

had this Act not been passed, and had those persons preceding them respectively in the series of such preference, been dead at the time of the death of the intestate : And provided also, secondly, that every such preference shall be upon and subject to such terms, security and conditions as such Court may think it right to direct.

XXV. And be it enacted, That the term "real estate" as used in this Act, shall be construed to include every estate, interest and right, legal and equitable, held in fee simple or for the life of another (except as in the nineteenth section of this Act is before excepted) in lands, tenements and hereditaments in Upper Canada, but not to such as are determined or extinguished by the death of the intestate seized or possessed thereof, or so otherwise entitled thereto, nor to leases for years ; and the term "inheritance," as used in this Act, shall be understood to mean real estate as herein defined, descended or succeeded to, according to the provisions of this Act.

Interpretation.

XXVI. And be it enacted, That whenever, in the preceding sections, any person is described as living, it shall be understood that he was living at the time of the death of the intestate from whom the descent or succession came, and whenever any person is described as having died, it shall be understood that he died before such intestate.

Interpretation.

XXVII. And be it enacted, That the expressions used in this Act, "where the estate shall have come to the intestate on the part 'of the father,' or 'mother,'" as the case may be, shall be construed to include every case where the inheritance shall have come to the intestate by devise, gift or descent from the parent referred to, or from any relative of the blood of such parent.

Interpretation.

XXVIII. And be it enacted, That this Act shall apply to that part of this Province called Upper Canada, and to none other.

Act to apply to U. C. only.

## CAP. VII.

An Act to amend an Act passed in the twelfth year of Her Majesty's Reign, intituled, *An Act to simplify the transfer of real property in Upper Canada, and to render certain rights and interests therein liable under execution.*

[ 2d August, 1851. ]

**W**HEREAS it is expedient to amend an Act passed in the twelfth year of Her Majesty's Reign, intituled, *An Act to simplify the transfer of real property in Upper Canada, and to render certain rights and interests therein liable under execution* : 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-write 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 second, third, fourth, fifth, seventh, eighth, ninth and eleventh sections of the said first recited Act be and the same are hereby repealed.

Preamble.

Certain sections of 12 Vict. c. 71, repealed.

II. And be it enacted, That all corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant, as well as in livery.

Corporeal tenements, &amp;c. deemed to lie in grant, &amp;c.

III. And be it enacted, That a feoffment, otherwise than by deed, shall be void at law, and no feoffment shall have any tortious operation.

Feoffments unless by deed, to be void.

IV. And be it enacted, That a partition and an exchange of any tenements and hereditaments, and a lease required by law to be in writing of any tenements and hereditaments, and an assignment of a chattel interest in any tenements or hereditaments, and a surrender in writing of any tenements or hereditaments not being an interest which might by law have been created without writing, shall be void at law, unless made by deed.

Partition on exchange of tenements, &amp;c. unless by deed to be void.

V. And be it enacted, That a contingent, an executory and a future interest and a possibility coupled with an interest in any tenements or hereditaments of any tenure, whether

Certain interest in tenements may be disposed of by deed.

whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent into or upon any tenements or hereditaments of any tenure, may be disposed of by deed, but that no such disposition shall by force only of this Act defeat or enlarge an estate tail, and that any such disposition by a married woman shall be made conformably to the provisions of any Act in force at the time of such disposition for enabling married women to convey their real estate.

VI. And be it enacted, That a contingent remainder, existing at any time after the thirtieth day of May, one thousand eight hundred and forty-nine, and if created before the passing of this Act, shall be deemed to have been capable of taking effect, notwithstanding the determination by forfeiture, surrender or merger, of any preceding estate of freehold.

VII. And be it enacted, That when the reversion expectant on a lease made either before or after the passing of this Act of any tenements or hereditaments of any tenure, shall be surrendered or merge, the estate which shall for the time being confer, as against the tenant under the same lease, the next vested right to the same tenements or hereditaments, shall, to the extent and for purpose of preserving such incidents to and obligations on the same reversion as but for the surrender or merger thereof would have subsisted, be deemed the reversion expectant on the same lease.

VIII. And be it enacted, That when any person entitled to any freehold or leasehold 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, or shall have assented to a bequest thereof, or shall have assigned the mortgage debt, such executor or administrator shall have power, on payment of the principal money and interest due on the said mortgage, or if the mortgage money shall have been paid to the testator or intestate in his lifetime, to convey, release and discharge the said mortgage debt and the legal estate in the land; and such executor or administrator shall also have the same power as to any portion of the lands, on payment of some part of the mortgage debt, or on any arrangement for exonerating the whole or any part of the mortgaged lands without payment of money, and such conveyance, release or discharge shall be as effectual as if the same had been made by any person having the legal estate.

IX. And be it enacted, That the thirteenth section of the said recited Act shall extend and be applied to any estate, right or title or interest in lands which may be disposed of by deed under the fifth section of this Act.

### CAP. VIII.

#### An Act to facilitate the Leasing of Lands and Tenements.

[2d August, 1851.]

**W**HEREAS it is expedient to facilitate the leasing of lands and tenements: 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, whenever any person, being a party to any deed which shall be expressed to be made in pursuance of this Act, shall employ in such deed any of the forms of words contained in column one of the Schedule hereto annexed, and distinguished by any number therein, such deed shall be taken to have the same effect and be construed as if such person had inserted in such deed the form of words contained in column two of the same Schedule, and distinguished by the same number as is annexed to the form of words employed by such person, but it shall not be necessary in any such deed to insert any number.

Certain contingent remainders made valid.

Effect of surrender or merger of reversions expectant on a lease in certain cases.

Executor of deceased mortgagee, may convey, or release to the lands mortgaged in certain cases.

Section 13, of above Act extended.

Preamble.

Form of words in column 1 of Schedule to be construed as in column 2.