

A. D. 1839.

2^o VICTORIÆ.

C. 28.

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IX. And be it enacted, That this Act shall continue and be in force until the first day of April which will be in the year of our Lord one thousand eight hundred and forty two, and no longer.

Cont^d to 1845 by 4th vic. c. 23

CAP. XXVIII.

An Act to authorize the Sale of Mortgaged Premises by the Court of Chancery, and directing the application of the proceeds thereof.

Passed 23d March 1839.

I. **B**E it enacted by the Lieutenant Governor, Legislative Council and Assembly, That whenever a Bill shall be filed in the Court of Chancery for the foreclosure or satisfaction of a Mortgage, the Court shall have power to decree a sale of the Mortgaged premises, or such part thereof as may be sufficient to discharge the amount due on the Mortgage and the costs of suit.

Court may decree a sale of mortgaged premises on the filing of a Bill for foreclosure.

II. And be it enacted, That all sales of Mortgaged Premises, under the decree of the Court of Chancery, shall be made by a Master under the direction of the said Court, and the conveyances shall be executed by such Master, which shall vest in the purchaser the same estate, and no other or greater, than would have vested in the Mortgagee if the equity of redemption had been foreclosed, and such deed shall be as valid as if the same were executed by the Mortgagor and the Mortgagee, and shall be an entire bar against each of them, and against all parties to the suit in which such decree for sale was made, and against their heirs respectively, and all claiming under their heirs: and every such conveyance having been first duly acknowledged or proved, according to the provisions of the Laws relating to the Registry of Deeds, may be registered in the Registry Office of the County where the lands lie, and such conveyance so registered, or a copy thereof, may be given in evidence in any Court of Law or Equity in this Province, in like manner with and under the same rules and restrictions as any other registered Deed, and when so given in evidence shall be deemed and taken to be evidence that all the proceedings on which such conveyance is founded were rightly had and done.

Sales and conveyances to be made by a Master under direction of the Court.

Conveyances may be registered in the County Register, and when given in evidence to be evidence that all the proceedings were rightly had and done.

III. And be it enacted, That the proceeds of every sale made under the decree of the Court of Chancery as aforesaid, shall be applied to the discharge of the debts adjudged by such Court to be due and of the costs awarded; and in case there shall be any surplus, it shall be brought into Court for the use of the Mortgagor or of the person who may be entitled thereto, subject to the order of the Court.

Application of proceeds of Sales.

IV. And be it enacted, That when any Bill shall be filed for the foreclosure or satisfaction of any Mortgage upon which there shall be due any interest or portion only of the principal, the Bill may be ordered to be dismissed, upon the defendants bringing into Court, at any time before the decree, the principal and interest due, with costs; and in case the same shall be brought into Court after a decree, and before a sale, further proceedings thereupon shall be stayed; but the decree shall stand as a security for such further sums as may thereafter fall due on the Mortgage, and upon any subsequent default of payment thereof, may be enforced by the further order of the Court for the sale of the Mortgaged premises, or of such part thereof as shall be necessary from time to time, until the amount secured by the Mortgage and the costs of the proceedings thereon, shall have been fully paid and satisfied.

Proceedings on Bills for foreclosure of Mortgages on which there shall be due any interest or portion only of the principal.

V. And be it enacted, That if in any of the foregoing cases it shall appear to

Court may order the sale of the whole mortgaged premises when considered most beneficial.

to the Court; that the Mortgaged premises are so situated that the sale of the whole will be most beneficial to the parties, the decree shall in the first instance be entered for the sale of the whole premises accordingly; and in such case the proceeds of such sale shall be applied as well to the payment of the amount due and of the costs of suit, as towards the residue of the sum not due at the time of such sale; and if such residue do not bear interest, then the Court may direct the same to be paid with a deduction of the rebate of legal interest, for the time during which such residue shall not be due and payable.

In cases of subsequent incumbrances the residue of the proceeds of sale to be subject to the claims of the holders.

VI. And be it enacted, That in case of subsequent incumbrances affecting any mortgaged premises which may be sold under the decree of the said Court by virtue of this Act, the residue of the proceeds which may remain after the discharge of the first Mortgage thereon shall be subject, under the order and direction of the said Court, to the claims of the holders of such subsequent incumbrances according to their due priority, whether the same be due and payable or otherwise, subject to the like rebate of interest in case of sums not payable, when the same do not bear interest, as is provided in the fifth section of this Act.

All sales to be by public auction after due notice.

VII. And be it enacted, That all sales of any Mortgaged premises made under the authority of this Act, shall be made by public auction, of which not less than three months notice shall be given.

CAP. XXIX.

An Act relating to the sale and disposition of the real estate of Infants.

Passed 23d March 1839.

Chancellor or Master of the Rolls may compel Infants possessed of property by Mortgage or in trust to convey the same.

I. **B**E it enacted by the Lieutenant Governor, Legislative Council and Assembly, That whenever any infant shall be seized or possessed of any Lands, Tenements or Hereditaments, by way of Mortgage or in trust only for others, the Chancellor or Master of the Rolls, on the Petition of the guardian of such Infant or of any person interested, may enable and compel such infant to convey and assure such Lands, Tenements and Hereditaments to any other person in such manner as the said Court shall order and direct; and every conveyance or assurance made pursuant to such order, shall be as good and effectual in the law as if the same were made by such Infant when of lawful age.

Court of Chancery may compel the performance by Infant Heirs or others of bargains made by any party dying before performance.

II. And be it enacted, That the Court of Chancery shall have power to decree and compel the specific performance, by any Infant Heir or other person, of any bargain, contract or agreement made by any party who may die before the performance thereof, on petition of the executors or administrators of the estate of the deceased, or of any person or persons interested in such bargain, contract or agreement, and on hearing all parties concerned, and being satisfied that the specific performance of such bargain, contract or agreement, ought to be decreed or compelled.

Infants by next friend or guardian may apply for an order for the sale, &c. of real estate.

III. And be it enacted, That any Infant seized of any real estate or entitled to any term for years in any lands may, by his next friend or by his guardian, apply by petition to the Chancellor or the Master of the Rolls for an order for the sale or other disposition of the said property in manner hereinafter mentioned.

Court to appoint guardians who are to give security by Bond for performance of trust.

IV. And be it enacted, That on such application the said Court may appoint one or more suitable person or persons to be the guardian of such Infant in relation to the proceedings on such application, who shall be required to give security by bond to the Infant, to be filed with the Registrar, in such penalty and with such sureties and in such form as the Court shall direct, conditioned for the faithful performance