

mortgagees as now recognised in the Court of Chancery in Upper Canada."

7. In lieu of fifty sixth section: "The doctrine of tacking having been found productive of injustice: therefore every deed executed subsequent to the first day of January, one thousand eight hundred and fifty one, a memorial whereof has been or may be duly registered, shall be deemed effectual both in Law and in Equity, according to the priority of the time of registering such memorial; and when no memorial of such deed has been duly registered, then such deeds shall be deemed effectual both at Law and in Equity, according to the priority of time of execution."

8. In lieu of fifty-eighth section: "When any Mortgage has been satisfied, the Registrar or his deputy on receiving from the person entitled to the amount of such Mortgage, or his Attorney, a certificate in the form A, duly proved by the oath of a subscribing witness in the same manner as herein provided for the proof of deeds and other instruments affecting lands."

8. The eleventh section of chapter ninety of the said Consolidated Statutes, intitled: *An Act respecting the transfer of Real Property and the liability of certain interests therein to execution*, is hereby repealed and the following substituted therefor: "Any estate, right title or interest in lands which, under the fifth section of this Act, may be conveyed or assigned by any party, shall be liable to seizure and sale under Execution against such party, in like manner and on like conditions as lands are by law liable to seizure and sale under execution, and the Sheriff selling the same may convey and assign the same to the purchaser in the same manner and with the same effect as the party might himself have done."

9. All other Statutes, parts and clauses of Statutes authorising the Registration of Judgments, Decrees and Orders for the payment of money in Upper Canada, are hereby repealed.

10. No judgment, rule, order or decree for the payment of money of any Court in Upper Canada, shall create or operate as a lien or charge upon lands or any interest therein.

11. Nothing in this Act contained shall be taken, read or construed to affect any suit or action on or before the eighteenth day of May, one thousand eight hundred and sixty-one, pending in any Court in Upper Canada, in which any Judgment Creditor is a party.

12. This Act shall take effect on the first day of September next, and in cases of Judgments heretofore registered all Writs of Execution against lands issued before the said first day of September, shall have priority according to the respective times of the registration of the Judgments on which they have issued or shall issue respectively.

#### CHAPTER XLV.

*An Act to remove all doubts as to the validity of certain Certificates issued by Judges of the County Courts to Insolvents, under the Act of 1856.*

[Assented to 18th May, 1861.]

Whereas under the authority of an Act of the Parliament of this Province, passed in the session held in the nineteenth and twentieth years of Her Majesty's reign, intitled: "An Act to extend the provisions of the Insolvent Debtors' Act of Upper Canada, and for the relief of a certain class of persons therein mentioned," many persons obtained from the several judges of the County Courts in Upper Canada the final order and discharge in the said act mentioned; And whereas many of the said persons so discharged, have again entered into business, and on the faith of such orders and discharges being effectual and final, have obtained credit, and therefore it is but right and just that any and all doubt should be removed as to the effect of such orders and discharges: Therefore, Her Majesty, &c., enacts as follows:

1. Each and every order made by any judge of any County Court in Upper Canada, while the said act was in force, which in effect purports to discharge any debtor to whom the same

was granted, from his debts contracted up to or before the date of the presentation of his petition under the provisions of the said act,—as also any certificate so granted which on the face of it professes to have been made under the said act and in pursuance of its provisions,—shall be valid and is hereby declared to have the effect of discharging such debtor from all liability for or in respect of any debt mentioned in the schedule of the said debtor, filed on the presentation of the petition upon which such certificate was granted; but this act shall not apply to any certificate which may have been rescinded by any such judge before the passing of this act, or to any certificate to rescind which proceedings had been instituted before the judge who granted the same, on or before the second day of April, in the year of our Lord one thousand eight hundred and sixty one.

#### SELECTIONS.

##### THE EXPEDIENCY OF ABOLISHING THE PRACTICE OF OPENING BIDDINGS IN THE COURT OF CHANCERY.

[Read by MR. SERJEANT WOOLRICH at a General Meeting of the Society for Promoting the Amendment of the Law, on Monday, January 14th, 1861.]

From very early times, certainly for more than a century, it has been the practice of the Court of Chancery to direct the re-sale of an estate, although an actual purchaser may be in existence. The estate having been sold under the order of the court, this practice is denominated, "opening the biddings." There are undoubtedly instances where a purchase effected through fraud or collusion has been set aside by a court of equity, but it is peculiar to that court to set aside a *bona fide* purchase upon an advance of price (which is the staple of the new bidding), to open the sale after the purchase has been confirmed by the master, or, as at present, after eight days succeeding the judge's certificate. The latitude allowed is considerable, and the discretion absolute. It is immaterial, with regard to the principle, whether the disappointed claimant were present or not at the sale, nor is any advanced sum in particular, as £10, to be considered as conferring any certain right to the privilege, nor even after the eight days, can a purchaser be entirely sure whether some sinister suggestion may not, at least embarrass him with an uncertain litigation, the court having, on the one hand, the unctious of keeping faith with purchasers, and on the other, an anxiety to help suitors by shielding them from the remotest chance of collusion. It may be said that these difficulties, which occasionally beset the purchaser in chancery, may have operated to throw a shade over the value of the property offered. By analogy to the case of copyholds, the price of which is calculated with reference to the expected fines and other burthens, it might be supposed that the buyer of a chancery estate would likewise make his tender in conformity with the prospects he might entertain of future disappointment or litigation. Hence on the other hand, the court might have interposed its anomalous jurisdiction in order to protect property from undue depreciation. It must however, be remembered, if any weight be assigned to this argument, that there is always a paper containing a reserved bidding, which remains in the hands of the auctioneer, until the close of the sale of each lot; so that it would seem to be a sufficient protection to produce this reserve without calling in aid the additional power which the courts have so long assumed. The question is, whether there are any claims on behalf of an intending purchaser in the Court of Chancery of a superior character to those of a person who has been disappointed of his wishes at an ordinary auction. There have been three elements in the consideration of this matter—the state of things before the confirmation of the report by the master; the position of vendor and purchaser after that approval; and the condition of the same parties under the