

Laws of Her Majesty's Province of United Canada, passed in the year 1856. Quebec: Stewart Derbyshire and George Desbarts, 1856.

20 Victoria – Chapter 82

An Act to confirm the Partition made by the Trustees of the Will and Codicils of the late Anne Powell, of the Real Estate of the late Honorable William Dummer Powell, and for the appointment of new Trustees, and for other purposes. Assented to 19th June, 1856.

Whereas John Powell, of the Town of Niagara, Esquire, Mary Sophia Coxwell, of the City of Toronto, widow, Samuel Peters Jarvis, of the same place, Esquire, William Botsford Jarvis, of the same place, Esquire, Edmund Meredith, of the same place, Esquire, and Frances Anne, his wife, Augustus Nanton, of the same place, Esquire, and Louisa Mary, his wife, Lewis W. Orde, of the same place, Esquire, and Sarah, his wife, Anne Jane Seymour, of the same place, widow, John Ridout, of the same place, Esquire, and Charlotte Bleecker, his wife, William Clarke, of the Town of Guelph, Esquire, and Clara Pigott, his wife, Grant Powell, of the said City of Toronto, Esquire, and Lawrence W. Mercer, of the Town of Niagara, Esquire, and Catherine, his wife, have presented their Petition stating, (amongst other things): “That the Honorable William Dummer Powell, late of the Town of York, the now City of Toronto, and Chief Justice of the Province of Upper Canada, departed this life on or about the sixth day of September, in the year of our Lord, one thousand eight hundred and thirty-four, seized of considerable real estate within the said Province of Upper Canada, and having first duly made and published his last will and testament, duly executed according to Law, so as to pass real estate by Devise within Upper Canada, and which said last will and testament bears date on or about the thirteenth day of December, in the year of our Lord, one thousand eight hundred and thirty, and that he did hereby give, devise and bequeath to his wife, Anne Powell, all his real and personal estate in case she should survive him, to hold the same during her natural life, in full confidence that she would dispose of the same to the general satisfaction of his family, which power he thereby gave to her to be exercised by an instrument under her hand and seal, purporting to be her last will and testament duly executed according to Law:

“That the said Anne Powell, the widow of the said late Honorable William Dummer Powell, survived him, and departed this life on or about the ninth day of March, in the year of our Lord, one thousand eight hundred and fifty, having previously duly made and published her last will and testament in writing, executed so as to pass real estate by devise in Upper Canada, and the several codicils thereto annexed, which said will bears date on or about the fourteenth day of October, in the year of our Lord, one thousand eight hundred and thirty-four, and the said several codicils thereto bearing date respectively, as follows, that is to say:

“Number one, the ninth day of December, in the year of our Lord, one thousand eight hundred and thirty-four; Number two, the twenty-second day of May, in the year of our Lord, one thousand eight hundred and thirty-nine; Number three, the third day of March, in the year of our Lord, one thousand eight hundred and forty; Number four, the eighteenth day of May, in the year of our Lord, one thousand eight hundred and forty-one; Number five, the second day of July, in

the year of our Lord, one thousand eight hundred and forty-two; Number six, the second day of July, in the year of our Lord, one thousand eight hundred and forty-two; Number seven, the nineteenth day of July, in the year of our Lord, one thousand eight hundred and forty-two; Number eight, the twenty-fourth day of July, in the year of our Lord, one thousand eight hundred and forty-three; Number nine, the nineteenth day of December, in the year of our Lord, one thousand eight hundred and forty-six; Number ten, the nineteenth day of January, in the year of our Lord, one thousand eight hundred and forty-nine; and Number eleven, the thirteenth day of February, in the year of our Lord, one thousand eight hundred and forty-nine:

“That the said Anne Powell, by the said will and codicils, after making several specific devises as to the real estate of the said the Honorable William Dummer Powell, devised the residue of the same to the Executors and Trustees of her said last will and testament, for them to divide the same into six equal shares or portions, to be taken in manner following, that is to say: one share by each of the children of the said the late Honorable William Dummer Powell, living at the time of the decease or intermarriage of her daughter, Elizabeth Powell, therein mentioned, and one share by the said Petitioners, John Powell and Mary Sophia Coxwell, as tenants in common, one share by Mary Boyles Jarvis, the wife of the said Samuel Peters Jarvis, and one share by Anne Murray Gwynne; and in case of the decease of any one of the persons so entitled before their said shares became vested, then such share to become vested in the children of such deceased person respectively; and by codicil hereinbefore numbered eleven, the said Anne Powell devised the said share of the said Petitioner, John Powell, to the Reverend Henry James Grasett, Clerk, and the Honorable James Christie Palmer Esten, now one of the Vice-Chancellors of the Court of Chancery of Upper Canada, in trust for the said John Powell, and Eleanor, his wife, during their natural lives, and to their children after the decease of the survivor of them; and by codicil hereinbefore numbered nine, the said Anne Powell devised the said share of the said Mary Sophia Coxwell to the said Samuel Peters Jarvis, William Botsford Jarvis, William C. Gwynne and John Ridout, as Trustees thereof, for William Henry Coxwell, now deceased, the then husband of the said Mary Sophia Coxwell, and the said Mary Sophia Coxwell, and the survivor of them, and for their children after the decease of such survivor, as by reference to the said last will and codicils, will more fully and at large appear:

