

## CAP. LXXIII.

## An Act to provide for the Sale under Executions, of the interest of Mortgagors in Real Estate in Upper-Canada.

[ 30th May, 1849. ]

Preamble.

**W**HEREAS it is expedient to provide by law, that the interest of Mortgagors and their Equity of Redemption, in Real Estate, may be sold upon Executions against lands and tenements in Upper-Canada: 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 from and after the passing of this Act, it shall and may be lawful, upon any Writ of *Fieri Facias* lawfully issued against the lands and tenements in Upper-Canada of any person or persons who, or any of whom, may be a Mortgagor of Real Estate in the District, to the Sheriff or other Officer of which such Writ is directed, to seize or take in execution, sell and convey, (in like manner as any other Real Estate might be seized or taken in execution, sold and conveyed,) all the legal and equitable estate, right, title, interest and property, and the Equity of Redemption of such Mortgagor in any lands and tenements in such District.

The interest of a mortgagor may be taken in execution.

Effect of seizure and of the sale and conveyance to be made under it by the Sheriff: obligations of the purchaser, &c.

Rights of the purchaser.

Purchaser paying mortgage money entitled to a

**II.** And be it enacted, That the effect of such seizure or taking in execution, sale and conveyance, shall be to transfer to and vest in the purchaser or purchasers, and the heirs and assigns of such purchaser or purchasers, all the legal and equitable estate, right, title, interest and property, and the Equity of Redemption of such Mortgagor, in the lands or tenements so seized or taken in execution, sold and conveyed at the time of placing such Writ in the hands of the Sheriff or other Officer to whom the same is directed as well as at the time of such sale and to give to and vest in such purchaser or purchasers, and the heirs and assigns of such purchaser or purchasers, the same advantages, benefits, rights, privileges and powers as such Mortgagor could or would have had, enjoyed or exercised if such sale had not taken place; and that such purchaser or purchasers of the interest of such Mortgagor, or the heirs or assigns of such purchaser or purchasers may pay, remove or satisfy, or cause or procure to be paid, removed or satisfied any mortgage or mortgages, charge or charges, or lien or liens, which at the time of such sale lawfully or equitably existed upon the lands or tenements so sold, in like manner as such Mortgagor or Mortgagors against whom such Writ of *Fieri Facias* was issued, might, or could pay, remove or satisfy such mortgage or mortgages, charge or charges, or lien or liens; and that upon such payment, removal and satisfaction thereof being effected by such purchaser or purchasers, or the heirs and assigns of such purchaser or purchasers, such purchaser or purchasers and the heirs and assigns of such purchaser or purchasers, shall take, have, hold, possess and enjoy the same estate, right, title, interest, property, benefit and advantage which such Mortgagor or Mortgagors against whom such Writ of *Fieri Facias* was issued, might or would have taken, had, held, possessed and enjoyed in case such payment, removal or satisfaction had been effected by such Mortgagor or Mortgagors, and on payment of the mortgage money to the Mortgagee by the purchaser, the Mortgagee, his heirs, or assigns shall, if required, give to such purchaser or the heirs or assigns of such purchaser, at his or their cost and charges, a certificate

of

of payment or satisfaction of such mortgage or of the performance of the condition of the same, which may be in the form and to the effect of the Schedule to this Act marked A, and which certificate shall be of the like effect, and shall be acted upon by Registers and others, to the same extent as if the same had been given to the Mortgagor, his heirs, executors, administrators or assigns.

certificate of satisfaction, &c.

III. And be it enacted, That any Mortgagee or Mortgagees of the lands and tenements so sold, or of any part thereof, or the heirs or assigns of such Mortgagee or Mortgagees, ( being, or not being, Plaintiff or Plaintiffs, Defendant or Defendants in the Judgment whereon the Writ of *Fieri Facias* on which such sale shall take place, was issued) may be the purchaser or purchasers at such sale, and shall and may take, have, hold, possess and enjoy the same estate, title, property, benefits, advantages, rights, privileges and powers as such purchaser or purchasers as any other purchaser or purchasers not interested in the lands or tenements so sold, as Mortgagee or Mortgagees: Provided always, that if the Mortgagee of the said premises shall become the purchaser thereof, he shall, give to the Mortgagor a release of the debt, for the payment of which the mortgage may be given: and if any other person shall become such purchaser, and the Mortgagee shall enforce payment against the Mortgagor of the debt to secure which the mortgage was given, then such purchaser shall be compelled to repay the said debt and interest to the Mortgagor, and in default of such payment, within one calendar month after the same is demanded, the Mortgagor may sue such person in any Court of competent jurisdiction, and recover the amount of such debt and interest, in an action either of debt or assumpsit for money had and received, and until the said debt and interest, if recovered from or paid by the said Mortgagor after such sale, shall be repaid to him, the same shall be a charge upon the premises so mortgaged and sold.

