

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

10 & 11 Victoria – Chapter 37

An Act to facilitate the partition of Lands. Tenements and Hereditaments in certain cases in Lower Canada. 28th July, 1847.

Whereas in some instances Townships have been erected by Letters Patent under the Great Seal of the late Province of Lower Canada, and the Waste Lands of the Crown in the said Townships have been by the said Letters Patent granted to the grantees therein named, as tenants in common, which grantees made no partition thereof, and the said Lands continue to be held in common by persons who have derived their titles from the said grantees; and whereas by reason of the great length of time which has elapsed since the making of the said Letters Patent and the mutations which have occurred in the persons seized of and entitled to the said Lands, under alienations made by the said grantees, their heirs and assigns, and by descent or inheritance the co-tenants in common now seized of the said Lands and in whom the same are vested, have become very numerous, and are, as well as the titles under which they respectively hold, for the most part unknown to each other, and from these causes, it is impracticable, by the ordinary process of law, to compel a partition of the said Lands; and whereas the settlement, cultivation and improvement of the said Townships, in which grants have been made as aforesaid, for the want of a partition of the Lands granted as aforesaid, have been prevented and obstructed and retarded to the manifest injury of the proprietors of the said Lands, and of the country at large; and whereas special Legislative provision is indispensably necessary to facilitate a partition of the Lands held as aforesaid: 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, intituled, *An Act to reunite 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 lawful for any person or persons seized as tenant or tenants in common of Lands, Tenements and Hereditaments, situated in Townships in Lower Canada, in which the said Lands were originally granted by Letters Patent under the Great Seal of the Province of Lower Canada, to the grantees therein named as tenants in common, by his or their petition in this behalf to the Court of Queen's Bench for the District in which such Lands, Tenements and Hereditaments are situated, to set forth his title to the said Lands, Tenements and Hereditaments, whereof he is seized as aforesaid, and to demand a partition thereof among the several persons by whom the same may be held as tenants in common, in like manner as in an action of partition instituted in the ordinary form of law: and the Court to which such petition shall be presented, shall have power to exercise the same jurisdiction, and to adjudge and award the same remedy to the petitioner or petitioners, against his or their co-tenants in common as might or could be exercised, adjudged and awarded in such action of partition.

II. And be it enacted, That after the petitioner shall have substantiated by *primâ facie* proof to the satisfaction of the said Court, that he is seized of Lands, Tenements and Hereditaments held by him as tenant in common as aforesaid, in any such Township, it shall be lawful for the said Court by its judgment or order in this behalf, to order and direct, that the several co-tenants in common by whom the said Lands, Tenements and Hereditaments are held in common with the petitioner, shall and do on some certain day, in a future Term of the said Court, not less distant than twelve months, appear in the said Court, and answer the petition aforesaid, and shall and do at the same time make and exhibit a claim, or demand in intervention, to be filed in the said Court, of their respective shares, rights and interest in the said Lands, Tenements and Hereditaments, and also to order and direct that its said judgment or order in the premises, shall be posted up, in some frequented place in the Township in which the said Lands are situated, and if there be no frequented place in such Township, then in some frequented place in the next adjoining Township, at least fourteen days before the time appointed for the appearance of the said co-tenants as aforesaid, and shall also be published in the Quebec and Montreal Gazettes twice a week, during the same period immediately preceding the time to be appointed as aforesaid.

III. And be it enacted, That after the judgment or order of the said Court shall have been posted up and published in manner aforesaid, and after the time appointed for the appearance of the co-tenants, and the making of their claims as aforesaid, it shall be lawful for the said Court to take cognizance of, hear, and determine, as well of and upon the Petition aforesaid, as of and upon the several claims or demands in intervention, which may have been made by co-tenants in common, or persons professing to be such aforesaid: And it shall be lawful for any of the co-tenants who may appear in pursuance of such judgment or order, as aforesaid, to controvert and plead to the allegations contained in the said Petition, and make their defence to the same, as might be done by Defendants to a Declaration in an action of partition; and in like manner the said Petitioner or Petitioners may, by plea, controvert and plead to the claims or demands in intervention of his or their co-tenants, or persons professing to be such, and issues of law and fact, may be raised and perfected, as well on the said Petition as on the said claims or demands in intervention, in like manner as might or could be done, in original actions, in the ordinary administration of Justice, to the end that it may be adjudged and determined by the said Court, whether, upon the said Petition, and upon the said claims or demands in intervention, a partition shall be made, and if made by and between whom, and for whose benefit the same shall be made.

