

Partition Act

CHAPTER 333

OF THE

REVISED STATUTES, 1989

amended 2007, c. 17, s. 19

NOTE - This electronic version of this statute is provided by the Office of the Legislative Counsel for your convenience and personal use only and may not be copied for the purpose of resale in this or any other form. Formatting of this electronic version may differ from the official, printed version. Where accuracy is critical, please consult official sources.

An Act Respecting the Partition of Lands

Short title

1 This Act may be cited as the Partition Act. *R.S., c. 333, s. 1.*

Interpretation

2 In this Act, "land" includes mining areas. *R.S., c. 333, s. 2.*

Jurisdiction of Supreme Court preserved

3 The provisions of this Act shall not restrict the jurisdiction and powers of the Supreme Court, possessing the jurisdiction and powers of the former Court of Chancery in England as to the partition of land, but shall be construed as enlarging the same. *R.S., c. 333, s. 3.*

LAND SUBJECT TO PARTITION

Land subject to partition

4 All persons holding land as joint tenants, co-parceners or tenants in common, may be compelled to have such land partitioned, or to have the same sold and the proceeds of the sale distributed among the persons entitled, in the manner provided in this Act. *R.S., c. 333, s. 4.*

Right of action

5 Any one or more of the persons so holding land may bring an action in the Trial Division of the Supreme Court for a partition of the same, or for a sale thereof, and a distribution of the proceeds among the persons entitled. *R.S., c. 333, s. 5.*

Persons entitled to maintain action

6 Such action may be maintained by any person who has an estate in possession, but not by one who is entitled only to any remainder or reversion. *R.S., c. 333, s. 6.*

Tenant jointly or in common for term

7 When two or more persons hold jointly or in common, as tenants for any term of years, any of them may bring such action against his co-tenants in the same manner as if they had all been tenants of the freehold. *R.S., c. 333, s. 7.*

Restriction on action of tenant for term

8 No tenant for any term of years, unless twenty years at the least remain unexpired, shall maintain such an action against any tenant of the freehold. *R.S., c. 333, s. 8.*

PARTIES AND SERVICE

Statement of claim

9 (1) The statement of claim shall set forth the rights and titles, so far as known to the plaintiff, of all persons interested in the land who would be bound by the partition, whether they have an estate of inheritance, or for life, or years, or whether it is an estate in possession, or in remainder, or reversion, and whether vested or contingent.

(2) If the plaintiff holds an estate for life, or years, the person entitled to the remainder or reversion, after his estate, shall be considered as one of the persons so interested. *R.S., c. 333, s. 9.*

Unknown interested person

10 If there are any persons interested in the land whose names are unknown to the plaintiff, the Court or judge may, if, having regard to the nature and extent of the interests of such persons, it appears expedient on account of the difficulty of ascertaining such persons, or in order to save expense, appoint one or more persons to represent such persons whose names are unknown to the plaintiff, and the judgment or order of the Court shall be binding on the persons so represented, subject to this Act. *R.S., c. 333, s. 10.*

Failure to appear

11 If any person entitled to notice fails to appear, and if the service of the originating notice or other notice to him appears to the Court or the judge to have

been insufficient, the Court or a judge may order such further notice as is thought proper. *R.S., c. 333, s. 11.*

Right of interested person out of Province to appear

12 If, in any stage of the action, it appears to the Court that any person interested, whether a party or not, is out of the Province and has not had an opportunity to appear in the action, it may be adjourned until sufficient time is allowed to enable him to appear. *R.S., c. 333, s. 12.*

Party to action by leave

13 Any person who is not a party may be made a party by leave of the Court or a judge, on filing an affidavit showing that he is entitled to a share in the land, and in all subsequent proceedings he shall be named as a party to the action. *R.S., c. 333, s. 13.*

Guardian

14 The Court or a judge may assign a guardian for the suit for any infant or incompetent person who is interested in the premises, in the same manner as a guardian is admitted for an infant plaintiff or defendant in any other action, and the judgment or order of the Court shall be binding on the persons so represented, subject to this Act. *R.S., c. 333, s. 14; 2007, c. 17, s. 19.*

PLEADINGS

Statement of defence

15 The defendant, in his statement of defence, may plead any matter tending to show that the plaintiff ought not to have partition, either in whole or in part. *R.S., c. 333, s. 15.*

