

No. 118.

4th Session, 8th Parliament, 29th Vict., 1865.

BILL.

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

No. 223 of 1865--1st Session.

Hon. Atty. Genl. MACDONALD.

QUEBEC :

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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 : Preamble.

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 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 actual 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 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, except in respect of the particular matter authorized to be done. 22, 23 V., c. 35, s. i.

Restriction on 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 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 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, (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 license.

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 Vic., cap. 38, sec. 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 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 respect of the apportioned rent or other reservation allotted or belonging to him. 22 & 23 Vic., cap. 35, sec. iii. 10 15

POLICIES OF INSURANCE.

Relief against forfeiture for breach of covenant to insure in certain cases. **5.** The Court of Chancery 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 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. 20 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.

Lessor to have benefit of an informal insurance. **7.** 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 or other property 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 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. 30 35

Protection of purchaser against forfeiture under covenant for insurance against fire in certain cases. **8.** 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 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 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. 40 45 50

9. 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.

5 10. 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 un-
10 released, 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.

11. 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
15 or by any instrument in writing, 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 ;
20 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,
25 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.

Proviso.

30 12. Where, under a power of sale, a *bona 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
35 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
40 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 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
45 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.

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

13. Where, by any will which shall come into operation after the passing of this Act, the testator shall have charged his real estate or
50 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

Devisee in trust may raise money by sale, not-

withstanding want of express power in the will.

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 repayment 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.

14. 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.

15. If any testator who shall have created such a charge as is described in the thirteenth 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 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.

16. 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.

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

17. The provisions contained in sections *thirteen*, *fourteen*, *fifteen* and *sixteen*, 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.

PROVISIONS FOR CASES OF FUTURE AND CONTINGENT USES.

In case of limitation to uses they shall take effect as

18. 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 5 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.

they arise,
without con-
tinued seizin
or *scintilla ju-
ris* in the per-
sons original-
ly seized.

ASSIGNMENT OF PERSONALTY.

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

FRAUDS ON SALES AND MORTGAGES.

20. Any seller or mortgagor of land, or of any chattels, real or per- Punishment
sonal, or choses in action, conveyed or assigned to a purchaser or of vendor for
15 mortgagee, or the solicitor or agent of any such seller or mortgagor, fraudulent
who shall, after the passing of this Act, conceal any settlement, deed, concealment
will or other instrument material to the title, or any incumbrance, from of deeds, &c.,
the purchaser or mortgagee, or falsify any pedigree upon which the or falsifying
20 title does or may depend, in order to induce him to accept the title pedigree.
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 by
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
25 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 instrument or incumbrance so concealed, or of any
claim made by any person under such pedigree, but whose right was
30 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
35 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 for Upper Canada, or in case that office be vacant, of
Her Majesty's Solicitor-General for Upper Canada; and no such
sanction shall be given without such previous notice of the application
40 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; and no prosecution for concealment shall be sustained unless a
written demand of an abstract of title was served by or on behalf of the
purchaser or mortgagee before the completion of the purchase or mort-
50 gage. 22 & 23 Vic., cap. 35, sec. xxv., and 23, 24 Vic., cap. 38, s. 8.

INTERPRETATION CLAUSE.

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

- "Mortgage." 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 repayment of money or money's worth lent, and to be re-conveyed, re-assigned or re-leased on satisfaction of the debt ; and 5
- "Mortgagor." 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
- "Mortgagee." The term "mortgagee" shall be taken to include every person to whom or in whose favor any such conveyance, assignment, pledge or 10 charge as aforesaid is made or transferred.—22 & 23 Vic., cap. 35, sec. xxv.

POWERS OF ATTORNEY.

22. A power of attorney executed by a married woman for the sale or conveyance of any real estate of or to which she is seized or entitled in Upper Canada, or authorizing the attorney to execute a deed barring 15 or releasing her dower in any lands or hereditaments in Upper Canada, shall be valid both at law and in equity ; provided, (1) that she be examined and a certificate indorsed on the power of Attorney, as required in regard to deeds and conveyances by a married woman, under the Consolidated Statutes for Upper Canada respectively intituled, "An 20 Act respecting Dower," and "An Act respecting the conveyance of Real Estate by Married Women ;" and provided (2) that her husband is a party to and executes such power of attorney or the deed or other instrument executed in pursuance thereof, where the power is for the sale or conveyance of her real estate. 25.

