

## C A P. II.

An ACT for Partition of Lands in Coparcenary, Jointenancy, and Tenancy in Common, and thereby for the more effectual collecting His Majesty's Quit Rents in the Colony of *Nova Scotia*.

\*\*\*\*\* *HEREAS* for the more speedy Settlement of the Province,  
 \* W \* it became necessary to erect Townships in divers Parts of the Preamble.  
 \* \* \* \* \* same, and for inducing Persons to remove into the Province  
 and become Settlers and Inhabitants of the said Townships, it  
 was found requisite by Grants to the several Petitioners to convey, previous  
 to their Arrival in the Province, certain Shares or Rights in the re-  
 spective Townships, and inasmuch as the said Rights could not, without  
 greatly retarding the Progress of the Settlements, be surveyed and set  
 out to each respective Grantee by Metes and Bounds in Severalty, it was  
 judged expedient to convey the Lands in the said Townships to the Per-  
 sons named in the respective Patents as Jointenants or Tenants in Com-  
 mon. And Whereas many of the Grantees have never arrived, or by  
 themselves or others taken any actual Possession of their Shares in the  
 said Townships, and yet by the Terms and Periods in the said Patents  
 they are intituled and will long remain intituled to the said Shares, by Rea-  
 son whereof numerous Inhabitants in the respective Townships having un-  
 divided Parts are greatly oppressed and prejudiced, who on account of  
 such Absentees cannot proceed to divide their Rights by private Deeds  
 of Partition, nor can any Summons be legally served as against such Ab-  
 sentees upon Writs of Partition, and for want of dividing the said Lands,  
 a considerable Part thereof is wasted and destroyed by frequent Trespasses  
 and otherwise, or lie uncultivated and unmanured, so that the Profits of  
 the same are totally or in a great Measure lost, to the Injury of His Ma-  
 jesty's Rights in the Quit Rents respectively reserved, as to the Means of  
 levying the same, and tending to the Vexation of the Inhabitants, by be-  
 ing liable to Suits for an Account of Profits demandable by one Tenant in  
 Common against another, For Remedy whereof, Be it Enacted by  
 the Lieutenant Governor, the Council, and Assembly, That upon the  
 Petition of any one or more of the Inhabitants in each Town-  
 ship, to the Supream Court, praying a Division of the Lands to  
 the Proprietors in Severalty, according to their Shares and  
 Rights, it shall and may be lawful for the said Court to award  
 a Writ of Partition in the usual Form (a), to the Provost Mar-  
 shal, to be executed by him or his Deputy, in the Prefence of two  
 Justices of the Peace, in Manner following, *That is to say*, that  
 in assigning the Shares in Severalty, in virtue of the said Writ of  
 Partition, the Lands actually occupied and improved shall be set  
 off and assigned to all such Proprietors respectively, who have so  
 occupied and improved the same; and that in assigning the Rights  
 to Lands unimproved, after Division thereof into Shares according

Eng. Stat. 8. & 9.  
 Will. 3. c. 31. made  
 Perpetual by 3. & 4.  
 Ann. c. 18. Sect. 2.  
 Upon Petition of  
 any Inhabitant of  
 any Township,  
 the Supream Court  
 may award a Writ  
 of Partition,  
 (a) Regist. Brev.  
 Judicial. 20. a  
 F. N. B. 137. R.  
 to be executed by  
 the Provost Mar-  
 shal, in Prefence of  
 two Justices.  
 Lands actually im-  
 proved by any Pro-  
 prietors, shall be  
 set off to them.

(b) Lit. Sect. 246.  
Co. Lit. 167. a. b.

Shares to be ballotted for, and the Numbers drawn expressed in the Inquisition, and confirmed by the Court.

(c) Return of the Sheriff & Jurors by the Words of the Writ must be under their Seals.

Co. Lit. 168. b.  
Provoft Marshal to give 40 Days Notice to the Occupiers of the Lands, &c.

Persons duly notified, and neglecting to appear, shall be defaulted,

and final Judgment for Partition given against the Persons present; and also against the Persons defaulted, unless they shew a probable Matter in Bar, within 15 Days.

(d) Co. Lit. 169. a.

In Case of Inequality, the Court may order a new Partition,

which shall bind all Persons, except Infants, &c.

(e) Lit. Sect. 258.

Co. Lit. 171. a.

