

*At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on Tuesday the Twenty Eighth Day of May, 1765, in the Fifth Year of His Majesty's Reign, and there continued by several Prorogations until the seventeenth day of October, 1767, in the seventh year of His said Majesty's Reign; being the Fifth Session of the Fourth General Assembly convened in the said Province.*

7 George III – Chapter 2 (Session 2)

**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.**

Whereas for the more speedy settlement of the Province, it became necessary to erect townships in divers parts of the 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 respective 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 persons named in the respective patents as jointenants or tenants in common. 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 intitled and will long remain intitled to the said shares, by reason whereof numerous inhabitants in the respective townships having undivided 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 absentees 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 Majesty'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 being 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 township, to the Supream Court [Supreme 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 Marshal, to be executed by him or his deputy, in the presence 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 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 Provost Marshal or Deputy Provost Marshal; and the number so drawn shall be expressed in the inquisition by the jury, and be accordingly assigned by the Provost Marshal or Deputy Provost Marshal and the Justices, in their return of the Writ of Partition (c); which shall be confirmed by the judgement of the said Court: and the said Provost 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 Provost 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, judgement shall be given by default as against them, and a final judgement 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 judgement shall be so given by default shall not, within fifteen days after serving them with notice of the said judgement, apply themselves to the said court by motion, and shew a good and probable matter in bar of the said partition, the said judgement by default shall be confirmed, and final judgement entered (d). Provided nonetheless, 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), femmes 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 judgement shall be set aside and a new Writ of Parition 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 judgement 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 goods and probable matter against the said partition, and such new partition and judgement 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 likewise improved bona fide, by the proprietor intitled under the former judgement of partition, shall be devested out of such proprietor, but that the equity of partition shall be made out of the 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.

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.