

C A P. XVII.

AN ACT to partition the Common of the Seigneurie of Boucherville, among the persons having a right of Commonage in the said Common.

(17th March, 1821)

Preamble.

WHEREAS divers Inhabitants of the Seigneurie of Boucherville, in the County of Kent, are proprietors in common of a certain Tract of Land in the said Seigneurie, commonly called the Common of Boucherville; and whereas the said proprietors did by their petition in that behalf represent, that it would be much more for their benefit, and that of the public at large, that partition of the said Common should be made among all the Proprietors thereof, according to their respective rights, 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 Provincial Parliament: May it therefore please Your Most Gracious 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 from and after the passing of this Act, it shall and may be lawful to and for each and every of the said proprietors to possess, to sell and to alienate their rights in the said Common, as they shall see fit, in any manner permitted by the Laws in force in this Province, any Ordinance, Law or usage to the contrary notwithstanding.

After the passing of this Act, proprietors may possess, sell and alienate their right in the common.

Duty of the Trustees for the said Common.

II. And be it further enacted by the authority aforesaid, 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 a y five of the co-proprietors thereof, to cause to be published at the door of the Church of the Parish of Boucherville, 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 seven days, at such place as shall then be appointed in order to proceed to choose a proper person as Commissioner for

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,

Co-proprietors to choose the commissioner.

The person chosen to be approved of by the Governor.

III. 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 of the said Common, as soon as twenty of them, and not less, shall have assembled, to proceed to choose the said Commissioner, by majority of votes; of which choice and the proceedings of which meeting, an Act shall be passed before a Notary and two witnesses, and the whole shall be transmitted to the Governor, Lieutenant-Governor or person administering the Government of this Province for the time being, and submitted for his approbation.

The Governor not approving of the person chosen as commissioner, or he should refuse to act as such, co-proprietors may choose another.

IV. And be it further enacted by the authority aforesaid, that in case the Governor, Lieutenant-Governor or person administering the Government of the said Province for the time being, should not approve the choice of the person so appointed Commissioner, or the said Commissioner, should from any motive whatever, refuse to accede to the choice which has so fallen on him, or should think proper to resign, or should 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-before prescribed.

Commissioner to give public notice of his appointment.

V. 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, in two of the weekly Papers published in the City of Montreal, during two weeks and to cause to be posted a similar notice, at the door of the Parish Church of Boucherville, of the place and days when and where he will keep his office; and shall require all, each and every of the said Proprietors, to exhibit at the said Office, within fifteen days from the date of the said notice, all the deeds of grant or judgments establishing his or their respective rights in the said Common, in order that the said rights may be definitively ascertained by the said Commissioner.

Duty of the commissioner on his having examined the titles in support of the rights of the co-proprietors.

VI. 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 fix the number of entire and equal shares in the said Common, the number of persons entitled thereto, and the respective proportions

tions which they 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 judgment giving them such right, and without regard to any agreements or *Actes* which may have been made before the passing of this Act, and in virtue of which any of the co-proprietors in the said Common may have sold, given, exchanged, or in any manner whatever disposed of any part of his rights in the said Common, independently of the land or real property to which the said right of common was annexed, whereof and of the whole, it shall be the duty of the said Commissioner to make a detailed report.

Commissioner's
duty after having
made his report.

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 to the persons interested as herein-after-mentioned, to deposit and file the said report 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 Sessions of the said Court, in Superior term, 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 or amendment of the said report, according to the nature and circumstances of the case.

Duty of the com-
missioner before
proceeding to the
homologation of
his report.

VIII. And be it further enacted by the authority aforesaid, that it shall be the duty of the said Commissioner, before proceeding to the homologation of the said report, to cause to be published and posted at the door of the Church of Boucherville, during two Sundays in succession, a notice, informing all persons interested in the partition of the said Common, of the day in which the said Report is to be by him filed and deposited in the office of the said Court of King's Bench, in order that if any of the said persons consider himself aggrieved, either as to the proportion of the rights assigned him by the said Report, or by the omission of them, or in any other way whatever, he may if he think fit, have an opportunity of opposing the homologation of the said Report, and obtaining such justice as may be his due.

Duty of the com-
missioner after
having obtained
the homologation
of his report.

IX. And be it further enacted by the authority aforesaid, that when the said Commissioner shall have obtained the homologation of the said Report, it shall be the duty of the said Commissioner to cause the said Common to be divided and partitioned by a sworn Surveyor, into a like number and quantity of equal Lots or divisions as shall appear to exist by his said Report, of which operation the said Surveyor shall give in his *Procès Verbal* as soon as possible. Provided always, that it shall be lawful to and for the said Commissioner to reserve such quantity of land,

Proviso,

Proviso.

land, being portion of the Area of the said Common, as he shall think necessary for the communications or roads in the said Common; and Provided also, that the said Commissioner, after having divided the said Common into equal lots or divisions as aforesaid, shall not be bound to subdivide the same, for the accommodation of any Proprietor or Proprietors in common of any of the aforesaid lots or divisions.

Where the division of the common has been made by the Surveyor, duty of the commissioner in such case.

