

No. 177.

1st Session, 6th Parliament, 21 Victoria, 1858.

BILL.

An Act to authorize partitions and licitations of the property of minors and of substituted property, in certain cases.

Received and read, first time, Wednesday,
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MR. PAPINEAU.

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An Act to authorize partitions and licitations of the property of minors and of substituted property, in certain cases.

WHEREAS it is expedient to amend the laws relating to the partition of the property of minors and interdicted persons, and also of substituted property in certain cases; Therefore Her Majesty, &c., enacts as follows: Preamble.

5 I. The action *en partage*, in respect of co-heirs, minors, or interdicted persons, may be instituted by their tutors or curators specially authorized by the advice of a meeting of relations duly homologated. The Judge or officer of Justice shall set forth in the Act of homologation the reasons which induced him to authorize such proceeding on
10 the part of the tutor or curator.

Action of partition may be instituted by tutors, &c., in certain cases.

15 II. When the husband has the right of enjoyment of the property of his wife, she being a minor emancipated by marriage, he may, in conjunction with her, assisted by her curator, demand a final partition as against the co-heirs with his wife, both of immoveable and moveables.

As to husband enjoying the property of his wife.

20 III. When a co-heir, being of age, makes a *demande en justice*, or by notarial act, for a partition either upon the tutor or curator of a minor or interdicted person, such tutor or curator being authorized by the advice of a meeting of relations duly homologated, may appear to the action and defend the same, or may proceed to an amicable partition with or without *tirage au sort*, after a valuation of the property subject thereto shall have been first made by *experts* appointed *ex officio* by the officer of justice homologating the advice of the meeting of relations.

Tutor, &c., may be a party to the action of partition, in certain cases.

25 IV. *Co-grevés de substitution* in favor of their respective children or other nearest heirs may, with the consent of the tutor to the substitution authorized by the advice of a meeting of relations, proceed to final partition of the substituted property: and those called to the substitution in each branch shall only be entitled to have and receive the property
30 falling to the lot of their respective lines, saving their recourse by the ordinary action of *lesion en partage*, if there be ground therefor.

Co-grevés may, in certain cases, divide the property entailed.

35 V. A *co-grevé de substitution* shall have a right of action for final partition against his *co-grevés* and the tutor to the substitution; and any judgment condemning the latter shall be equivalent to the authorization of the meeting of relations.

A *Co-grevé* may demand final partition, &c.

Sale when the property cannot be conveniently divided. Distribution of the price.

VI. When the immoveables cannot be conveniently divided, the sale thereof by licitation shall be proceeded with according to the forms prescribed by law when the licitation is forced, and according to the ordinary formalities for the alienation of the property of minors when the partition or licitation is amicably effected without any judicial proceeding: The proceeds of the sale by licitation shall be paid to the persons entitled thereto, viz :

1st. To the proprietor, being of age, in accordance with the conditions agreed upon at the sale.

2nd. To the minor upon his coming of age, or being authorized by 10 marriage, on the advice of a meeting of relations duly homologated.

3rd. To the interdicted person upon the removal of the interdiction, or as may be otherwise ordered by law.

4th. To the *appelé* upon the opening of the substitution.

No more than half the price to remain in the hands of purchaser without further security.

VII. In no case shall more than one-half the purchase-money remain 15 in the hands of the purchaser unless he give sufficient security upon other real property, to the satisfaction of the Judge, to guarantee the payment of the other half, without prejudice to the privileged hypothec for the whole purchase-money, upon the immoveables sold by 20 licitation.

Act limited to Lower Canada.

VIII. This Act applies only to Lower Canada.