
1st Session, 8th Parliament, 27 Victoria, 1863.

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BILL

An Act respecting short forms of Mortgages
in Upper Canada.

Received and read, first time, Tuesday, 25th
August, 1863.

Second reading, Friday, 28th August, 1863.

Hon. Mr. FERGUSSON BLAIR.

QUEBEC:

PRINTED FOR THE CONTRACTORS BY HUNTER,
ROSE & LEMIEUX, ST. URSULE STREET.

BILL.

An Act respecting short forms of Mortgages in Upper Canada.

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

1. When a mortgage of real property in Upper Canada, made according to the forms set forth in the first schedule to this Act, or any other such mortgage expressed to be made in pursuance of this Act, or referring thereto, contains any of the forms or words contained in column one of the second schedule to this Act, and distinguished by any number therein, such mortgage shall be taken to have the same effect, and be construed as if it contained the form of words contained in column two of the same schedule, and distinguished by the same number as is annexed to the form of words used in such mortgage ; but it shall not be necessary in any such mortgage to insert any such number.

Where words of column one of the second schedule are employed the mortgage to have the same effect as if the words in column two were inserted.

2. Any such mortgage or part of such mortgage which fails to take effect by virtue of this Act shall, nevertheless, be as effectual to bind the parties thereto, so far as the rules of law and equity will permit, as if this Act had not been made.

Mortgages failing to take effect under this Act to be as valid as if Act not made

3. Every such mortgage, unless an exception be specially made therein shall be held and construed to include all houses, out-houses, edifices, barns, stables, yards, gardens, orchards, commons, trees, woods, underwoods, mounds, fences, hedges, ditches, ways, waters, water-courses, lights, liberties, privileges, easements, profits, commodities, emoluments, hereditaments and appurtenances whatsoever to the lands therein comprised belonging, or in any wise appertaining, or with the same demised, held, used, occupied and enjoyed, or taken or known as part or parcel thereof, and if the same purports to convey an estate in fee, also the reversion and reversions, remainder and remainders, yearly and other rents, issues and profits of the same lands, and of every part and parcel thereof, and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim and demand whatsoever at law and in equity of the grantor in, to, out of or upon the same lands and every part and parcel thereof, with their and every of their appurtenances, subject always to the reservations, limitations, provisos and conditions, contained in the grant of such lands from the Crown.

Mortgage to include all houses, &c., and the reversion, and all the estate, &c.

4. In the construction of this Act and schedules thereto, unless there be something in the subject or context repugnant to such construction, the word "lands" shall extend to all freehold tenements and hereditaments whether corporeal or incorporeal or any undivided part or share therein respectively; and the word "party" shall mean and include any body politic, corporate, or collegiate, as well as an individual.

Construction of words "lands" and "party."

5. In taxing any bill for preparing and executing any mortgage under this Act, the taxing officer, in estimating the proper sum to be charged therefor, shall consider not the length of such mortgage, but the skill and labor employed, and responsibility incurred in the preparation thereof.

Remuneration for mortgage under this act not to be by length only.

Schedules, etc., to form part of Act.

6. The schedules and the directions and forms therein contained, shall be deemed parts of this Act.

SCHEDULES TO WHICH THIS ACT REFERS.

THE FIRST SCHEDULE.

This Indenture, made the _____ day of _____ one thousand eight hundred and _____, in pursuance of the Act respecting short forms of mortgages, between [here insert names of parties and recitals, if any] witnesseth, that in consideration of _____ of lawful money of Canada, now paid by the said [Mortgagee or Mortgagees] to the said [Mortgagor or Mortgagors,] the receipt whereof is hereby acknowledged, the said [Mortgagor or Mortgagors] doth [or do] grant and mortgage unto the said [Mortgagee or Mortgagees] his [her or their] heirs and assigns for ever, all [parcels] [here insert provisos, covenants or other provisions.]

In witness whereof the said parties hereto have hereunto set their hands and seals.

TITLE SECOND SCHEDULE.

Directions as to the forms in this schedule, in cases of mortgage of real property.

1. Parties who use any of the forms in the first column of this schedule, may substitute for the words "Mortgagor or Mortgagors," or "Mortgagee or Mortgagees." any name or names, and in every such case corresponding substitutions shall be taken to be made in the corresponding forms in the second column.

2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in any of the forms in the first column of this schedule, and corresponding changes shall be taken to be made in the corresponding forms in the second column.

3. Such parties may introduce into, or annex to any of the forms in the first column, any express exceptions from or other express qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding forms in the second column.

