

Laws of Her Majesty's Province of Upper Canada, passed in the year 1849. Montreal: Stewart Derbyshire & George Desbarats, 1849.

12 Victoria – Chapter 73

An Act to provide for the Sale under Executions, of the interest of Mortgagors in Real Estate in Upper-Canada. 30th May, 1840.

Whereas 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 intitled, *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.

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 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.

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.

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.

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 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 _____ }
G. H. of _____ } Witnesses.