

# Technical and Bibliographic Notes / Notes techniques et bibliographiques

The Institute has attempted to obtain the best original copy available for filming. Features of this copy which may be bibliographically unique, which may alter any of the images in the reproduction, or which may significantly change the usual method of filming are checked below.

L'Institut a microfilmé le meilleur exemplaire qu'il lui a été possible de se procurer. Les détails de cet exemplaire qui sont peut-être uniques du point de vue bibliographique, qui peuvent modifier une image reproduite, ou qui peuvent exiger une modification dans la méthode normale de filmage sont indiqués ci-dessous.

- Coloured covers / Couverture de couleur
- Covers damaged / Couverture endommagée
- Covers restored and/or laminated / Couverture restaurée et/ou pelliculée
- Cover title missing / Le titre de couverture manque
- Coloured maps / Cartes géographiques en couleur
- Coloured ink (i.e. other than blue or black) / Encre de couleur (i.e. autre que bleue ou noire)
- Coloured plates and/or illustrations / Planches et/ou illustrations en couleur
- Bound with other material / Relié avec d'autres documents
- Only edition available / Seule édition disponible
- Tight binding may cause shadows or distortion along interior margin / La reliure serrée peut causer de l'ombre ou de la distorsion le long de la marge intérieure.
- Blank leaves added during restorations may appear within the text. Whenever possible, these have been omitted from filming / Il se peut que certaines pages blanches ajoutées lors d'une restauration apparaissent dans le texte, mais, lorsque cela était possible, ces pages n'ont pas été filmées.
- Additional comments / Commentaires supplémentaires: **Cover title page is bound in as last page in book but filmed as first page on fiche.**

- Coloured pages / Pages de couleur
- Pages damaged / Pages endommagées
- Pages restored and/or laminated / Pages restaurées et/ou pelliculées
- Pages discoloured, stained or foxed / Pages décolorées, tachetées ou piquées
- Pages detached / Pages détachées
- Showthrough / Transparence
- Quality of print varies / Qualité inégale de l'impression
- Includes supplementary material / Comprend du matériel supplémentaire
- Pages wholly or partially obscured by errata slips, tissues, etc., have been refilmed to ensure the best possible image / Les pages totalement ou partiellement obscurcies par un feuillet d'errata, une pelure, etc., ont été filmées à nouveau de façon à obtenir la meilleure image possible.
- Opposing pages with varying colouration or discolourations are filmed twice to ensure the best possible image / Les pages s'opposant ayant des colorations variables ou des décolorations sont filmées deux fois afin d'obtenir la meilleure image possible.

This item is filmed at the reduction ratio checked below / Ce document est filmé au taux de réduction indiqué ci-dessous.

10x		14x		18x		22x		26x		30x		32x
										✓		
		12x		16x		20x		24x		28x		

No. 35.

---

---

2nd Session, 7th Parliament, 26th Victoria, 1863.

---

---

**BILL.**

**An Act to amend the Law of Property and  
Trusts in Upper Canada.**

---

**Received and read, first time, Friday,  
27th Feb., 1863.**

**Second reading, Monday, 2nd March, 1863.**

---

**Hon. Mr. MOWAT.**

---

**QUEBEC.**

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

An Act to amend the Law of Property and Trusts in Upper Canada.

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

LEASES.

1. Where any license to do any act which, without such license, would create a forfeiture, or give a right to re-enter, under a condition 5 or power reserved in any lease heretofore granted or to be hereafter granted, shall at any time after the passing of this Act, be given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or to be made, or to the ac- 10 tual assignment, under-lease, or other matter thereby specifically authorized to be done, but not so as to prevent any proceeding for any subsequent breach, (unless otherwise specified in such license); and all rights under covenants and powers of forfeiture and re-entry in the lease contained, shall remain in full force and virtue, and shall be 15 available as against any subsequent breach of covenant or condition, assignment, under-lease, or other matter not specifically authorized or made dispensable by such license, in the same manner as if no such license had been given, and the condition or right of re-entry shall be and remain in all respects as if such license had not been given, ex- 20 cept in respect of the particular matter authorized to be done. 22, 23 V., c. 35, s. i.

