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2nd Session, 3rd Parliament, 12 Victoria, 1849

BILL.

An Act to amend and extend certain provisions of "*An Act to facilitate the Partition of Lands, Tenements, and Hereditaments, in certain cases, in Lower Canada.*"

Received and Read a first time, Monday, 22nd
January, 1849

Second Reading. Wednesday, 24th Jan, 1849

M^r. Sol. Genl. DRUMMOND.

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BILL.

An Act to amend and extend certain provisions of "*An Act to facilitate the Partition of Lands, Tenements, and Hereditaments, in certain cases, in Lower Canada.*"

WHEREAS it is expedient, for the furtherance of the end of Justice to amend and extend the provisions of the Act, passed in the Session of the Parliament of this Province, which was held in the tenth and eleventh years of the Reign of Her Majesty, intituled: "*An Act to facilitate the Partition of Lands, Tenements, and Hereditaments in certain cases, in Lower Canada,*" and to repeal certain provisions there- of: Be it therefore enacted, &c.

And it is hereby enacted by the authority of the same, That whenever any Petitioner claiming an interest in any lands, tenements and hereditaments, to facilitate the Partition of which provision is made by the said Act, and demanding a Partition of such lands, tenements and hereditaments, under the provisions of the said Act, shall, by *prima facie* evidence have satisfied the Court of Queen's Bench for the District in which such lands, tenements and hereditaments are situated, that he is seized of lands and tenements held by him in common with others, in the manner mentioned in the said Act, it shall be lawful for the said Court, and the said Court is hereby required, in making, pronouncing, and rendering the judgment or order provided for by the second Section of the said Act, to order and direct that such judgment or order shall be posted up and published in the manner provided by the se-

Preamble

10 and 11
Vict., chap
37 cited

When a Petitioner demands a Partition of lands, Court in rendering judgment may order the same to be posted up for six months before time appointed for appearance of co-tenants of Petitioner

cond Section of the said Act, at least six months before the time appointed in and by such judgment and order, for the appearance of the co-tenants of the said Petitioner, and of such other persons as may by law have a right to be maintained in possession of any portion or portions of such lands, tenements and hereditaments, or as may have an interest in the Partition thereof, for the purposes specified in the said Act.

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All proceedings under Act hereby amended, suspended until 1st day of Term of Court after 1st May, 1849

II. And be it enacted, That all proceedings upon any Petition which, pursuant to the provisions or under color of the said Act, may, since the passing thereof, have been presented or exhibited to any such Court, and upon which any judgment or order, such as it was lawful for such Court to pronounce, give or make under the provisions of the said second Section of the said Act, may have been pronounced, given or made, shall be suspended from and after the day appointed in such judgment or order for the appearance of the parties interested, and for making and exhibiting by them their claims or demands in intervention, up to and until the first day of the Term of such Court which shall be held next after the first day of May of the present year one thousand eight hundred and forty-nine;—Provided nevertheless, that it shall be lawful for any such co-tenants or for any other party who may have an interest in the Partition of the lands, tenements and hereditaments, referred to in such judgment or order, and who shall have made or exhibited his claim or demand in intervention upon the day appointed by any such order or judgment, to amend or extend his claim or demand in intervention, and to file any Titles, Deeds, or other documents in support thereof, either before such Court sitting in Term, or in the Office of the Prothonotary of such Court in vacation, at any time on or before the said first day of the Term of such Court which shall be held next after the said first day of May of the 45

PROVIDED Time to be given to parties interested in any Petition already filed under the said Act, to oppose, &c

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present year one thousand eight hundred and forty-nine; and also at any time on or before the said first day of such Term, to except, answer or plead to any such Petition, or to controvert the allegations thereof, as fully and effectually as he might do or have done on the day appointed in such order or judgment for the making and filing of such claims or demands in intervention.

10 III. And be it enacted, that whenever any portion of any such lands, tenements and hereditaments, for the Partition of which provision is made by the said Act, or any share, right or interest therein shall be claimed by any of the co-tenants of such lands, tenements or hereditaments, or by any other person interested in the lands, tenements and hereditaments to be divided or partitioned under the said Act, as hereby amended, by descent or inheritance, from or through any other person whomsoever, the party so claiming, shall not be required to prove such descent or inheritance, but the fact of his being the lawful representative of the person through whom he shall have so claimed, by descent or inheritance, shall be considered as true for all the purposes of such Partition, unless such fact be denied and controverted by some other party to the said Partition, claiming, or assuming to claim an interest in such lands, tenements, or hereditaments, by descent or inheritance, through the same identical person.

When any portion of lands is claimed by a co-tenant, by descent or inheritance, &c., it shall not be necessary to prove such descent or inheritance unless denied by another party who claims an interest in the lands

35 IV. And be it enacted, that whenever any party shall claim an interest in such Partition, under and by virtue of any Deed of Sale or Conveyance, or under and by virtue of any other Title or Document whatsoever, purporting to have been executed through the medium of an Agent or Attorney, the party so claiming shall not be required to prove the authority of such Agent or Attorney in that behalf, but such authority shall, for all the purposes of such Partition, be

Party claiming interest in any Partition, by Deed executed through an Agent, not required to prove authority of Agent unless denied by an other party interested in such Partition

considered as undoubted, unless the authority of such Agent or Attorney in that behalf, be denied or controverted by some other party interested in the said Partition, and claiming or assuming to claim an interest therein, through the person purporting to be the principal of such alleged Agent or Attorney. 5

The Act hereby amended and this one, Public Acts

V. And be it declared and enacted, That the said Act, hereby amended, and the present Act, are Public Acts, and shall be taken cognizance of as such by all Her Majesty's Courts in the Province. 10

Provisions of the said Act, inconsistent with this, repealed

VI. And be it enacted, That all the provisions of the said Act, hereby amended, which are repugnant to or inconsistent with this Act, shall be, and are hereby repealed. 15

Interpretation Act to apply to this

VII. And be it enacted, That the Interpretation Act shall apply to this Act.