

Laws of Her Majesty's Province of United Canada, passed in the year 1847. Montreal:
Stewart Derbishire & George Desbarats, 1847.

10 & 11 Victoria – Chapter 111

An Act to facilitate commutation of the tenure of lands en roture in the Queen's domain into that of free and common soccage, and to avoid the unnecessary delays and expense heretofore incidental to such commutations.

Reserved for the signification of Her Majesty's pleasure 28th July, 1847.

The Royal Assent given by Her Majesty in Council, on the 30th October, 1847; and Proclamation made thereof by His Excellency James, Earl of Elgin and Kincardine, in the Canada Gazette of the 11th December, 1847.

Whereas the process heretofore followed in commuting the tenure of land held *à titre de cens or en roture* of the Crown in Lower Canada into the tenure in free and common soccage, pursuant to an Act of the Imperial Parliament, passed in the third year of the Reign of His late Majesty King George the Fourth, intituled, *An Act to regulate the Trade of Lower and Upper Canada, and for other purposes relating to the said Provinces*, has been found, by reason of the various references to the different public functionaries whose ministry it has been in such cases customary to require, exceedingly dilatory, expensive and onerous insomuch as to be an obstacle to the commutation of tenure which by the said Act it was intended to promote; To remedy all which, and to facilitate the working of the said Act, by introducing a summary and less expensive process of commutation than heretofore practised: Be it 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, 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 whenever, pursuant to the aforesaid Act, passed in the third year of the Reign of His late Majesty King George the Fourth, by the Imperial Parliament, intituled, *An Act to regulate the Trade of the Provinces of Lower and Upper Canada, and for other purposes relating to the said Provinces*, any person, holding land, real or immoveable property *à titre de cens et rentes*, within the censive of any Fief or Seigniority [Seigneurie] of Her Majesty in this Province, or in any of the Estates of the late Order of Jesuits, shall be desirous to obtain a release from Her Majesty of all feudal or seigniorial rights arising therefrom, and to commute the tenure of such land, real or immoveable property, from that *en roture* into free and common soccage, and shall apply for this purpose to the proper Officer or Agent thereunto as hereinafter mentioned, specially appointed and duly authorized by the Governor or person administering the Government of the Province for the time being, on the part of the Crown, for the Fief or Seigniority in which such land, real or immoveable property is situate, setting forth in his application by writing the description, according to his titles, of the land, real or immoveable property, the tenure whereof he is desirous of commuting, exhibiting also therewith his titles, and requesting commutation of the tenure of such land, real or immoveable property, and shall have made

payment of the sum that shall have been mutually agreed upon by such Officer or Agent on the part of the Crown and the applicant, as the commutation line, indemnity or consideration in that behalf, to be paid to Her Majesty on the intended commutation, or that shall have been fixed, ascertained and determined in manner hereinafter provided, and have also duly paid or secured the payment of all arrears of seigniorial rights, dues and duties which he, she or they owed or may owe Her Majesty thereupon, or with which the said land, real or immoveable property in respect whereof such commutation, release and extinguishment may be sought or required, had been, was or may then be chargeable in favor of Her Majesty, such Officer or Agent shall be and he is hereby authorized to execute a release by *Acte* duly executed before Notaries as nearly as may be in the form prescribed in the Schedule of this Act (and for which the Notary shall be entitled to a fee of twenty shillings and no more from the applicant) in the name of Her Majesty, of the said land or real property, from all feudal or seigniorial rights, dues and incumbrances arising and accruing thereupon to Her Majesty by reason of the tenure thereof *à titres da cens et rentes* or *en roture*, declaring also the tenure of the said land to be in virtue of such release for ever thereafter commuted into that of free and common soccage, and which release and *Acte* or Deed of Commutation shall be deemed, held and taken to be to all intents and purposes tantamount and equivalent to a grant of such land from Her Majesty, Her Heirs and Successors, as provided by the above recited Act of the Imperial Parliament of the third year of the Reign of His late Majesty George the Fourth, and the commutation of tenure of the said land or real property shall thereby be perfect and accomplished, and the land to which such commutation shall relate be for ever thereafter Held in free and common soccage, according to the true intent and meaning of the said Act.