COLUMN ONE.

COLUMN TWO.

1. And the said [A. B.] wife [or wives] of the said Mortgagor [or Mortgagors] hereby bars [or bar] her [or their] dower in the said lands.

1. And the said [A. B.] wife [or wives] of the said Mortgagor [or Mortgagors] for and in consideration of the sum of _____ of lawful money of Canada, to her in hand paid by the said Mortgagee, [or Mortgagees] at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, hath granted and released, and by these presents doth grant and release unto the said Mortgagee [or Mortgagees] his [her or their] heirs and assigns all her [or their] dower, and right and title which, in the event of surviving her [or their] said husband [or husbands] she [or they] might or would have to dower, in, to, or out of the lands and premises here by conveyed or intended so to be.

2. Provided—This mortgage to be void on payment of [amount of Principal money] of lawful money of Canada, with interest at [rate of interest] per cent. as follows: [terms of payment of principal and interest] and taxes and performance Statute of labor.

2. Provided always, and these presents are upon this express condition, that if the said Mortgagor [or Mortgagors] his [her or their] heirs, executors, administrators or assigns, or any of them, do and shall, well and truly pay or cause to be paid unto the said Mortgagee [or Mortgagees] his [her

[or their] executors, administrators or assigns, the just and full sum of [amount of principal money] of lawful money of Canada, with interest thereon, at the rate of [rate of interest] per cent. per annum on the day [or days] and time, [or times] and in manner following, that is to say, [terms of payment of principal and interest] without any deduction, defalcation or abatement out of the same, for, or in respect of any taxes, rates, levies, charges, rents, assessments, statute labor or other impositions, whatsoever already rated, charged, assessed or imposed, or hereafter to be rated, charged, assessed or imposed by authority of Parliament or otherwise howsoever, on the said lands and tenements, hereditaments and premises, with the appurtenances, or on the said Mortgagee [or Mortgagees] his [her or their] heirs, executors, administrators or assigns, in respect of the said premises, or of the said money or interest, or any other matter or thing relating to these presents, and until such default as aforesaid, shall and will, well and truly pay, do and perform or cause or procure to be paid, done and performed all matters and things in this proviso hereinbefore set forth, then these presents, and everything in the same contained, shall be absolutely null and void.

3. The said Mortgagor [or Mortgagors] covenants [or covenant] with the said Mortgagee [or Mortgagees]

3. And the said Mortgagor [or Mortgagors] doth [or do] hereby for himself [herself or themselves] his [her or their] heirs, executors and administrators, covenant, promise and agree to and with the said Mortgagee, [or Mortgagees] his [her or their] heirs or assigns, in manner following, that is to say:

4. That the Mortgagor [or Mortgagors] will pay the mortgage money and interest, and observe the above proviso.

4. That the said Mortgagor [or Mortgagors] his [her or their] heirs, executors, administrators or some or one of them shall, and will well and truly pay or cause to be paid unto the said Mortgagee, [or Mortgagees] his [her or their] heirs, executors, administrators or assigns, the said sum of money in the above proviso mentioned, with interest for the same as aforesaid, at the day [or days] and time [or times] and in manner above limited for payment thereof, and shall and will in everything, well, faithfully and truly do, observe, perform, fulfil and keep all and singular the provisions, agreements and stipulations in the said above proviso particularly set forth according to the true intent and meaning of these presents, and of the said above proviso.

5. That the Mortgagor [or Mortgagors] has [or have] a good title in fee simple to the said lands.

5. And also that the said mortgagor [or mortgagors] at the time of the sealing and delivery hereof is, [or are] and stands [or stand] solely, rightfully and lawfully seized of a good, sure, perfect, absolute and indefeasible estate of inheritance, in fee simple of and in the lands, tenements, hereditaments, and all and singular other the premises hereinbefore described, with their and every of their appurtenances, and of and in every part and parcel thereof, without any manner of trusts, reservations, limitations, provisos or conditions except those contained in the original grant thereof from the Crown or any other matter or thing to alter, charge, change, incumber or defeat the same.

6. And that he [or they] has [or have] the right to convey the said lands to the said grantee [or grantees.]

7. And that on default the Mortgagee [or Mortgagees] shall have quiet possession of the said lands.

8. Free from all incumbrances.

9. And that the said mortgagor [or mortgagors] will execute such further assurances of the said lands as may be requisite.

