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No. 93.

2nd Session, 6th Parliament, 22 Victoria, 1859.

(PRIVATE BILL.)

BILL.

An Act to enable the Trustees of the Estate of Charles Thompson, deceased, to mortgage and sell certain portions of his real estate.

Received and read, first time, Monday, 28th
February, 1859.

Second reading, Wednesday, 2nd March, 1859.

MR. MORRISON.

WILLIAM SLADDEN,
Parliamentary Agent.

TORONTO :
PRINTED BY JOHN LOVELL, YONGE STREET.

An Act to enable the Trustees of the Estate of Charles Thompson, deceased, to mortgage and sell certain portions of his Real Estate.

WHEREAS Charles Thompson, late of Summer Hill, in the Township and County of York, Esquire, died on or about the 15th day of February, 1858, having first ~~duly~~ made and executed his last Will and Testament, in writing, dated on or about the 13th day of February, 1858, and thereby appointed his sons-in-law, George Penny Dickson, of Elgin Mills, in the said County of York, miller, and John Coleman Griffith, of the City of Toronto, merchant, executors and trustees thereof, and guardians of such of his children as at the time of his death should be under the age of twenty-one years, and the said Charles Thompson thereby gave, devised and bequeathed unto his said Trustees, and the survivor of them, or the heirs, executors, administrators, or assigns of such survivor, all his real and personal estate, of what kind or nature soever, and wheresoever situate (except such real and personal estate as he might hold as trustee.) To have and to hold to the said George Penny Dickson and John Coleman Griffith, and the survivor of them, and the heirs, executors, administrators, and assigns of such survivor, upon the trusts, and to and for the ends, intents and purposes hereinafter declared, of and concerning the same, that is to say, in trust, in the first place, to sell and dispose of so much and such parts of his said real and personal estate as might be necessary for the payment of his just debts (excepting such parts thereof as formed the Summer Hill estate, comprising Lot 17, in the 2nd Concession of York, whereon he then resided, and Lot 20, in the 3rd Concession, with their respective appurtenances, and the household furniture and effects therein, which his desire was, should not be sold, but should be reserved and used as a place of residence for his wife and children, until the youngest of his said children should have attained the age of twenty-one years, or being a girl have married under that age,) and with the proceeds of the same to pay and discharge all his just debts and funeral expenses; secondly, to pay to his wife Lucretia Williams Thompson, until the youngest of his said children should attain the age of twenty-one years, or being a daughter, should marry under that age, the interest, rents, issues and profits of such of his personal and real estate as should not have been sold for the payment of his debts, as the same should accrue due, to be applied by her for her and their maintainance, and the education and benefit of his said children, as she might think proper. Thirdly, upon trust, after payment of his said debts, and of the said interest, rents, issues, and profits, to his said wife; and when and so soon as the youngest of his said children shall have so attained their said age of twenty-one years, or married under that age, to divide, according to their judgment or the judgment of the survivor of them, the remainder of his estate, into as many equal portions, according

Preamble.
Recital of case

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

if not total ruin to the estate, and to the great prejudice and injury of the infant children of the said testator, and the other parties, adults, entitled under his Will. And whereas, under the said Will, the said George Penny Dickson and John Coleman Griffith have no power to sell or mortgage the said Summer Hill estate, but are by the language of the Will restricted from so doing. And whereas the other property of the said Charles Thompson, the testator, is composed principally of wild lands, and of various mortgages against which judgments are registered in the respective Counties in which the lands are situated, and the same are now unsaleable and unavailable; and even if they could be sold, would be wholly inadequate to pay off the debts of the said testator. And whereas Isabella Dickson, the wife of the said George Penny Dickson, Walter Thompson and Olive Stowell Griffith, the wife of the said John Coleman Griffith, are respectively children of the said Charles Thompson, and Legatees under the said Will, and the only other parties entitled and interested under or in the desires and bequests in the said Will are the said Charles Thompson and Doyle Thompson, two sons of the said testator, both of whom are now, and for several years past have been resident in California aforesaid, and Sandford Thompson an infant of the age of eighteen years and upwards, George Clarence Thompson an infant of the age of fifteen years and upwards, Janet McMurrich Thompson an infant of the age of eleven years and upwards, Alice Amelia McGregor Thompson an infant of the age of nine years and upwards, and James Patten Thompson an infant of the age of six years and upwards. And whereas the said George Penny Dickson, John Coleman Griffith, and the said Lucretia Williams Thompson, the widow of the said testator Charles Thompson, have, by their petition, prayed for the enactments hereinafter contained, and it is expedient to grant the prayer thereof; Therefore Her Majesty, &c., enacts as follows:

