

1914

c 109 Conveyancing and Law of Property Act

Ontario

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CHAPTER 109.

An Act respecting the Law and Transfer of
Property.

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:—

- Short title. **1.** This Act may be cited as *The Conveyancing and Law of Property Act*. 1 Geo. V. c. 25, s. 1.
- Interpretation. **2.** In this Act,
- Conveyance. (a) “Conveyance” shall include assignment, appointment, lease, settlement, and other assurance, made by deed, on a sale, mortgage, demise, or settlement of any property or on any other dealing with or for any property; and “convey” shall have a meaning corresponding with that of conveyance;
- Imp. Act
44-45 V.
c. 41, s. 2.
Convey.
- Land. (b) “Land” shall include messuages, tenements, hereditaments, whether corporeal or incorporeal, and any undivided share in land;
- Mortgage. (c) “Mortgage” shall include any charge on property for securing money or money’s worth;
- Mortgage
money. (d) “Mortgage money” shall mean money or money’s worth secured by a mortgage;
- Mortgagee. (e) “Mortgagee” shall include any person from time to time deriving title under the original mortgagee.
- Mortgagor. (f) “Mortgagor” shall include any person from time to time deriving title under the original mortgagor or entitled to redeem a mortgage according to his estate, interest or right in the mortgaged property;
- Property. (g) “Property” shall include real and personal property, and any debt, and any thing in action, and any other right or interest;
- Puffer. (h) “Puffer” shall mean a person appointed to bid on the part of the seller;
- Purchaser. (i) “Purchaser” shall include a lessee, a mortgagee, and an intending purchaser, lessee or mortgagee, or other person, who, for valuable consideration, takes or deals for any property; and “purchase”
- Purchase.

shall have a corresponding meaning with that of purchaser; but "sale" shall mean only a sale properly so called. 1 Geo. V. c. 25, s. 2.

3. All corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, lie in grant as well as in livery. 1 Geo. V. c. 25, s. 3.

4. A feoffment, otherwise than by deed, shall be void and no feoffment shall have any tortious operation. 1 Geo. V. c. 25, s. 4.

WORDS OF LIMITATION.

5.—(1) In a conveyance it shall not be necessary, in the limitation of an estate in fee simple, to use the word heirs; or in the limitation of an estate in tail to use the words of the body; or in the limitation of an estate in tail male or in tail female to use the words heirs male of the body or heirs female of the body.

(2) For the purpose of such limitation it shall be sufficient in a conveyance to use the words in fee simple, in tail, in tail male, or in tail female, according to the limitation intended, or to use any other words sufficiently indicating the limitation intended.

(3) Where no words of limitation are used the conveyance shall pass all the estate, right, title, interest, claim and demand which the conveying parties have, in, to, or on the property conveyed, or expressed or intended so to be, or which they have power to convey in, to, or on the same.

(4) Subsection 3 shall apply only if and as far as a contrary intention does not appear from the conveyance, and shall have effect subject to the terms of the conveyance and to the provisions therein contained.

(5) This section shall apply only to conveyances made after the 1st day of July, 1886. 1 Geo. V. c. 25, s. 5.

PROVISIONS AS TO CONVEYANCES.

6. A receipt for consideration money or securities in the body of a conveyance shall be a sufficient discharge to the person paying or delivering the same without any further receipt being endorsed on the conveyance. 1 Geo. V. c. 25, s. 6.

7. A receipt for consideration money or other consideration in the body of a conveyance or indorsed thereon shall, in favour of a subsequent purchaser, not having notice that the money or other consideration thereby acknowledged to be received was not in fact paid or given, wholly or in part, be

sufficient evidence of the payment or giving of the whole amount thereof. 1 Geo. V. c. 25, s. 7.

Rights of purchaser as to execution. Imp. Act, 44 and 45 V. c. 41, s. 8.

