

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

20 Victoria – Chapter 45

**An Act for settling the Law concerning Lands held in Free and Common Soccage, in Lower Canada. Assented to 10th June, 1857.**

Whereas the Act hereinafter mentioned has left certain points unsettled as regards the Law applicable to lands in Lower Canada held in Free and Common Soccage, and the authority of the said Act itself has been called in question on technical and formal grounds, although it has been maintained by the majority of the Judges of the Courts of Superior Civil jurisdiction, and has been generally acted upon as Law; And whereas it is expedient that all doubts as to the effect of the said tenure should be removed for the future and as regards the past in so far as may be consistent with vested rights, and that the Laws relating to lands of every tenure should be as far as possible uniform, more, especially as regards their descent in cases of intestacy, and the rights of married women; And whereas in the ignorance or uncertainty which has very generally prevailed as to the Law in the matters aforesaid, it may have happened in many cases that the widows and heirs of persons who have left lands in Free and Common Soccage with regard to which they have died intestate, have assented to some disposition or partition thereof, which though consistent with their understanding of the Law and with substantial justice in each particular case, may not have been in accordance with the strict legal rights of the parties, and it is just and necessary for the quieting of titles and the avoidance of litigation, to confirm such dispositions and partitions: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. The Act passed by the Legislative Council and Assembly of the Province of Lower Canada, in the ninth year of the Reign of His Majesty King George the Fourth, and intituled, *An Act for rendering valid conveyances of lands and other immoveable property held in free and common soccage within the Province, of Lower Canada, and for other purposes therein mentioned*, and the Royal assent whereto was signified by Proclamation in the said Province on the First day of September, one thousand eight hundred and thirty-one, is hereby declared to be and to have been since the passing thereof, that is to say, since the day last aforesaid, in force in Lower Canada.

II. And whereas it is provided by the sixth section of the Act above cited, that when the proprietor of lands granted or held in free and common soccage should have died before the passing of the said Act, without having partitioned the same either by last, will and testament or otherwise, the heirs of such proprietor should be held to partition the same according to the "Old Laws of the Province," (that, is to say, ns if such lands had been held by the tenure of *franc aleu roturier* being that known to the said Old Laws which is most analogous to free and common soccage), unless the said heirs should have agreed among themselves upon a different partition; And whereas the tenor of the said section and of the preamble and other parts of the said Act, show that the Legislature held the said Old Laws to be those most consistent; with the feelings and customs of the people of Lower Canada, and that, they ought, with the exception of such portions as relate to Seignorial or feudal rights or dues, to apply thereafter to lands held in free and common soccage, yet by some omission or error this is not formally enacted:

Therefore, it is hereby provided, that where the proprietor of any land held in free and common soccage in Lower Canada, shall have died intestate as to such lands, between the passing of the Act last above cited and the passing of this Act, the husband, widow and heirs of such proprietor, shall have respectively the same rights in respect of such lands as if they had been held in *franc aleu roturier*, — unless they shall have agreed upon, assented to or confirmed a different disposition or partition thereof, or shall have acquiesced therein during one year and one day from the death of such proprietor, by having allowed the same or any possession or act founded thereon, to remain unquestioned by them in any competent Court during that time; And this section shall apply to and bind minors, absentees and married women, and as well the heirs and legal representatives of or persons claiming through the parties who shall have agreed upon, assented to, confirmed or acquiesced in such disposition or partition, as such parties themselves; Provided always, that whenever any person shall have *bonâ fide* purchased or obtained any hypothec or charge upon any such lands for a valuable consideration from any person who claimed to be and was entitled thereto as heir of the former owner so dying intestate, either under the English Law referred to in the Act aforesaid, or under the Laws of Lower Canada applicable to lands held in *franc aleu roturier*, and shall have registered the Deed creating such charge, or operating such Conveyance, before the registration of any sale, conveyance or incumbrance of such lands by any other person, claiming to be such heir, and before the passing of this Act, or within six months next after the passing of the same but before, registration by such other person, no person being at, the date of such Deed in adverse possession of the lands as such heir or as claiming through any such heir, or having questioned the title of the vendor or grantor of the charge in any suit pending or decided in favor of the adverse claimant at the date of such Deed, then as regards the conveyance, sale or charge operated or created by such Deed, the grantor or vendor therein mentioned shall be held to have been at the date thereof the person entitled to inherit the said lands from the proprietor so dying intestate as regards them; And in like manner any devise of any such lands held in free and common soccage, by last will and testament made according to the forms prescribed by the law of England in force there at the time of making such devise, shall have the same force and effect as if made before two Notaries Public according to the laws and usages of Lower Canada.

III. Provided always, that nothing in the two preceding sections of this Act, shall affect any case pending at the time of its passing, or any case in which there is then any actual and open possession under a title adverse to their provisions or those of the Act therein mentioned, but such cases shall be adjudged upon as if this Act had never been passed; nor shall any thing in the said sections affect any case in which a judgment having authority of *chose jugée* has been given before the passing of this Act.

IV. The Laws which shall hereafter apply to and govern lands held in free and common soccage in Lower Canada, as well with regard to descent, inheritance, incumbrance, alienation, dower, and the rights of husbands and of married, women, as with regard to all other incidents and matters whatsoever, shall be the same with those which apply to and govern lands held, by the tenure of *franc aleu roturier*, in like matters, except only in so far as such Laws may have been expressly altered as regards lands, held in free, and common soccage, by the Act above cited or any other Act of the Legislature of Lower Canada or of Canada; and as regards the rights of married women and their representatives, this section shall apply to cases where the husband shall die after the passing of this Act, whatever be the date at which the marriage may have taken place; but nothing herein contained

shall prevent the effect of any marriage contract or settlement made either in the English or French form.

V. The Laws which have governed lands held in Free and Common Soccage in Lower Canada, in matters other than, alienation, descent and rights depending upon marriage, are hereby declared to have always been the same with those which governed lands held in *franc aleu roturier*, except in so far only as it may have been otherwise provided by any Act of the Legislature of Lower Canada, or of this Province; but nothing in this section shall be construed as a declaration that such lands held in Free and Common Soccage, have or have not at any time been governed by any other Law as regards alienation, descent or rights depending on marriage.

VI. The word "Lands" in this Act shall include any immoveable property or hereditament capable of being held in free and common soccage, and any estate or interest therein; the word "Deed," shall include any instrument by which any lands can be conveyed, hypothecated or incumbered by the Laws of Lower Canada; and the word "Hypothec" or "Charge," shall include the privilege of *bailleur de fonds* and all other privileged or hypothecary charges.