

No. 77.

2nd Session, 7th Parliament, 26 Victoria, 1868

BILL.

An Act to provide for the sale of lands of deceased debtors, under execution.

Received and read, first time, Monday, 2nd
March, 1868.

Second reading, Friday, 6th March, 1868.

Hon. Sol. Gen. WILSON.

QUEBEC:

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An Act to provide for the sale of lands of deceased debtors under execution in Upper Canada.

WHEREAS by an Act of the Imperial Parliament, passed in the fifth Preamble. year of His Majesty, King George the Second, chapter seven, intitled "An Act for the more easy recovery of debts in His Majesty's plantations and Colonies in America," it is among other things enacted, 5 "That from and after the twenty-ninth day of September, one thousand seven hundred and thirty-two, the houses, lands, negroes and other hereditaments and real estates situate or being within any of the said plantations, belonging to any person indebted, shall be liable to and chargeable with all just debts, duties and demands, of what 10 nature or kind soever, owing by any such person to His Majesty or any of his subjects, and shall and may be assets for the satisfaction thereof in like manner as real estates are by the law of England liable to the satisfaction of debts due by bond or other specialty, and shall be subject to the like remedies, proceedings and process in any 15 court of law or equity in any of the said plantations respectively, for seizing, extending, selling or disposing of any such houses, lands, negroes and other hereditaments and real estates towards the satisfaction of such debts, duties and demands, and in like manner as personal estates in any of the said plantations respectively are seized, extended, sold 20 or disposed of for the satisfaction of debts."

And whereas it has been determined under the said Act that the fee simple lands of a deceased debtor which have descended upon his heir at law, or which have been devised by the debtor, may be seized and sold under an Execution issued upon a Judgment obtained against the 25 personal representative of the debtor, without notice to the heir or devisee and although the personal representative has no charge of, or any interest in or control over the lands.

And whereas, it is unjust that sales should be made in such cases, and it is expedient from the long practice of the law which has prevailed in 30 this respect that the sales which have been made should be maintained, Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

1. All sales of lands in fee simple or *pour autre vie* of any deceased Former sales debtor heretofore had or made under any Execution issued against the valid. 35 personal representative of the debtor, shall be valid in like manner as if the same had been had or made under an Execution issued against the debtor in his lifetime.

2. No sale of the fee simple lands, or lands held *pour autre vie* No future sale of any deceased debtor shall hereafter be made under any Judg- to be made 40 ment recovered against the personal representative of the debtor, or unless heir, under any execution issued against the personal representative of the &c., party to debtor, unless the heir at law, tenant in special occupancy, or devisee as suit. the case may be, is a party to the judgment or execution, and has had an opportunity of pleading thereto.

Lands not to be replied or suggested until Heir, &c., party to the suit. **3.** In any action against the personal representative of any deceased debtor, the plaintiff shall not be at liberty to reply or suggest lands left by the deceased, applicable to the payment of the debt sought to be recovered until after he has made the heir-at-law, tenant in special occupancy, or devisee, as the case may be, a party defendant to the suit. 5

Mode of making Heir, &c., party to suit. **4.** When the plaintiff in any such action desires to reply lands, he shall make a suggestion to the effect that the deceased died seised of lands applicable to the payment of the debt sought to be recovered. To Wit: Certain lands (specifying the lands as nearly as he may be able to do) which are in the hands of (naming him) as heir-at-law, &c. as the case may be, and that he the plaintiff prays the proceedings may be stayed, and that the said heir-at-law, &c., as the case may be, may be made a party to the suit to answer thereto.

Scire facias. **5.** The plaintiff shall then be at liberty to issue a *scire facias* to the effect that the plaintiff had declared against the personal representative 15 (stating shortly the substance of the declaration) and that the defendant pleaded (stating shortly the substance of the pleas) (or did not plead as the case may be,) that the plaintiff has alleged that the deceased died seised of lands, &c. That he desires to reply (or suggest) lands as the case may be, and that he therefore prays that the party to be summoned 20 as heir-at-law, &c., (as the case may be) in whose hands the said lands are, may be summoned to plead to the said action.

Wherefore the said party is required to be and appear at the place where the proceedings are filed within one month after the service of a copy of the writ upon him, to plead to the said action. 25

Issue, &c., of writ. **6.** The Writ shall be issued, tested, signed, sealed, served and returned in like manner as the Writ of Summons at the commencement of the suit. The defendant shall enter an appearance. If he fail to do so the plaintiff shall do so for him. The plaintiff shall then serve the defendant with a copy of the pleadings, to which the defendant shall 30 plead in like manner, as any other defendant may plead, and the suit shall proceed in like manner in all respects as other suits.

Sales, &c., made by Heir before suit valid. **7.** All *bona fide* sales and leases made by the heir, devisee or special occupant before suit shall prevail against all creditors who desire to charge the lands by such suit or action. 35

Sales, &c., made after suit valid, unless notice of plaintiff's claim is registered. **8.** All *bona fide* sales and leases made by the heir, devisee or special occupant after suit brought and before final judgment, shall be valid unless the purchaser or lessee had actual notice of the pendency of such suit or action before such sale or lease made, or unless before such sale or lease made a notice of the pendency of such suit or action has been 40 filed in the Register Office of the County where the lands lie, to the effect that such suit or action is pending, and that the plaintiff will claim to make the lands of the deceased, in the hands of the heir, devisee or special occupant liable in the said suit or action.

Sales, &c., after judgment void. **9.** All sales and leases made after final judgment against the lands 45 shall be void as against such judgment; provided the judgment is registered in the county where the lands lie within one month after it has been entered.

Notice to be registered. **10.** The notice to be filed in the Register Office shall be to the following effect: 50
 In (naming the Court,) Between (naming party)
 plaintiff, and (naming party) defendant.

The above action was commenced on (*stating the day, month and year,*) for the recovery of *stating the general nature of claim* and the plaintiff claims to make all the lands which were of the deceased, (*naming him*), liable to the payment of his recovery in this suit or
5 action.

Dated,

(Signed,

By the plaintiff, his Agent,
Attorney, or Solicitor.

10 11. Upon which the Registrar shall charge a fee of fifty cents to his Fee to Regis-
own use. trars.