

Laws of His Majesty's Province of Upper Canada, passed in the year 1857. Toronto: Stewart Derbshire & George Desbarats, 1857.

20 Victoria – Chapter 224

An Act to vest certain real estate of the late Thomas Benson in the hands of Trustees. Assented to 10th June, 1857.

Whereas the widow and children of the late Thomas Benson, in his lifetime of the Town of Port Hope in the County of Durham in this Province, deceased, have by their petition represented, that the said Thomas Benson was killed in the accident that occurred at the Desjardins Canal Bridge on the Great Western Railway, on the twelfth day of March now last past; that the said Thomas Benson departed this life intestate; that, at the time of his decease the said Thomas Benson was seized in fee of an undivided fifth part of the lands following, that is to say: the south-east quarter and the north half of lot number four, and the north half and a part of the south half of lot number five, in the fourth concession of the Township of Emily in the County of Victoria, as tenant in common with Nesbit Kirchhoffer, Thomas Curtis Clarke, John Smart, James Smith, and John Shuter Smith, all of Port Hope aforesaid, Esquires, and also of an undivided third part of a part of Town plot number sixty-six in the Town of Port Hope aforesaid, as tenant in common with Thomas Rodman Merritt, of the Town of Saint Catharines, Esquire, and the said John Smart; that the said respective lands were purchased and acquired by the said Thomas Benson and the respective parties above named with the view and intention of laying the same out into lots, and selling the same; and that in pursuance of such intention a plan had been made and printed of the lands firstly above mentioned, preparatory to a sale thereof or of a portion of the same, by auction; and not only had a similar plan been made of the property secondly above mentioned, but a sale by auction of a portion of the lots into which the same had been subdivided had actually taken place; And whereas the said Petitioners have further represented, that their interests and those of the other parties jointly interested in the said lands would be best promoted by executing and carrying out the said intended sales, but that in consequence of the death of the said Thomas Benson intestate, and the minority of four of his children and their consequent legal incapacity to execute conveyances, such disposition of the said property cannot at present be legally or advantageously made, and have prayed that an Act may be passed to transfer the estate and interest of the said late Thomas Benson, (or of the said petitioners, his children, as his heirs in the said respective lands as tenants in common as aforesaid) to, and to vest the same in James Rae Benson, of the said Town of Saint Catharines, Esquire, and the said Thomas Rodman Merritt, as Trustees, to hold the same for the purposes and objects above mentioned, for the benefit of the said petitioners, the children of the said late Thomas Benson, with power to sell and dispose of the same and to join in any sales or conveyances of the same lands that may be made, and to hold the proceeds arising from the same for the benefit of the said petitioners, the children of the said Thomas Benson, according to their several and respective interests in the same, and also to make partition of the same lands and alter such partition to sell and dispose of and convey that portion of the same that may be designated as the share of the said Thomas Benson, or of the said petitioners as his representatives; And whereas the said Nesbit Kirchhoffer, Thomas Curtis Clarke, John Smart, James Smith, John Shuter Smith, and Thomas Rodman Merritt, have by their petition set forth the same facts, and prayed that the prayer of the petition of the widow and children of the said late Thomas Benson in this behalf may be granted,

and that an Act maybe passed to transfer the estate and interest held by the said Thomas Benson in the said respective lands to, and to vest the same in the said James Rae Benson and Thomas Rodman Merritt as Trustees as aforesaid, and it is expedient to grant the prayers of the said several petitions as hereinafter mentioned: Therefore, Her Majesty, by and with the advice and consent of the Legislative Council and Assembly of Canada, enacts as follows:

I. All the estate, right, title, interest, property, claim and demand whatsoever of the children of the said late Thomas Benson, who are at the time of the passing of this Act under the age of twenty-one years, in or to the lands following, that is to say: the south-east quarter and the north half of lot number four, and the north half and a part of the south half of lot number five, in the fourth concession of the Township of Emily, in the County of Victoria, held by the said late Thomas Benson in his lifetime as tenant in common with the said Nesbit Kirchhoffer, Thomas Curtis Clarke, John Smart, James Smith, and John Shuter Smith, and in or to a part of Town plot number sixty-six in the said Town of Port Hope, held by the said late Thomas Benson, in his lifetime as tenant in common with the said John Smart and Thomas Rodman Merritt, is hereby transferred to and vested in the said James Rae Benson, and Thomas Rodman Merritt, both of the Town of Saint Catharines, Esquires, and the survivor of them, and their successors to be appointed as hereinafter mentioned, as Trustees for the benefit of the children of the said late Thomas Benson, who at the time of the passing of this Act are under age as aforesaid, with power to join in any sales or conveyances of the same lands that may be made by the other tenants in common thereof, and also to join with the other co-heirs of the said late Thomas Benson, who at the time of the passing of this Act are of full age in selling and disposing of and conveying the interest of the said Thomas Benson or his heirs in the said lands to the said other tenants or to any or either of them, or in making partition of the same lands, and after such partition to join as aforesaid in selling and disposing of and conveying that portion of the same that may be designated as the share of the said late Thomas Benson or his representatives, and to hold the proceeds arising and accruing to them the said James Rae Benson and Thomas Rodman Merritt, as such Trustees as aforesaid, from such sales as aforesaid, for the benefit of the children of the said late Thomas Benson, who are at the time of the passing of this Act under the age of twenty-one years as aforesaid, according to their several and respective shares in his inheritance.

II. Any sale or conveyance of the said lands, or any of them, or of any part thereof, duly made and executed by the said Trustees in conjunction with the other co-heirs of the said late Thomas Benson and the other tenants in common thereof respectively, or in conjunction with the said heirs only, shall be as good, valid and effectual, to all intents and purposes whatever, as it the said late Thomas Benson were living and had made or joined in so making and executing the same as aforesaid instead of the said Trustees and co-heirs; and the bond fide payment to the said Trustees, either alone or in conjunction with others as aforesaid, of the price or purchase money or of any part or portion of the price or purchase money of the said lands or any of them or of any part thereof, and the receipt of the said Trustees for any sum or sums of money so paid, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof.

III. In case of the death, removal from, the Province, resignation, incapacity, or unwillingness to act, of either or both of the said Trustees, before the complete fulfilment of the trust hereby created, it shall be lawful for the Judge of the County Court of the United Counties of Durham and Northumberland, or

for any one of the Judges of either of the Superior Courts at Toronto, on the written application of any one of the heirs of the said late Thomas Benson, or of any one of the other tenants in common of the said lands as aforesaid, to nominate and appoint some fit and proper person or persons to be trustee or trustees in lieu and stead of the said trustee or trustees so dying, removing from the Province, resigning, or becoming unwilling to act as aforesaid, and so from time to time to replace any such trustee or trustees so nominated and appointed as aforesaid, and such trustee or trustees so from time to time nominated and appointed as aforesaid, shall have the same power to all intents and purposes as if expressly named and appointed in and by this Act.

IV. This Act shall be deemed a Public Act.