8. On a sale the purchaser shall not be entitled to require that the conveyance to him be executed in his presence, or that of his solicitor, but shall be entitled to have, at his own cost, the execution of the conveyance attested by some person appointed by him, who may, if he thinks fit, be his solicitor. 1 Geo. V. c. 25, s. 8.

Requirement of deed for certain interests.

9. A partition and an exchange of land and an assignment of a chattel interest in land, and a surrender in writing of land not being an interest which might by law have been created without writing, shall be void at law, unless made by deed. 1 Geo. V. c. 25, s. 9; 3-4 Geo. V. c. 18, s. 22.

Disposal of certain interests in land by deed.

10. A contingent, an executory, and a future interest, and a possibility coupled with an interest in land, 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 land, may be disposed of by deed; but no such disposition shall, by force only of this Act, defeat or enlarge an estate tail. 1 Geo. V. c. 25, s. 10.

Saving.

Exchange or partition. "Give" or "grant." Imp. Act, 8 and 9 V. c. 106, s. 4, part.

11. An exchange or a partition of any tenements or hereditaments shall not imply any condition in law, and the word "give" or the word "grant" in a conveyance shall not imply any covenant in law, except so far as the word "give" or the word "grant" may, by force of any Act in force in Ontario, imply a covenant. 1 Geo. V. c. 25, s. 11.

Application of preceding three sections.

12. The next preceding three sections shall not extend to any deed, act or thing executed or done, or to any estate, right or interest created before the 1st day of January, 1850. 1 Geo. V. c. 25, s. 12.

Effect of grants, devises, etc., to two or more.

13.—(1) Where by any letters patent, assurance or will, made and executed after the first day of July, 1834, land has been or is granted, conveyed or devised to two or more persons other than executors or trustees in fee simple, or for any less estate, it shall be considered that such persons took or take as tenants in common, and not as joint tenants, unless an intention sufficiently appears on the face of such letters patent, assurance or will, that they are to take as joint tenants.

Husband and wife.

(2) This section shall apply notwithstanding that one of such persons is the wife of another of them. 1 Geo. V. c. 25, s. 13.

Land acquired by possession by two or more.

14. Where hereafter two or more persons acquire land by length of possession they shall be considered to hold as tenants in common and not as joint tenants. 1 Geo. V. c. 25, s. 14.

15.—(1) Every conveyance of land, unless an exception is specially made therein, shall include all houses, out-houses, edifices, barns, stables, yards, gardens, orchards, commons, trees, woods, underwoods, mounds, fences, hedges, ditches, ways, waters, water-courses, lights, liberties, privileges, easements, profits, commodities, emoluments, hereditaments and appurtenances whatsoever, to such land belonging or in any-wise appertaining, or with the same demised, held, used, occupied and enjoyed or taken or known as part or parcel thereof; and if the same purports to convey an estate in fee simple, also the reversion or reversions, remainder and remainders, yearly and other rents, issues and profits of the same land and of every part and parcel thereof, and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim and demand whatsoever, of the grantor, into out of, or upon the same land, and every part and parcel thereof, with their and every of their appurtenances.

(2) Except as to conveyances under former Acts relating to short forms of conveyances, this section shall apply only to conveyances made after the 1st day of July, 1886. 1 Geo. V. c. 25, s. 15.

16. Unless the contrary appears to be the intent of the instrument where in a conveyance the “mining rights” in respect of any land are granted or reserved, such grant or reservation shall be construed to convey or reserve the ores, mines and minerals on or under the land, together with such right of access for the purpose of winning such ores, mines and minerals as is incidental to a grant of ores, mines and minerals. 3-4 Geo. V. c. 18, s. 23, *part*.

17. Unless the contrary appears to be the intent of the instrument where in a conveyance the “surface rights” in respect of any land are granted or reserved, such grant or reservation shall be construed to convey or reserve the land therein described with the exception of the ores, mines and minerals on or under such land and such right of access for the purpose of winning the ores, mines and minerals as is incidental to a grant of ores, mines and minerals. 3-4 Geo. V. c. 18, s. 23, *part*.