“That the said Anne Powell, at the time of her decease, left the following children of the said late Honorable William Dummer Powell, her surviving, that is to say: the said Mary Boyles Jarvis, the wife of Samuel Peters Jarvis, and Elizabeth Powell, and the following issue of such other children as had departed this life before her said decease, that is to say: of John Powell, the said Petitioners, John Powell and Mary Sophia Coxwell, of Grant Powell, the said Petitioner, Anne Jane Seymour, Charlotte Bleecker Ridout, and Elizabeth Grogan, and William Dummer Powell, (since deceased,) and the said Petitioners, Grant Powell and Catherine Mercer, and of William Dummer Powell, Mary Boyles Jarvis, the wife of William Botsford Jarvis, and the said Anne Murray Gwynne:

“That the said Mary Boyles Jarvis, the wife of William Botsford Jarvis, departed this life on or about the eighth day of June, in the year of our Lord, one thousand eight hundred and fifty-two, intestate, leaving her surviving the following children, namely, the said Petitioners, Frances Anne

Meredith, Louisa Mary Nanton and Sarah Orde, and William Dummer Jarvis,, and Colbome Jarvis, an infant under age:

“That the said William Dummex Powell, departed this life on or about the ninth day of August, in the year of our Lord, one thousand eight hundred and fifty-four, having duly made and published his last will and testament in writing, and whereof the said Clara Pigott Clarke is now one of the Trustees:

“That after the said decease of the said Anne Powell, the said Executors and Trustees named in the said will and codicils, and being the said Elizabeth Powell, Samuel Peters Jarvis, William Botsford Jarvis, William Dummer Powell and William C. Gwynne, assumed the general trusts of the said will and codicils, and for the purpose of dividing the said real estate in the said will and codicils mentioned, amongst the several parties beneficially entitled therein, made partition thereof, and a deed of release to uses, bearing date the twenty-second day of April in the year of our Lord, one thousand eight hundred and fifty-three, was made and executed by and between the several parties thereto, as where then of full age and capable of legally binding their respective rights and interests by such partition:

“That the said Elizabeth Powell departed this life on or about the first day of December, in the year of our Lord, one thousand eight hundred and fifty-five, having by her last will and testament duly appointed the Honorable William Benjamin Robinson and Lawrence W. Mercer, her devisees in trust thereof:

“That the Trustees nominated in and by the said codicils numbered nine and eleven, for the said Mary Sophia Coxwell and her children, and the said John Powell, and Eleanor, his wife, and their children, have never assumed the execution of the said respective trusts:

“That by reason of the infancy of several of the persons beneficially interested under the said will and codicils, a complete partition of the said real estate so devised by the said Anne Powell to her Trustees, could not be had without doubts arising as to the same being legally perfect in all respects; and that other questions have arisen involving doubts as to the legality in other respects of the various dispositions made of the said real estate by the said Anne Powell, under the said will and codicils, of the said real estate of the said late Honorable William Dummer Powell, and that although all the members of his family are desirous to remove the same, such cannot be legally done by reason of such infancy as aforesaid:

“That further, the said Petitioners, the said John Powell and Mary Sophia Coxwell, were desirous of obtaining a partition of their respective shares and that of their children, under the said codicils hereinbefore mentioned, and that the Trustees hereinbefore appointed, have no power to make such partition under the said codicils, and that instead of such Trustees, new Trustees of such respective portions should be appointed, with power to make such partition and to substitute new Trustees and therefore prayed that an Act might be obtained to confirm the various dispositions made by the said Anne Powell, of the real estate of the said late Honorable William Dummer