II. And be it enacted, That the Governor, or person administering the government of the Province for the time being, shall have power to nominate and appoint in and for each and every Fief and Seigniority in this Province, appertaining to Her Majesty, a fit and proper person to be Agent for the purposes of this Act, and to give such directions for his or their guidance in the performance of his or their duties respectively under this Act, as by and with the advice of Her Majesty's Executive Council he shall deem expedient and conducive to the purposes thereof.

III. And be it enacted, That for all the duties which any such Officer or Agent on the part of the Crown shall perform with respect to any such commutation, he shall be entitled to a fee of thirty shillings currency, and no more, from the person or party applying for the commutation, but for whom he shall not in any case of commutation act as agent.

IV. And be it enacted, That the commutation fine, indemnity and consideration to be paid by any *Censitaire*, person, body politic or corporate for such commutation, release and extinguishment with regard to his or their land, real or immoveable property situate within any Fief or Seigniority appertaining to Her Majesty, shall be at and after the rates following, that is to say: that the said commutation of all *cens et rentes* within all and every the said Fiefs and Seigniorities shall be had and obtained on the payment of such capital or sum of money as the said *cens et rentes* reckoned at the legal rate of interest shall or may represent; that the said commutation of the *droit de lods et ventes* upon or in respect of any lot, piece or parcel of land in any such Fief or Seigniority, included in whole or in part in the City of Quebec, the Town of Three Rivers or in the Borough of

William Henry, having buildings upon it, and being with such buildings of the value of five hundred pounds currency, or upwards, shall be had and obtained for and during the first seven years which shall elapse after the passing of this Act upon payment of not more than one twentieth part of the value of such lot, piece or parcel of land and buildings, and at any time at and after the expiration of seven years subsequent to the passing of this Act, and before the expiration of fourteen years from the said time, upon payment of not more than one eighteenth part of the value of such lot, piece or parcel of land and buildings, and at any time after the expiration of fourteen years from the said time upon payment of not more than one sixteenth part of the value of such lot, piece or parcel of land and buildings; and that the said commutation of the said *droit de lods et ventes* upon or in respect of any lot, piece or parcel of land in any such Fief or Seigniorie whereupon there may be buildings of which the value shall be less than five hundred pounds and more than one hundred pounds currency, shall be had and obtained during the said first period above mentioned of seven years after the passing of this Act, upon payment of not more than one sixteenth part of the value of such lot, piece or parcel of land and buildings, and at any time after the expiration of the said seven years subsequent to the passing of this Act, and before the expiration of fourteen years from the said time, upon payment of not more than one fourteenth part of the value of such lot, piece or parcel of land, and buildings; and at any time after the expiration of the fourteen years from the said time, upon payment of not more than one twelfth part of the value of such lot, piece or parcel of land and buildings; that the said commutation of the said *droit de lods et ventes* upon, for or in respect of any lot, piece or parcel of land situate in any of Her Majesty's Fiefs or Seigniories and without the limits of the said City of Quebec, Town of Three Rivers or Borough of William Henry, or for or in respect of any lot, piece or parcel of land within the said City of Quebec, Town of Three Rivers or Borough of William Henry, upon which there shall be no buildings of the value of one hundred pounds, shall be had and obtained for and during the said first period of seven years after the passing of this Act, upon payment of not more than one twelfth part of the value thereof, and at any time after the expiration of this period of seven years subsequently to the passing hereof, and before the expiration of fourteen years from the said time, upon payment of not more than one tenth part of the said value; and at any time after the expiration of fourteen years from the said time, on the payment of not more than one eighth part of the value of such lot, piece or parcel of land or buildings.