Amendment of statement of claim

16 If any person was made a party by leave of the Court or a judge, the plaintiff may, without leave, amend his statement of claim and plead, or he may reply that such person has no estate or interest in the land. *R.S., c. 333, s. 16.*

ORDER FOR PARTITION

Order for partition

17 If the defendant fails to appear or to deliver a defence, or if, after a trial, it appears that partition should be made, the Court or a judge shall make an order for the partition of the land, which shall specify the persons entitled to share in the partition ordered and the share to which each is respectively entitled. *R.S., c. 333, s. 17.*

COMMISSIONERS AND THEIR DUTIES

Commissioners

18 When such order passes, unless it appears to the Court or judge that a sale of the land is necessary under the provisions of this Act, the Court or judge may appoint three disinterested persons as commissioners, to make partition and to set off to the parties their respective shares. *R.S., c. 333, s. 18.*

Oath

19 The commissioners, before proceeding to the execution of their duties, shall be sworn before any justice of the peace faithfully and impartially to perform the same, a certificate of which oath shall be made on the order for partition by the person who administered it. *R.S., c. 333, s. 19.*

Notice of right to be present

20 The commissioners shall give notice of the time and place appointed for making the partition to all persons interested therein who have appeared, or who are known and within the Province, that they may be present if they see fit. *R.S., c. 333, s. 20.*

Evidence and subpoena

21 (1) The commissioners may take evidence, and if it is desired by any of the parties interested in the partition to produce witnesses before the commissioners, such party may obtain subpoenas from the prothonotary for such witnesses, and disobedience of any such subpoena shall be deemed a contempt of court.

(2) The person served with a subpoena shall be entitled to be paid the same fees as for attendance at an ordinary trial. *R.S., c. 333, s. 21.*

Division of land

22 (1) The commissioners shall divide the land and allot the several shares thereof to the respective parties mentioned in the order, designating the several shares by sufficient monuments.

(2) The shares of any two or more parties may be allotted to them in common, upon their expressing their consent to that effect in writing, addressed to the commissioners. *R.S., c. 333, s. 22.*

Validity of report

23 The report of the commissioners shall be valid if at least two of the commissioners concur therein. *R.S., c. 333, s. 23.*

LAND INCAPABLE OF DIVISION

Set off of land

24 (1) When the land, of which partition is sought, cannot be divided without prejudice to the owners, or when any specific part thereof is of greater value than the share of any party and cannot be divided without prejudice to the owners, the

whole land, or the part so incapable of division, may be set off to any one of the parties who will accept it, upon payment by him to any one or more of the others of such compensation as the commissioners determine.

(2) The partition in such case shall not be confirmed by the Court or judge until all the sums so awarded are paid to the parties entitled thereto, or secured to their satisfaction. *R.S., c. 333, s. 24.*

Alternate occupation

25 The commissioners, instead of setting off the land or a part thereof, in the manner provided in [Section 24](#), may assign the exclusive occupancy and enjoyment of the whole or the part, as the case may be, to each of the parties alternately, for certain specified times, in proportion to their respective interests therein. *R.S., c. 333, s. 25.*

Liability of occupier

26 When the whole, or any specific part of the land is assigned in the manner provided in [Section 25](#), the person entitled for the time being to the exclusive occupancy shall be liable to the other parties for any injury to the premises occasioned by his misconduct, in like manner and to the like extent as a tenant for years under a common lease without express covenants would be liable to his landlord, and the other parties shall have their remedy therefor against him by action, either jointly or severally, at their election. *R.S., c. 333, s. 26.*

Remedy for trespass

27 While any land is so in the exclusive occupancy of any such party, he shall be entitled to the same remedy against any person who trespasses upon or otherwise injures the land as if he held the same under a lease for the term of his exclusive occupancy, and he and all the other parties shall also be entitled to recover against the wrong-doer such other and further damages as they have sustained by the same trespass or injury, in like manner as if the land had been leased by them for such term, and all joint damages recovered by any such parties shall be apportioned and divided among them, according to their respective rights, by the court in which the judgment is recovered. *R.S., c. 333, s. 27; revision corrected.*

SALE OF LAND

Sale of land

28 (1) Where

(a) the land, or any part thereof, cannot be divided without prejudice to the parties entitled; or

(b) any party is, by reason of infancy, insanity or absence from the Province, prevented from accepting such land, or part thereof, incapable of division under this Act,

the Court or a judge may order that such land shall be sold after such notice and in such manner as the Court or judge directs, and that the net proceeds of such sale shall be divided among the parties entitled.