*Restriction or effect of License to alien, &c.*

2. Where in any lease heretofore granted or to be hereafter granted, there is or shall be a power or condition of re-entry on assigning or underletting or doing any other specified act without license, and a 25 license at any time after the passing of this Act shall be given to one of several lessees or co-owners to assign or underlet his share or interest, or to do any other act prohibited to be done without license, or shall be given to any lessee or owner, or any one of several lessees or owners, to assign or underlet part only of the property, or to do any 30 other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees or owner or owners of the other shares or interests in the property, or by the lessee or owner of the rest of the property, 35 (as the case may be,) over or in respect of such shares or interests or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.—22, 23 V., c. 35, s. ii.

*Restricted operation of partial Licenses.*

**Actual waiver not to extend further than to the particular instance mentioned, and not to be deemed a general waiver.** **3.** Where any actual waiver of the benefit of any covenant or condition in any lease, on the part of any lessor, or his heirs, executors, administrators, or assigns, shall be proved to have taken place after the passing of this Act in any one particular instance, such actual waiver shall not be assumed or deemed to extend to any instance or any breach of covenant or condition other than that to which such waiver shall specially relate, nor to be a general waiver of the benefit of any such covenant or condition, unless an intention to that effect shall appear. 23, 24 V., c. 33, s. vi. 5

**Apportionment of conditions of re-entry in certain cases.** **4.** Where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of 10 the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation, in like manner as if such conditions or powers had been reserved to him as incident to his part of the reservation in 15 respect of the apportioned rent or other reservation allotted or belonging to him.—22 & 23 Vic., chap. 35, sec. iii.

#### POLICIES OF INSURANCE.

**Relief against forfeiture for breach of covenant to insure in certain cases.** **5.** A Court of Equity shall have power to relieve against a forfeiture for breach of a covenant or condition to insure against loss or damage by fire, where no loss or damage by fire has happened, and the breach 20 has, in the opinion of the Court, been committed through accident or mistake, or otherwise without fraud or gross negligence, and there is an insurance on foot at the time of the application to the Court in conformity with the covenant to insure, upon such terms as to the Court may seem fit.—22 & 23 Vic., cap. 35, sec. iv. 25

**When relief granted, the same to be recorded.** **6.** The Court, where relief shall be granted, shall direct a record of such relief having been granted to be made by endorsement on the lease or otherwise.—22 & 23 Vic., cap. 35, sec. v.

**Court not to relieve any person more than once in respect of the same covenant.** **7.** The Court shall not have power, under this Act, to relieve the same person more than once in respect of the same covenant or condition; nor shall it have power to grant any relief under this Act where a forfeiture under the covenant in respect of which relief is sought, shall have been already waived out of Court in favor of the person seeking the relief.—22 & 23 Vic., cap. 35, sec. vi. 30

**Lessor to have benefit of an informal insurance.** **8.** The person entitled to the benefit of a covenant on the part of a lessee or mortgagor to insure against loss or damage by fire, shall, on loss or damage by fire happening, have the same advantage from any then subsisting insurance relative to the building covenanted to be insured, effected by the lessee or mortgagor in respect of his interest under the lease or in the property, or by any person claiming under 40 him, but not effected in conformity with the covenant, as he would have from an insurance effected in conformity with the covenant.—22 & 23 Vic., cap. 35, sec. vii.

**Protection of purchaser against forfeiture under covenant for insurance against fire in certain cases.** **9.** Where on the *bona fide* purchase after the passing of this Act, of a leasehold interest under a lease containing a covenant on the part of 45 the lessee to insure against loss or damage by fire, the purchaser is furnished with the written receipt of the person entitled to receive the rent, or his agent, for the last payment of the rent accrued due before the completion of the purchase, and there is subsisting at the time of the completion of the purchase, an insurance in conformity with the 50

covenant, the purchaser or any person claiming under him, shall not be subject to any liability by way of forfeiture or damages or otherwise, in respect of any breach of the covenant committed at any time before the completion of the purchase, of which the purchaser had not notice before the completion of the purchase; but this provision is not to take away any remedy which the lessor or his legal representatives may have against the lessee or his legal representatives for breach of covenant.—22 & 23 Vic., cap. 35, sec. viii.

10. The preceding provisions shall be applicable to leases for a term of years absolute, or determinable on a life or lives, or otherwise, and also to a lease for the life of the lessee, or the life or lives of any other person or persons.—22 & 23 Vic., cap. 35, sec. ix.