(f) Lit. Sect. 256. 257. Co. Lit. 170. b. 171. a.

who may have a new Partition, upon shewing a probable Matter in Bar.

The like Relief for Absentees.

to the Number of Grantees in each Township, each Number shall be written on separate Papers and rolled up and placed in a Box (b), from whence each Grantee present shall, in the Order wherein he is named in the Patent of Grant to the Township, draw out one of the said Papers, in the Presence of the Jury attending the Provoft Marshal or Deputy Provoft Marshal; and the Number so drawn shall be expressed in the Inquisition by the Jury, and be accordingly assigned by the Provoft Marshal or Deputy Provoft Marshal and the Justices, in their Return of the Writ of Partition (c); which shall be confirmed by the Judgment of the said Court: And the said Provoft Marshal or his Deputy are hereby required to give due Notice to the Tenants or Occupiers of the Lands, or if they cannot be found, to the Wife, Son, or Daughter, being of the Age of Twenty One Years and upwards, of the Tenant or Tenants, or to the Tenant in actual Possession by virtue of any Estate of Freehold, or for Term of Years, or uncertain Interest, or at Will, of the Lands, Tenements, or Hereditaments, whereof the Partition is demanded, Forty Days before the said Provoft Marshal shall proceed to execute the said Writ of Partition; and if it shall appear to the said Court, upon Return of the said Writ of Partition, that any of the Persons notified neglected to appear, Judgment shall be given by Default as against them, and a final Judgment for Partition shall be given against such Persons as were present at the Time of executing the Writ; and if the Persons against whom the Judgment shall be so given by Default shall not, within Fifteen Days after serving them with Notice of the said Judgment, apply themselves to the said Court by Motion, and shew a good and probable Matter in Bar of the said Partition, the said Judgment by Default shall be confirmed, and final Judgment entered (d). *Provided neverttheless*, that if the Tenants or Persons concerned shall shew to the Court any Inequality in the Partition, the Court may award a new Partition to be made in Presence of all Parties concerned, if they will appear, notwithstanding the Return and Filing upon Record the former; which said second Partition returned and filed shall be good and firm for ever against all Persons, except Infants (e), *Femes Covert*. (f), Persons of *Non sane* Memory, who shall, within One Year after the respective Disabilities shall be determined, be intitled to apply to the said Court, and shew a good and probable Matter in Bar of the said Partition, in which Case the said Judgment shall be set aside and a new Writ of Partition shall be awarded, and executed in Presence of all Parties concerned, which Partition shall be final and conclusive against all Persons whatsoever. *Provided also*, That all Persons absent may, within One Year after such Judgment of Partition, to be publickly notified in the *Nova Scotia Gazette*, or any other publick News Paper, three Weeks successively, by their Agents or Attornies apply to the said Court, and alledge any good and probable Matter against the said Partition, and such new Partition and Judgment

ment shall be had as aforesaid; which shall conclude such absent Persons, and all other Persons claiming and deriving under the Grants so passed by His Majesty's Government, for the Settlement and Improvement of the Province. *Provided likewise*, that in such second Writs of Partition, no Lands that have been builded upon, ploughed, or otherwise improved *bonâ fide*, by the Proprietor intitled under the former Judgment of Partition, shall be devested out of such Proprietor, but that the Equality of Partition shall be made out of the unimproved Lands.

in the second Partition no Proprietor shall be devested of any Lands actually improved by him, but the Equality shall be made out of unimproved Lands.

II. *And be it further Enacted*, That no Plea in Abatement shall be admitted or received in any Suit for Partition, nor shall the same be abated by Reason of the Death of any Tenant; and that in all Cases where the former Judgment shall, upon Appeal, be confirmed, the Person or Persons so appealing shall be awarded to pay Costs.

No Plea in Abatement shall be admitted in Suits for Partition. The Appellee to pay Costs when the first Judgment shall be confirmed.

III. *And be it also Enacted*, That from and out of every several Share so to be allotted and assigned to each and every Proprietor, His Majesty's Quit Rents reserved and payable by every Grantee in the respective Patents named, shall be recoverable by the usual Process, and be levied out of the Profits and other extendible Goods and Chattels of such respective Share; and that this Act nor any Thing herein contained, shall extend or be construed to extend to impeach or prejudice His Majesty's Rights to the said Quit Rents, or to any Forfeitures or other Rights in virtue of the said Grants.

His Majesty's Quit Rents to be recoverable out of every Share,

and to be levied out of the profits thereof.