18. In any instrument purporting to deal with “mining rights” or “surface rights” these expressions shall respectively have the meaning affixed to them by the two next preceding sections. 3-4 Geo. V. c. 18, s. 23, *part*.

19. The three next preceding sections shall not go into force until the 1st day of July, 1914, but shall not apply to conveyances by the Crown. 3-4 Geo. V. c. 18, s. 23, *part*.

20. Any corporation capable of taking and conveying land in Ontario shall be deemed to have been and to be capable of

What to be included in conveyance.

Application of section.

Meaning of “mining rights.”

Meaning of “surface rights.”

Application.

Operation of ss. 16-18.

How corporations may convey.

taking and conveying land by deed of bargain and sale, in like manner as any person in his natural capacity, subject to any general limitations or restrictions and to any special provisions as to holding or conveying land which may be applicable to such corporation. 1 Geo. V. c. 25, s. 16.

PROVIDING FOR INCUMBRANCES ON SALES.

Provision for sales free from incumbrances. Imp. Act, 44-45 V. c. 41, s. 5.

21.—(1) Where land subject to an incumbrance, whether immediately payable or not, is sold by any Court or out of Court, the Supreme Court or the Court in which the sale takes place may, on the application of any party to the sale, direct or allow payment into Court, in the case of an annual sum charged on the land, or of a capital sum charged on a determinable interest in the land, of such amount as, when invested in securities approved by the Court, the Court considers will be sufficient by means of the income thereof to keep down or otherwise provide for that charge; and in any other case of capital money charged on the land, of an amount sufficient to meet the incumbrance and any interest due thereon; but in either case there shall also be paid into Court such additional amount as the Court considers will be sufficient to meet the contingency of further costs, expenses, and interest, and any other contingency except depreciation of investments, not exceeding one-tenth of the original amount to be paid in, unless the Court for special reasons thinks fit to require a larger additional amount.

Payment into Court.

Conveyance or vesting order.

(2) The Court may thereupon, either after or without notice to the incumbrancer, declare the land to be freed from the incumbrance, may make any order for conveyance, or vesting order, proper for giving effect to the sale, and may give directions for the retention and investment of the money in Court.

Directions.

(3) After notice served on the persons interested in or entitled to the money or fund in Court, the Court may direct payment or transfer thereof to the persons entitled to receive or give a discharge for the same, and generally may give directions respecting the application or distribution of the capital or income thereof.

Effect of payment into Court.

(4) Payment of money into Court shall effectually exonerate therefrom the person making the payment.

How application made.

(5) The application shall be made in chambers, and on notice.

By purchaser.

(6) On an application by a purchaser notice shall be served in the first instance on the vendor.

By vendor.

(7) On an application by a vendor notice shall be served in the first instance on the purchaser.

(8) On any application notice shall be served on such persons as the Court thinks fit. Notifying others.

(9) The Court may make such order as it deems just respecting the costs, charges or expenses of any of the parties to the application. 1 Geo. V. c. 25, s. 17. Costs.

IMPLIED COVENANTS.

22.—(1) In a conveyance made on or after the 1st day of July, 1886, there shall, in the cases in this section mentioned, be deemed to be included, and there shall in those cases be implied, covenants to the effect in this section stated, by the person or by each person who conveys, as far as regards the subject-matter or share thereof expressed to be conveyed by him, with the person, if one, to whom the conveyance is made, or with the persons jointly, if more than one, to whom the conveyance is made as joint tenants, or with each of the persons, if more than one, to whom the conveyance is made as tenants in common: Covenants to be implied. Imp. Act, 44-45 V. c. 41, s. 7.

(a) In a conveyance for valuable consideration, other than a mortgage, the following covenants by the person who conveys, and is expressed to convey, as beneficial owner, namely, covenants for, On conveyance for value by beneficial owner. Imp. Act, 44-45 V. c. 41, s. 7.