X. And be it further enacted by the authority aforesaid, that where the said division shall have been made by the said Surveyor, in manner herein-before prescribed, it shall be the duty of the said Commissioner, 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 one of the Justices of the Court of King's Bench, shall visit the said Common, and make a correct estimation of each of the said equal rights or equal shares, severally and collectively, and shall determine and fix the sum or sums which the Proprietors to whom the more valuable rights and shares shall come, in the manner here-in-after prescribed, shall pay to those among the said proprietors to whom the rights or shares of less value shall come; of which visit and estimation, the said *Experts* shall make their Report in writing to the said Commissioner as soon as possible.

Duty of the commissioner after report of the experts has been received.

XI. And be it further enacted by the authority aforesaid, that after the said Commissioner shall have received the Report of the said *Experts*, in manner herein-before prescribed, it shall be the duty of the said Commissioner to cause the said Proprietors to be assembled and to cause all the said Proprietors to draw by lot for each equal right or equal share, to which each of the said Proprietors shall have made out his right in the manner herein-before prescribed. And it shall also be the duty of the said Commissioner to make and execute a contract before Notaries, of each equal right or equal share so come to each of the said Proprietor or Proprietors in common, and at the expense of each of the said Proprietors. Provided always, that in case any equal right or equal share shall have come to several persons jointly, the said Commissioner shall not be held to make and execute more than one and the same contract to the said persons jointly for the lot or piece of ground which hath so come to them in virtue of their claims or rights as aforesaid.

Proviso.

and

Saving of the rights of individuals interested.

XII. And be it further enacted by the authority aforesaid, that in case any person or persons, being a minor or minors, or being interdicted, or absent, should claim any right or share, or part of any right or share, in the said Common, the Tutor or Tutors, Curator or Curators, Attorney or Attorneys, or Agent or Agents of such person

person or persons, shall draw lots for each equal right or equal share which may belong to such person or persons and shall accept the contract or contracts for such equal right or equal share, or for such part thereof, as the case may be, at the expense of the person or persons aforesaid; Provided always that the said Tutor or Tutors, Curator or Curators, Attorney or Attornies, or Agent or Agents shall not, in any manner or way, sell or assign the said equal right or equal share, or any part thereof, unless in the manner and under such authority as in such case is required.

Saving of the rights of the Seigneur or Seigneurs of Boucherville.

XIII. And be it further enacted by the authority aforesaid, that nothing herein-contained, shall extend or be construed to extend to prevent the Seigneur or Seigneurs of Boucherville, or his or their Heirs, Receivers or Assigns, from asking, demanding, having and exercising all, each and every the rights, *Cens et Rentes, Lods et Ventés, Corvées, Retrait*, and other rights to him or them 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 Seigneurie generally, all, each and every which right and rights whatsoever, are wholly and specially reserved, which reservation shall be expressly stipulated in the Contracts which shall be passed in manner herein-before prescribed.

Commissioner to make a just distribution in fixing the sum which the proprietors are held to pay.

XIV. 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, establishing and fixing the proportion of the sum or sums which the said Proprietors shall be held to pay, for the purpose of collecting such sum or sums of money as shall become due to the Surveyor or Surveyors, who shall be employed by the said Commissioner, by virtue of the said Act, and such sum or sums of money as shall become due to the *Experts* who shall be appointed by the said Commissioner to visit and estimate the said Common, with the expense of their Report, as also such sum or sums of money as shall by the said Commissioner be disbursed and paid for the herein-before mentioned notices published and posted.

Proprietors to pay the commissioner their proportion, which each may be held to pay, according to the distribution made and a further sum to the commissioner for each right.

XV. 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 herein-before prescribed, and moreover the sum of forty shillings, current money of this Province, to the said Commissioner, upon each equal right

or

or equal share in the said Common, as the fees of the said Commissioner for his execution of this Act, and that the said Commissioner shall not demand or receive more from the said Proprietors, or any other person under any pretext whatsoever, by reason of the performance of his duties herein prescribed.

Certain parts of
an Ordinance of
the Intendant
BOCHART DE
CHAMPIGNY, of
15th August, 1698,
repealed.

XVI. And be it further enacted by the authority aforesaid, that so much of an Ordinance made at Montreal on the eighteenth day of August, one thousand, six hundred and ninety-eight, by Mr. *Bochart de Champigny*, Intendant of Justice, Police and Finance in Canada, as ordains that the Proprietors of land in the Seigneurie of Boucherville, having rights in the Common of the said Seigneurie, shall not sell or assign their rights in the said Common separately from their dwellings, be, and the same is hereby repealed.

Saving of the
King's rights and
also the rights of
other persons and
bodies politic and
corporate.

XVII. And be it further enacted by the authority aforesaid, that nothing in this Act contained, shall extend or be construed to extend 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, in any of the things therein-mentioned, except such as are mentioned in this Act, and except as to the rights which are hereby altered and extinguished; but that His Majesty, His Heirs and Successors, and all and every person or persons, body politic or corporate, their Heirs and Assigns, Executors and Administrators, shall have and exercise the same rights as they and each of them had before the passing of this Act, with the exceptions aforesaid, to every effect and purpose whatsoever, in as full and ample manner as if this Act had never been passed.

Public Act.

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