V. And be it enacted, That in all cases where the said Officer or Agent on the part of the Crown and any of the *Censitaires* of Her Majesty, or other person, or persons, body corporate or politic so requiring a commutation, release and extinguishment in manner aforesaid, of and from all *droits de lods et ventes, cens et rentes*, and all other feudal or seigniorial burthens to which any land or immoveable property he or they respectively may hold in any Fief or Seigniorie appertaining to Her Majesty may be subject, shall not by voluntary agreement settle and determine the value of any such lots, pieces or parcels of land and property with reference to which the said price, consideration money and indemnity according to the rates hereinbefore established shall be reckoned, such value thereof shall be fixed, ascertained and determined by the award of Arbitrators in manner following, that is to say: the said Agent shall, on the behalf of Her Majesty, nominate an Arbitrator, being an indifferent and disinterested person, and the said *Censitaire*, person or persons, or body corporate or politic, respectively, shall and may on his or their behalf also nominate and appoint one other Arbitrator, being also an indifferent and disinterested

person, and the Court of Queen's Bench for the District in Term, or any two Judges thereof in Vacation, upon a petition or summary application to it or them made in that behalf, shall and may nominate one other Arbitrator, being also an indifferent and disinterested person, which said three Arbitrators, after having been previously sworn before any one of the Justices of the said Court of Queen's Bench (who is hereby authorized to administer such oath) well, truly and honestly to execute the trust and duty of Arbitrators as aforesaid, and after notice to the parties respectively of the time and place of their meeting, shall proceed to fix, ascertain and determine the value of the lots, pieces or parcels of land and property in respect whereof such commutation, release and extinguishment shall be required: Provided always, that the costs and expenses of such arbitration, which shall not in any case exceed Ten pounds currenc3r, shall be borne by the parties in equal shares, and that the arbitrament and award of the said Arbitrators to be named and appointed as aforesaid, or any two of them, in and respecting the premises, shall be final, and the same shall be duly returned into, filed and enrolled in the said Court of Queen's Bench for the District, and shall by such Court be duly confirmed, and for the fying thereof the Prothonotary shall be entitled to a fee of Two shillings and six pence, and for enrolling the same in a register to be kept for the purpose, at the rate of six pence per hundred words.

VI. And be it enacted, That from and after the voluntary settlement or adjustment as aforesaid, touching the said commutation fine, price, consideration money and indemnity, and payment thereof (or tender of the same) to the proper Officer, reckoned according to such award in that behalf, or from and after a declaration signified to the Agent of such Seigniority, by the said *Censitaire*, person or persons, body politic or corporate, of his, her or their option, that such commutation fine, price, consideration money and indemnity, mutually agreed upon, as aforesaid, or reckoned according to such award, shall be and remain upon and charge and affect such lot, piece or parcel of Land and Property at and for a redeemable quit rent (*à rente constituée et rachetable*) in manner aforesaid, and execution conformably thereto of the release by *Acte* before Notary as hereinabove provided, all and every the *droits de cens et rentes, lods et rentes, droit de banalité de moulin, droit de retrait, exhibition de titres*, and all other feudal or seigniorial rights whatever of Her Majesty upon, for or in respect of the lot, piece or parcel of Land or Property, as to, and concerning which such commutation, release and extinguishment may be sought and required, shall accordingly be and be held to be taken and considered for ever commuted, released and extinguished; and such lot, piece or parcel of Land shall be holden and be deemed and considered as holden thenceforth for ever by the tenure of free and common soccage according to the above recited Act of the Imperial Parliament, and shall never again be granted, surrendered or holden by any *seigneurial* or feudal tenure whatsoever: Provided always, That nothing hereinbefore contained shall extend or be construed to extend to discharge the lots, pieces or parcels of Land, the tenure whereof may be so converted into that of free and common soccage, from the rights, hypothecs, privileges, reservations and demands of Her Majesty, charged in and upon the same for the security and recovery of the commutation fine, price, consideration money and indemnity, which, by reason of the adjustment with the *Censitaire*, or person or corporation who required such commutation, release and extinguishment, may remain as a charge and incumbrance on such Land or Property at a redeemable quit rent as aforesaid, (for the security and recovery of which commutation fine, price, consideration money and indemnity, Her Majesty shall have the same legal recourse, privilege and priority of hypothec as Her Majesty