6. And also, that the said Mortgagor [or Mortgageors] now hath [or have] in himself [herself or themselves] good right, full power and lawful and absolute authority to convey the said lands, tenements, hereditaments, and all and singular other the premises hereby conveyed or hereinbefore mentioned or intended so to be, with their and every of their appurtenances unto the said Mortgagee [or Mortgagees] his [her or their] heirs and assigns, in manner afore said, and according to the true intent and meaning of these presents.

7. And also that from and after default shall happen to be made of or in the payment of the said sum of money in the said above proviso mentioned, or the interest thereof, or any part thereof, or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents, and of the said proviso, then, and in every such case it shall and may be lawful to and for the said Mortgagee [or Mortgagees] his [her or their] heirs and assigns peaceably and quietly to enter into, have, hold, use, occupy, possess and enjoy the aforesaid lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, with the appurtenances, without the let, suit, hindrance, interruption or denial of him [her or them] the said mortgagor [or Mortgageors], his [her or their] heirs or assigns, or any other person or persons whomsoever.

8. And that free and clear and freely and clearly acquitted, exonerated and discharged of and from all arrears of taxes and assessments whatsoever due or payable upon or in respect of the said lands, tenements, hereditaments and premises or any part thereof, and of and from all former conveyances mortgages, rights, annuities, debts, judgments, executions and recognizances, and of and from all manner of other charges or incumbrances whatsoever.

9. And also that from and after default shall happen to be made of or in the payment of the said sum of money in the said proviso mentioned or the interest thereof or any part thereof or of or in the doing, observing, performing, fulfilling or keeping of some one or more of the provisions, agreements or stipulations in the said above proviso particularly set forth, contrary to the true intent and meaning of these presents and of the said proviso, then and in every such case the said mortgagor [or mortgagors] his [her or their] heirs and assigns and all and every other person or persons whatsoever, having, or lawfully claiming, or who shall or may have or lawfully claim, any estate, right, title, interest or trust of in, to, or out of the lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be with the appurtenances or any part thereof by, from, under or in trust for him the said mortgagor [or mortgagors] shall and will from time to

time and at all times thereafter, at the proper costs and charges of the said mortgagee [or mortgagees] his [her or their] heirs and assigns make, do, suffer and execute, or cause or procure to be made, done, suffered and executed, all and every such further and other reasonable act or acts, deed or deeds, services, conveyances and assurances in the law for the further, better and more perfectly and absolutely conveying and assuring the said lands, tenements, hereditaments and premises with the appurtenances unto the said mortgagee [or mortgagees] his [her or their] heirs and assigns, as by the said mortgagee [or mortgagees] his [her or their] heirs and assigns, or his [her or their] counsel learned in the law shall or may be lawfully and reasonably devised, advised or required, so as no person who shall be required to make or execute such assurances shall be compelled for the making or executing thereof to go or travel from his [or her] usual place of abode.

10. And also that the said mortgagor [or mortgagors] will produce the title deeds enumerated hereunder and allow copies to be made at the expense of the mortgagee [or mortgagees.]

10. And also that the said mortgagor [or mortgagors] and his [her or their] heirs shall and will, unless prevented by fire or other inevitable accident, from time to time, and at all times hereafter, at the request and proper costs and charges in the law of the said mortgagee [or mortgagees] his [her or their] heirs or assigns, at any trial or hearing in any action or suit at law or in equity or other judicature or otherwise as occasion shall require, produce all, every or any deed, instrument or writing hereunder written for the manifestation, defence and support of the estate, title and possession of the said mortgagee [or mortgagees] his [her or their] heirs and assigns of, in, to or out of the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be, and at the like request, costs and charges shall and will make and deliver or cause or procure to be made and delivered unto the said mortgagee [or mortgagees] his [her or their] heirs and assigns true and attested or other copies or abstracts of the same deeds, instruments and writings respectively or any of them, and shall and will permit and suffer such copies and abstracts to be examined and compared with the said original deeds by the said mortgagee [or mortgagees] his [her or their] heirs and assigns.

11. And that the said mortgagor [or mortgagors] has [or have] done no act to encumber the said lands.

11. And also that the said mortgagor [or mortgagors] hath [or have] not at any time heretofore made, done, committed, executed or wilfully or knowingly suffered any act, deed, matter or thing whatsoever whereby or by means whereof the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be or any part or parcel thereof, are, is or shall or may be in any wise impeached, charged, affected or incumbered in title, estate or otherwise howsoever.

12. And that the said mortgagor [or mortgagors] will insure the buildings on the said lands to the amount of not less than
currency.