Preceding provisions to apply to leases for a term of years absolute.

#### RENT CHARGES.

11. The release from a rent charge of part of the hereditaments charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of the rent-charge out of the hereditaments released, without prejudice, nevertheless, to the rights of all persons interested in the hereditaments remaining unreleased, and not concurring in or confirming the release.—22 & 23 Vic., cap. 35, sec. x.

Release of part of land charged not to be an extinguishment.

#### POWERS.

12. A deed hereafter executed in the presence of, and attested by two or more witnesses in the manner in which deeds are ordinarily executed and attested, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed, or by any instrument in writing not testamentary, notwithstanding it shall have been especially required that a deed or instrument in writing, made in exercise of such power, should be executed or attested with some additional or other form of execution or attestation or solemnity: Provided always, that this provision shall not operate to defeat any direction in the instrument creating the power, that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the instrument; and nothing herein contained shall prevent the donor of a power from executing it conformably to the power, by writing or otherwise than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend.—22 & 23 Vic., cap. 35, sec. xii.

Mode of execution of powers.

13. Where under a power of sale, a *bonâ fide* sale shall be made of an estate, with the timber thereon or any other articles attached thereto, and the tenant for life or any other party to the transaction, shall by mistake be allowed to receive for his own benefit a portion of the purchase money as the value of the timber or other articles, it shall be lawful for the Court of Chancery, upon any bill or claim or application in a summary way, as the case may require or permit, to declare that upon payment by the purchaser or the claimant under him, of the full value of the timber and articles, at the time of sale, with such interest thereon as the Court shall direct, and the settlement of the said principal moneys and interest under the direction of the Court upon such parties as in the opinion of the Court shall be entitled thereto, the said sale ought to be established; and upon such payment and settlement being

Sale under power not to be avoided by reason of mistaken payment to tenant for life.

made accordingly, the Court may declare that the said sale is valid, and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed, and the costs of the said application as between solicitor and client, shall be paid by the purchaser or the claimant under him.—22 & 23 Vic., cap. 35, sec. xiii.

5

Devisee in trust may raise money by sale notwithstanding want of express power in the will.

14. Where by any will which shall come into operation after the passing of this Act, the testator shall have charged his real estate or any specific portion thereof, with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have devised the estate so charged to any trustee or trustees for the whole of his estate or interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such estate, it shall be lawful for the said devisee or devisees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy or money as aforesaid, by a sale and absolute disposition, by public auction or private contract, of the said hereditaments or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other, and any deed or deeds of mortgage so executed, may reserve such rate of interest, and fix such period or periods of re-payment as the person or persons executing the same shall think proper.—22 & 23 Vic., cap. 35, sec. xiv.

Powers given by last section extended to Survivors, Devisees, &c.

15. The powers conferred by the last section shall extend to all and every person or persons in whom the estate devised shall for the time being be vested by survivorship, descent, or devise, or to any person or persons who may be appointed under any power in the Will or by the Court of Chancery, to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid.—22 & 23 Vic., cap. 35, sec. xv.

Executors to have power of raising money &c, where there is no sufficient devise.

16. If any testator who shall have created such a charge as is described in the fourteenth section, shall not have devised the hereditaments charged as aforesaid, in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors for the time being, named in the Will (if any), shall have the same or the like power of raising the said moneys as is hereinbefore vested in the devisee or devisees in trust of the said hereditaments, and such power shall from time to time devolve to and become vested in the person or persons (if any) in whom the executorship shall, for the time being, be vested; but any sale or mortgage under this Act shall operate only on the estate and interest, whether legal or equitable, of the testator, and shall not render it unnecessary to get in any outstanding subsisting legal estate.—22 & 23 Vic., cap. 35, sec. xvi.

Purchasers, &c., not bound to inquire as to powers.

17. Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by sections thirteen, fourteen and fifteen of this Act, or either of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.—22 & 23 Vic., cap. 35, sec. xvii.

45

Sections 13, 14, and 15, not to affect certain sales, &c, nor to extend to devisees in fee or in tail.

18. The provisions contained in sections thirteen, fourteen and fifteen, shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made, under or in pursuance of any Will coming into operation before the passing of this Act, but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this Act had not passed; and the said several sections shall not extend to a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies; nor shall they affect the power of any such devisee or devisees to sell or mortgage as he or they may by law now do.—22 & 23 Vic., cap. 35, sec. xviii.

