

pointed under the provisions of chapter thirty-nine of the Consolidated Statutes of Upper Canada, section one, for a union of Counties within this province, to continue to act as such Commissioners and to take and receive affidavits, affirmations and bail, in and for the Junior County, after its separation from such Union of Counties; Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of Ontario, enacts as follows:

1. All Commissioners appointed under the said Act, for any Union of Counties, and resident within the Junior County or any city set apart from a county for judicial purposes, at the time of the separation thereof from such union, have had since such separation, and still have and may exercise the same powers within such Junior County or city to take and receive affidavits, affirmations and bail, as if they had received their commissions or appointments, respectively for such Junior County at the time of the separation of such Union of Counties, anything in any law or statute to the contrary notwithstanding.

2. No such Commissioner shall after the passing of this Act have or exercise any such powers by virtue of such commission save in such Junior County.

AN ACT

For amending the Law of Auctions of Estates.

[Assented to March 4, 1868]

Whereas there is a conflict between the courts of Law and Equity in respect to the validity of sales by auction where a puffer has bid, although no right of bidding on behalf of the seller was reserved, and it is expedient that an end should be put to such conflict; and, whereas, as sales by auction are now conducted, many of such sales are illegal and could not be enforced against an unwilling purchaser, and it is expedient for the safety of both seller and purchaser that such sales should be so conducted as to be binding on both parties. Therefore, Her Majesty, &c., enacts as follows:

1. In construing this Act, "auctioneer," shall mean any person selling by public auction: "Land," shall mean any interest in any messuages, lands, tenements, or hereditaments of whatever tenure: "Puffer," shall mean a person appointed to bid on the part of the seller.

2. Unless in the particulars or conditions of sale by auction of any land, it is stated that such land will be sold subject to a reserved price, or to a right of the seller to bid, the sale shall be deemed and taken to be without reserve.

3. Upon any sale of land by auction, without reserve, it shall not be lawful for the seller or for a puffer to bid at such sale, or for the auctioneer to take, knowingly, any bidding from the seller or from a puffer.

4. Upon any sale of land by auction, subject to a right for the seller to bid, it shall be lawful for the seller, or any one puffer to bid at such auction, in such manner as the seller may think proper.

5. Nothing in this Act contained shall be taken to authorise any seller to become the purchaser at the sale.

6. This Act shall not apply to any sale which has taken place before its passage.

7. This Act may be cited for all purposes as "The Auctions of Estates Act (1868)."

SELECTIONS.

EXECUTION OF DEED.

The main question in this case was whether a certain deed had been duly executed. A deed is an instrument sealed and delivered, and it was contended, in *Xenos v. Wickham* that there had been no sufficient delivery of the deed. The plaintiffs, who were ship-owners, instructed an insurance broker to effect an insurance upon one of their vessels. The broker agreed with the defendants, who were an insurance company (now sued in the name of their chairman) to effect a policy of insurance in accordance with the instructions he had received from the plaintiffs. The defendants made out the policy and signed and sealed it, and left it in the hands of one of their clerks to be given to the plaintiffs, or their broker whenever they might choose to call for it. After the policy was so made, the broker, without any authority from the plaintiffs, told the defendants that the insurance was cancelled. The defendants thereupon returned the premium they had received in respect of the insurance, and treated the policy as cancelled. Subsequently the plaintiffs vessel was lost, and the plaintiffs claimed the amount insured under the policy. The defendants refused to pay—first, on the ground that the policy had never been duly delivered as a deed, inasmuch as it had always remained in their possession. Secondly, on the ground that, even if the instrument had been duly executed it had been cancelled by the consent and at the request of the plaintiffs. The House of Lords decided both of these points in favour of the plaintiffs. Five of the judges delivered opinions on the case in answer to the questions of the House. M. Smith and Willes, J.J., thought that the defendants were not liable on the policy while Pigott, B., Mellor and Blackburn, J.J., were of opinion that the defendants were liable. The House of Lords took this latter view of the case. The effect of the judgments of the Lord Chancellor and of Lord Cranworth is—that no technical act is necessary for the delivery of a deed. A deed may take effect although it is never delivered to the person who is to be benefited by it, or to any person on his behalf. "The efficacy of a deed depends upon its being sealed and delivered by the maker, not on his ceasing to retain possession