



No. 41.

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2nd Session, 3rd Parliament, 12 Victoria, 1849.

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## BILL.

An Act to simplify the transfer of Real Property in Upper Canada, and to render certain Rights and Interests therein liable under execution.

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Received and Read a first time, Tuesday, 30th  
January, 1849.

Second Reading, Monday, 12th February, 1849,

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MR. RICHARDS.

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**BILL.**

An Act to simplify the transfer of Real Property in Upper Canada, and to render certain rights and interests therein liable under execution.

**F**OR simplifying the Assurance of Property by Deeds, and for facilitating the remedy of Judgment Creditors against the Property of their Debtors: Be it enacted, 5 &c. Preamble.

And it is hereby enacted by the authority of the same, That the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows, that is to say: the word "Land" shall extend to 10 messuages, lands, tenements, and hereditaments, whether corporeal or incorporeal, and to any undivided share thereof, and to any estate or interest therein, and to money subject to be invested in the purchase of 15 land or of any interest therein; the word "Conveyance" shall extend to a feoffment, grant, release, surrender, or other assurance of land; the word "Person" shall extend to a Corporation as well as individual; 20 and every word importing the singular number only, shall extend and be applied to several persons or things as well as to one person or thing; and every word importing the masculine gender only, shall extend and be 25 applied to a female as well as a male. 30

*Interpretation of certain words in this Act.*

II. And be it enacted, That every person may convey by any deed, without livery of seisin, or a prior lease, all such land as he 30

*Land may be conveyed by deed, without livery of seisin, or a prior lease.*

might before the passing of this Act have conveyed by lease and release; and every such conveyance shall take effect as if it had been made by lease or release.

Partitions, &c.,  
to be by deed.

III. And be it enacted, That no partition or exchange or assignment of any freehold or leasehold land shall be valid at law unless the same be made by deed. 5

Lease and surrenders in writing, to be by deed.

IV. And be it enacted, That no Lease in writing of any freehold or leasehold land, or surrender in writing of any freehold or leasehold land, shall be valid as a lease or surrender, unless the same shall be made by deed; but any agreement in writing to let or to surrender any such land shall be valid and take effect as an agreement to execute a lease or surrender; and the person who shall be in the possession of the land in pursuance of any agreement to let, may, from payment of rent or other circumstances, be construed to be a tenant from year to year. 10 15 20

Contingent interest may be conveyed by deed.

V. And be it enacted, That any person may convey, assign or charge by any deed, any such contingent or executory interest, right of entry for condition broken, or other future estate or interest as he shall be entitled to, or presumptively entitled to, in any freehold or leasehold land, or personal property, or any part of such interest, right or estate respectively; and every person to whom any such interest, right or estate shall be conveyed or assigned, his heirs, executors, administrators, or assigns, according to the nature of the interest, right, or estate, shall be entitled to stand in the place of the person by whom the same shall be conveyed or assigned, his heirs, executors, administrators or assigns, and to have the same interest, right or estate, or such part thereof as shall be conveyed or assigned to him, and the same actions, suits, and remedies for the same, as the person originally entitled thereto, his heirs, executors, or 25 30 35 40

administrators, would have been entitled to if no conveyance, assignment, or other disposition thereof had been made; provided that no person shall be empowered by this  
 5 Act to dispose of any expectancy which he may have as heir, or heir of the body inheritable, or as next of kin, under any Law  
 7 for the distribution of the estates of intestates, of a living person, nor any estate, right,  
 10 or interest to which he may become entitled under any deed thereafter to be executed, or under the will of any living person, and no deed shall by force of this Act bar or enlarge any estate tail: Provided also, that no  
 15 chose in action shall by this Act be made assignable at law.

VI. And be it enacted, That neither the word "Grant," nor the word "Exchange,"  
 in any deed, shall have the effect of  
 20 creating any warranty or right of re-entry, nor shall either of such words have the effect of creating any covenant by implication, except in cases where by any Act in force in Upper Canada, it is or shall be declared  
 25 that the word "Grant" shall have such effect.

No implied warrant to be created by "Grant" or "Exchange."

VII. And be it enacted, That no conveyance shall be voidable only when made by feoffment or other assurance, where the  
 30 same would be absolutely void if made by release or grant; and that no assurance shall create any estate by wrong, or have any other effect than the same would have if it were to take effect as a release, surrender,  
 35 grant, lease, bargain and sale, or covenant to stand seized, as the case may be.

No conveyance to operate by wrong, or have greater effect than a release.