- (I) Right to convey;
- (II) Quiet enjoyment;
- (III) Freedom from incumbrances; and
- (IV) Further assurance;

according to the forms of covenants for such purposes set forth in Schedule B to *The Short Forms of Conveyances Act*, and therein numbered 2, 3, 4 and 5, subject to the provisions of that Act; Rev. Stat. c. 115.

(b) In a conveyance of leasehold land for valuable consideration, other than a mortgage, the following further covenant, by the person who conveys and is expressed to convey as beneficial owner: On conveyance of leaseholds for value by beneficial owner.

That, notwithstanding anything by the person who so conveys, made, done, executed, or omitted, or knowingly suffered, the lease or grant creating the term or estate for which the land is conveyed is, at the time of conveyance, a good, valid, and effectual lease or grant of the property conveyed, and is in full force, unforfeited, unsurrendered, and in nowise become void or voidable, and that, notwithstanding anything as aforesaid, all the rents reserved by and all the covenants, conditions and agreements contained Validity of lease.

in the lease or grant, and on the part of the lessee or grantee, and the persons deriving title under him to be paid, observed and performed, have been paid, observed and performed, up to the time of conveyance;

On conveyance by trustee, etc. Imp. Act, 44-45 V. c. 41, s. 7.

- (c) In a conveyance the following covenant by every person who conveys, and is expressed to convey, as trustee or mortgagee, or as personal representative of a deceased person, or as committee of a lunatic, or under an order of the Court, which covenant shall be deemed to extend to every such person's own acts only, namely;

Against incumbrances.

That the person so conveying has not executed, or done, or knowingly suffered, or been party or privy to any deed, act, matter or thing, whereby or by means whereof the subject matter of the conveyance, or any part thereof is or may be impeached, charged, affected, or incumbered in title, estate or otherwise, or whereby or by means whereof the person who so conveys is in anywise hindered from conveying such subject-matter or any part thereof, in the manner in which it is expressed to be conveyed.

On settlement for further assurance, limited.

- (d) In a conveyance by way of settlement the following covenant by a person who conveys and is expressed to convey as settlor, namely;

That the person so conveying, and every person deriving title under him by deed or act or operation of law in his lifetime subsequent to that conveyance, or by testamentary disposition or devolution in law, on his death will, from time to time, and at all times, after the date of that conveyance, at the request and cost of any person deriving title thereunder, execute and do all such lawful assurances and things for further or more perfectly assuring the subject-matter of the conveyance to the persons to whom the conveyance is made, and those deriving title under them, subject as, if so expressed, and in the manner in which the conveyance is expressed to be made, as by them or any of them shall be reasonably required.

On conveyance by direction of beneficial owner.

- (2) Where in a conveyance it is expressed that by direction of a person expressed to direct as beneficial owner another person conveys, the person giving the direction, whether or not he conveys and is expressed to convey, as beneficial owner, shall be deemed to convey, and to be expressed to convey as beneficial owner the subject-matter so conveyed by his direc-

tion; and the covenants on his part mentioned in clause (a) of subsection 1 shall be implied accordingly.

(3) The benefit of a covenant so implied shall be annexed and incident to and shall go with the estate or interest of the implied covenantee, and shall be capable of being enforced by every person in whom that estate or interest is for the whole or any part thereof from time to time vested. Enforcing covenants.

(4) A covenant so implied may be varied or extended and as so varied or extended shall, as far as may be, operate in the like manner, and with all the like incidents, effects and consequences, as if such variations or extensions were directed in this section to be implied. 1 Geo. V. c. 25, s. 18. Variation of covenants.

(As to implied covenants in the case of mortgages see *The Mortgages Act.*) Rev. Stat. c. 112.

23.—(1) A covenant relating to land of inheritance or to land held for the life of another shall be deemed to be made with the covenantee his heirs and assigns, and shall have effect as if heirs and assigns were expressed. Operation of covenants, inheritance. Imp. Act, 44-45 V. c. 41, s. 58.

