

The Provincial Statutes of Lower-Canada, Being the second session of the thirteenth Provincial Parliament of Lower-Canada. Quebec: P. E. Desbarats, Printer to the King's Most Excellent Majesty, 1829.

9 George IV – Chapter 77

An Act for rendering valid conveyances of Lands and other immoveable Property held in free and common Soccage within the Province of Lower-Canada, and for other purposes therein mentioned.

14th March, 1829. Presented for His Majesty's Assent, and reserved "for the signification of His Majesty's pleasure thereon."

1 November, 1830. Assented to by His Majesty in His Council.

18th January, 1831. The Royal Assent signified by the Proclamation of His Excellency the Administrator of the Government.

Whereas by an Act made and passed in the Imperial Parliament of the United Kingdom of Great Britain and Ireland, in the sixth year of His Majesty's Reign, intituled, "An Act to provide for the extinction of Feudal and Seignioral rights and burthens on Lands held a titre de fief and a titre de cens in the Province of Lower Canada, and for the gradual conversion of those Tenures into the Tenure of free and common Soccage, and for other purposes relating to the said Province," it is amongst other things declared and enacted, "that all Lands within the said Province of Lower Canada, which have heretofore been granted by His Majesty, or by any of His Royal Predecessors, to any person or persons, their heirs and assigns, to be holden in free and common Soccage, or which shall or may hereafter be so granted by His Majesty, His Heirs and Successors, to any person or persons, their heirs and assigns, to be holden in free and common Soccage, may and shall be by such Grantees, their heirs and assigns held, granted, bargained, sold, aliened, conveyed and disposed of and may and shall pass by descent, in such manner and form, and upon and under such rules and restrictions, as are by the Law of England established and in force, in reference to the grant, bargain, sale, alienation, conveyance, disposal, descent of Lands holden by the like tenure therein situate, or to the dower or other rights of married women in such Lands, and not otherwise, any Law, custom or usage to the contrary notwithstanding subject nevertheless, to the following Proviso," that nothing in the said Act contained shall extend to prevent His Majesty, with the advice and consent of the Legislative Council and Assembly of the Province of Lower Canada, from making and enacting any such Laws or Statutes as may be necessary for the better adapting the before mentioned rules of the Law of England, or any of them, to the local circumstances and condition of the said Province of Lower Canada and the inhabitants thereof;" Whereas "also by the forty-third clause of the Act of the Imperial Parliament of Great Britain, of the thirty-first year of the Reign of His late Majesty George the Third, Chapter thirty-first, which enacts, that all Lands which shall be hereafter granted within the said Province of Upper Canada, shall be granted in free and common Soccage, in like manner as Lands are now holden in free and common Soccage in that part of Great

Britain called England; and that in every case when Lands shall be hereafter granted within the said Province of Lower Canada, and when the grantee thereof shall desire the same to be granted in free and common Soccage the same shall be so granted, it is expressly enacted that the said Lands so granted shall be subject never tireless to such alterations with respect to the nature and consequences of such tenure of free and common Soccage as may be established by any law or laws which may be made by His Majesty, his Heirs or Successors, by and with the advice and consent of the Legislative Council and Assembly of the Province.” Whereas also, the object of the said Act was to free the said Lands from all Seigniorial and Feodal Rents and Charges to which the Lands previously conceded had been subjected, by virtue of the Deeds of Concession, which were before in use in this Province, and Whereas should Proprietors of Lands granted in Free and Common Soccage, be deprived of the protection of the Laws of this Province, and of the advantages resulting from the customs received and established with regard to real property, they should be exposed to the loss or diminution of the rights they have acquired and up to this day have exercised and enjoyed as attached to such Lands or real properties, or to the possession of such Lands so granted in Free and Common Soccage. And whereas divers Inhabitants of this Province, and others are now seized and possessed of sundry lands and other immoveable property in Free and Common Soccage, situate within the Province of Lower-Canada, and hold the same by and in virtue of grants, bargains, sales, enfeoffments, alienations, gifts, exchanges, disposals, descents, devises, inheritance, right of dower or other conveyances, differing both in manner and form from such, rules and restrictions as are by the law of England established, in reference to such grants, bargains, sales, enfeoffments, alienations, gifts, exchanges, disposals, descents, devises, inheritance, right of dower or other conveyances: And whereas it is necessary and expedient to make provision for quieting the lawful proprietors of such lands, and confirming to them the legal possession and enjoyment of the same, notwithstanding, that such grants, bargains, sales, enfeoffments, alienations, gifts, exchanges, disposals, descents, devises, inheritance, right, of dower, or other, conveyances, do or may differ from such rules and restrictions as are by the law of England established in reference to the same respectively: And whereas it is also necessary and expedient to enact and declare in what manner such land as are now holden, or shall or may hereafter be held in Free and Common Soceage, within the limits of this Province of Lower-Canada, shall and may hereafter beheld, acquired, conveyed or transferred: Be it therefore 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 all such grants, bargains, sales, enfeoffments, alienations, gifts, exchanges, disposals, descents, devises, inheritance, right of dower, or other alienation or conveyance whatsoever, by or in virtue of which any person or persons whomsoever are or shall be the proprietor or possessor of or lay claim to be the Proprietor and possessor of any lands or other immoveable property, heretofore granted in Free and Common Soccage within the Province of Lower-Canada, and which may have been