(2) Such order may be made instead of an order appointing commissioners for the division of the land, or may be made at any time subsequent to such an order.

(3) Every person interested, and every encumbrancer, shall have at least two days notice of the application for the sale of such land, but if from infancy, insanity or absence from the Province, or other cause, actual notice cannot be given, the Court or judge shall direct such notice to be given by service on a guardian, or by publication, or otherwise, as is deemed best.

(4) Such sale may be made and the deed executed by the sheriff of the county in which the land lies, or by an auctioneer, or such other person as is mentioned in the order, or the land may be conveyed to the purchaser by a vesting order to be made by the Court or a judge, and the purchaser of the land shall acquire, by such deed or vesting order, all the interest and title of all persons interested in the said land, and of all such encumbrancers.

(5) Where the share of any person interested in such land, so ordered to be sold, is subject to dower or to encumbrances, appearing from the certificate of the registrar of deeds for the registration district in which the land lies, or where any person entitled to a share is an unknown person, an infant or insane person or is absent from the Province, and was not personally served, the share of any such person in the proceeds of the sale shall be paid into court, or to such persons and according to such priorities, and in such amounts, as the Court or judge directs. *R.S., c. 333, s. 28.*

REPORT AND CONFIRMATION

Report of commissioners

29 The commissioners shall make a report of their proceedings under their hands and return the same, together with the order for partition, to the Court, and the report may be confirmed by the Court or a judge, whereupon the partition so made shall be final. *R.S., c. 333, s. 29.*

Powers of Court respecting report

30 The Court or a judge, for any reason, may vary or set aside the report or may remit the same to the commissioners, or may appoint other commissioners to divide the land. *R.S., c. 333, s. 30.*

Effect of confirmation of partition

31 The order confirming the partition shall be conclusive as to all rights, both of property and possession, of all parties to the action and privies, and except as provided hereinafter, all persons who are represented under the provisions of this Act. *R.S., c. 333, s. 31.*

Registration and confirmation of report

32 (1) A certified copy of the report of the commissioners shall be registered in the registry of deeds for the registration district in which the land is situated.

(2) In case of a sale the report of the person making the sale shall be subject to confirmation, as in case of other sales by the Court or a judge. *R.S., c. 333, s. 32.*

OPENING OF PARTITION

Application for new partition

33 If any person who was a part owner with the plaintiffs and for whom a share was assigned upon the partition, was described as an unknown person, and there was not personal service of, or appearance to, the originating notice or notice to him, he may, at any time within three years after the final judgment, apply to the Court for a new partition of the premises. *R.S., c. 333, s. 33.*

New order for partition

34 After hearing the parties interested, if it appears to the Court that the share assigned for the applicant was less than he was entitled to, or that such share was not at the time of the partition equal in value to his proper share of the land, the Court may order a new partition thereof. *R.S., c. 333, s. 34.*

Method of new partition

35 In such new partition the commissioners shall not be required to make a new division of the whole land, but they may take from any one share or shares and add to any other or others so much as is, in their judgment, necessary to make the partition just and equal, estimating the whole as in the state in which it was when first divided, or if an equal partition of the land cannot be made without inconvenience to the owners, the commissioners may award compensation to be paid by one party to another to equalize the shares. *R.S., c. 333, s. 35.*

Compensation for improvements

36 If, after the first partition, any improvement has been made on any part of the land which, by the new partition, is taken from the share of the person who made the improvements, he shall be entitled to compensation therefor, to be estimated and awarded by the commissioners and to be paid by the person to whom such part of the land is assigned on the new partition. *R.S., c. 333, s. 36.*

EFFECT OF JUDGMENT FOR PARTITION IN CERTAIN CASES

Action for land by non-party after judgment

37 If any person who was not made a party or was not served, claims to hold in severalty the land, or any part thereof, he shall not be concluded by the judgment for partition, but may bring his action for the land claimed by him against any or all of the plaintiffs or defendants, or of the persons holding under them, as the case requires, within the same time in which he might have brought it if no such judgment for partition had been given. *R.S., c. 333, s. 37.*

Action for assigned share by non-party after judgment

38 When any person, who was not made a party, claims the share that was assigned to any supposed part owner in the judgment for partition, he shall be concluded by the judgment so far as it respects the partition and the assignment of the shares, in like manner as if he had been a party to that action, but he shall not be prevented thereby from bringing his action for the share claimed by him against the person to whom it was assigned. *R.S., c. 333, s. 38.*