I. From and after the passing of this Act it shall and may be lawful for the said George Penny Dickson and John Coleman Griffith, or the survivor of them, and the heirs, executors, or administrators of such survivor, notwithstanding anything contained in the will of the said Charles Thompson to the contrary, or not contained therein as soon as conveniently may be, to sell or mortgage for a term of years, or partly to sell and partly to mortgage for a term of years for cash or upon credit, or partly for cash and partly credit, the fee simple and inheritance of the messuages, lands, tenements, hereditaments and real estate of the said Charles Thompson, deceased, forming the Summer Hill estate, comprising lot 17, in the 2nd concession of the County of York, and lot 20, in the 3rd concession of the said County of York, in the Province of Canada, with their and every of their appurtenancies, either entirely and altogether, or in parcels, and either by public auction or private contract, or partly by public auction and partly by private contract, with power to buy in the same at any sale, and to rescind any contract for sale of the said premises, or any part thereof, and to re-sell the same without being answerable for any loss which may happen thereby, and also with power to insert any special or other stipulations in any contract for or conditions of sale, either as to title or evidence of title or otherwise, and with power to execute, make, and do all such conveyances, surrenders, assurances and things for effectuating any and every such sale or mortgages as aforesaid as may be necessary or expedient, and to give and consent to all the ordinary and any special powers and authorities in such mortgages as to them or the survivor of them, or the heirs, executors or administrators of such survivor shall seem fit and requisite to

Executors of Will of Charles Thompson authorized to sell or mortgage certain real estate to the said late Charles Thompson belonging, and to have all powers necessary for that purpose.

carry into effect the objects of this Act, and also with power to agree or covenant to give in any mortgage to be executed by them or him, as such trustees or trustee, any per centage for the use of the money to be borrowed by them, as such trustees or trustee, as to them or him in their or his discretion shall seem fit, and also to agree to take and receive of any purchaser of them or him, as such trustees or trustee, of any of the lands by this Act authorised to be sold, such per centage per annum as they or he, in their or his discretion may, in any mortgage to be given to them or him, as such trustees or trustee, fix to be paid by any such purchaser of them as aforesaid during the period of any credit upon which any hereditaments may be sold for the amount of unpaid purchase money, and every such conveyance surrender, and assurance so made by the said George Penny Dickson and John Coleman Griffith, or the survivor of them, or the heirs, executors, or administrators of such survivor, shall be as valid and effectual as if the said Charles Thompson, the son of the said testator, and all and every other the parties legally or equitably interested in the said Summer Hill estate, or the proceeds arising from the conversion of the same, or the rents, issues, profits and income of the same either before or after conversion, had joined in and executed such conveyances, surrenders, or assurances, and it is hereby declared that the said George Penny Dickson and John Coleman Griffith, and the survivor of them, and the heirs, executors, administrators and assigns respectively of such survivor, shall by and out of the monies to arise from any sales or mortgages of the said real estate hereby authorised to be sold and mortgaged as aforesaid, pay first the funeral and testamentary expenses and debts of the said testator, Charles Thompson, in the due course of administration and according to their legal or equitable priorities; and secondly, to invest the residue of such monies in the name or names of them, the said George Penny Dickson and John Coleman Griffith, or the survivor of them or the executors or administrators of such survivor in or upon any of the public securities of the Province of Canada, or at interest upon real securities in the Province, with power from time to time, or at any time to alter, vary, or transpose such securities into or for others of the same or a like nature, at their or his discretion; And the said George Penny Dickson and John Coleman Griffith, or the survivor of them, or the heirs, executors or administrators of such survivor, shall stand and be possessed of and interested in the said trust, monies, stocks, funds and securities, and the interest, dividends, and annual produce thereof, upon trust to pay the income and proceeds thereof to the person or persons for the purposes and in the manner to whom but for the enactments herein contained, the rents and profits of the said Summer Hill Estate would have been payable or applicable under the trusts contained in the Will of the said testator, Charles Thompson, deceased; and to pay and divide the corpus of the said trust, monies, stocks, funds and securities, unto, amongst and between the persons who, and at the time when, but for the enactments herein contained, would or might have become entitled to a share or shares in the said Summer Hill Estate under any partition or division which would have been made in pursuance of such trusts.

Proceeds to be invested in certain securities.

Receipts of the two executors to be sufficient discharge for mortgage purchase of securities.

