further enacted by the authority aforesaid, that it shall also be the duty of the said Commissioner, to give public notice within three months after the date of his appointment, by an advertisement posted up and read at the Church door of the Parish of Varennes, during at least two successive weeks and by public notice on two successive Sundays, at the issue of the forenoon service or Mass at the Church door aforesaid, of the place and days when and where he will hold his office, and shall require all and every of the said Co-proprietors to exhibit at his office within fifteen days after such notice, all the Deeds of Grant or Judgements or other title establishing their respective rights in the said Common, in order that the said rights may be definitively ascertained by the said Commissioner.

V. And be it further enacted by the authority aforesaid, that when the said Commissioner shall have examined the titles which shall have been laid before him in support of the rights of each of the aforesaid Co-proprietors in the said Common, it shall be his duty to ascertain and establish the number of persons entitled to shares in the said Common, and the proportionate share to which each Co-proprietor is entitled therein, and ought to have in the partition thereof, and this in virtue either of the Deeds of Concession of the Lands of which the said Co-proprietors shall then be in possession, or of any Judgement giving them such right, or of any other title translativ of property according to Law, and to cause a plan of the said Common, to be made and prepared by a sworn Land Surveyor, as hereinafter-mentioned and directed, of all which it shall be the duty of the said Commissioner to make a detailed report.

VI. Provided always, and be it further enacted by the authority aforesaid, that if it shall appear to the Commissioner who shall be appointed under and in virtue of this Act, that any agreement or convention has been heretofore made and entered into between the Seignior within whose Seigniorie the said Common is situate, and a majority of the Co-proprietors interested in the said Common, fixing or establishing the rights of the said Seignior [Seigneur], he shall in the partition of the said Common, to be by him made pursuant to this Act, be guided with respect to the rights of the said Seignior by such agreement or convention; but if there shall have been no such agreement or convention, then he shall be guided by the rights of the parties, as they may be made apparent to him.

VII. And be it further enacted by the authority aforesaid, that when the said Commissioner shall have made his report as aforesaid, it shall be his duty after giving sufficient notice thereof to the persons interested as hereinafter-mentioned, to deposit and file the said Report and Plan in the office of the Court of King's Bench for the District of Montreal, and to sue for and obtain the ratification and confirmation thereof, at any of the Superior Terms of the said Court according to the rules of proceeding in the said Court, and it shall be lawful for the Judges of the said Court to order the ratification, amendment or rejection of the said Report according to the nature and circumstances of the case, and in as summary a mode as possible, with power to the said Court to give Judgement in vacation, if necessary.

VIII. And be it further enacted by the authority aforesaid, that it shall be the duty of the Commissioner aforesaid, before proceeding to prosecute the homologation of the said Report, to cause to be posted up and read at the Church door of Varennes during two successive Sundays, a notice informing all persons interested in the partition of the said Common, of the day when the said Report and Plan is to

be by him fyled and deposited in the Office of the said Court of King's Bench, to the end that all persons thinking themselves aggrieved either in the partition or apportionment of the said Common, to them respectively made by the said Report, or by omission of their respective rights or pretensions in the said Common, or in any other way whatever, may, if they see fit, have an opportunity of opposing the homologation of the said Report, and obtaining justice therein.

IX. And be it further enacted by the authority aforesaid, that as soon as the said Return shall have been ratified, it shall be the duty of the said Commissioner to convene a meeting of the Proprietors of the said Common, by a notice which shall be read and published at the door of the Church of the Parish of Varennes, on a Sunday or Holiday after Divine Service, and which shall state the day, hour and place at which such meeting is to be holden, and the reason of the same, and that as soon as the Proprietors or a majority of them shall so have met the said Commissioner, shall call upon them to agree among themselves amicably, upon the manner in which the said Common shall be partitioned, and upon the local situation of their respective shares, and also upon the number, position and extent of the Highways or Bye-Roads which it may be necessary to reserve for the use and convenience of the said Proprietors.

X. And be it further enacted by the authority aforesaid, that as soon as a majority of the said Co-proprietors, present at the said meeting, shall have agreed as aforesaid upon the manner in which the said Common is to be partitioned, it shall be the duty of the said Commissioner to draw up an authentic thereof, and to proceed as soon as possible to cause the said Common to be partitioned by a sworn Land Surveyor, and the necessary Roads laid out according to the provisions of such Act, of which operation the said Land Surveyor shall give a Procès Verbal.

XI. And be it further enacted by the authority aforesaid, that in case the majority of the said Co-proprietors assembled as aforesaid, to regulate the partitioning of the aforesaid Common, shall judge it necessary for any reason whatsoever, to desist from their right of partitioning the same among themselves, and shall give notice (Acte) thereof to the said Commissioner, it shall be the duty of the aforesaid Commissioner to cause the said Common to be divided and partitioned by a sworn Land Surveyor, into as many lots as there are Co-proprietors concerned and having shares in the said Common, and to assign to each proprietor his lot or share in the said Common, according to the extent or value of his rights in the same, as near in local situation and to the best of his knowledge and judgement as circumstances and the nature of the case will admit, to the Land in respect to which such right is attached and dependant, and to make such reserves of Roads and Bye-roads for the use of such Co-proprietors as he shall judge to be useful or necessary.