## INHERITANCE.

19. Where there shall be a total failure of heirs of the purchaser, or where any land shall be descendible as if an ancestor had been the purchaser thereof, and there shall be a total failure of the heirs of such ancestor, then and in every such case the land shall descend and the descent shall thenceforth be traced from the person last entitled to the land, as if he had been the purchaser thereof.—22 & 23 Vic., cap. 35, sec. xix.

20. The last preceding section shall be read as part of chapter eighty-two of the Consolidated Statutes for Upper Canada, intituled, "An Act respecting Real Property."—22 & 23 Vic., cap. 35, sec. xx.

## PROVISION FOR CASES OF FUTURE AND CONTINGENT USES.

21. Where by any instrument any hereditaments have been or shall be limited to uses, all uses thereunder, whether expressed or implied by law, and whether immediate or future, or contingent or executory, or to be declared under any power therein contained, shall take effect when and as they arise by force of and by relation to the estate and seizin originally vested in the person seized to the uses, and the continued existence in him or elsewhere of any seizin to uses or *scintilla juris*, shall not be deemed necessary for the support of, or to give effect to, future or contingent or executory uses; nor shall any such seizin to uses or *scintilla juris* be deemed to be suspended, or to remain or to subsist in him or elsewhere.—23 & 24 Vic., cap. 38, sec. vii.

## ASSIGNMENT OF PERSONALTY.

22. Any person shall have power to assign personal property, now by law assignable, including chattels real, directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.—22 & 23 Vic., cap. 35, sec. xxi.

23. The *bona fide* payment to, and the receipt of, any person to whom any purchase or mortgage money shall be payable upon any express or implied trust, shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security.—22 & 23 Vic., cap. 35, sec. xxiii.

24. Any seller or mortgagor of land, or of any chattels, real or personal, or chooses in action conveyed or assigned to a purchaser, or mortgagee, or the solicitor or agent of any such seller or mortgagor, who shall, after the passing of this Act, conceal any settlement, deed, will, or other instrument material to the title; or any incumbrance, from the purchaser or mortgagee, or falsify any pedigree upon which the title does or may depend, in order to induce him to accept the title offered or produced to him, with intent in any of such cases to defraud, shall be guilty of a misdemeanor, and being found guilty, shall be liable, at the discretion of the Court, to suffer such punishment, by fine or imprisonment for any time not exceeding two years, with or without hard labor, or by both, as the Court shall award, and shall also be liable to an action for damages at the suit of the purchaser or mortgagee, or those claiming under the purchaser or mortgagee, for any loss sustained by them or either or any of them, in consequence of the settlement, deed, will, or other instru-

ments or incumbrance so concealed, or of any claim made by any person under such pedigree, but whose right was concealed by the falsification of such pedigree; and in estimating such damages, where the estate shall be recovered from such purchaser or mortgagee, or from those claiming under the purchaser or mortgagee, regard shall be had to any expenditure by them, or either or any of them, in improvements on the land; but no prosecution for any offence included in this section, against any seller or mortgagor, or any solicitor or agent, shall be commenced without the sanction of Her Majesty's Attorney-General, or in case that office be vacant, of Her Majesty's Solicitor-General; and no such sanction shall be given without such previous notice of the application for leave to prosecute to the person intended to be prosecuted, as the Attorney-General or the Solicitor-General (as the case may be) shall direct. 22 & 23 Vic., cap. 35, sec. xxv., and 23, 24 V., c. 38, s. 8. 15

Interpretation of words used in this Act.

"Lands."

"Mortgage."

"Mortgagor"

"Mortgagee."

**25.** In the construction of the previous provisions in this Act, the term "land" shall be taken to include all tenements and hereditaments, and any part or share of or estate or interest in any tenements or hereditaments, of what tenure or kind soever; and

The term "mortgage" shall be taken to include every instrument by virtue whereof land is in any manner conveyed, assigned, pledged, or charged as security for the re-payment of money or money's worth lent, and to be re-conveyed, re-assigned, or re-leased on satisfaction of the debt; and

The term "mortgagor" shall be taken to include every person by whom any such conveyance, assignment, pledge or charge as aforesaid shall be made; and

The term "mortgagee" shall be taken to include every person to whom or in whose favor any such conveyance, assignment, pledge or charge as aforesaid is made or transferred. 22 & 23 Vic., cap. 35, sec. 30 xxv.