12. And also that the said mortgagor [or mortgagors] or his [her or their] heirs shall and will forthwith insure, unless already insured, and during the continuance of this

security keep insured against loss or damage by fire, the messuages and buildings erected on the said lands, tenements, hereditaments and premises hereby conveyed or mentioned, or intended so to be, in the sum of

of lawful money of Canada, at the least, in some respectable insurance office, to be approved of by the said mortgagee [or mortgagees,] his [her or their] heirs or assigns, and pay all premiums and sums of money necessary for such purpose, as the same shall become due, and will on demand assign, transfer, and deliver over unto the said mortgagee [or mortgagees,] his [her or their] heirs, executors, administrators or assigns, the policy or policies of assurance, receipt and receipts thereto appertaining.

13. And the said mortgagor [or mortgagors] doth [or do] release to the said mortgagee [or mortgagees,] all his [her or their] claims upon the said lands subject to the said proviso.

13. And the said mortgagor [or mortgagors] hath [or have] released, remised, and forever quitted claim, and by these presents doth [or do] release, remise, and forever quit claim unto the said mortgagee [or mortgagees] his [her or their] heirs and assigns, all and all manner of right, title, interest, claim and demand whatsoever, both at law and in equity of, unto and out of the said lands, tenements, hereditaments, and premises hereby conveyed or mentioned, or intended so to be and every part and parcel thereof, so as that neither the said mortgagor [or mortgagors] his [her or their] heirs, executors, administrators, or assigns, shall or may at any time hereafter have claim, pretend to, challenge or demand the said lands, tenements, hereditaments and premises, or any part thereof, in any manner howsoever subject always to the said above proviso; but the said mortgagee (or mortgagees) his (her or their) heirs or assigns, and the said lands, tenements, hereditaments and premises, subject as aforesaid, shall from henceforth forever hereafter be exonerated and discharged of and from all claims and demands whatsoever, which the said mortgagor [or mortgagors] his [her or their] heirs or assign might or could have, upon the said mortgagee [or mortgagees] his [her or their] heirs or assigns in respect of the said lands, tenements, hereditaments and premises, or upon the said lands, tenements, hereditaments and premises.

14. Proviso, that the said mortgagee [or mortgagees] on default of payment for months, may enter on and lease or sell the said lands.

14. Provided always, and it is hereby declared and agreed by and between the parties to these presents, that if the said mortgagor [or mortgagors] his [her or their] heirs, executors or administrators shall make default in any payment of money or interest according to the true intent and meaning of these presents, and of the proviso in that behalf hereinbefore contained and calendar months shall have thereafter elapsed, without such payment being made [of which default, as also of the continuance of the said principal money and interest, or some part thereof, on this security, the production of these presents shall be conclusive evidence] it shall and may be lawful to and for the said mortgagee [or mortgagee] his [her or their] heirs or assigns, without any further consent or concurrence of the said mortgagor [or mortgagors], his

[*her or their*] heirs or assigns to enter into possession of the said lands, tenements, hereditaments and premises hereby conveyed, or mentioned or intended so to be, and to receive and take the rents, issues and profits thereof, and whether in or out of possession of the same, to make any lease or leases thereof, or of any part thereof as he [*she or they*] shall think fit, and also to sell and absolutely dispose of the said lands, tenements, hereditaments, and premises hereby conveyed or mentioned, or intended so to be, or any part or parts thereof, with the appurtenances by public auction or private contract, or partly by public auction and partly by private contract, as to him [*her or them*] shall seem meet, and to convey and assure the same when so sold unto the purchaser or purchasers thereof, his, [*her or their*] heirs and assigns, or as he, she or they shall direct and appoint, and with full power to buy in or to rescind and contract for the sale thereof or of any part thereof, and to resell the same or any part thereof without being responsible for any loss from the same, and to execute and do all such assurances, acts, matters and things as may be found necessary for the purposes aforesaid; and the said mortgagee [*or mortgagees*] shall not be responsible for any loss which may arise by reason of any such leasing or sale as aforesaid, unless the same shall happen by reason of his [*her or their*] wilful neglect or default; and it is hereby further agreed between the parties to these presents, that, until such sale or sales shall be made as aforesaid, the said mortgagee [*or mortgagees*] his [*her or their*] heirs, executors, administrators or assigns shall and will stand and be possessed of and interested in the rents and profits of the said lands, tenements, hereditaments and premises in case he [*she or they*] shall take possession of the same, on any default as aforesaid, and after such sale or sales shall stand and be possessed of and interested in the moneys to arise and be produced by such sale or sales upon trust in the first place to pay and satisfy the costs and charges of preparing for and making sales, leases and conveyances as aforesaid, and all other costs and charges, damages and expenses which the said mortgagee [*or mortgagees*] his [*her or their*] heirs, executors, administrators or assigns, shall bear, sustain or be put to for taxes, rent, insurances and repairs, and all other costs and charges which may be incurred in and about the execution of any of the trusts in him [*her or them*] hereby reposed, and in the next place to pay and satisfy the principal sum of money and interest hereby secured or mentioned or intended so to be, or so much thereof as shall remain due and unsatisfied up to and inclusive of the day when the said principal sum shall be paid and satisfied; and after full payment and satisfaction of all such sums of money and interest as aforesaid, upon this further trust that the said mortgagee [*or mortgagees*] his [*her or their*] heirs, executors, administrators or assigns do and shall pay the surplus, if any, to the said mortgagor [*or mortgagors*] his [*her or their*] executors, administrators or assigns, or as he [*she or they*] shall direct and appoint,