XII. And be it further enacted by the authority aforesaid, that nothing in this Act contained, shall extend or be construed to extend to prevent the Seigneur of Varennes, or his heirs and assigns from demanding, having, and exercising all and every the rights, Cens et Rentes, Lods et Ventés, Corvées, Retrait and other rights to him due and owing, and which may become due and owing by virtue of the original Deed of Grant of the said Common, or by virtue of the deeds of grant of the lands or dwellings of the said Proprietors, or by virtue of the Instrument of grant of the said Seignior generally all and every of which rights whatsoever they may be, are hereby wholly reserved, and which reservation shall be expressly stipulated in the contracts which shall be passed pursuant to this Act.

XIII. And be it further enacted by the authority aforesaid, that after the report of the Commissioner aforesaid shall have been homologated, as by this Act required, it shall be the duty of the said Commissioner to make and execute a Contract before Notaries, of the share or proportion in the said Common allotted to the several Proprietors, or Proprietors in Common, and at the expense of each of them. Provided always, that when any such share or portion shall come to or be allotted to several persons jointly, the said Commissioner shall not be held to make and execute more than a single Contract to the said Persons jointly for the share or portion of ground which hath come to and been allotted to them in virtue of their claims or rights as aforesaid.

XIV. Provided always, and be it further enacted by the authority aforesaid, that if, after the execution of such Contracts, any Proprietor or Proprietors shall be dissatisfied by reason of the inferiority in soil, or local situation of the share or portion allotted him or them, and shall hereof complain to such Commissioner it shall be the duty of such Commissioner upon such complaint to nominate three Experts or persons acquainted with the subject not having any right or interest in the said Common, which Experts having previously made oath before any Justice of the Peace, which oath any Justice of the Peace is hereby authorised to administer, well and truly to do and perform their duty pursuant to this Act, shall visit the said Common and make correct estimation of each of the several shares or portions allotted, and shall determine and fix the sum or sums which the several Proprietors of the shares or portions of greater value ought to contribute and pay to any person or persons unavoidably damnified and complaining as aforesaid, of the allotment or allotments to him or them made, of the shares or portions of less value, of which visit and estimation, the said Experts shall make their Report in writing to the said Commissioner as soon as possible, and such report shall be held to be final with respect to all parties.

XV. And be it further enacted by the authority aforesaid, that it shall be the duty of the said Commissioner to cause to be made a just and correct distribution, fixing the proportion of the sum or sums which the said Proprietors shall be held to pay, as well for the purpose of collecting such sum or sums of money as may become due to the Surveyor or Surveyors, who shall be employed by the said Commissioner for the purposes of this Act, as for defraying every other necessary expense and disbursement which the said Commissioner may, in the prosecution of his duties pursuant to this Act, incur, as well as the expenses of prosecuting the homologation of his report and plan aforesaid, when the said expenses of homologation shall have been duly taxed.

XVI. And be it further enacted by the authority aforesaid, that the said Proprietors shall pay to the said Commissioner at the time of the passing of the Contracts herein before-mentioned, the proportion or proportions which each of the said Proprietors shall be held to pay, according to the distribution which shall be made in the manner above-mentioned, and moreover the sum of three pounds, currency, to the said Commissioner, upon each share or portion in the said Common, as fees to the said Commissioner, for his execution of this Act, and that the said Commissioner shall not demand nor receive more from the Proprietors or any other person under any pretext whatsoever by reason of the performance of his duties pursuant to this Act.

XVII. Provided always, and be it further enacted by the authority aforesaid, that in case of complaint as herein above-mentioned, and after the Experts shall have made their report, in writing, as herein, above-provided, it shall also be the duty of the said Commissioner, to proceed anew to make a just and fair distribution fixing the proportion or proportions which each and every Proprietor in the said Common, shall be bound to contribute and pay towards the indemnity awarded pursuant to such complaint, including the necessary costs and charges incurred in and about the proceedings arising from, and incidental to such complaint and to the report of Experts, of which the said Commissioner shall cause due notice to be given, to the persons interested, and in case of non-payment by the party liable for the same, he may be sued by the party in whose favor the indemnity shall have been awarded, for the recovery thereof, in any Court of competent jurisdiction. Provided always, that in case it shall appear by the report of the said Experts, that such demand for indemnity shall be unfounded, the costs of such Report shall be borne by the individuals who shall have made the demand, and may be recovered against them by the said Commissioner in any Court of competent jurisdiction.

XVIII. And be it further enacted by the authority aforesaid, that nothing in this Act contained, shall extend or be construed to weaken, diminish or extinguish the rights and privileges of His Majesty, his heirs and successors, nor of any person or persons, body politic or corporate, except such as are affected by this Act.

XIX. And be it further enacted by the authority aforesaid; that this Act shall be deemed a public Act, and as such shall be judicially taken notice of by all Judges, Justices of the Peace, and all other persons whomsoever, without being specially pleaded.