

No. 206.

1st Session, 8th Parliament, 27th Victoria, 18

BILL.

An Act to enable the surviving trust under the Will of the late Lieutenant General Sir William Johnston, K. C. deceased, to sell certain lands in Canada belonging to the estate of the said General Johnston.

PRIVATE BILL.

Received and read 1st time, Thursday,
October, 1863.

Second reading, Monday, 5th October, 18

Mr. T. C. WALLBRIDGE

QUEBEC.

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An Act to enable the surviving Trustees under the Will of the late Lieutenant-General Sir William Johnston, K. C. B., deceased, to sell certain lands in Canada belonging to the estate of the said General Johnston.

- W**HEREAS Robert Johnston, of Laputa, in the County of Donegal, in Ireland, Esquire, and James Johnston, a Lieutenant-Colonel in Her Majesty's Eighth (The King's) Regiment of Foot, at present stationed at Gibraltar, Devises and Trustees named in the last will and testament and codicils thereto, of Lieutenant-General Sir William Johnston, Knight Commander of the Bath, late of the Town of Southampton, England, deceased, and Jane Johnston, of the same place, spinster, only surviving daughter of the said Lieutenant-General Johnston, have presented their petition to the Legislature of this Province of Canada, setting forth, amongst other things, that, by the will and codicils of the said late General Johnston, he devised certain lands situate in the County of Lincoln and the County of Middlesex, in Canada, unto the said petitioners, Robert Johnston and James Johnston and Lady Johnston, (since deceased), upon trust for his son the said James Johnston, for life, and after his decease, in case he should leave lawful issue of his body living at his decease, upon trust for his child or children then living, and the issue *per stirpes* of any deceased child, as tenants in common, and the heirs and assigns of such children, as in the said will is particularly set forth; but in case the said James Johnston should die without leaving lawful issue living at his decease, then upon trust for the testator's six daughters therein named, and their respective heirs and assigns, in equal shares as tenants in common, and in case of the death of any of his said daughters under age and without issue, that the shares original or accruing of them or her so dying, should be in trust for the others of his said daughters, their or her heirs and assigns for ever, as tenants in common, as in the said will is particularly set forth;
- And that Lady Johnston, widow of the testator, died without having married again, and that all the other children aforesaid of the said General Johnston, except the petitioners, James Johnston and Jane Johnston, have died, unmarried and without issue;
- That the petitioner, James Johnston, is unmarried and without issue, and that the petitioners, James and Jane Johnston, are the only persons in existence beneficially interested in the said lands in Canada;
- And that the said lands, being of great value, but almost entirely wild and unproductive, entail serious loss to the estate of the said General Johnston, by reason of the payment of large sums of money for taxes, employment of agents, care-takers and solicitors, and their travelling expenses, and that the petitioners are unable to reside in Canada;
- And that depredations are constantly committed upon the said lands, which are in many cases wholly denuded of timber, and that, owing to inattention of agents, a large portion of the said lands have been sold for taxes; And that from the scarcity of material for fencing and building, it would be too expensive for the interests of the estate to lease the said lands so as to produce a commensurate income;

Preamble.

Will of Lieut. Gen. Sir Wm. Johnston, in reference to Canada lands recited.]

Death of widow and surviving children, except petitioners, &c., &c.

And the petitioners submit that it was an oversight and error, and is a hardship, and ruinous to the estate, to be compelled to hold unproductive property which annually diminishes the income of those whom it was the testator's intention to benefit; and that it would be for the interests of the family to sell the lands and hold the purchase money subject to the trusts imposed by the testator in respect of the said lands, and they pray for authority so to do: 5

Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:—

Trustees invested with powers to sell lands in Canada belonging to the estate. 1. Robert Johnston and James Johnston, the trustees aforesaid, or the trustees for the time being, under the will and codicils of the said late Lieutenant-General Sir William Johnston, K. C. B., deceased, shall have power to sell and dispose of the lands owned by the estate of the said General Johnston, in Canada, either by public sale or by private contract, either in parcels or together, and either for cash or upon security by mortgage, or in such manner as to the trustees for the time being, shall seem best, with or without any special or other stipulations as to title or evidence or commencement of title or otherwise, and shall have power to buy in, rescind, or vary any contract for sale, and resell without being answerable for loss occasioned thereby. 15 20

And after payment of expenses, stand possessed of residue of purchase moneys, subject to trusts in will. 2. The trustees for the time being shall, for the purposes of this Act, have power to execute and do all such assurances, assignments, deeds, acts and things as they shall think fit; and shall, by and out of the moneys arising from such sale or sales, pay, and reimburse themselves for any expenses incurred in or about the execution of any of the trusts or powers now granted them, or granted them under the provisions of the said will and codicils thereto, and pay the expenses incurred in or about the obtaining of this Act, and shall stand possessed of the residue of the same moneys, upon such trusts, and with and subject to such powers as are declared by the said will and codicils in respect of the said lands in Canada thereby devised, and shall have power to invest the said moneys in such manner as to the trustees for the time being shall seem best for the benefit and advantage of the parties beneficially entitled under the said will to the lands aforesaid. 25 30

Purchaser not bound to see to application of purchase money. 3. No purchaser or purchasers shall be bound to enquire, or to see to the application of the said purchase moneys, or be responsible for their misapplication, and the receipts of the said trustees, for the time being, or of their agent or attorney duly authorized in that behalf, shall wholly absolve any purchaser or purchasers from the responsibility in respect of the application or misapplication of the same. 35 40

Public Act. 4. This Act shall be deemed a public Act.