

*Acts of the General Assembly of His Majesty's Province of New-Brunswick passed in the year 1810.* Saint John, NB: Jacob Mott, Printer to the King's Most Excellent Majesty, 1810.

50 George III – Chapter 7

**An Act to provide for the more easy partition of Lands in co-parcenary, joint-tenancy, and tenancy in common. Passed the 14th of March, 1810.**

Whereas the proceedings upon writs of partition between co-parceners, joint-tenants, and tenants in common are tedious, chargeable and often times ineffectual, by reason of the difficulty of discovering the persons and estates of the tenants of the lands, tenements, and hereditaments to be divided, and the defective or dilatory executing and returning of the process of summons, attachment, and distress, and other impediments in making and establishing partitions, by reason of which divers persons having undivided parts or purparts may be greatly oppressed and prejudiced, and the premises may be wasted and destroyed, or lie uncultivated and un-manured, so that the profits of the same may totally or in a great measure be lost, for remedy whereof:

I. Be it enacted by the President, Council, and Assembly, That upon the petition of any one or more co-parceners, joint-tenants, or tenants in common to the Supreme Court, praying a division of the lands in which they may be interested to the proprietors in severalty, according to their respective shares and rights, shall and may be lawful for the said Court to examine the title of the petitioners preferring such petition, and the quantity of their respective parts and purparts, and accordingly as they shall find their respective rights, parts, and purparts to be, to award a writ of partition as nearly as may be in the form for that purpose established in the register of judicial writs, and directed to the Sheriffs of the several and respective Counties in this Province, to be executed by them respectively in the presence of two of the Justices of the Peace in their several and respective Counties, in manner following, that is to say, that in assigning the shares in severalty in virtue of such writ of partition, the lands actually occupied and improved shall be set off and assigned to all such proprietors respectively, who shall have so occupied and improved the same to the extent of their several and respective rights and shares therein and that in assigning the rights to lands unimproved, after division thereof into shares according to the number of grantees in each Grant, Deed, Will or other conveyance, or of the persons intitled to such lands as co-heirs or co-parceners in any manner whatsoever, each number shall be written on a separate paper, which papers shall be rolled up and placed in a box, from which each grantee present shall, in the order in which he is named in the Patent, Grant, Deed, Will, or other conveyance, or by seniority in cases of co-heirs, or co-parceners, as aforesaid, draw out one of the said papers in the presence of the Jury summoned by the said Sheriffs respectively by virtue of such writ; and the number so drawn shall be expressed in the Inquisition to be found by such Jury, and accordingly assigned by such Sheriffs and Justices respectively in their return of such writ of partition, and shall be confirmed by the judgment of the said Court, and the said Sheriffs respectively are hereby required to give due notice to the tenants or occupiers of the lands respectively, 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 any such Sheriff shall proceed to execute the said writ of partition, and if it shall appear to the said Court, upon return of any such writ of partition, by the affidavit or affidavits of one or more credible person or persons that such notice shall have been given, and if it shall so appear that any of the persons notified neglected to appear, judgment shall lie 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 such writ, and if any person's against whom the judgment shall be so given by default shall not, at the term of the Supreme Court next after serving them respectively with notice of the said judgment; apply 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; which shall be good and conclude all persons whatsoever after notice as aforesaid, whatever right or title they may have or may at any time claim to have in any of the lands, tenements and hereditaments mentioned in the said judgment and writ of partition, although all persons concerned may not be named in any of the proceedings, nor the title of the tenants truly set forth.

II. Provided nevertheless, That if the tenants of persons concerned, admitting the title, parts and purparts of the petitioners shall shew to the Court any inequality in the partition, the Court may award a new partition to be made in presence of all persons 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 forever against all persons whomsoever, except infants, *femes covert*, and 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 Court may suspend or set aside such judgment, and award a new writ of partition to be executed in presence of all persons concerned, which partition shall be final and conclusive against all persons whatsoever. Provided, that all persons absent from the Province may within one year after such judgment of partition publicly notified in the Royal Gazette three weeks successively, by their agents or attornies, apply to the said Court and shew a good and probable matter against the said partition, in which case the said Court may award such new partition and judgment as aforesaid, which shall conclude such absent persons, and all others claiming and deriving title under such Patents, Grants, Deeds, Wills, or other conveyances, or as co-heirs, or co-parceners as aforesaid, to the lands of which the said partition shall be made as aforesaid. Provided likewise, that in such second writs of partition, no lands shall have been built upon, ploughed or otherwise improved bonafide 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.