Style of action under Section 38 and time limit

39 In such case the action shall be brought by him against the tenant in possession in like manner as if the plaintiff had originally claimed the specific piece of land demanded, instead of an undivided part of the whole land, and it may be brought within the same time in which it might have been brought if no judgment for partition had been given. *R.S., c. 333, s. 39.*

More than one claimant for same share of land

40 If two or more persons appear as defendants, claiming the same share of the land to be divided, it shall not be necessary to decide upon their respective claims, except only for the purpose of determining which of them shall be admitted to defend in the action, and if partition is made, the share so claimed shall be assigned to the party who is determined to be entitled to it, in an action to be thereafter brought between them. *R.S., c. 333, s. 40.*

Application of Section 40

41 If in such a case it is decided in the original action for partition, upon the reply of the plaintiffs, or otherwise, that either of the defendants is not entitled to the share that he claims, he shall be concluded by the judgment, so far as it respects the partition and the assignment of the shares, but he shall not be prevented thereby from bringing his action for the share claimed by him against the other claimant thereof in the manner provided in [Section 40](#). *R.S., c. 333, s. 41.*

Action by non-party part owner after judgment

42 (1) If any person who was not made a party, or was not served, claims any part of the land as a part owner with those who were parties to that action, or any of them, and if the part or share so claimed was not known or not allowed and left for him in the partition, he shall be concluded by the judgment so far as it respects the partition, but he shall not be prevented thereby from bringing an action for the share or proportion claimed by him against each of the persons who hold any part of the land under the judgment for partition.

(2) If the plaintiff prevails in such case last mentioned, he shall not be entitled to demand a new partition of the whole land, but he shall recover against each of the persons holding under the judgment for partition the same proportion or share of the part held by him that the plaintiff was entitled to out of the whole land before the partition thereof. *R.S., c. 333, s. 42.*

Claim by heir or devisee

43 If, after the making of partition, it appears that any person for whom a share was left, or to whom a share was assigned, died before such partition was made, and the proper representatives of such person were not added as parties, the heir or devisee of such deceased person shall not, by reason of such heir or devisee having been a party to the action, either as a plaintiff or as a defendant, be barred from claiming the share that belonged to the deceased person, but the heir or devisee in such case shall have the same rights and the same remedies in all respects as if such heir or devisee had not been a party to the action and had no notice of the pendency thereof. *R.S., c. 333, s. 43.*

New partition resulting from eviction

44 If any person to or for whom any share is assigned or left upon any judgment for partition, is evicted thereof, by any person who, at the time of the partition, had a title thereto paramount to the title of those among whom partition was made, the person so evicted shall be entitled to a new partition of the residue, in like manner as if the former partition had not been made. *R.S., c. 333, s. 44.*

Effect of partition on lien

45 Any person having a mortgage, attachment or other lien upon the share of any part owner, shall be concluded by the judgment so far as it respects the partition and the assignment of the shares, but his lien shall remain in full force upon the part that is assigned or left for such part owner. *R.S., c. 333, s. 45.*

DEATH OF PARTIES

Death of party

46 In the case of the death of any party in an action for partition, the action shall not abate, but may be conducted and prosecuted to final judgment and the Court or judge may make such order to bring in the heirs or representatives of the deceased party, or other person to represent him, and make them parties to the action, as such Court or judge thinks proper under the rules of the Supreme Court. *R.S., c. 333, s. 46.*

COSTS

Costs

47 (1) The costs of the trial of any issues or the costs of any contested matter shall be in the discretion of the judge.

(2) All the other costs of the proceedings and the expenses and charges of the commissioners shall be taxed in the usual manner, and shall be paid by the parties in proportion to their respective shares or interests in the premises. *R.S., c. 333, s. 47.*

GENERAL PROVISIONS

Status of title held under partition

48 Every person holding any land under a partition made by virtue of this Act shall be considered as holding it under an apparently good title, and in case of eviction, he shall, as against the person evicting him, be entitled to compensation for any improvements made thereon. *R.S., c. 333, s. 48.*

Land in different counties

49 Where the land to be divided is situated in different counties, the whole of such land may be included in one action, and the Court or judge may appoint three commissioners in each county in which any part of such land lies, or may appoint three commissioners to divide all the land wheresoever situated. *R.S., c. 333, s. 49.*