

No. 237.

1st Session, 6th Parliament, 21 Victoria, 1858.

(PRIVATE BILL.)

BILL.

An Act to confirm the titles of purchasers and mortgagees of lands and hereditaments in Upper Canada, under the marriage settlement of John Stewart Lyon and Mary Theresa Dickson.

Received and read, first time, Friday, 18th
June, 1858.

Second reading, Monday, 21st June, 1858.

MR. McMICKEN.

WILLIAM SLADDEN,
Parliamentary Agent.

TORONTO:

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An Act to confirm the titles of purchasers and mortgagees of lands and hereditaments in Upper Canada, under the marriage settlement of John Stewart Lyon, and Mary Theresa Dickson.

WHEREAS John Stewart Lyon, of Kirkmichael, in the County of Dumfries, North Britain, and Mary Theresa his wife, Thomas Bushby, of the same County, a Captain in Her Majesty's Royal Navy, George Lyon, of Dabruscan, in the same County, Esquire, Isaac Bayley, of Mannel, in the County of Sterling, in North Britain, Esquire, and John Ewart, of the City of London, in England, Esquire, have by their Petition represented as follows: That by indenture of lease, and assignment and release, dated the 8th and 9th days of November, 1836, the assignment and release made between the said Mary Theresa Lyon, by her then name and description, of Mary Theresa Dickson of Queenston, in the Province of Upper Canada, Spinster, of the first part, the said John Stewart Lyon, of the second part, Walter Dickson, Richard Mackenzie, the said Thomas Bushby, George Lyon, and Isaac Bayley, of the third part, by which after reciting, amongst other things, that a marriage had been agreed upon, and was intended to be had and solemnized, between the said John Stewart Lyon, and Mary Theresa Dickson, it is witnessed that the said Mary Theresa Dickson, for the considerations therein mentioned, did with the privity and approbation of the said John Stewart Lyon, convey the messuages, or tenements, lands, and hereditaments, mentioned and described in the Schedule thereunto annexed, and also all other, her messuages, or tenements, lands, and hereditaments, (if any) situate, lying, and being in the then Province of Upper Canada, or any dependencies thereof, or elsewhere in His then Majesty's American Colonies, with the appurtenances (save and except such as were held by way of mortgage) unto the said Walter Dickson, Richard Mackenzie, Thomas Bushby, George Lyon, and Isaac Bayley, their heirs, executors, administrators, and assigns, respectively, to the use of the said Mary Theresa Dickson, until the said intended marriage and after the solemnization thereof, to the use of them the said Walter Dickson, Richard Mackenzie, Thomas Bushby, George Lyon, and Isaac Bayley, their heirs, executors, administrators, and assigns for ever, upon trust at such time or times during the lives of the said John Stewart Lyon, and Mary Theresa Dickson, and of the survivor of them as they, or the survivor, should by any writings under their, his, or her hands or hand, direct or appoint, and after the decease of such survivor, then at such time or times as to the trustees or trustee for the time being of the said indenture should seem expedient, to sell and dispose of the same in manner therein mentioned, and it was by the said indenture declared that the said trustees should stand possessed of the money to arise and be produced by the

Preamble.
Case recited.

said sales and also of the rents and profits of the said hereditaments until sold, upon the trusts and for the ends, intents and purposes, and subject to the powers, provisoes, agreements and declarations as were or should be expressed and declared concerning the same, by an indenture of settlement then already prepared and bearing even date with the indenture in recital (being the settlement made on the marriage of the said John Stewart Lyon and Mary Theresa Dickson), and made between the said Mary Theresa Dickson, of the first part, the said John Stewart Lyon, of the second part, and the said Walter Dickson Richard Mackenzie, Thomas Bushby, George Lyon and Isaac Bayley, of the third part. *And that* by the same indenture of release and assignment, the said Mary Theresa Dickson, with the like privity and approbation of the said John Stewart Lyon, conveyed and assigned all the messuages, lands, tenements and hereditaments situate in Upper Canada aforesaid, or elsewhere soever, to which she was entitled as a mortgage in fee, or for any term or terms of years, or other estate, term or interest, together with the principal monies and interest secured thereon, and full power and authority to recover, receive and discharge the same, unto the said Walter Dickson, Richard Mackenzie, Thomas Bushby, George Lyon and Isaac Bayley, their heirs, executors, administrators, and assigns, respectively (subject to the subsisting equities of redemption therein), upon and for the trusts, intents, and purposes, and with, under, and subject to the powers, provisoes, declarations, and agreements therein-after expressed or referred to, of and concerning the same, being the same trusts as are by the said indenture of settlement declared, of and concerning the monies that are to arise from the sale of the lands and hereditaments aforesaid; *That* the said Richard Mackenzie, by deed poll under his Hand and Seal, dated the 4th day of July, 1837, renounced and disclaimed the trust estates intended to have been vested in him by the said in part recited indenture: *That*, by a certain indenture, dated the 14th day of June, 1842, indorsed upon a certain other indenture, dated the 9th day of November, 1836, being an assignment of certain stocks, funds, and personal securities upon the trusts of the said indenture of settlement, and made between the said John Stewart Lyon, and Mary Theresa, his wife, of the first part, the said Walter Dickson, Thomas Bushby, George Lyon, and Isaac Bayley, of the second part, the said John Ewart, of the third part, and William Gordon, of Old Broad Street, in the City of London, gentleman, of the fourth part, the said John Ewart was duly appointed a trustee of all and singular the messuages, lands, tenements, and hereditaments, property, funds, monies, and premises whatsoever, in the said indenture of settlement mentioned, in the place and stead of the said Walter Dickson, in all respects as if the said John Ewart had been originally nominated and appointed trustee of the said trust, property, and funds, and all and singular the shares, debentures, debts, and other things therein mentioned, (and which are set forth in the second schedule annexed to the power of attorney in the said petition recited or referred to), and all and singular other sum and sums of money, stocks, funds, securities, debts, and personal estate and effects whatsoever, which were then held by or vested in them the said Walter Dickson, Thomas Bushby, George Lyon and Isaac Bayley, under or by virtue of the said indenture of settlement,—unto the said William Gordon upon trust, that he should forthwith assign and transfer the same unto the said Thomas Bushby, George Lyon, Isaac Bayley and John Ewart, their executors, adminis-