and shall also, in such event, at the request costs and charges in the law of the said mortgagor [or mortgagors] his [her or their] heirs or assigns, convey and assure unto the said mortgagor [or mortgagors] his [her or their] heirs or assigns, or to such person or persons as he [she or they] shall direct and appoint, all such parts of the said lands, tenements, hereditaments and premises as shall remain unsold for the purposes aforesaid, freed and absolutely discharged of and from all estate, lien, charge and incumbrance whatsoever by the said mortgagee [or mortgagees] his [her or their] heirs or assigns in the meantime, so as no person who shall be required to make or execute any such assurances, shall be compelled for the making thereof to go or travel from his [or her] usual place of abode; provided, always, and it is hereby further declared and agreed by and between the parties to these presents, that notwithstanding the power of sale, and other the powers and provisions contained in these presents, the said mortgagee [or mortgagees] his [her or their] heirs or assigns shall have and be entitled to his [her or their] right of foreclosure of the equity of redemption of the said mortgagor [or mortgagors] his [her or their] heirs and assigns in the said lands, tenements, hereditaments and premises as fully and effectually as he [she or they] might have exercised and enjoyed the same in case the power of sale and the other former provisos and trusts incident thereto had not been herein contained.

15. Proviso that in default of the payment of the interest hereby secured the principal hereby secured shall become payable.

15. Provided always, and it is hereby further expressly declared and agreed by and between the parties to these presents that if any default shall at any time happen to be made of or in the payment of the interest money hereby secured or mentioned or intended so to be or any part thereof then and in such case the principal money hereby secured or mentioned or intended so to be and every part thereof shall forthwith become due and payable in like manner and with the like consequences and effects to all intents and purposes whatsoever as if the time herein mentioned for payment of such principal money had fully come and expired, but that in such case the said mortgagor [or mortgagors] his [her or their] heirs or assigns shall on payment of all arrears under these presents with lawful costs and charges in that behalf at any time before any judgment in the premises recovered at law or within such time as by the practice of equity relief therein could be obtained, be relieved from the consequences of non-payment of so much of the money secured by these presents or mentioned or intended so to be as may not then have become payable by reason of efflux of time.

16. Proviso, that until default of payment the mortgagor [or mortgagors] shall have quiet possession of the said lands.

16. And provided also, and it is hereby further expressly declared and agreed by and between the parties to these presents, that until default shall happen to be made of or in the payment of the said sum of money hereby secured or mentioned, or intended so to be, or the interest thereof, or the doing, observing, performing, fulfilling

or keeping some one or more of the provisions, agreements or stipulations herein set forth, contrary to the true intent and meaning of these presents, it shall and may be lawful to and for the said Mortgagor [or *Mortgagors*] his [*her or their*] heirs and assigns, peaceably and quietly to have, hold, use, occupy, possess and enjoy the said lands, tenements, hereditaments and premises hereby conveyed or mentioned or intended so to be with their and every of their appurtenances, and receive and take the rents, issues and profits thereof to his [*her or their*] own use and benefit, without let, suit, hindrance, interruption or denial of or by the said *Mortgagor or Mortgagees*] his [*her or their*] heirs, executors, administrators or assigns, or of or by any other person or persons whomsoever lawfully claiming, or who shall or may lawfully claim by, from, under or in trust for him, her, them or any or either of them.