

to the value and not quantity, as he should have children then living, or having died, leaving a child or children then surviving; and forthwith to assign, transfer and convey to each of his said children, and the child or children of each deceased child or children as aforesaid, his, her, or their heirs, executors, administrators and assigns, one of such equal 5 portions of his estate, the child or children of any of his children so dying, taking the portion that his father or mother would have taken, had he or she been living at the time of such division. And the said testator by his said Will declared, that it should and might be lawful, subject to the reservations therein contained, for the said trustees or the survivor of them, or 10 the heirs, executors, administrators, or assigns of such survivor, or any substituted trustee or trustees, to sell and absolutely to dispose of all or any of his real or personal estate by private sale or public auction, and for cash or on credit, and upon such securities as to them should seem reasonable, and convey, assign and transfer such real or personal property to the 15 purchaser or purchasers thereof, by such deed or deeds, conveyances or assurances in the law as should or might be requisite for the vesting of such estate in the purchasers or purchaser thereof, in accordance with the contract or contracts respecting the same, and the intention of the parties. And whereas by a Codicil to the said Will, dated on or about the 13th 20 day of February, 1858, the said testator stated that his eldest son Charles Thompson had, for some time then past, been and still then was in the State of California, one of the United States of America; and that he the said testator was desirous that upon his return to this Province, he should be a trustee and executor of his Will and guardian of his children who 25 were under age, in addition to the trustees, executors, and guardians named therein; and that he had determined to nominate and appoint him co-executor, trustee, and guardian under his Will; accordingly the said testator did thereby direct and declare that his said Will should, when and so soon as his said son should return to this Province, be read and construed 30 in the same manner, and should have the same operation and effect in all respects, as if his said son had been named and appointed a trustee and executor thereof, and guardian as aforesaid, together with and in addition to the said George Penny Dickson and John Coleman Griffith. And in all other respects the said testator confirmed his said Will. And whereas 35 the said Will and Codicil were duly proved, approved and registered by the said George Penny Dickson and John Coleman Griffith, on the 30th day of March, 1858, in the then Court of Probate for Upper Canada, and the same have since been deposited in the Court of Chancery, pursuant to the Statute in such case made and provided. And whereas the said Charles 40 Thompson, he son, has not returned to this Province, and is supposed to be still in California, and he has never assumed the performance of the duties and responsibilities of the Trusteeship of the said Will and Codicil; and whereas since the decease of the said testator, it has been discovered that he the said testator was largely indebted to various parties in mortgage, 45 judgment and simple contract debts; such debts amounting in the whole to the sum of £15,000, or thereabouts. And whereas the said creditors are pressing their demands, and threaten and intend to sell the said property, designated as the Summer Hill Estate in the said Will, which the majority of them have the power of doing, as well through the said mortgages as 50 by executions, to a large amount, against lands, and writs of *venditioni exponas* have been placed in the hands of the Sheriff, and under which the Sheriff has advertised for sale the said Summer Hill estate, which sale, if forced and effected at the present time, under the authority of the Writs in the hands of the Sheriff, would be attended with great loss, 55