

Laws of His Majesty's Province of Upper Canada, passed in the year 1857. Toronto: Stewart Derbshire & George Desbarats, 1857.

20 Victoria – Chapter 139

An Act to make further Legislative provision for the partition of certain lands in the Townships of Bolton and Magog. Assented to 10th June, 1857.

Whereas by Letters Patent, bearing date the nineteenth day of August, one thousand seven hundred and ninety-seven, five sevenths part of the Township of Bolton, (a portion of which now lies in the Township of Magog,) were granted to Nicholas Austin and others, associates as tenants in common; And whereas under the provisions of an Act passed in the Session held in tenth and eleventh years of Her Majesty's Reign, intituled, *An Act to facilitate the partition of lands, tenements and hereditaments in certain cases in Lower Canada*, proceedings were adopted before the Court of Queen's Bench, and are still pending before the Superior Court for the District of Montreal, for the purpose of effecting a partition of the said lands, but owing to the conflicting interests of the resident and nonresident proprietors, it hath been found impossible to effect a partition thereof by the means provided by the said Act; And whereas inasmuch as the obstacles which prevent the partition of the said lands were an inevitable consequence of the unwise and improvident character of the said grant, the Government and Legislature of the Province are bound in justice and equity to repair the injury thereby inflicted upon the resident proprietors, by adopting more efficient means to secure them in their holdings and quiet their titles thereto: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. Whenever, at any time within six months from the passing of this Act, any non-resident proprietor of any undivided share or shares in the lands so granted as aforesaid, shall, by letter addressed by himself or his Attorney to the Provincial Secretary, declare that he desires to take advantage of the present Act, and to have the value of his interest in the said lands estimated, and shall appoint the person he proposes to act for him as his arbitrator (*arbitre*), the Commissioner of Crown Lands for the time being, or in his absence, the Attorney General for Lower Canada, shall appoint a fit and proper person to act as arbitrator (*arbitre*) on behalf of the Crown.

II. The arbitrators (*arbitres*) so appointed shall, before proceeding further, appoint a third arbitrator (*tiers arbitre*), or if they cannot agree in their selection, a Judge of the Superior Court for the District of Montreal, shall, upon the application of either of the first named arbitrators, appoint a third; the arbitrators (*arbitres*) so appointed shall proceed to value the undivided share of such non-resident proprietor in the said lands according to his titles and to principles of equity and justice; and the decision of a majority of such three arbitrators shall be final; and the said arbitrators, or a majority of them, shall address the report thereon, or a copy thereof duly certified, to the Commissioner of Crown Lands for the time being.

III. Upon receipt of any such report, and upon the sale and conveyance by such non-resident proprietor to Her Majesty, Her Heirs and Successors, of all his right, title and interest in the said lands, the Commissioner of Crown Lands, or in his absence, the Attorney General for Lower Canada, shall, in

Her Majesty's name, grant, sell and convey in Her Majesty's name, to such non-resident proprietor, an extent of the ungranted lands of the Crown equivalent to the amount at which his share, title and interest in the said lands shall have been estimated by the said arbitrators in such report, or shall, at his option, deliver to him a certificate entitling him to purchase ungranted lands of the Crown lying in the said Township of Bolton or elsewhere, to an extent equivalent to such amount; and so soon as the Crown shall have become possessed of all the undivided shares of each of the non-resident proprietors who have disputed or will persist in disputing the titles of the resident proprietors, the Governor shall appoint three fit and proper persons to enquire into and report upon the best and most equitable mode of dividing or partitioning the lands so granted as aforesaid, between the Crown and the resident proprietors, and of quieting the titles of such resident proprietors to their lawful holdings, with a view to effecting such object by further and final legislation.

IV. And in investigating the said titles, and in making such enquiry and report, the said Commissioners shall not be bound to follow the strict rules of law either as to the interpretation of the titles or as to the evidence which they may think proper to have adduced before them; but they shall be governed in all matters connected with such investigation and report by broad principles of equity and justice, and by a due regard to the peculiar position in which the parties interested in the said lands so granted as aforesaid, have been placed.

V. The Commissioners so to be appointed shall have the same powers as the Judges of the Superior Court, within their jurisdiction, to compel the appearance of witnesses and the production of all papers, plans and documents required for the purposes of this Act.

VI. And the Governor shall, by Order in Council, from time to time, upon the report of the Attorney General for Lower Canada, order the Commissioner of Crown Lands to grant certificates for the purchase of Crown Lands, either in the said Township of Bolton or elsewhere, for the amount of taxable and duly taxed costs incurred by the parties to the proceedings now pending as aforesaid, as well as for the costs of the arbitrators and Commissioners to be appointed as hereinabove provided.

VII. The term "non-resident proprietor" wherever it is used in this Act, whether in the singular or the plural number, shall apply only to persons who have not, either by themselves or their predecessors, cultivated or improved any portion of the land claimed by them.