#### POWERS OF ATTORNEY.

Provision that power shall not be revoked by death, to be valid.

**26.** In case a Power of Attorney for the sale or management of real or personal estate or for any other purpose, provides by any form of words that the same shall not be revoked by the death of the party executing the same, such provision shall be valid and effectual, both at law and equity according to the tenor and effect thereof and subject to such conditions and restrictions if any as may be therein contained. 35

#### TRUSTEES AND EXECUTORS.

Trustee, &c., making payment under Power of Attorney, not to be liable by reason of death of party giving such power.

**27.** No trustee, executor or administrator making any payment or doing any act *bona fide* under or in pursuance of any power of Attorney, shall be liable for the moneys so paid, or the act so done, by reason that the person who gave the power of Attorney was dead at the time of such payment or act or had done some act to avoid the power, provided that the fact of the death or of the doing of such act as last aforesaid at the time of such payment or act *bona fide*, done as aforesaid by such trustee, executor, or administrator, was not known to him: Provided always, that nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money against the person to whom such payment shall have been made, but that such person so entitled shall have the same remedy against such person to whom such payment shall be made as he would have had against the trustee, executor or administrator, if the money had not been paid away under such power of Attorney. 22 & 23 Vic., cap. 35, sec. xxvi. 40 45 50



**28.** Where an executor or administrator, liable as such to the rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said lease or agreement for a lease as may have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part, or any further part, (as the case may be,) of the personal estate of the deceased, to meet any future liability under the said lease or agreement for a lease; and the executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease: but nothing herein contained shall prejudice the right of the lessor or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed. 22 & 23 Vic., cap. 35, sec. xxvii.

As to liability of executor or administrator in respect of rents, covenants, or agreements.

**29.** In like manner, where an executor or administrator, liable as such to the rent, covenants or agreements contained in any conveyance on chief rent or rent-charge, (whether any such rent be by limitation of use, grant or reservation,) or agreement for such conveyance, granted or assigned to or made and entered into with the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said conveyance, or agreement for a conveyance, as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed, or agreed to be conveyed, although the period for laying out the same may not have arrived, and shall have conveyed such property, or assigned the said agreement for such conveyance as aforesaid, to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said conveyance or agreement for a conveyance; and the executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having, where necessary, set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance, or agreement for conveyance; but nothing herein contained shall prejudice the right of the grantor, or those claiming under him, to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed. 22 & 23 Vic., cap. 35, sec. xxviii.

As to liability of executor in respect of Rents, &c., in Conveyances on rent charges.

**30.** Where an executor or administrator shall have given such or the like notices as in the opinion of the Court in which such executor or administrator is sought to be charged, would have been given by the Court of Chancery in an administration suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall, at the expiration of the time named in the said notices, or the last of the said

As to distribution of the assets of Testator or Intestate after notice given by Executor or Administrator.

notices, for sending in such claims, be at liberty to distribute the assets of the testator or intestate, or any part thereof, amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof, as the case may be; but nothing in the present Act contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively. 10  
22 & 23 Vic., cap. 35, sec. xxix.

**31.** On the administration of the estate of any person dying after the passing of this Act, in case of a deficiency of assets, debts due to the Crown, and to the Executor or Administrator of the deceased person, and debts due to others, including therein respectively debts by judgment, decree or order, and other debts of record, debts by specialty, simple contract debts, and such claims for damages as by statute are payable in like order of administration as simple contract debts, shall be paid *pari passu* and without any preference or priority of debts of one rank or nature over those of another. But nothing herein contained shall prejudice any lien existing during the lifetime of the debtor on any of his real or personal estate. 15  
20

In case of deficiency of assets, certain debts to rank *pari passu*, and without priority over each other.

Exception

**32.** In case the Executor or Administrator gives notice in writing to any creditors or other persons of whose claims against the estate such Executor or Administrator has notice, or to the attorney or agent of such creditor or other person, that the said Executor or Administrator rejects or disputes such claim, it shall be the duty of the claimant to commence his suit in respect of such claim within six months after such written notice was given, in case the debt or some part thereof was due at the time of the notice, or within six months from the time the debt or some part thereof falls due, if no part thereof was due at the time of the said notice; and in default the said suit shall be forever barred. 25  
30

If an executor or administrator rejects a claim, suit must be brought within a certain period, or be barred.