(2) A covenant relating to land not of inheritance or to land not held for the life of another shall be deemed to be made with the covenantee his executors, administrators and assigns, and shall have effect as if executors, administrators and assigns were expressed. 1 Geo. V. c. 25, s. 19. Idem. Not of inheritance.

POWERS.

24.—(1) A deed executed in the presence of, and attested by, two or more witnesses in the manner in which deeds are ordinarily executed and attested, shall, so far as respects the execution and attestation thereof, be a valid execution of a power of appointment by deed or by any instrument in writing, not testamentary, notwithstanding that it is especially required that a deed or instrument in writing, made in exercise of such power, shall be executed or attested with some additional or other form of execution or attestation or solemnity. Mode of executing powers. Imp. Act, 22-23 V. c. 35, s. 12.

(2) This section shall not operate to defeat any direction in the deed or instrument creating the power that the consent of any particular person shall be necessary to a valid execution, or that any act shall be performed in order to give validity to any appointment, having no relation to the mode of executing and attesting the deed or instrument. Saving of other requirements.

(3) Nothing in this section shall prevent the donee of a power from executing it conformably to the power. 1 Geo. V. c. 25, s. 20. Power may be observed.

Disclaimer of power by donee.
Imp. Act, 44 and 45 V. c. 41, s. 52.

25.—(1) A person to whom a power, whether coupled with an interest or not, is given may by deed disclaim or release or contract not to exercise the power.

Disclaimer of power.
45-46 V. c. 39, s. 6 (2).

(2) A person disclaiming shall not afterwards be capable of exercising or joining in the exercise of the power, and on such disclaimer the power may be exercised by the other or others or the survivor or survivors of the others of the persons to whom the power is given unless the contrary is expressed in the instrument creating the power. 1 Geo. V. c. 25, s. 21.

Validity of sale under power although mistaken payment to tenant for life.

Imp. Act, 22-23 V. c. 35, s. 13.

26. Where, under a power of sale, a sale in good faith is made of an estate, with the timber thereon, or with any articles attached thereto, and the tenant for life, or any other party to the transaction, is by mistake allowed to receive for his own benefit a part of the purchase money or value of the timber or article, the Supreme Court, upon an action brought, or upon application made in a summary way, may declare, that upon payment by the purchaser, or the claimant under him, of the full value of the timber or article at the time of the sale, with such interest thereon as the Court directs, and the settlement of the principal money and interest under the direction of the Court, upon such persons as in the opinion of the Court are entitled thereto, the sale ought to be established; and upon payment and settlement being made accordingly, the Court may declare the sale valid, and thereupon the legal estate shall vest and go in like manner as if the power had been duly executed, and the costs of the application, as between solicitor and client, shall be paid by the purchaser or the claimant under him. 1 Geo. V. c. 25, s. 22.

ILLUSORY APPOINTMENTS.

Validity of certain appointments.

27.—(1) No appointment made in exercise of any power or authority, to appoint any property, real or personal, amongst several objects, shall be invalid or impeached on the ground that an unsubstantial, illusory or nominal share only is thereby appointed to, or left unappointed to devolve upon, any one or more of the objects of such power, or upon the ground that any object of such power has been altogether excluded; but every such appointment shall be valid and effectual, notwithstanding that anyone, or more, of the objects shall not thereunder, or in default of such appointment, take more than an unsubstantial, illusory, or take no share thereof or nominal share of the property subject to such power.

Imp. Act, 11 Geo. IV. and 1 Wm. IV. c. 46, ss. 1, 2 and 3, 37 and 38 V. c. 37, s. 1.

Saving of positive requirements in constating instrument.