would have had for any right extinguished by such commutation, or for the security and recovery of any arrears of seigniorial dues accrued before such commutation, release and extinguishment may have been required) or in any wise to destroy, alter or affect the remedies and recourse at law which Her Majesty, Her Heirs and Successors might lawfully have had or have taken for the recovery of the same if such commutation, release and extinguishment had not been made and obtained, but that all and every the lawful rights, hypothèques, privileges, actions, demands, recourse and remedies in that behalf of Her Majesty, Her Heirs and Successors, be and the same are hereby saved and maintained.

VII. And be it enacted, That there shall not, for arrears of *lods et ventes* accrued and due to Her Majesty at the time of the passing hereof, or hereafter to become due according to law for each mutation in the ownership of any lands and tenements situated within the City of Quebec, and of which, with the buildings thereon erected, the value shall be or exceed the sum of Five hundred pounds, be demanded or exacted more than one twentieth of the price and consideration for each sale or conveyance of any such lands and tenements; nor for each and every mutation in the ownership of any lands or tenements in any censive of the Crown out of the limits of the said City, shall there be exacted or demanded more than one sixteenth part of the price and consideration of the sale and conveyance of such last mentioned lands and tenements; nor for each and every mutation in ownership in any lands or tenements situated within the limits of said City of Quebec, of which with the buildings thereon erected the value shall be less than Five hundred pounds currency, shall *then* be exacted or demanded more than one sixteenth part of the price and consideration for each sale or conveyance thereof; and further, that all and every such arrears of *lods et ventes* accrued and due within the said City to Her Majesty at the time of the passing of this Act, according to the respective rates aforesaid, shall not be demandable from any person or persons owing the same personally, or hypothecarily, nor shall any such person or persons indebted as aforesaid to a greater amount than Forty pounds currency be compellable to pay the same except within seven years from the day when this Act shall come into effect, in seven equal and annual instalments: Provided always, that in default of any person or persons to pay any such instalment or instalments after the same shall become due, the whole of such arrears of *lods et ventes*, according to the rates aforesaid, or the remaining unpaid instalments thereof, shall become and be immediately payable to, and demandable on the part of Her Majesty by the proper Officer, from the person or persons who shall owe the same.

VIII. And be it enacted, That all monies arising from commutations pursuant to this Act shall go to and constitute a separate fund to be called "The Commutation of Tenures Fund" (those arising from the Jesuits Estates being kept always apart and distinct) and accounted for, and funded in such manner as may be provided; and that an annual report of all such commutations in detail shall annually be laid before both Houses of the Legislature at each Session thereof, and that the first report shall be made at the now next ensuing Session of the same.

IX. And be it enacted, That all Lands, real and immoveable Property, the tenure of which shall have been so as aforesaid commuted under this Act, or any other law in force in this Province, into the tenure in free and common soccage, shall be subject to the laws heretofore in force in that part of the Province formerly Lower Canada with respect to testamentary dispositions, and to the

grant, bargain, sale, alienation, conveyance, disposal of, and descent of Lands therein, and to the partitioning thereof among co-heirs, when the same are not devised by last will and testament, dower and other rights of married Women in such Lands, in the same manner and to all intents and purposes as if held *en franc aleu roturier*; any law heretofore to the contrary in anywise notwithstanding.

X. And be it enacted, That nothing herein contained shall apply to or affect, or be construed to affect in any manner the rights of Her Majesty, Her Heirs or Successors, or of any person or persons, body corporate or politic, other than such as are specially mentioned in this Act, it not being thereby intended to alter or disturb any incumbrance, charge or liability of any kind other than such as are hereinabove specified, to which the land or real property, tire tenure whereof shall have been so as aforesaid commuted, may, previous to and at the time of commutation, have been subject.

Schedule.

Form of the *Acte* or Deed of Communication Referred to in This Act.