IV. And be it enacted, That it shall and may be lawful for the said Court upon the Petition aforesaid, and upon the claims or demands in intervention aforesaid, to adjudge that a partition shall be made, and by and between whom the same shall be made, in like manner as could and might be done in an action of partition, and to have and exercise upon the said Petition, and upon the said claims or demands in intervention, all and every the powers which might by the said Court be lawfully exercised in such action or partition, and the rules, orders and judgments, made in and touching the premises, in execution of the provisions herein contained, shall be binding as well on the co-tenants who may appear and answer the said Petition, as upon all other co-tenants or persons professing to be such, who may make default to appear and answer the said Petition, and on all other persons, in like manner as rules, orders, and judgments are binding on the parties to a suit, as well those who appear as those who, after being duly summoned, may make default, and

on other persons: Provided always, that an appeal shall be to the Provincial Court of Appeals of Lower Canada, from judgments to be rendered by the said Courts in execution of the provision herein contained, in like manner as from judgments rendered by the said Court in original actions.

V. And be it enacted, That it shall be lawful for the said Court of Queen's Bench, upon the Petition aforesaid, and upon the claims or demands in intervention aforesaid, by and with the consent of the parties respectively, at any time before final judgment thereupon, to refer the matter in contest in and upon the Petition, and the claims or demands aforesaid, and the making of the partition aforesaid, to the award and final determination of three arbitrators, one of whom shall be named by the said Tenant or Tenants, making such Petition for partition, the second by the said Tenant or Tenants collectively, exhibiting claims or demands in intervention, and the third by the Court; which said arbitrators shall proceed to act, and shall act upon the reference submitted to them in some place in the Township or Parish in which the said lands, tenements and hereditaments, sought to be partitioned and apportioned shall be situate, as the said arbitrators, or any two of them shall appoint, and they shall have power to examine witnesses on the subject matter referred to them after the said witnesses shall have been sworn before any one of Her Majesty's Justices of the Peace, (to whom power to administer the oath on this behalf is hereby given,) and also to examine any of the parties on oath touching the said subject matter, if the said arbitrators or any two of them shall deem such examination necessary or proper, which oath any of Her Majesty's said Justices of the Peace is also hereby empowered to administer, and the award and determination of the said arbitrators, or any two of them, on all the matters referred to them shall be final and conclusive.

VI. And be it enacted, That any occupant of land in any of the said Townships who, having so appeared in Court shall produce a title to a specified number of acres derived from any of the said grantees, or shall by prescription according to the Common Law of Lower Canada be entitled to any number of acres, shall be maintained in possession of the land occupied by him, provided that the number of acres specified in such title and so occupied by him shall not exceed the extent of land which the grantee from whom such title shall have been derived would have had a right to, had a partition taken place before he divested himself of his title therein; and provided also, that nothing in this Act contained shall be so construed as to prevent the said tenants in common or any such occupant or occupants of any number of acres as aforesaid from availing themselves of any pleas of prescription or to deprive them of any other right vested in them by the Common Law of Lower Canada.

VII. And be it enacted, That the said Court in the exercise of the jurisdiction hereby vested in it, shall have the same power to award or withhold costs, upon and in respect of the several proceedings to be had before it, as well upon the Petition aforesaid, as on the claims or demands in intervention aforesaid, as might be lawfully exercised by the said Court upon and in respect of proceedings in original actions.