VIII. And be it enacted, That after the time at which this Act shall come into operation, no estate in land shall be created by  
 40 way of contingent remainder; but every estate which before that time would have taken effect as a contingent remainder, shall take effect (if in a will or codicil) as an ex-

Contingent remainders abolished, &c.

ecutory devise, and (if in a deed) as an executory estate of the same nature, and having the same properties as an executory devise; and contingent remainders existing under deeds, wills or instruments, executed or made before the time when this Act shall come into operation, shall not fail, or be destroyed or barred, merely by reason of the destruction or merger of any preceding estate, or its determination by any other means than the natural effluxion of the time of such preceding estate, or some event on which it was in its creation limited to determine.

Executor or administrator of mortgagee empowered, on discharge of mortgage, to convey the legal estate vested in the heir or devisee.

IX. And be it enacted, That when any person entitled to any freehold land by way of mortgage, has or shall have departed this life, and his executor or administrator is or shall be entitled to the money secured by the mortgage, and the legal estate in such land is or shall be vested in the heir or devisee of such mortgagee, or the heir, devisee or other assign of such heir or devisee, and possession of the land shall not have been taken by virtue of the mortgage, nor any action or suit be depending, such executor or administrator shall have power, upon payment of the principal money and interest due to him on the said mortgage, to convey by deed or surrender (as the case may require) the legal estate which became vested in such heir or devisee; and such conveyance shall be as effectual as if the same had been made by any such heir or devisee, his heirs or assigns.

Receipts of trustees to be effectual discharges.

X. And be it enacted, That the *bond fide* payment to and the receipt of any person to whom any money shall be payable upon any express or implied trust or for any limited purpose, or of the survivors or survivor of two or more mortgagees or holders, or the executors or administrators of such survivor, or their or his assigns, shall effectually discharge the person paying the same from seeing to the application or being answer-

able for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security.

XI. And be it enacted, That it shall not Indenting a deed unnecessary.  
 5 be necessary in any case to have a deed indented; and that any person, not being a party to any deed, may take an immediate benefit under it in the same manner as he might under a Deed Poll.

10 XII. And be it enacted, That when the reversion of any land, expectant on a lease, shall be merged in any remainder or other reversion or estate, the person entitled to the estate into which such reversion shall The remedies for the rent and covenants in a lease, not to be extinguished by the merger of the immediate reversion  
 15 have merged, his heirs, executors, administrators, successors and assigns, shall have and enjoy the like advantage, remedy, and benefit against the lessee, his heirs, successors, executors, administrators and assigns,  
 20 for nonpayment of the rent, or for doing of waste or other forfeiture, or for not performing conditions, covenants, or agreements contained and expressed in his lease, demise or grant, against the lessee, farmer or  
 25 grantee, his heirs, successors, executors, administrators and assigns, as the person who would for the time being have been entitled to the mesne reversion which shall have merged, would or might have had and en-  
 30 joyed if such reversion had not been merged.

XIII. And be it enacted, That any estate, Interest in lands conveyable under this Act to be liable to seizure under execution.  
 right, title or interest in lands which, under the provisions of this Act, might be validly  
 35 conveyed or assigned by any party, shall be liable to seizure and sale under any writ of execution against such party, in like manner and on like conditions as lands of such party; and the Sheriff selling the same may  
 40 convey and assign the same to the purchaser in like manner and with like effect as such party might himself have done; and any

Provided,

such estate, right, title or interest as aforesaid shall be sufficiently described in any advertisement or notice of such sale given by the Sheriff or in any deed of conveyance or assignment to be executed by him, by the words "all the estate, title or interest of [*describing the party*] in or to [*describing the lands*]" ; Provided always, that if such party be not in possession of the lands, it shall not be requisite that the Sheriff should actually seize or go to the same, but the registry of a certificate of the judgment, in the Registry Office of the County in which the lands shall be situate, shall bind and affect such lands, or all the estate, right, title or interest of the judgment debtor to or in the same, to the amount of such judgment, with interest and costs, in favor of the judgment creditor, and in preference to any subsequent purchaser or incumbrancer, and the publication of the Sheriff's advertisement or notice of the seizure and intended sale of such lands, or of all the estate, right, title or interest of the judgment debtor in or to the same, shall render void and of no effect any conveyance or assignment thereof to be made by such judgment debtor after such publication and before the judgment shall be satisfied, discharged or otherwise rendered inoperative against the judgment debtor.

Commencement of this Act.

XIV. And be it enacted, That this Act shall commence and take effect upon, from and after the                      day of one thousand eight hundred and                      and shall not extend to any deed, act or thing executed or done, or (except so far as regards the provisions herein before contained as to existing contingent remainders) to any estate, right or interest created, before the                      day of                      one thousand eight hundred and

Act to extend only to U. C.

XV. And be it enacted, That this Act shall extend only to Upper Canada