trators and assigns, to be held by them, upon the trusts of the said indenture of settlement, and which the said William Gordon accordingly, by deed poll dated the 15th day of June, 1842, and also indorsed upon the said indenture of the ninth day of November, 1836, assigned
5 unto the said Thomas Bushby, George Lyon, Isaac Bayley and John Ewart, their executors, administrators and assigns: *That* by certain indentures of Lease and Release, bearing date respectively, the 13th and 14th days of June, 1842, the release being made between the said
10 Walter Dickson, Thomas Bushby, George Lyon and Isaac Bayley, of the first part, the said William Gordon, of the second part, and the said Thomas Bushby, George Lyon, Isaac Bayley and John Ewart, of the third part, which recited amongst other things, that there were certain inaccuracies in the enumeration of the lands and hereditaments in the schedule annexed, or written under the said indenture of release
15 of the ninth day of November, 1836, and that since the date and execution thereof, parts of the said hereditaments had been sold and disposed of, and that the schedule to the indenture of release then in recital, was believed to contain a true and correct account of the whole
20 of the said trust lands and hereditaments, as existing on the 31st day of December, 1841;—it is by the indenture of release, then in recital witnessed, that by force and virtue and in exercise and execution of the power and authority for that purpose, by the said indenture of release of the ninth day of November, 1836, given or limited to, or vested in the said Walter Dickson, Thomas Bushby, George Lyon and Isaac Bayley, as such continuing Trustees as aforesaid, and of
25 all other power and authorities enabling them in that behalf, and for the considerations therein mentioned, they the said Walter Dickson, Thomas Bushby, George Lyon and Isaac Bayley, did grant, bargain, sell, release, enfeoff, convey and confirm unto the said William Gordon, his heirs, executors, administrators and assigns, all and singular
30 the messuages, lands, tenements and hereditaments conveyed to the said Walter Dickson, Richard Mackenzie, Thomas Bushby, George Lyon and Isaac Bayley, and their heirs, in and by the said Indenture of the 9th day of November, 1836, and which then remained vested in the said Walter Dickson, Thomas Bushby, George Lyon and Isaac
35 Bayley (save and except only such as were vested in or in trust for them, by way of mortgage, and which were intended to be thereafter conveyed and assigned) to hold unto and to the use of the said Thomas Bushby, George Lyon, Isaac Bayley and John Ewart, their heirs, executors, administrators and assigns, nevertheless upon the
40 trusts in the said indenture of release of the 9th day of November, 1836, expressed or declared; *and that* it is by the indenture of release in recital further witnessed, that the said Walter Dickson, Thomas Bushby, George Lyon and Isaac Bayley, did grant, bargain, sell, release, enfeoff, assign and confirm unto the said William Gordon, his heirs,
45 executors, administrators and assigns, all and singular, the messuages, lands, tenements, hereditaments and premises, situate, lying and being in the Province of Upper Canada aforesaid, or elsewhere soever, which at the time of the execution of the said Indenture of the 9th day of November, 1836, were vested in or in any trustee or trustees
50 for the said Mary Theresa Dickson as mortgagee, and which were thereby conveyed or expressed to be conveyed to the said Walter Dickson, Richard Mackenzie, Thomas Bushby, George Lyon and Isaac Bayley, their heirs and assigns, and which then remained vested in the said Walter Dickson, Thomas Bushby, George Lyon and Isaac

