

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

performance of the trust reposed, for the paying over, investing and accounting for all monies which shall be received by such guardians, according to the order of the Court, and for the observance of the orders and directions of the said Court, in relation to the said trust; and in case of the forfeiture of such bond, the said Court may order and direct the same to be prosecuted for the benefit of the party injured.

V. And be it enacted, That upon the filing of such Bond by such guardian as aforesaid, the said Court may proceed in a summary way by reference to a Master to inquire into the merits of such application, and in case it shall appear satisfactorily that a disposition of the real estate of such Infant, or any part thereof, or any term of years of which he may be possessed, or in which he may be interested, is necessary or proper, either for the support and maintenance of such Infant or for his education, or that the interest of such Infant requires or will be substantially promoted by such disposition on account of any part of his said property being exposed to waste and dilapidation, or on account of its being wholly unproductive or for any other reasons or circumstances, the Court may order the letting for a term of years, the sale or other disposition of such real estate or interest by such guardian so appointed, in such manner and with such restrictions as shall be deemed expedient: Provided always, that nothing herein contained shall be construed to authorize the ordering of the sale, leasing or other disposition of any real estate or term for years, in any manner contrary to the provisions of any last will, or any conveyance by, through or under which such estate or term was devised or conveyed to such Infant.

On filing Bond Court to proceed in a summary way by reference to a Master, and may order the letting or sale of the property.

Proviso.

VI. And be it enacted, That upon any agreement for the sale, leasing or other disposition of such property made pursuant to such order, the same shall be reported to the Court on the oath of the guardian making the same, and if it be confirmed a conveyance shall be executed under the direction of the Court.

Agreements for such sales, &c. to be reported to the Court and if confirmed conveyance to be executed.

VII. And be it enacted, That all sales, leases, dispositions and conveyances, made in good faith by any guardian in pursuance of any such agreement so confirmed as aforesaid; shall be valid and effectual as if made by such Infant when of full age.

Sales, &c. made by guardians on agreement so confirmed to be valid.

VIII. And be it enacted, That upon any order for the sale of any property being made as aforesaid, the Infant to whom the same shall belong shall be considered, so far as relates to such property, a ward of the Court of Chancery; and the Court shall have power to make such order for the investment, disposition and application of the proceeds of such property, and of the increase and interest arising therefrom, as to secure the same for the benefit of such Infant in such manner as may be deemed most expedient.

Infant to be considered a ward of Chancery so far as relates to property sold.

IX. And be it enacted, That no sale so made as aforesaid shall give to such Infant any other or greater interest or estate in the proceeds of such sale than he had in the estate so sold; but the said proceeds shall be deemed estate of the same nature as the property sold.

Estate of Infant in the proceeds of the sale to be the same as the property sold.

X. And be it enacted, That every conveyance made under the provisions of this Act, 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.

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