

No. 17.

4th Session, 3rd Parliament, 14 Victoria, 1851.

BILL.

An Act for the relief of Mortgagees.

Received and read a first time, Monday, 26th
May, 1851.

Second Reading, Monday, 2nd June, 1851.

Hon. Mr. CAMERON (of Cornwall).

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BILL.

An Act for the relief of Mortgagees.

WHEREAS it is expedient that relief should be afforded to Mortgagees of freehold and leasehold property in certain cases in which they are not sufficiently protected by law; Be it therefore enacted, &c. Preamble.

5 That it shall and may be lawful for any Mortgagee of freehold or leasehold property, or any assignee or assignees of such Mortgagee, to take and receive from the Mortgagor or assignee of such Mortgagor, a release of the equity of redemption in such property, or to purchase the same under any power of sale in his Mortgage, or any judgment or decree, without thereby merging the Mortgage debt as against any subsequent Mortgagee or registered judgment Creditor of the same property. Mortgagee of freehold property, &c. may receive release of equity of redemption &c., without merger of his debt.

15 **II.** And be it enacted, That whenever any prior Mortgagee or assignee or assignees of such prior Mortgagee of such property as aforesaid, shall take a release of the equity of redemption of the Mortgagor or his assignee in such mortgaged property as aforesaid, or shall purchase 20 the same under any power of sale in his mortgage or any judgment or decree, no subsequent Mortgagee or his assignee, or registered judgment Creditor shall be entitled to foreclose or sell such property without redeeming or selling subject to such prior Mortgagee or his assignee, in 25 the same manner as if such prior Mortgagee or his assignee had not taken, received or purchased such equity of redemption of the Mortgagor or his assignee. When prior Mortgagee shall take release of equity of redemption, &c. subsequent Mortgagee, &c. not entitled to foreclose or sell property without redeeming, &c.

30 **III.** And be it enacted, That nothing in this Act contained shall be construed to affect any priority or claim which any Mortgagee or judgment Creditor shall or may have or be entitled to under any Act in force relating to the registry of titles to land. Priority of any Mortgagee not to be affected by this Act.

35 **IV.** And be it enacted, That on any proceeding for foreclosure by, or redemption against any assignee or assignees of any Mortgagee, the statement of the mortgage account, under the oath of such assignee or assignees, shall be sufficient *prima facie* evidence of the state of such account, and no affidavit or oath shall be required from the Mortgagee or any intermediate assignee denying any payment to such Mortgagee or intermediate 40 assignee, unless the Mortgagor or his assignee, or the party proceeding to redeem, shall deny the correctness of such statement of account by oath or affidavit. In proceedings for foreclosure, &c. state of Mortgage account may be proved *prima facie* by statement on oath of assignee of Mortgagee.

45 **V.** And be it enacted, That this Act shall extend only to Upper Canada. Extent of Act.