

testimony : Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That no person offered as a witness shall hereafter be excluded by reason of incapacity, from crime or interest, from giving evidence, either in person or by deposition, according to the practice of the Court, on the trial of any issue joined, or of any matter or question or on any inquiry arising in any suit, action or proceeding, civil or criminal, in any Court or before any Judge, Jury, Sheriff, Coroner, Magistrate, Officer or person having by law, or by consent of parties, authority to hear, receive and examine evidence : but that every person so offered may and shall be admitted to give evidence on oath, or solemn affirmation in those cases wherein affirmation is by law receivable, notwithstanding that such person may or shall have an interest in the matter in question, or in the event of the trial of any issue, matter, question or inquiry, or of the suit, action or proceeding in which he is offered as a witness, and notwithstanding that such person offered as a witness, may have been previously convicted of any crime or offence : Provided that this Act shall not render competent any party to any suit, action or proceeding individually named in the record, or any lessor of the plaintiff, or tenant of premises sought to be recovered in ejectment, or the landlord or other person in whose right any defendant in *replevin* may make cognizance, or any person in whose immediate or individual behalf any action may be brought or defended, either wholly or in part, or the husband or wife of such persons respectively.

Persons offered as witnesses not to be excluded for certain causes.

Proviso : parties to the suit not to be witnesses.

II. And be it enacted, That nothing in this Act shall apply to or affect any suit, action or proceeding brought or commenced before the passing of this Act ; and that this Act shall apply only to Upper-Canada.

To what cases this Act shall apply.

### CAP. LXXI.

An Act to simplify the transfer of Real Property in Upper-Canada, and to render certain rights and interests therein liable under execution.

[30th May, 1849.]

**F**OR simplifying the Assurance of Property by Deeds, and for facilitating the remedy of Judgment Creditors against the Property of their Debtors : Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this Act, except where the nature of the provision or the context of the Act shall exclude such construction, be interpreted as follows, that is to say : the word "Land" shall extend to messuages, lands, tenements, and hereditaments, whether

Preamble.

Interpretation of certain words in this Act.

whether corporeal or incorporeal, and to any undivided share thereof, and to any estate or interest thereon, and to money subject to be invested in the purchase of land or of any interest therein; the word "Conveyance" shall extend to a feoffment, grant, lease, surrender, or other assurance of land; the word "Person" shall extend to a Corporation as well as an individual; and every word importing the singular number only, shall extend and be applied to several persons or things as well as to one person or thing; and every word importing the masculine gender only, shall extend and be applied to a female as well as a male.

Land may be conveyed by deed, without livery of seizin, or a prior lease.

II. And be it enacted, That every person may convey by any deed, without livery of seizin, or a prior lease, all such land as he might before the passing of this Act have conveyed by lease and release; and every such conveyance shall take effect as if it had been made by lease or release.

Partitions, &c., to be by deed.

III. And be it enacted, That no partition or exchange or assignment of any freehold or leasehold land shall be valid at law unless the same be made by deed.

Lease and surrenders in writing to be by deed.

IV. And be it enacted, That no Lease in writing of any freehold or leasehold land, or surrender in writing of any freehold or leasehold land, shall be valid as a lease or surrender, unless the same shall be made by deed; but any agreement in writing to let or surrender any such land shall be valid and take effect as an agreement to execute a lease or surrender; and the person who shall be in possession of the land in pursuance of any agreement to let, may, from payment of rent or other circumstances, be construed to be a tenant from year to year.

As to agreements.

Contingent or executory interest may be conveyed by deed.

V. And be it enacted, That any person may convey, assign or charge by any deed, any such contingent or executory interest, right of entry for condition broken, or other future estate or interest as he shall be entitled to, or presumptively entitled to, in any freehold or leasehold land, or personal property, or any part of such interest, right or estate respectively; and every person to whom any such interest, right or estate shall be conveyed or assigned, his heirs, executors, administrators, or assigns, according to the nature of the interest, right, or estate, shall be entitled to stand in the place of the person by whom the same shall be conveyed or assigned, his heirs, executors, administrators or assigns, and to have the same interest, right or estate, or such part thereof as shall be conveyed or assigned to him, and the same actions, suits, and remedies for the same, as the person originally entitled thereto, his heirs, executors, or administrators, would have been entitled to if non-conveyance, assignment, or other disposition thereof had been made; provided that no person shall be empowered by this Act to dispose of any expectancy which he may have as heir, or heir of the body inheritable, or as next of kin under any Law for the distribution of the estates of intestates of a living person, nor any estate, right, or interest to which he may become entitled under any deed thereafter to be executed, or under the will of any living person, and no deed shall by force of this Act bar or enlarge any estate tail: Provided also, that no chose in action shall by this Act be made assignable at law.

Rights of the assignee.

Proviso: certain expectancies not to be assignable.

Proviso as to choses in action.

No implied warranty, &c., to be created by the word "Grant" or "Exchange."

VI. And be it enacted, That neither the word "Grant," nor the word "Exchange," in any deed shall have the effect of creating any warranty or right of re-entry, nor shall either of such words have the effect of creating any covenant by implication, except in cases where by any Act in force in Upper-Canada, it is or shall be declared that the word "Grant" shall have such effect.

