

CAP. CCXXXVII.

An Act to divide the Common of Maskinongé among the co-proprietors thereof.

[Assented to 14th June, 1853.]

Preamble.

WHEREAS certain inhabitants of the Seigniory of Maskinongé, in the Parish of Saint Joseph de Maskinongé, in the County of St. Maurice, and also of the Parishes of St. Barthelemy and St. Cuthbert, in the County of Berthier, are proprietors in common of a certain land in the said Seigniory of Maskinongé, commonly known as the Common of Maskinongé; And whereas the said proprietors and persons interested therein have, by their petition, represented that it would be more advantageous to all parties interested in the said Common, that a division thereof should be made in accordance with their respective rights therein, and that each one of them should be enabled separately (*par divis*) to enjoy and dispose of his share in the said Common, which cannot be effected without the authority of the Legislature: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That it shall be the duty of the President and Trustees of the said Common, or, in their default, of five of the Proprietors thereof, to cause a notice to be given at the doors of the Churches of Saint Joseph de Maskinongé, Saint Barthelemy and Saint Cuthbert, after Divine Service in the forenoon, calling on the Co-proprietors of the said Common to meet at some time not less than fifteen days thereafter, in the public Hall of the said Parish of Saint Joseph de Maskinongé, for the purpose of proceeding to elect a suitable person to be a Commissioner for the purposes of this Act, which person shall have no right in the said Common, and shall not be related or of kin to any of the Co-proprietors thereof; and at the said meeting the then President of the Corporation established under the Act passed in the fourteenth and fifteenth Victoria, chapter one hundred and thirty-four, intituled, *An Act to revive and amend the Act relating to the Common of Maskinongé*, shall preside and draw up a minute (*procès-verbal*) of the proceedings, signed by himself and by two witnesses present at the said meeting, which he shall deposit in the office of the Notary residing nearest to where such meeting shall be held in the said Parish of Saint Joseph de Maskinongé.

Meeting of the proprietors for the election of a Commissioner.

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Election of Commissioner and notice to him.

II. And be it enacted, That at the time and place so appointed in the said notice, it shall be lawful for the Co-proprietors of the said Common to proceed to elect the said Commissioner
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by a majority of the votes of the said Co-proprietors present ; and it shall be the duty of the Notary in whose office the minute of the proceedings of the said meeting shall have been deposited, to notify the person so elected Commissioner, of his election in conformity with the provisions of this Act.

III. And be it enacted, That in case the person elected as Commissioner at the said meeting shall not accept the office, or, having accepted the same, shall afterwards resign, or shall absent himself from the Province, or shall die, or become incapable of acting, it shall then be lawful for the Co-proprietors to proceed to the election of another Commissioner in the manner hereinbefore provided.

Election of another in case of resignation, &c.

IV. And be it enacted, That it shall also be the duty of the said Commissioner within one month after his appointment, to give public notice by an advertisement posted up at the church doors of the Parishes of Saint Joseph de Maskinongé, Saint Barthelemy and Saint Cuthbert, during at least two consecutive weeks, and by public notice on two consecutive Sundays, immediately after Divine Service in the forenoon, at the doors of the Churches aforesaid, of the place where and the days on which his office will be opened, and to require each and every of the said Co-proprietors to exhibit at his office within fifteen days after such notice, all deeds of concession, judgments or other titles establishing their respective rights in the said Common, in order that their rights may be clearly established as hereinafter provided.

Commissioner to call on proprietors for their titles, &c.

V. And be it enacted, That it shall be the duty of the said Commissioner, immediately after the expiration of the time fixed for the deposit of the titles herein ordered to be made with him, to transmit them to one of the Judges of the Superior Court of Lower Canada, in the Town of Three-Rivers, who is hereby authorized and required to examine the same and pronounce judgment thereon, either during the term of the Circuit Court in the Circuit of Three-Rivers, or in vacation, declaring the validity or invalidity of such titles respectively, and to give notice to the Commissioner, of the day on which such judgment will be pronounced, and further, to order a plan of the said Common to be made by a Sworn Surveyor, if a majority of the Co-proprietors present shall require it, at a meeting summoned and presided over in the same manner as the one above mentioned for electing the said Commissioner, and a minute of the proceedings of the said meeting shall in like manner be prepared and deposited as aforesaid ; Provided always, that the boundaries and limits of the said Common as they are at present established and determined, shall be the limits and boundaries of the said Common, for all the purposes of this Act.

