

Laws of Her Majesty's Province of United Canada, passed in the year 1851. York: Stewart Derbyshire and George Desbarts, 1851.

14 & 15 Victoria – Chapter 45

An Act for the relief of Mortgagees. 30th August, 1851.

Whereas it is expedient that relief should be afforded to Mortgagees of freehold and leasehold property in certain cases in which they are not sufficiently protected by law: 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 it shall and may be lawful for any Mortgagee of freehold or leasehold property, or any Assignee or Assignees of such Mortgagee, to take and receive from the Mortgagor or Assignee of such Mortgagor, a release of the equity of redemption in such property, or to purchase the same under any power of sale in his Mortgage, or any judgment or decree, without thereby merging the Mortgage debt as against any subsequent Mortgagee or registered judgment Creditor of the same property.

II. And be it enacted, That whenever any prior Mortgagee or Assignee or Assignees of such prior Mortgagee of such property as aforesaid, shall take a release of the equity of redemption of the Mortgagor or his Assignee in such Mortgaged property as aforesaid, or shall purchase the same under any power of sale in his Mortgage or any judgment or decree, no subsequent Mortgagee or his Assignee, or registered judgment Creditor shall be entitled to foreclose or sell such property without redeeming or selling subject to such prior Mortgagee or his Assignee, in the same manner as if such prior Mortgagee or his Assignee had not taken, received or purchased such equity of redemption of the Mortgagor or his Assignee.

III. And be it enacted, That nothing in this Act contained shall be construed to affect any priority or claim which any Mortgagee or judgment Creditor shall or may have or be entitled to under any Act in force relating to the registry of titles to land.

IV. And be it enacted, That on any proceeding for foreclosure by, or redemption against any Assignee or Assignees of any Mortgagee, the statement of the Mortgage account, under the oath of such Assignee or Assignees, shall be sufficient *primâ facie* evidence of the state of such account, and no affidavit or oath shall be required from the Mortgagee or any intermediate Assignee denying any payment to such Mortgagee or intermediate Assignee, unless the Mortgagor or his Assignee, or the party proceeding to redeem, shall deny the correctness of such statement of account by oath or affidavit.

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