VII. And be it enacted, That no conveyance shall be voidable only when made by feoffment or other assurance, where the same would be absolutely void if made by release or grant; and that no assurance shall create any estate by wrong, or have any other effect than the same would have if it were to take effect as a release, surrender, grant, lease, bargain and sale, or covenant to stand seized, as the case may be.

No assurance to have greater effect than a release, &c.

VIII. And be it enacted, That after the time at which this Act shall come into operation, no estate in land shall be created by way of contingent remainder; but every estate which before that time would have taken effect as a contingent remainder, shall take effect (if in a will or codicil) as an executory devise, and (if in a deed) as an executory estate of the same nature, and having the same properties as an executory devise; and contingent remainders existing under deeds, wills or instruments, executed or made before the time when this Act shall come into operation, shall not fail, or be destroyed or barred, merely by reason of the destruction or merger of any preceding estate, or its determination by any other means than the natural effluxion of the time of such preceding estate, or some event on which it was in its creation limited to determine.

Contingent remainders abolished, &c.

As to existing contingent remainders.

IX. And be it enacted, That when any person entitled to any freehold land by way of mortgage, has or shall have departed this life, and his executor or administrator is or shall be entitled to the money secured by the mortgage, and the legal estate in such land is or shall be vested in the heir or devisee of such mortgagee, or the heir, devisee or other assign of such heir or devisee, and possession of the land shall not have been taken by virtue of the mortgage, nor any action or suit be depending, such executor or administrator shall have power, upon payment of the principal money and interest due to him on the said mortgage, to convey by deed or surrender (as the case may require) the legal estate which became vested in such heir or devisee; and such conveyance shall be as effectual as if the same had been made by any such heir or devisee, his heirs or assigns.

Executor or administrator of mortgagee empowered to convey the legal estate vested in the heir or devisee.

X. And be it enacted, That the *bonâ fide* payment to and the receipt of any person to whom any money shall be payable upon any express or implied trust, or for any limited purpose, or of the survivors or survivor of two or more mortgagees or holders, or the executors or administrators of such survivor, or their or his assigns, shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security.

Receipts of trustees to be effectual discharges.

XI. And be it enacted, That it shall not be necessary in any case to have a deed indented; and that any person, not being a party to any deed, may take an immediate benefit under it in the same manner as he might under a Deed Poll.

Indenting a deed unnecessary, &c.

XII. And be it enacted, That when the reversion of any land, expectant on a lease, shall be merged in any remainder or other reversion or estate, the person entitled to the estate into which such reversion shall have merged, his heirs, executors, administrators, successors and assigns, shall have and enjoy the like advantage, remedy and benefit against the lessee, his heirs, successors, executors, administrators and assigns, for non-payment of the rent, or for doing of waste or other forfeiture, or for not performing conditions, covenants, or agreements contained and expressed in his lease, demise or grant, against the lessee, farmer or grantee, his heirs, successors, executors, administrators

The remedies for the rent and covenants in a lease, not to be extinguished by the merger of the immediate reversion.

administrators and assigns, as the person who would for the time being have been entitled to the mesne reversion which shall have merged, would or might have had and enjoyed if such reversion had not been merged.

Any interest in lands which might be conveyed under this Act to be bound by judgments liable under execution.

XIII. And be it enacted, That any estate, right, title or interest in lands which, under the provisions of the fifth section of this Act, might be validly conveyed or assigned by any party, shall be bound by the judgments of any Court of Record, and shall be liable to seizure and sale under any Writ of Execution against such party, in like manner and on like conditions as lands of such party are now by law liable to seizure and sale under execution, and the Sheriff selling the same may convey and assign the same to the purchaser in like manner and with like effect as such party might himself have done.

Commencement of this Act.

XIV. And be it enacted, That this Act shall commence and take effect upon, from and after the thirty-first day of December, one thousand eight hundred and forty-nine, and shall not extend to any deed, act or thing executed or done, or (except so far as regards the provisions hereinbefore contained as to existing contingent remainders) to any estate, right or interest created, before the first day of January, one thousand eight hundred and fifty.

Act to extend only to U. C.

XV. And be it enacted, That this Act shall extend only to Upper-Canada.

## C A P. L X X I I.

An Act to provide for the Sale and Disposition of the Real Estate of Infants in certain cases therein mentioned.

[30th May, 1849.]

Preamble.

**W**HEREAS it is expedient to authorize the Sale and Disposition of the Real Estate of Infants in certain cases where the same is for their benefit: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower-Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, That any Infant seized or possessed of, or entitled to any Real Estate in fee, for a term of years, or otherwise howsoever, in Upper-Canada, may, by his or her next friend, or by his or her guardian, apply to the Court of Chancery in and for Upper-Canada, for the sale or other disposition of such property, or a competent part thereof, in manner and for any of the purposes hereinafter directed: Provided always, that no such application shall be made to the said Court of Chancery without the consent of such Infant if he or she be of the age of seven years or upwards.

Application may be made for leave to sell real estate of Infants.

Proviso as to infants of or over seven years.

Court of Chancery may order the sale on certain conditions.

II. And be it enacted, That whenever, upon any such application as aforesaid, it shall appear satisfactorily to the said Court, that a disposition of any part of such Real Estate of such Infant is necessary and 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