Mortgagee may purchase the lands mortgaged to him.

Proviso: he shall release the mortgage debt.

Provision if any other person be the purchaser.

IV. And be it enacted, That where words occur in this Act, importing the singular number or the masculine gender only, they shall be understood to include more than one person, matter or thing of the same kind, as well as one person, matter or thing, and females as well as males, unless it be otherwise expressly provided; and when it would be consistent and reconcilable with the intent and meaning of this Act, wherever any person is described, it shall be held to apply to such person, his heirs, executors, administrators or assigns; and this Act shall extend to Upper-Canada only: and all other words, terms or phrases shall receive such fair and liberal construction as shall be best adapted to carry out this Act according to its true intent and meaning.

Interpretation clause.

Act to extend only to U. C.

## SCHEDULE A

*Above referred to.*

To the Registrar of the County of

I, A. B. of \_\_\_\_\_ do certify that C. D. of \_\_\_\_\_  
 who hath become the purchaser of the interest of E. F. of \_\_\_\_\_  
 hath satisfied all money due upon a certain Mortgage made by the said E. F. to me  
 bearing date the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight  
 hundred \_\_\_\_\_

hundred and \_\_\_\_\_, and registered at \_\_\_\_\_ of the clock in the forenoon, (as the case may be) of the \_\_\_\_\_ day of \_\_\_\_\_ in the same year (or as the case may be) and that such Mortgage is therefore discharged,

As witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_ (Signed,) A. B.

E. H. of } Witnesses.  
G. H. of }

C A P. L X X I V .

An Act requiring Mortgages of Personal Property in Upper-Canada to be filed.

[ 30th May, 1849. ]

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 every Mortgage or Conveyance intended to operate as a Mortgage of Goods and Chattels made after the passing of this Act, in Upper-Canada, which shall not be accompanied by an immediate delivery and be followed by an actual and continued change of possession of the things mortgaged, shall be absolutely void as against the creditors of the mortgagor, and as against subsequent purchasers and mortgagees in good faith, unless the Mortgage or Conveyance or a true copy thereof, together with an affidavit of a witness thereto sworn before a Commissioner of the Queen's Bench, of the due execution of the Mortgage or Conveyance, or of the due execution of the Mortgage or Conveyance of which the copy to be filed purports to be a copy, shall be filed as directed in the succeeding section of this Act.

Mortgages of personals in Upper-Canada made after the passing of this Act, to be void unless filed as herein directed.

Such Mortgages to be filed in office of Clerk of District Court.

And open to inspection.

Copy of mortgage to be filed again one year after first filing.

II. And be it enacted, That the instruments mentioned in the preceding section shall be filed in the Office of the Clerk of the District Court of the District where the mortgagor therein, if a resident in Upper-Canada, shall reside at the time of the execution thereof, and if not a resident, then in the Office of the Clerk of the District Court of the District where the property so mortgaged shall be at the time of the execution of such instrument; and such Clerks are hereby required to file all such instruments aforesaid presented to them respectively for that purpose, and to endorse thereon the time of receiving the same, and shall deposit the same in their respective Offices to be kept there for the inspection of all persons interested.

III. And be it enacted, That every Mortgage or copy thereof filed in pursuance of this Act, shall cease to be valid as against the creditors of the person making the same or against subsequent purchasers or mortgagees in good faith after the expiration of one year from the filing thereof, unless within thirty days next preceding the expiration of the said term of one year, a true copy of such Mortgage, together with a statement exhibiting the interest of the mortgagee in the property thereby claimed by virtue thereof, shall be again filed in the Office of the Clerk of the said District Court.

IV.