made and executed prior to the passing of this Act, for the transfer, alienation, and conveyance of any such lands or other immoveable property, though, not made and executed according to the rules and restrictions established by the Law of England, in reference to such grants, bargains, sales, enfeoffments, alienations, gifts, exchanges, disposals descents, devises, inheritance, right of dower, or other conveyances, shall be and are hereby declared to be as good and valid in Law, to all intents and purposes whatsoever, as if they and each and every of them had been made and executed in conformity to such rules and restrictions as aforesaid; Provided always, that such grants, bargains, sales, enfeoffments, alienations, gifts, exchanges, disposals, descents, devises, inheritance, right of dower or other conveyances, and each and every of them respectively were at the time of making and executing the same, good and sufficient to operate as such grants, bargains, sales, enfeoffments, alienations, gifts, exchanges, disposals, descents, devises, inheritance, right of dower or other conveyances, under any Law or usage in force in this Province at the time of making and executing the same, and that as fully and amply to all intents and purposes as if the said rules and restrictions of the Law of England had never been in force, or had not been so declared to govern and affect the transfer, alienation and conveyance of lands or other immoveable property so held in Free and Common Soccage, any Law, usage or custom to the contrary notwithstanding.

II. And be it further enacted by the authority aforesaid, that from and after the passing of this Act, all grants, bargains, sales, enfeoffments, alienations, gifts, exchanges, disposals, devises, or other, conveyances of any Lands or other immoveable property, now holden, or which may hereafter be held in Free and Common Soccage within the limits of the Province of Lower-Canada, and which, shall be duly, made and executed either upon and under such rules and restrictions as are by the Law of England established and in force in reference to such grants, bargains, sales, enfeoffments, alienations, gifts, exchanges, disposals, devises, or other conveyances, or by deed or instrument in writing, duly made and executed by and before two Notaries Public, or by and before one Notary and two witnesses, according to the laws and usages of the Province of Lower Canada, shall be equally good, valid and binding in Law, any thing in the aforesaid in part recited Statute to the contrary thereof in anywise notwithstanding.

III. And be it further enacted by the authority aforesaid, that all mortgages and hypotheques, and all privileged claims of Bailleur de fonds created before, the passing of this Act, upon any lands or other immoveable property now holden in free and Common Soceage, and which were so made and created according to the forms, laws, and usages of the Province of Lower-Canada, affecting other Lands not holden in Free and Common Soccage, shall be held and declared good and effectual in Law to all intents and purposes whatsoever.

IV. And be it further enacted by the authority aforesaid, that all mortgages and hvpotheques, and all privileged claims which shall or may be created from and after the passing of this Act, upon any Lands or other immoveable property, now holden or which shall or may hereafter be hoiden in Free and Common Soccage, shall and may be made

according to the forms, laws and usages of the Province of Lower-Canada, provided that the lands so to be mortgaged or hypothecated, or upon which such privilege claim is so intended to be reserved, shall be specially set forth, and described in the Instrument creating or reserving the same and not otherwise, anything in the aforesaid in part recited Statute to the contrary thereof in anywise notwithstanding.

V. Provided always, and it is enacted that nothing in this Act contained, shall be so construed as to prejudice in any manner whatsoever the rights of any persons by whom any real property may have been sold, (Bailleurs de fonds) who shall always be allowed to demand and exercise their rights of preference of hypothec and privileged claim upon the monies which shall from the consideration of any sale or transfer of any Land or hereditament although no stipulation to that effect of express mention of such right be made in the Deed of Sale or transfer of such Land or hereditament.

VI. Provided always and be it further enacted by the authority aforesaid, that when any Proprietor of Land granted or held in Free and Common Soccage in this Province, shall have died before the passing of this Act without having partitioned the same, either by last Will and Testament or otherwise, the heirs of such Proprietor shall be held to partition such Land according to the old Laws of the Country, unless the said heirs should have agreed among themselves upon a different partition.