Commissioner to transmit titles to Judge of Superior Court, who shall pronounce judgment on them.

Proviso.

VI. And be it enacted, That the said Commissioner on the receipt by him of the said notice from one of the Judges of the said

Commissioner to give notice said

of the judgment, and to divide the Common in conformity to it.

said Superior Court, shall forthwith cause public notice to be given of the time fixed for the rendering of such judgment, by a notice in writing posted upon the doors of the Churches of Saint Joseph de Maskinongé, Saint Barthelemy and Saint Cuthbert, on the Sunday previous thereto, after Divine Service in the forenoon, in order that all parties interested may be present, if they think proper; and after the said judgment shall have been rendered, he shall proceed to determine and establish the number of the persons having rights to shares in the said Common and the share which each Co-proprietor has a right to have and ought to obtain therein, and that whether such right be in virtue of deeds of concession of the lands which the Co-proprietors shall be then in possession of, or by virtue of any judgment establishing such rights, or by any other legal title transferring property, of all which it shall be the duty of the said Commissioner to make a report in detail.

By what considerations the Commissioner shall be guided in assigning the share of each party in the Common.

VII. Provided always, and be it enacted, That if it shall appear to the Commissioner who shall be appointed under this Act, that any stipulation or agreement shall have been made and entered into between the Seigniors of the Seigniorie in which the said Common is situate, and a majority of the Co-proprietors interested in the said Common, determining or establishing the rights of the said Seignior, he shall be guided by such stipulation or agreement as regards the Seignior, in the division of the said Common to be made by him under this Act; but if no such stipulation or agreement shall have taken place, he shall then be guided by the rights of the parties as they may in his opinion exist, according to the titles which shall have been declared valid by the judgment rendered by the said Judge.

Report of Commissioner to be filed in Court, and subject to homologation, &c.

VIII. And be it enacted, That so soon as the said Commissioner shall have made his report as above mentioned, it shall be his duty, after due notice thereof shall have been given to the parties interested therein, to deposit the said report and plan, if such report and plan shall have been demanded and prepared, in the office of the Circuit Court for the Circuit of Three Rivers, and to apply for and obtain the homologation and ratification thereof, either during the sitting of the said Court or during vacation, conformably to the rules of practice of the said Court, and it shall be lawful for the said Judge to order the homologation, amendment or rejection of the said report, according to the nature and circumstances of the said case, and in as summary a manner as possible, with power to the said Judge to pronounce judgment thereon during vacation, if necessary.

Notice to be given that parties may oppose the report if they see fit.

IX. And be it enacted, That it shall be the duty of the Commissioner aforesaid, before proceeding to the homologation of the said report, to cause to be posted up and read at the doors of the Parish Churches of Saint Joseph de Maskinongé, Saint Barthelemy and Saint Cuthbert, on two consecutive Sundays,

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an advertisement giving notice to all persons interested in the division of the said Common, of the day on which the said report and plan, provided such report and plan shall have been demanded and prepared, will be deposited in the office of the said Circuit Court, in order that all parties who shall consider themselves aggrieved either by the division or by the distribution of the said Common which shall be made among them respectively by the said report, or by the omission of their respective rights and pretensions in and to the said Common, or in any other manner whatsoever, may if they deem fit, oppose the homologation of the said report, and obtain justice in that behalf.