Bayley, unto the said William Gordon, his heirs and assigns,—to the use of the said Thomas Bushby, George Lyon, Isaac Bayley and John Ewart, their heirs and assigns respectively, according to the nature and tenure of the respective premises, and for all the estates and interests of the said Walter Dickson, Thomas Bushby, George Lyon 5 and Isaac Bayley therein, and subject to such rights and equities of redemption as were then subsisting of the same respectively, but nevertheless upon and for the trusts in and by the said indenture of release of the ninth day of November, 1836, expressed and declared of and concerning the same: *That* by deed poll under 10 the hands and seals of the said Thomas Bushby, George Lyon, Isaac Bayley and John Ewart, and also of the said John Stewart Lyon and Mary Theresa, his wife, and dated the 19th day of August 1842, the said Thomas Bushby, George Lyon, Isaac Bayley, and John Ewart, by and with the concurrence of John Stewart Lyon and Mary Theresa, 15 his wife, constituted and appointed John Hamilton, Gilbert McMicken, and Jacob Keefer, jointly and severally their attorneys and attorney for the purpose of carrying into effect the trusts expressed and declared in the said indenture of release of the 9th day of November, 1836, for the sale of the said lands and hereditaments and the recovery and col- 20 lection of the principal monies and interest due and owing upon the said mortgage securities in the same indenture respectively mentioned; *That* in pursuance of the powers and authorities to them given or reserved in and by the same deed poll or letter of attorney the said John Hamilton, Gilbert McMicken and Jacob Keefer, sold and con- 25 veyed divers and divers parts of the several messuages, lands and hereditaments comprised in and conveyed by the said thereinbefore recited indentures of lease and release of the eighth and ninth days of November, 1836, and the thirteenth and fourteenth days of June, 1842, to divers persons who became the purchasers thereof respectively for 30 divers sums of money which have been duly remitted to the said Thomas Bushby, George Lyon, Isaac Bayley and John Ewart, as trustees of the said indenture of settlement made on the marriage of the said John Stewart Lyon and Mary Theresa, his wife, and conveyed the same lands and hereditaments to the respective purchasers thereof. 35 *And that* doubts have arisen whether under the trusts contained and declared in and by the said indenture of release and assignment of the ninth day of November, 1836, the said Thomas Bushby, George Lyon, Isaac Bayley and John Ewart, were well and sufficiently empowered to authorize the said John Hamilton, Gilbert McMicken and Jacob 40 Keefer, as their attorneys, to act in the sale of the said lands and hereditaments or the release and discharge of the said mortgaged premises to the owners thereof on payment of the respective mortgage monies, or whether such sales and releases respectively were well and effectually made, or the said John Stewart Lyon and Mary Theresa, his 45 wife, were effectually bound by the sales and releases thereof, so respectively made by the said attorneys or by the several deeds of conveyance and release made and executed by them to the respective purchasers of the said lands and hereditaments, and whether the assent of the said John Stewart Lyon, and Mary Theresa, his wife, to such 50 sales was sufficiently evidenced by their being parties to and concurring in the said deed poll or power of attorney for the purpose of effectuating the several sales and releases of the said lands and hereditaments; *And whereas* the said petitioners have by the said petition prayed for an Act to quiet the possession of the several purchasers and mortgagees 55

of the said lands and hereditaments, and of all parties claiming by, from, through, under or in trust for them respectively, and to confirm the said several sales, releases, deeds and conveyances thereof; And whereas it is expedient to grant the prayer of the said petition; Therefore, Her Majesty, &c., enacts as follows:

I. The right, title, interest, property, possession, benefit, claim, and demand of the several parties who have become the respective purchasers of the said lands and hereditaments situate in Upper Canada, and of all parties claiming by, from, through, under, or in trust for them, so far as such right, title, interest, property, possession, claim, and demand can or may be impeached or affected under or by reason of any act or deed made, done, or executed by the said Thomas Bushby, George Lyon, Isaac Bayley, and John Ewart, or by the said John Hamilton, Gilbert McMicken, and Jacob Keefer, or any or either of them, as the attorneys or attorney of them the said Thomas Bushby, George Lyon, Isaac Bayley, and John Ewart, and all sales and releases which have been made, and all deeds and conveyances which have been executed by the said George Bushby, George Lyon, Isaac Bayley, and John Ewart, by their said attorneys, or any or either of them, shall be as valid and effectual to all intents and purposes whatsoever, as if the said John Stewart Lyon and Mary Theresa, his wife, had by writing under their respective hands directed and appointed each separate sale and release according to the exigency or supposed exigency of the trusts contained and declared in and by the said indenture of release and assignment of the ninth day of November, 1836, and as if the said Thomas Bushby, George Lyon, Isaac Bayley, and John Ewart, had themselves sold and disposed of and released the same lands and hereditaments respectively, and had in their own proper persons and under their own respective hands and seals made and executed the deeds of conveyance and release of the same respectively, to the several purchasers and mortgagees thereof respectively, and their respective heirs and assigns.

Certain sales; mortgages and releases by the attorneys of Mrsrs. Bushby, Lyon, Bayley and Ewart, to be as valid as if made by the said parties themselves, on the express direction and appointment of J. S. Lyon and his wife with respect to every sale or release.

II. This Act shall be deemed a public Act.

Public Act.