Before us, the undersigned Notaries Public for that part of the Province of Canada heretofore Lower Canada, residing at _____ in the said Province, came and appeared _____ residing in the _____ Agent for the Fief and Seigniori of _____ appertaining to Her Majesty (*as the case may be*) _____ who, on the request to him made by (*name, occupation and residence,*) a party to thses presents, and appearing also before us the said Notaries, to grant him (*or them*) in conformity with the Act hereinafter mentioned of the Imperial Parliament, and of the Act of the Legislature of this Province, passed in the _____ year of Her Majesty's Reign, and intituled, (*title of this Act*) a commutation, release and extinguishment of and from the *droit de lods et ventes, cens et rentes*, and all feudal and Seigniorial burthens whatsoever to which { he / they } may be subjected in respect of a lot of land (*or the several lots of land*) whereof he is (*or they are*) proprietor and possessor (*or proprietors and possessors*) situate in the Seigniori of _____ and described in the Title Deed of him (*or them*) the said _____ as follows: (*Take in a description of the lot or lots.*) The said { lot / lots } appertaining to the said A by whom { they were / it was } aquired from B by Deed, &c., and free from arrears of Seigniorial dues up to this date, (*or being charged with the sum of £ _____ for arrears of cens et rentes and lods et ventes according to account this day adjusted*) by these presents acting for and in the name of and on behalf of Her Majesty pursuant to the aforesaid Act of the Legislature of this Province, hath, from this day for ever acquitted, released and discharged the said { lot / lots } of land of and from all *droits de lods et ventes, cens et rentes, droit de banalit é de moulin de retrait*, and all the feudal and Seigniorial rights whatsoever, to which the said { lot / lots } may be subject or liable, so that by these presents the tenure of the said { lot / lots } of land is from this day for ever converted into that of free and common soccage, in conformity with the Act passed by the Parliament of the United Kingdom in the Third year of the Reign of His late Majesty King George the Fourth, intituled, *An Act to regulate the Trade of the Provinces of Lower and Upper Canada, and for other purposes relating to the said Provinces*, and shall never again be held and possessed by the said A { his / their } heirs and assigns under any other tenure whatsoever.

The said commutation, release and discharge were thus made and granted for and in consideration of the sum of (for instance one hundred and eight pounds, six shillings and eight pence) lawful current money aforesaid, to wit: (Eight pounds, six shillings and eight pence) current money aforesaid the principal sum representing the sum of ten shillings current money aforesaid, the amount of the *cens et rentes* payable in respect of the said lot or lots by virtue of and under

the deed of concession, and the sum of (one hundred pounds) current money aforesaid, being the proportion due to the Crown of the sum of (two thousand pounds) current money aforesaid, at which the said lot was (or lots were) estimated by private agreement sanctioned by His Excellency the Governor General, (or person administering the Government of this Province for the time being) or according to estimate of C. and D. Arbitrators chosen by the parties as will appear by their Report, dated _____ filed and of record in the Office of the Prothonotary of Her Majesty's court of Queen's Bench for the District of _____ which said sum of (one hundred and eight pounds, six shillings and eight pence) was forthwith paid and the receipt whereof is hereby acknowledged, (or is to remain at a quit rent *rentes constituée rachetable à toujours*,) redeemable in payments of not less than (twenty-five pounds) or (fifty pounds) each (or is payable at the end of two, three, four, &c., years) with legal interest to be paid thereon annually.

As to the arrears above mentioned, the said A obliges himself (or oblige themselves) to pay them (describe the terms of payment) with legal interest or without interest (*as the case may be.*)

For the security of the payment of the said arrears and commutation money to Her Majesty, Her Heirs or Successors, reserve is hereby made, without any novation or derogation whatever, of the same legal recourse, privileges and priority of hypothec as Her Majesty, Her Heirs and Successors would have had for any *droits de lods et ventes, et cens et rentes*, or other rights extinguished by the present commutation and represented by the said sum.

Done and passed in the year one thousand eight hundred and _____ on the _____ day of the month of _____

The said _____ having signed with us Notaries, these presents being first duly read.