

Laws of Her Majesty's Province of United Canada, passed in the year 1846. Montreal:
Stewart Derbishire & George Desbarats, 1846.

9 Victoria – Chapter 10

An Act to remove certain doubts as to the jurisdiction conferred upon the Court of Chancery in Upper Canada, in matters relating to Lunatics, Idiots, and persons of unsound mind, and their Estates; and to amend and extend the Laws in force in Upper Canada relating to Lunatics, Idiots, and persons of unsound mind, and their Estates. 18th May, 1846.

Whereas by the laws of England the custody, care and management of Lunatics, Idiots, and persons of unsound mind and their Property and Estates, does not of right belong to or form part of the jurisdiction of the Court of Chancery, but the same is conferred upon the Lord Chancellor or some other person or persons under and by a Commission from the Crown, under the Sign Manual; And whereas certain doubts have arisen as to the proper construction of the Act of the Parliament of that part of this Province heretofore Upper Canada, creating the Court of Chancery, in relation to the said matters; And whereas in consequence of certain proceedings being had in matters of lunacy in the said Court, it is expedient to remove such doubts; and for the better management and care of persons found to be Lunatic, Idiot, or of unsound mind in this Province, and for the preservation of their Estates from waste and destruction, and to provide more effectually for the disposal of their Estates for the payment of debts, and for the support of such persons, maintenance of their families, and education of their children, it is expedient to amend the laws of this Province in relation to the said several matters: 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, intituled, *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 it was intended that the said Court of Chancery should have the like jurisdiction as given to the Lord Chancellor in England, or such other person or persons appointed as aforesaid in respect of the said matters, and that from and after the passing of this Act the said Court of Chancery shall, with a like power and authority as exercised by the Lord Chancellor in England, or such other person or persons as may be entrusted as aforesaid, have the care and custody of all Lunatics, Idiots, and persons of unsound mind in that part of the Province formerly Upper Canada, and of their real and personal Estates, so that the same shall not be wasted or destroyed; and shall provide for their safe keeping and maintenance, and for the maintenance of their families and education of their children, out of their personal Estates and real estates, respectively.

II. And be it enacted, That when any person or persons shall be desirous of traversing any inquisition which shall be returned into the said Court of Chancery, by which any person hath been found Lunatic, Idiot, or of unsound mind, a petition for that purpose shall be presented to the said Court of Chancery within three calendar months, to be computed from the day of the return of such inquisition, and the said Court is hereby directed and required to hear and determine such petition; and the said Court shall, in every order to be made upon such petition, limit a time not

exceeding six calendar months from the date of such order, within which the person or persons desiring to traverse as aforesaid, and all other proper parties are to proceed to the trial of the traverse to which such petition shall relate, which trial may be ordered to be had in any Court of Record in Upper Canada, according to the circumstances of the case and the situation of the parties, respectively; and it shall be lawful for the said Court in the case of every such traverse, upon the petition of any such person or persons as aforesaid, to make an order that the person or persons desiring to traverse as aforesaid, not being the party who upon such inquisition has been found Lunatic, Idiot, or of unsound mind, shall, within one month after the date of such order, give security by bond with one or more sureties, to the Registrar for the time being of the said Court of Chancery, to be filed within one month with the said Registrar, (which said security shall be approved of and certified to be sufficient by the Judge of the District Court in the District in which the parties shall reside, or by one of the Masters of the said Court of Chancery) for all proper parties proceeding to the trial of such traverse as aforesaid, within the time to be for that purpose limited as aforesaid.

