

Acts of the General Assembly of Her Majesty's Province of New-Brunswick passed in the year 1866. Fredericton, NB: G. E. Fenety, Printer to the Queen's Most Excellent Majesty, 1866.

29 Victoria – Chapter 10 (Session 2)

An Act relating to the administration of Justice in Equity. Passed 9th July, 1866.

Section.

1. Costs of suit, how paid and by whom.
2. Writ of Possession after decree, when and by whom issued.

Section.

3. Execution of Writ, when and by whom.

Be it enacted by the Lieutenant Governor, Legislative Council, and Assembly, as follows:—

1. That the costs of all parties to any suit hereafter to be brought for the partition of lands, to be ascertained and taxed by the Clerk, shall be shared and borne by the several parties to such suit rateably and in proportion to the value of their respective interests in the lands and premises partitioned, the said costs to be and remain a lien upon the lands and tenements of the several parties for the amounts to be paid by them respectively until paid.
2. Whenever it shall be made appear on motion or by petition to the Supreme Court in Equity, or a Judge thereof, by affidavit, or by the Certificate of the Registrar of Deeds and Wills for the County wherein the lands lie, that a memorial of any decree of absolute or unconditional foreclosure, or of any decree of severalty in partition, has been duly registered or received for registry in the County where the lands lie, or that any deed of sale and transfer made by any officer of the said Court, under a decree or order of the same, has been duly registered or received for registry as aforesaid, then it shall be lawful for the said Court or any Judge thereof, at the instance of the mortgagee or purchaser as aforesaid, or of any party to a partition of lands, to direct or order a Writ (A) to be issued for the delivery of possession of the lands so decreed in severalty, foreclosed, or sold by the officer of the Court, as aforesaid, to such party or parties as may be entitled thereto, under and by virtue of the said decree, or purchase thereunder as aforesaid; provided that fourteen days notice of any application for such writ shall be first given to any person or persons in the actual occupation (if any) of the said lands or tenements at the time of such application, at which time the said party may show reasonable cause (if any) why the said writ should not issue forthwith.
3. The Sheriff or other officer authorized to execute the said writ for delivery of possession, shall have the same power and authority in the discharge of the duties hereby imposed upon him, as are given by law to him in the execution of a writ of *habera facias possessionem* in ejectment at common law, and shall be entitled to like fees, charges and expenses as in that case, which fees, charges and expenses shall be taxed by the Clerk of the Court in Equity, and shall be recovered against any party or parties whose continuance in possession may make the said writ necessary, in the same manner as any other costs of suit may be recovered; provided nevertheless, that the rights and interests of any bona fide owner of the said lands and tenements which are not

precluded by the said decree, shall not be damnified or foreclosed by the said delivery of possession.

Schedule of Forms.

Writ of Possession, &c.

Victoria, &c.

To the Sheriff of

Whereas by a certain decree (or order) lately made in our Supreme Court in Equity, in a certain cause there depending, wherein A. B. is plaintiff and C. D. defendant, it was decreed (or ordered) [here insert such part of decree or order, or proceedings thereunder, as it may be sought to have carried out] remaining as of record in our said Court, or the proceedings thereunder, will more fully appear.

Therefore we command you that without delay you cause the said _____ to have possession of the said lands and tenements aforesaid decreed, (allotted or conveyed, as the case may be) to him(or them) as aforesaid, with the appurtenances; and in what manner you shall have executed this our writ, make appear to us in our said Court, at Fredericton, within _____ days from the date hereof, and have you then there this writ. Witness Chief Justice, at Fredericton, the _____ day of _____ A.D. 186_____ [day of issuing.]

E.F., Clerk.