X. And be it enacted, That immediately after the said report shall have been homologated, it shall be the duty of the said Commissioner to summon a meeting of the Co-proprietors of the said Common, by a notice to be read and posted up at the doors of the Parish Churches of Saint Joseph de Maskinongé, Saint Barthelemy and Saint Cuthbert, on a Sunday or *fête d'obligation*, after Divine Service in the forenoon, setting forth the day, hour and place for the holding of such meeting, and also the purpose thereof, and that so soon as the said Co-proprietors, or a number thereof, shall be so assembled, the said Commissioner shall call upon them to agree together as to the manner in which the said Common shall be divided, such division to be into as many lots as there shall be shares in the said Common, as to the local situation of their respective lots, and as to the number, situation and extent of the roads or thoroughfares, which it may be necessary to reserve for the use and convenience of the said Co-proprietors; of all which the Commissioner aforesaid shall prepare a *procès-verbal* duly attested as aforesaid, which *procès-verbal* shall be deposited in the office of the said Notary; Provided that the said Commissioner may, if he shall deem necessary, require the services of a sworn land Surveyor, and require him to be present at the said meeting, and the cost of his services shall form part of the costs to be paid to the said Commissioner by the Co-proprietors of the said Common in the manner hereinafter mentioned.

Meeting for agreeing upon the mode of dividing the Common into actual lots, &c.

Proviso.

XI. And be it enacted, That so soon as a majority of the said Co-proprietors present at the said meeting, shall have agreed as to the manner in which the said Common shall be divided, the said Commissioner shall forthwith proceed, in the presence of the said Co-proprietors present at the said meeting, or of so many of them as shall think proper to remain for that purpose at the place of meeting, to determine by lot, what lot or lots shall thereafter belong to each of the said Co-proprietors respectively, without favor or partiality, according to the general practice in like cases in this Province, and shall prepare a *procès-verbal* of the whole, duly certified before witnesses, which said *procès-verbal* he shall deposit in the office of the Notary aforesaid, and the said *procès-verbal* shall for ever thereafter be

Mode in which the lot of each proprietor shall be determined and assigned to him.

a good and valid title to each of the said present Co-proprietors for each share of the said Common which shall be described in the said *procès-verbal* as having fallen to his share by lot.

Rights of the
Seigniors
saved.

XII. And be it enacted, That none of the provisions of this Act shall extend, or be construed to extend, to prevent the Seigniors of the said Seigniory of Maskinongé, or their heirs and assigns, from requiring, having and exercising all and every the rights of *cens et rentes, lods et ventes, corvées, retrait* and other rights, which may be or shall become due to them, by virtue of the deeds of concession of the said Common, or by virtue of the deed of concession of the lands or dwelling places of the said proprietors, or by virtue of the deed of concession of the said Seigniory, all and every of which said rights generally whatsoever are hereby wholly reserved, and such reservation shall be expressly stipulated in the *procès-verbal* of distribution by lot above mentioned, which shall be prepared and deposited in conformity with this Act.

Expenses to
be apportioned
among the
Co-proprietors.

XIII. And be enacted, That it shall be the duty of the said Commissioner to cause a just and exact apportionment to be made, determining the proportion of the sum or sums which the said proprietors shall be bound to pay, in order to the levying of the moneys which may be due to the Surveyor or Surveyors employed by the said Commissioner for the purposes of this Act, as well as to defray all other necessary expenses and disbursements which the said Commissioner may incur in the execution of his duty in conformity with this Act, and for the payment of the costs of the application for the homologation of his report, after such costs of homologation shall have been duly taxed, and for the payment of all other just and lawful expenses whatsoever incurred in carrying this Act into effect.

Proprietors to
pay each his
share of ex-
penses.

XIV. And be it enacted, That the said proprietors shall pay to the said Commissioner on demand at any time after the *procès-verbal* of the distribution of the lots shall have been duly prepared and deposited as aforesaid, the proportion or proportions which each one of the said proprietors shall be bound to pay, in accordance with the apportionment which shall have been made in the manner hereinabove provided.

Rights of the
Crown, &c.
saved.

XV. And be it enacted, That nothing herein contained shall affect or be construed to affect in any manner or way whatsoever, the rights of Her Majesty, Her Heirs and Successors, or of any Body Politic or Corporate, or of any persons, such only excepted as are herein mentioned.

Public Act.

XVI. And be it enacted, That this Act shall be deemed a Public Act.