23. In case a power of attorney for the sale or management of real or personal estate, or for any other purpose, provides that the same may be exercised in the name and on the behalf of the heirs or devisees, executors or administrators of the person executing the same, or provides by any form of words that the same shall not be revoked by the death 30 of the person executing the same, such provision shall be valid and effectual to all intents and purposes both at law and in equity, according to the tenor and effect thereof, and subject to such conditions and restrictions, if any, as may be therein contained.

24. Independently of any such special provision in a power of attorney, every payment made and every act done under and in pursuance of any power of attorney, or any power, whether in writing or verbal, and whether expressly or impliedly given, or an agency expressly or impliedly created after the death of the person who gave such power or created such agency, or after he has done some act to avoid the 40 power or agency, shall, notwithstanding such death or act last aforesaid, be valid as respects every person party to such payment or act, to whom the fact of the death, or of the doing of such act as last aforesaid was not known at the time of such payment or act *bona fide* done as aforesaid, and as respects all claiming under such last-mentioned person. 45

DISTRIBUTION OF ASSETS.

25. 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 50 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.

26. 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.

27. 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 notices, for sending in such claims, be at liberty to distribute the assets

As to liability of executor in respect of rents, &c., in conveyances on rent charges.

As to distribution of the assets of testator or intestate after notice given by executor or administrator

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 of 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. 22 & 23 Vic., cap. 35, sec. xxix. 10

28. 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, 15 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 20 any of his real or personal estate.

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

Exception.

29. In case the executor or administrator gives notice in writing to any creditor or other person 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 25 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 30 said notice; and in default the said suit shall be for ever barred.

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

LIMITATION IN INTESTACY.

30. After the first day of January, one thousand eight hundred and sixty-six, 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, 35 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 40 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 but within twenty years after such accounting, payment or acknowledgment, or the last 45 of such accountings, payments or acknowledgments, if more than one was made or given. 23 & 24 Vic., cap. 38, sec. xiii.

After 1st of January, 1866, 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.

SUMMARY APPLICATIONS TO CHANCERY.

31. Any trustee, executor or administrator shall be at liberty, without the institution of a suit, to apply by petition to any Judge of the Court of Chancery, or by summons upon a written statement to any such 50

Trustee, executor, &c., may apply by petition to

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 petition or statement to be accompanied by a certificate of counsel, to the effect that in his judgment the case stated is a proper one for the opinion, advice, or direction of the Judge under this Act, and 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 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.

Judge of Chancery for opinion, advice, &c., in management, &c., of trust property.

LIABILITY OF TRUSTEES.

32. 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, moneys, 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.

LAND SUBJECT TO MORTGAGES.

33. When any person shall, after the thirty-first of December, one thousand eight hundred and sixty-five, die seized of or entitled to any estate or interest in any land or other hereditaments, which shall at the time of his death be charged with the payment of any sum or sums of money by way of mortgage, and such person shall not, by his will or deed, or other document, have signified any contrary or other intention, the heir or devisee to whom such land or hereditaments shall descend or be devised, shall not be entitled to have the mortgage debt discharged or satisfied out of the personal estate, or any other real estate of such person, but the land or hereditaments so charged shall, as between the different persons claiming through or under the deceased person, be

In case of persons dying after 31st Dec. 1865, mortgages on his real property to be paid out of such property and not out of his personal estate.

primarily liable to the payment of all mortgage debts with which the same shall be charged, every part thereof, according to its value, bearing a proportionate part of the mortgage debts charged on the whole thereof; **Proviso;** Provided always, that nothing herein contained shall affect or diminish any right of the mortgagee on such lands or hereditaments to obtain full ⁵ payment or satisfaction of his mortgage debts, either out of the personal estate of the person so dying as aforesaid or otherwise; **Proviso.** Provided also, that nothing herein contained shall affect the rights of any person claiming under or by virtue of any will, deed, or document already made or to be made before the first day of January, one thousand eight **10** hundred and sixty-six. 17 & 18 Vic., cap. 113.