Powell, under her said will and codicils hereinbefore mentioned, and to ratify the partition thereof under the said Deed of Release to uses, bearing date the twenty-second day of April, in the year of our Lord, one thousand eight hundred and fifty-three, and further to nominate and appoint new Trustees of the said John Powell, and Eleanor, his wife, and their children, of their portion of the said estate under the said codicil, dated the thirteenth day of February, in the year of our Lord, one thousand eight hundred and forty-nine, and new Trustees of the said Mary Sophia Coxwell and her children, under the said codicil, dated the nineteenth day of December, in the year of our Lord, one thousand eight hundred and forty-six, in place and in stead of the said Trustees thereby respectively appointed; and in addition to the powers conferred upon the said Trustees respectively, in and by the said codicils, to give to them respectively, the power to partition the said share or portion devised to the said John Powell, and Eleanor, his wife, and their children, and to the said Mary Sophia Coxwell and her children, as tenants in common, and to appoint a new substitute or substitutes, from time to time, as should be deemed expedient; And whereas it is expedient to grant the prayer of the said Petitioners: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

- I. The various dispositions made by the said Anne Powell, of the real estate of the said the late Honorable William Dummer Powell, under her said will and codicils, in the preamble to this Act mentioned, are hereby confirmed and declared to be valid and effectual, to bind all persons beneficially entitled to any interest under the said Will and Codicils, being of full age and consenting thereto.
- II. The partition of the said real estate under the said Deed of Release to uses in the said preamble mentioned, to bear date the twenty-second day of April, in the year of our Lord, one thousand eight hundred and fifty-three, is hereby ratified and declared to be valid and effectual to bind all persons beneficially entitled to any interest under the said Deed of Partition.
- III. The said John Powell, Lawrence W. Mercer and Joseph Woodruff, of the Town of Niagara, Esquires, and the survivors and survivor of them, and the heirs and assigns of such survivor, are and is hereby appointed and declared to be Trustees and Trustee for the said John Powell, and Eleanor, his wife, and their children, of their portion of the said Estate of the said the late Honorable William Dummer Powell, under the said Will of the said Anne Powell, and codicil thereto, in the preamble hereof mentioned, to bear date the thirteenth day of February, in the year of our Lord, one thousand eight hundred and forty-nine, in place and instead of the Trustees thereby appointed, and are hereby invested with all the same powers and trusts as if they had been originally named and appointed in and by the said codicil, and the said portion of the said Estate is hereby declared to be vested in them, under and subject to the said Trusts declared in the said codicils.
- IV. The said Mary Sophia Coxwell, George Alexander Phillpotts, of the City of Toronto, Esquire, and Henry Powell, of the Town of St. Catharines, Esquire, and the survivors and survivor of them, the heirs and assigns of such survivor, are and is hereby appointed and declared to be Trustees and Trustee for the said Mai-y Sophia Coxwell and her children, of their portion of the said Estate of the said the late Honorable William Pummer Powell, under the said Will of the said Anne Powell

and the said Codicil thereto in the preamble hereof mentioned to bear date the nineteenth day of December, in the year of our Lord one thousand eight hundred and forty-six, in place and instead of the Trustees thereby appointed, and are hereby invested with all the same powers and trusts as if they had been originally named and appointed in and by the said codicil, and the said portion of the said estate is hereby declared to be vested in them, under and subject to the said trusts declared in the said codicil.

V. At any time or times hereafter, in every case of the decease, removal from the Province of Upper Canada, incapacity or unwillingness to act, or resignation of any of the said Trustees respectively appointed, in and by the said third and fourth sections of this Act, respectively, the surviving or continuing Trustees or Trustee of the said trusts respectively, are empowered respectively by Deed in writing to substitute or appoint a new Trustee or Trustees respectively, in the room and place of such Trustee or Trustees respectively so dying, removing from the said Province or becoming unable or unwilling to act or resigning as aforesaid; and such new Trustees or Trustee so appointed shall have the same powers for all purposes whatsoever in the matters of their respective trusts, as if expressly named and appointed in and by the third and fourth sections of this Act respectively, with similar powers of substitution or new appointment of a new Trustee or Trustees as aforesaid.

VI. The said Trustees hereinbefore mentioned or to be appointed under the fifth section of this Act, respectively, are hereby further authorized and empowered to make such partition as may by them respectively be agreed upon and deemed expedient, of the share of the said Real Estate as was by the said Will and Codicils of the said Anne Powell, and the said Deed of Partition in the said second section of this Act mentioned, vested in the Trustees of the said John Powell and Eleanor his wife and their children, on the one hand, and the Trustees of the said William Henry Coxwell and Mary Sophia Coxwell and their children on the other, as tenants in common, so that their respective portions of such share may become separately vested in the said Trustees respectively, upon the respective trusts hereinbefore mentioned, and such tenancy in common effectually determined, notwithstanding the coverture or infancy of any of the persons beneficially interested in such share or portion respectively.

VII. This Act shall be deemed a Public Act.