

*Laws of Her Majesty's Province of Upper Canada*, passed in the year 1850. Toronto: Stewart Derbshire & George Desbarats, 1850.

13 & 14 Victoria – Chapter 50

**An Act for the more effectual Administration of Justice in the Court of Chancery in Upper Canada. 10th August, 1850.**

Whereas it is expedient to give further facilities for instituting and carrying on suits in the Court of Chancery in order as much as possible to obviate delay and diminish expense: 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 lawful for the Judges of the said Court from time to time to appoint Masters and Deputy Registrars of the said Court, in such localities as the said Judges may consider necessary and expedient for the purpose of promoting as far as possible the local Administration of Justice: And it shall and may be lawful for the said Judges from time to time to cancel such appointments and to appoint others at their pleasure, and to make such rules and orders as may be necessary for regulating the offices of the said Masters and Deputy Registrars hereby authorized to be appointed, and for specifying the business to be transacted in the said respective offices, and for fixing the costs to be allowed in respect thereof, and from time to time to make other rules and orders amending, altering or rescinding the same or any of them; Provided that nothing herein shall be construed to prevent the Judges of the said Court from appointing the same person to hold the offices of Master and Deputy Registrar, if they shall think it right so to do.

II. And be it enacted, That the said Masters and Deputy Registrars of the Court of Chancery respectively, shall, on the first day of January, the first day of April, the first day of July and the first day of October, in each and every year, make up and render to the Inspector General of Public Accounts of the Province, accounts in writing of all the fees, dues, emoluments, perquisites and profits received by or on account of the said offices respectively, in such form and with such particulars as the said Inspector General shall from time to time require: which said accounts shall be signed by the Officer rendering the same, and shall be sworn to before the Judge of the County Court of the County in which such office is held; and such Officers respectively shall, within ten days after the rendering of such account, pay over one-half of the amount of all such fees, dues, emoluments, perquisites and profits, to the Receiver General of the Province, and shall be respectively entitled to retain the other half as their remuneration, and if default shall be made in such payment, the amount due by the Officer making default shall be deemed a specialty debt to Her Majesty.

III. And be it enacted, That it shall be lawful for the Master in ordinary of the said Court of Chancery to appoint, subject to the approval of the Judges of the said Court, one Clerk, whom the said Master or the like approval may remove at pleasure, and that there shall and may be paid

and payable out of the Consolidated Revenue Fund of this Province (after paying or reserving sufficient to pay all such sums as have been directed by any former Act of the Parliament of this Province to be paid out of the same, but with preference to all other payments which shall hereafter be charged upon the same) the yearly sum of One Hundred and Twenty-five Pounds, as and for the salary of a Clerk in the Master's Office, such salary to commence from the tenth day of September last, and to be paid from the said tenth day of September up to the time of the appointment of a Clerk in pursuance of this Act to the Master of the said Court, to be by him paid to the Clerk or Clerks who may have performed the duty of Master's Clerk during such period, and such salary to be thereafter paid to the Clerk to be so appointed, quarterly, free and clear of all taxes and deductions whatsoever, on the first day of January, the first day of April, the first day of July and the first day of October, by equal portions; the first payment to be made on the first of the said quarterly days which shall occur after the appointment of such Clerk in pursuance of this Act, such first payment to be a rateable portion of the quarter's salary according to the time then elapsed since such appointment, and in case of the resignation or removal of such Clerk he shall be entitled, and in case of his death his executors or administrators shall be entitled, to a proportional part of his salary according to the time elapsed between the last quarterly payment and such death, resignation or removal.

IV. And whereas it is convenient to provide for the partition of estates by the said Court, Be it therefore enacted, That the said Court of Chancery shall have jurisdiction and possess the same power and authority in relation to the partition and sale of estates of joint tenants, tenants in common and coparceners, as by the laws of England are possessed by the Court of Chancery in England, and also as by the laws of Upper Canada are possessed by the Court of Queen's Bench and County Courts in Upper Canada respectively; and that in such cases, any Decree, Order or Report by which such partition shall be declared or effected in any Deed under the seal of and executed by the Master of the said Court of Chancery, shall respectively have the same effect at law and in equity as the Records of Returns in the Court of Queen's Bench or County Courts in Upper Canada have now by-law in matters of partition, or as Sheriffs' Deeds now have, and an office copy of any such Decree, Order or Report shall be sufficient evidence in all Courts of the partition declared thereby and of the several holdings by the parties of the shares, thereby to them allotted.

V. And be it enacted, That in addition to parties being at liberty to proceed as heretofore in the Court of Queen's Bench and County Courts in Upper Canada, in order to obtain a partition or sale in those Courts of estates of Joint Tenants, Tenants in Common, or Coparceners, the same may be obtained in the Court of Chancery according to the practice of the said Court of Chancery in other cases, or in such other manner and by such other proceedings as the said Court shall from time to time by general orders or otherwise direct or appoint.

VI. And be it enacted, That any sale or partition made or effected by the said Court of Chancery under the authority of this Act, shall be as binding and conclusive for the conveying away or apportioning the estate or interest of any married woman, infant, idiot or lunatic, party to the proceedings by which such sale or partition shall have been made or declared, as of any person fully competent to contract or act for himself.

VII. And be it enacted, That these provisions shall and may extend to suits already instituted in the said Court, and in which the said Court may according to such practice or orders as it shall adopt think it fit and proper to allow partition to be made, even though the specific object of the suit may not have been for partition.

VIII. And be it enacted, That in suits instituted in the said Court for the partition of lands held in joint tenancy, tenancy in common or coparcenery, it shall not be necessary to postpone the execution of any conveyance ordered by any decree which may be pronounced in any such suit in consequence of the infancy of any such joint tenant, tenant in common, or coparcener, but that the guardian of any such infant may be ordered by the said Court to execute such conveyance on behalf of his ward, and such guardians are hereby authorized and empowered to do and perform on behalf of their wards any act, matter or thing respecting the partition of lands which may be directed by the said Court, and every such act, matter or thing so done shall be deemed valid and effectual in law to every intent and purpose, as if the same had been done by such minor after his arrival at full age.

IX. And be it enacted, That whenever the said Court shall be of opinion that partition cannot be made of lands so held in joint tenancy, tenancy in common, or coparcenery, without material prejudice to the whole, in such case it shall be competent to the Court, if it shall so think fit, to order a sale of the entire estate in such way as the Court may consider most for the benefit of all concerned; and the Judges of the said Court are hereby authorized and empowered to make rules and regulations respecting proceedings in partition, in as full and ample a manner as they are authorized to make rules and regulations in relation to the general practice of the said Court, by an Act passed in the twelfth year of Her Majesty's Reign, Chaptered sixty-four, intituled, *An Act for the more effectual Administration of Justice in the Court of Chancery of the late Province of Upper Canada*.