III. 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 such application or appeal as aforesaid be confirmed; the person so appealing shall be awarded to pay costs.

IV. And be it further enacted, That the respective Sheriffs and all Justices of the Peace, within their respective Counties, shall give due attendance to the executing of such writ of partition, unless reasonable cause be shewn to the Court upon oath, and there allowed of, or otherwise be

liable every of them to pay unto such petitioner or petitioners, such costs and damages as shall be awarded by the Court, not exceeding five pounds, for which such petitioner or petitioners may bring his, her or their action in the said Court; and the said Court shall award what each person shall receive, having respect to the distance of the place from their respective habitations, and the time they must necessarily spend about the same, to be assessed, levied, collected and paid in the manner herein after mentioned.

V. And whereas, The usual method of executing writs of partition by the Sheriffs summoning the Jury to attend on the lands, in order to view and make division of the same, may be often times attended with an expence equal to or exceeding the value of the premises, and in many cases be very difficult, if not impracticable from the nature, situation, and large extent of the lands to be divided.

Be it further enacted, That it shall and may be lawful for the respective Sheriffs upon receiving any writ of partition for dividing any lands, to proceed to the execution thereof in any place within the County in which the lands shall be, by a Jury of the said County, who shall accordingly make a division of the same agreeably to the bounds expressed in the Patent, Grant, Deed, Will, or other conveyance, or otherwise howsoever, and the best information that can be procured of the value, nature, and quality of the lands; and such division, so made, shall be as valid and effectual, to all intents and purposes whatsoever, as if the same had been made on the lands to be divided by virtue of such writ. Provided, that the Said division be made in every respect agreeably to the directions of this Act.

VI. And whereas, difficulties may arise in the recovery of the charges and expences attending the executing of writs of partition unless the same be provided for by Law. Be it further enacted, that all accounts of charges and expences which may hereafter arise for the obtaining and executing of writs of partition for the division of lands in any County in this Province, until final judgment thereon, together with the charges of Surveying the said lands, and all other incidental expences relative thereto, shall be laid before the said Supreme Court, and when the same shall have been allowed by the said Court, two or more persons shall be appointed by the said Court to assess the amount thereof in due proportion on the several shares allotted to each and every proprietor, and the Same shall be levied out of the profits and other goods and chattels thereon, or belonging to each proprietor respectively, or to the person in possession of the respective shares or any part thereof, and shall be paid to the person or persons appointed by the said Court to collect and receive the same.

VII. And be it further enacted, That if any proprietor or other person in possession of any land allotted and assigned as aforesaid, shall refuse or neglect to pay the sum assessed as his dividend or proportion of the charges aforesaid, it shall and may be lawful for any one of His Majesty's Justices of the Peace, on complaint of the collector and receiver appointed as aforesaid, to issue a warrant of distress and sale of the delinquents goods and chattels, for the recovery of the sum so assessed with the charges of prosecution.

VIII. And be it further entitled, That in case no person be resident on any lands allotted and assigned as aforesaid, nor any goods and chattels thereon, whereout the sum due as aforesaid may be levied, and any non resident proprietor shall neglect or refuse to pay his or her proportion of any such assessment made as aforesaid, it shall and may be lawful upon the petition of the Supreme Court, setting forth such refusal or neglect, to direct a sale to be made at public auction to the highest bidder, of so much of such non resident proprietors lands or timber thereon as shall be sufficient to pay his or her proportion of such assessment, together with the charges arising from such sale, and good and sufficient Deeds of conveyance of the land so sold, to be made and executed, by and in the name of the Sheriff of the County; in which such lands may respectively lie, reasonable means having been previously used by the said Court, according to its discretion, for the ascertaining of such proprietor, and for the enabling him, by due notice, to prevent the necessity of such sale, by satisfying the said charges and expences, with the costs attending such Inquiry and notice as aforesaid.