III. And be it enacted, That every person having, or who shall hereafter have right to traverse any such inquisition as aforesaid, who shall not present his, her, or their petition for that purpose, to the said Court of Chancery, within the time hereinbefore limited, and applicable to his, her, or their case, or who shall refuse or neglect to give such security as aforesaid, or who shall not proceed to the trial of such traverse, within such time as shall be in that behalf limited or directed as aforesaid, and the heirs, executors and administrators of every such person, and all others claiming or to claim, by, through, or under him, her or them, shall be and are hereby absolutely, barred of such right of traverse, unless the said Court shall, under the special circumstances of any particular case, think fit, upon a petition being presented to the said Court for that purpose (the circumstances of such particular case to be substantiated upon affidavit to be sworn before some Master or Master Extraordinary of the said Court, or any other person duly authorized to take affidavits in any Superior Courts of this Province), to allow such traverse to be had or tried after the time by this Act limited; in all which special cases, it shall be lawful for the said Court of Chancery to make such orders as shall seem just.

IV. And be it enacted, That it shall be lawful for the said Court of Chancery, if the said Court shall be dissatisfied with any verdict to be returned upon any such traverse as aforesaid, to order one or more new trials thereon, as to the said Court shall seem meet, and as is usual in cases of issues directed by the Court of Chancery; any thing herein contained to the contrary notwithstanding.

V. And be it enacted, That in order to afford due protection to the property of persons found by inquisition to be Lunatic, Idiot, or of unsound mind in Upper Canada, and to prevent misapplication of the same, the Master who shall approve of and appoint a Committee of the estate, shall also approve of two or more responsible persons as sureties, in double the amount of the personal estate, and of the annual rents and profits of the real estates, for answering and duly accounting for the same, once in every year, or oftener if required by the said Court; and the said security shall be taken by bond or by recognizance in the name of the Registrar of the said Court for the time being, in such manner as the said Master shall direct, and the same shall be properly executed, and filed in the office of the Registrar of the said Court of Chancery.

VI. And be it enacted, That every Committee of the estate of any such Lunatics, Idiots, and persons of unsound mind, shall, within six months after their appointment, file in the office of the Registrar of the said Court, a just and true inventory of the whole real and personal estate of such Lunatic, Idiot, or person of unsound mind, stating the income and profits thereof, and the debts, credits and effects, so far as the same shall have come to the knowledge of such Committee; And whenever any property belonging to such estate shall be discovered after the filing of any inventory, it shall be the duty of such Committee to file as aforesaid, a just and true account of the same from time to time, as the same shall be discovered; and all and every inventories shall be verified by the oath of the Committee to be taken before a Judge of any Court of Record in this Province, or before a Master or Master Extraordinary in Chancery, and the filing of such inventories may be compelled by the order and process of attachment, and. other process of the said Court of Chancery.

VII. And be it enacted, That whenever the personal estate of any such Lunatic, Idiot, or person of unsound mind, shall not be sufficient for the discharge of his, her or their debts, it shall be the duty of the Committee of his or her estate to apply by petition to the said Court, praying for authority to mortgage, lease or sell, so much of the real estate of such Lunatic, Idiot or person of unsound mind, as shall be necessary for the payment of such debts; and such said petition shall set forth the particulars and amount of the estate real and personal of such Lunatic or person of unsound mind, the application which may have been made of any personal estate, and an account of the debts and demands existing against such estate, and the petition shall be referred to one of the Masters of the said Court to inquire into and report upon the matters therein contained, whose duty it shall be to inquire into the truth of the representations made, to hear all parties interested in such real estate, and to report thereon with all convenient speed, and upon the coming in of the said Report, and an examination of the matter, if it shall appear to the said Court, that the personal estate of such Lunatic, Idiot, or person of unsound mind, is not sufficient for the payment of his or her debts, and that the same has been applied to that purpose, as far as the circumstances of the case rendered proper, an order shall be made, directing the Committee of the estate of such person to mortgage, lease, or sell the whole or any part of the real estate of such person as shall be necessary to discharge such debts, and to execute in place of such person respectively, conveyances of the said estates, so to be mortgaged, leased or sold, and to do all such other acts as shall be necessary to effectuate the same, in such manner as the said Court shall direct; and in the application of any monies raised by any such mortgage, lease or sale, the Committee shall pay all debts in equal proportion without giving any preference to such as are founded on sealed instruments, and in case of such mortgage, lease or sale, the Court may require any additional security to be given, by any such Committee, for the faithful application and accounting for the proceeds of such mortgage, lease or sale, and may require an account thereof from time to time.