(2) Nothing in this section shall prejudice or affect any provision in any deed, will, or other instrument creating any such power, which declares the amount of the share or shares from which no object of the power shall be excluded or that some one or more object or objects of the power shall not be excluded or give any validity, force or effect to any appointment, other than such appointment would have had if a sub-

stantial share of the property affected by the power had been thereby appointed to, or left unappointed, to devolve upon any object of such power. 1 Geo. V. c. 25, s. 23.

TENANCY BY THE CURTESY.

28. Where a husband has issue born alive and capable of inheriting any land to which his wife is entitled in fee simple, or fee tail, if the husband survive his wife, whether such issue live or not, the husband shall, subject to the provisions of *The Married Women's Property Act*, be entitled to an estate for his natural life in such land as may not have been disposed of by her deed or will; but if he has no such issue by his wife he shall not be entitled to any further or other estate or interest in such land in the event of surviving his wife, except such as may be devised to him by her will, or such as he may become entitled to under *The Devolution of Estates Act*. 1 Geo. V. c. 25, s. 24.

Tenancy by the curtesy.

Imp. Rev. Stat., 1870, p. 129.

Rev. Stat. c. 149.

Rev. Stat. c. 119.

WASTE.

29. A tenant by the curtesy, a dowress, a tenant for life, or for years, and the guardian of the estate of an infant, shall be impeachable for waste, and liable in damages to the person injured. 1 Geo. V. c. 25, s. 25.

Waste by tenants by curtesy, dowress, etc. 6 Edw. I. (St. Gloucester), c. 5.

30. An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate. 1 Geo. V. c. 25, s. 26.

Waste by tenant for life without impeachment of waste.

31. Tenants in common, and joint tenants, shall be liable to their co-tenants for waste, or, in the event of a partition, the part wasted may be assigned to the tenant committing such waste, at the value thereof to be estimated as if no such waste had been committed. 1 Geo. V. c. 25, s. 27.

Waste between joint tenants and tenants in common. 13 Edw. I. (St. of Westminster Sec.) c. 22.

32. Lessees making or suffering waste on the demised premises without license of the lessors shall be liable for the full damage so occasioned. 1 Geo. V. c. 25, s. 28.

Waste by lessees. 52 Hen. III. (St. of Marlbridge) c. 23.

(For other remedies see *The Judicature Act*, s. 17.)

Rev. Stat. c. 56.

RELEASE OF PART OF LAND FROM RENT CHARGE.

33. The release from a rent-charge of part of the land charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the right to recover any part of it out of the land released, without prejudice to the rights of all persons interested in the land remaining unreleased and not concurring in or confirming the release. 1 Geo. V. c. 25, s. 29.

Effect of release of part of land subject to rent-charge.

Imp. Act. 2223 V. c. 35, s. 10.

FUTURE AND CONTINGENT USES.

Abrogation
of doctrine of
scintilla juris.

Imp. Act,
23-24 V.
c. 38, s. 7.

34. Where by any deed, will or other instrument any land is limited to uses, all uses thereunder, whether expressed or implied by law, and whether immediate or future, or contingent or executory, or to be declared under any power therein contained, shall take effect when and as they arise by force of and by relation to the estate and seisin originally vested in the person seised to the uses; and the continued existence in him or elsewhere of any seisin to uses or *scintilla juris* shall not be necessary for the support of, or to give effect to, future or contingent or executory uses; nor shall any such seisin to uses or *scintilla juris* be deemed to be suspended, or to remain or to subsist in him or elsewhere. 1 Geo. V. c. 25, s. 30.

CONTINGENT REMAINDERS.

Unaffected by
forfeiture,
etc., of pre-
ceding estate.

35. Every contingent remainder shall be capable of taking effect notwithstanding the determination by forfeiture, surrender or merger of any preceding estate of freehold. 1 Geo. V. c. 25, s. 31.

MERGER.

No merger of
estate by
operation of
law.
44 V. c. 5.

36. There shall not be any merger by operation of law only of any estate, the beneficial interest in which, prior to *The Ontario Judicature Act, 1881*, would not have been deemed merged or extinguished in equity. 1 Geo. V. c. 25, s. 32.