**33.** After the first day of January, one thousand eight hundred and sixty-four no suit or other proceeding shall be brought to recover the personal estate, or any share of the personal estate, of any person dying intestate, possessed by the legal personal representative of such intestate, but within the time within which the same might be brought to recover a legacy, that is to say, within twenty years next after a present right to receive the same shall have accrued to some person capable of giving a discharge for or release of the same, unless in the meantime some part of such estate or share, or some interest in respect thereof, shall have been accounted for or paid, or some acknowledgment of the right thereto shall have been given in writing, signed by the person accountable for the same, or his agent, to the person entitled thereto, or his agent; and in such case no such action or suit shall be brought within twenty years after such accounting, payment, or acknowledgment, or the last of such accountings, payments, or acknowledgments, if more than one was made or given. 23 & 24 Vic., cap. 38, sec. 13. 35  
40  
45

After 1st of January, 1864 a suit to recover personal estate of an intestate or any part thereof, must be brought within the same time as a suit for a legacy.

**34.** Any trustee, executor or administrator shall be at liberty, without the institution of a suit, to apply by petition to any Judge of the High Court of Chancery, or by summons upon a written statement to any such Judge in Chambers, for the opinion, advice or direction of such Judge on any question respecting the management or administration of the trust property or the assets of any testator or intestate, such application to be served upon or the hearing thereof to be attended by all persons interested in such application, or such of them as the said Judge 50  
55

Trustee, Executor, &c., may apply by petition to Judge of Chancery for opinion, advice, &c., in Management, &c., of Trust Property.

shall think expedient; and the trustee, executor or administrator acting upon the opinion, advice or direction given by the said Judge, shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor or administrator, in the subject matter of the said application; provided, nevertheless, that this Act shall not extend to indemnify any trustee, executor or administrator in respect of any act done in accordance with such opinion, advice or direction, as aforesaid, if such trustee, executor or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction: and the costs of such application, as aforesaid, shall be in the discretion of the Judge to whom the said application shall be made. 22 & 23 Vic., cap. 35, sec. xxx.

**35.** Every deed, will, or other document creating a trust, either expressly or by implication, shall, without prejudice to the clauses actually contained therein, be deemed to contain a clause in the words or to the effect following; that is to say:—"That the trustees or trustee, for the time being, of the said deed, will, or other instrument, shall be respectively chargeable only for such moneys, stocks, funds and securities as they shall respectively actually receive, notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects, or defaults, and not for those of each other, nor for any banker, broker, or other person with whom any trust monies or securities may be deposited; nor for the insufficiency or deficiency of any stocks, funds or securities; nor for any other loss, unless the same shall happen through their own wilful default respectively; and also that it shall be lawful for the trustees or trustee for the time being, of the said deed, will, or other instrument, to reimburse themselves or himself, or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will, or other instrument." 22 & 23 Vic. cap. 35, sec. xxxi.

Every trust instrument to be deemed to contain clauses for the indemnity and reimbursement of the Trustees.

#### JURISDICTION OF CHANCERY.

**36.** The Court of Chancery in Upper Canada shall have the same jurisdiction as the Court of Chancery in England has in regard to leases and sales of settled estates; and in regard to enabling minors, with the approbation of the Court, to make binding settlements of their real and personal estate on marriage; and in regard to questions submitted for the opinion of the Court in the form of special cases on the part of such persons as may by themselves, their Committees, Guardians, or otherwise concur therein; and the said Court shall have the same powers of regulating the practice in such cases as in other matters within the jurisdiction of the said Court.

Court in U. C. to have the same jurisdiction as in England, in regard to settlements of minors estates. Special cases submitted, &c.

**37.** In all cases in which the Court of Chancery has jurisdiction to entertain an application for an injunction against a breach of any covenant, contract or agreement, or against the commission or continuance of any wrongful act, or for the specific performance of any covenant, contract or agreement, the Court, if it thinks fit, may award damages to the party injured, either in addition to or in substitution for such injunction or specific performance, and such damages may be assessed in such manner as the Court may direct. 21, 22 V., c. 27, s. 2.

Court may award damages in cases of injunction against breach of covenant, or for specific performance, &c.