II. The receipt or receipts in writing of the said George Penny Dickson and John Coleman Griffith, or the survivor of them, or the heirs, executors or administrators of such survivor, or of the trustees or trustee for the time being acting in the execution of the trusts of the Will of the said testator, Charles Thompson, incorporated in this Act for the pur-

chase money of any property hereby authorized to be sold, or for any monies raised by way of mortgage authorized by this Act, or for any monies, stocks, funds or securities, paid or transferred to them or him under the authority of this Act, or in the execution of any of the trusts of the Will of the said testator, Charles Thompson, deceased, incorporated in this Act, shall be an effectual discharge or effectual discharges for such purchase or mortgage, or other monies, stocks, funds or securities; And the person or persons to whom the same shall be given, his, her or their heirs, executors, administrators or assigns, shall not afterwards be answerable or accountable for any loss, misapplication or non-application of such purchase or mortgage, or other monies, stocks, funds or securities, or be in anywise obliged or concerned to see to the application thereof.

Parties receiving same not bound to see to application of such purchases.

III. On any sale or mortgage made under the provisions of this Act, the surplus of the money, after payment of the funeral and testamentary expenses and debts of the said testator, Charles Thompson, which shall remain in the hands of the said George Penny Dickson, and John Coleman Griffith or the survivor of them, or the executors or administrators of such survivor, and the stocks, funds and securities upon which such surplus shall or may be from time to time invested, shall be considered for the purpose of devolution, of the same nature and character as the estate sold or mortgaged, and the heirs of the party or parties through whom title may have to be claimed, who would, in the ordinary devolution of the estate if the same had not been converted and changed from realty into personalty, have become entitled to some interest in the same as realty, after the discharge or failure of any of the trusts of the Will of the said testator, Charles Thompson, shall have the like interest therein as they would have had in the estate sold or mortgaged under the authority of this Act, if no sale or other disposition had been made thereof.

Proceeds for purpose of devolution to be considered of nature of estate sold or mortgaged.

IV. In order to insure the raising of the actual amount which may be required for the payment of the funeral and testamentary expenses and debts of the said testator, Charles Thompson, it shall and may be lawful for the said George Penny Dickson, and John Coleman Griffith, or the survivor of them, or the executors or administrators of such survivor, and without the necessity of any other person or persons whatever joining in the same, absolutely to sell and dispose of all and every or any of the mortgages which the said George Penny Dickson and John Coleman Griffith, or the survivor of them may take from any purchasers of the hereditaments hereby authorized to be sold, at such prices and subject to such abatements by way of discount from the par value of the same, as to them or him, in their or his discretion shall seem fit; Provided always, that the monies so to be raised by them or him by sales, and disposition of such mortgages or any of them shall be held by them or him upon the same trusts, and for the same ends, interests and purposes, and be applied and disposed of in the same way and manner as are by this Act declared, of the monies which may arise from the sale or sales, mortgage or mortgages of the lands, tenements and hereditaments by this Act authorized to be sold and mortgaged as aforesaid.

Executors may dispose of mortgages taken by them upon such terms as they may think proper.

Proviso.

V. The powers and interests herein given to the said George Penny Dickson and John Coleman Griffith for the purposes in this Act expressed, shall be shared in and jointly executed with them by the said

Conditions upon which Charles Thompson, the

son, may become a Trustee.

Charles Thompson, the son of the said testator, whenever under the provisions of the codicil to the Will of the said testator, his said son shall become a trustee of the property of the said testator, and accept probate of the said Will and codicil; And in order to constitute the said Charles Thompson a co-trustee with the said George Penny Dickson and John Coleman Griffith for the purposes of this Act, no conveyance, assurance or device shall be necessary or requisite beyond the performance of the conditions set forth in the Will of the said testator, and the acceptance of probate of the said Will and codicil by the said Charles Thompson, the son; whereupon, but not till then, he shall, for all the purposes of this Act be a joint trustee with the said George Penny Dickson and John Coleman Griffith for the purposes of this Act: And every new trustee to be hereafter appointed under the provisions of the Will of the said testator or otherwise, to act in the performance of the trusts of his said Will shall, from and after such appointment, be also trustee with the continuing or other trustees, if any, of the said Will, for the purpose of carrying into effect the ends, interests, and purposes of this Act, and no conveyance, assurance or device shall be necessary to effectuate such appointments to the trusteeship for the purposes of this Act.

Public Act.

VI. This Act shall be deemed a public Act.

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