VIII. And be it enacted, That when the personal estate, and the rents, profits, and income of the real estate of any such Lunatic, Idiot or person of unsound mind, shall be insufficient for his maintenance or that of his family, or for the education of his children, a similar application may be made by the Committee to the said Court, or by any member of the family of such person, that the said Committee may be authorized and directed to mortgage or sell the whole or such part of

the real estate, as shall be necessary for that purpose, upon which the like reference and proceedings shall be had, and a like order shall be made, as hereinbefore directed in respect to the provision for the payment of debts.

IX. Provided always, and be it enacted, That on any mortgage, lease or sale which shall be made in pursuance of this Act, the person whose estate shall be mortgaged, leased or sold, and his or her heirs, next of kin, devisees, legatees, executors, administrators and assigns, shall have such and the like interest in the surplus which shall remain after answering the purposes aforesaid, of the money raised by any mortgage, lease or sale, as he, she or they would have had in the estate, by the mortgage, lease or sale of which such monies shall be raised, if no such mortgage, lease or sale had been made; and such monies shall be of the same nature and character as the estate so mortgaged, leased or sold, and it shall be lawful for the said Court to make such orders, and to direct such acts and deeds to be done and executed, as shall be necessary for carrying the aforesaid objects into effect, and for the due application of such surplus monies.

X. And be it enacted, That whenever, any such Lunatic, Idiot or person of unsound mind, shall be seized, or possessed of any real estate, by way of mortgage, or as a Trustee for others in any manner, his or her Committee may apply to the said Court for authority, to convey and assure such real estate to any other person or persons, entitled to such conveyance or assurance in such manner as the said Court shall direct, upon which a reference and the like proceedings shall be had as in the case of an application to sell the real estate as aforesaid, and the Court upon hearing all the parties interested, may order such conveyance, as aforesaid, or assurance, to be made, and on the application of any person entitled to such conveyance or assurance, by bill or petition, the Committee may be compelled by the said Court, on a hearing of all parties interested, to execute such conveyance assurance.

XI. And be it enacted, That every conveyance, mortgage, lease and assurance made under the order or direction of the said Court, pursuant to any of the provisions of this Act, shall be as valid and effectual, to all intents and purposes, as if the same had been executed by such Lunatic, Idiot, or person of unsound mind, when of sound mind, memory and understanding.

XII. And be it enacted, That the said Court of Chancery shall have authority to decree and compel the specific performance of any bargain, contract or agreement which may have been made by any Lunatic, Idiot or person of unsound mind in Upper Canada, while such person was capable to contract; and to direct the Committee of such person to do and execute all necessary conveyances and acts for the purpose; and the purchase money, or so much thereof as remains unpaid shall be paid to the said Committee of such Lunatic, Idiot, or person of unsound mind.

XIII. And be it enacted, That the said Court may order the expenses and costs of and relating to the petitions, orders, directions and conveyances to be made in pursuance of this Act, or any of them, to be paid and raised from the lands or rents or personal estate, in respect of which the same shall respectively be made, in such manner as the said Court shall think proper; and the said Court shall have the same power and authority to regulate and direct from time to time what fees shall be

taken and allowed in all matters connected with or relating to such Lunatics, Idiots, or persons of unsound mind, and their estates, as it possesses in other cases.

XIV. And be it enacted, That for the purposes of this Act Her Majesty's Common Gaols in the several Districts and Counties of Upper Canada, as well as all other gaols which may be erected in any District now existing, or which may hereafter be constituted and set apart, shall be prisons of the said Court; And that all Sheriffs, Deputy Sheriffs, Gaolers, Constables, and other Peace Officers shall be aiding, assisting and obeying the said Court in the exercise of its Jurisdiction conferred by this Act, whenever required so to do by the said Court.