IMPROVEMENTS UNDER MISTAKE OF TITLE.

Lien on lands
for improve-
ments under
mistake of
title.

37. Where a person makes lasting improvements on land, under the belief that the land is his own, he or his assigns shall be entitled to a lien upon the same to the extent of the amount by which the value of the land is enhanced by such improvements; or shall be entitled or may be required to retain the land if the Court is of opinion or requires that this should be done, according as may under all circumstances of the case be most just, making compensation for the land, if retained, as the Court may direct. 1 Geo. V. c. 25, s. 33.

PURCHASES OF REVERSIONS.

Rule as to
purchases of
reversions.

38. No purchase made in good faith, and without fraud, of any reversionary interest in property shall be opened or set aside on the ground of undervalue. 1 Geo. V. c. 25, s. 34.

PURCHASER FOR VALUE WITHOUT NOTICE.

Onus of proof.

39. It shall not be necessary, in order to maintain the defence of a purchase for value without notice, to prove pay-

ment of the mortgage money or purchase money or any part thereof. 1 Geo. V. c. 25, s. 35.

ASSIGNMENT TO ASSIGNOR AND ANOTHER OR TO ASSIGNOR'S WIFE.

40. Any property may be conveyed by a person to himself jointly with another person, by the like means by which it might be conveyed by him to another person, and may in like manner be conveyed or assigned by a husband to his wife, or by a wife to her husband alone or jointly with another person. 1 Geo. V. c. 25, s. 36.

Assignment of property to wife or self and others. Imp. Act, 44 and 45 V. c. 41, s. 50.

RIGHTS OF POSTHUMOUS CHILDREN.

41. Where any estate is, by any marriage or other settlement, limited in remainder to, or to the use of, the first or other son or sons of the body of any person lawfully begotten, with any remainder over to, or to the use of, any other person or in remainder to, or to the use of, a daughter lawfully begotten, with any remainder to any other person, any son or daughter of such person lawfully begotten, or to be begotten, that shall be born after the decease of his or her father, shall, by virtue of such settlement, take such estate so limited to the first and other son or daughter in the same manner as if born in the lifetime of his or her father, although there may be no estate limited to trustees, after the decease of the father, to preserve the contingent remainder to such after born son, or daughter, until he or she come *in esse*, or is born, to take the same. 1 Geo. V. c. 25, s. 37.

Capacity of posthumous children to take in remainder. Imp. Act, 10 Wm. III. c. 22.

PRODUCTION OF CESTUIS QUE VIE, AND TENANTS FOR LIFE.

42. If any person, for whose life an estate is granted, remains out of Ontario or absents himself therein for the space of seven years together, so that it cannot be ascertained whether he is alive or dead, and no sufficient proof is made of the life of such person in any action commenced for recovery of such estate by the lessor or reversioner, the person upon whose life such estate depended shall be accounted as naturally dead, and in every action brought for the recovery of the estate by the lessor or reversioner, his heirs, or assigns, judgment shall be given accordingly. 1 Geo. V. c. 25, s. 38.

When death of *cestui que vie* presumed. 18 and 19 Car. II. c. 11, s. 1.

43. If any person is evicted out of any land by virtue of section 42, and if afterwards the person, upon whose life such estate depends, returns to Ontario, or in any action to be brought for recovery of the same, is shown to be living, or to have been living at the time of the eviction, the tenant or lessee who was ousted, his executors, administrators or assigns, may re-enter, repossess, have, hold, and enjoy, the land in his former estate, for and during the life, or so long a term as the person upon whose life the estate depends shall be living;

Right of tenant when *cestui que vie* proved to be living.

Action for
mesne profits
with interest.

and also shall, upon action to be brought by him against the lessor, reversioner, or tenant in possession, or other person, who, since the time of the eviction, received the profits of the land, recover for damages the full profits thereof, with lawful interest for, and from, the time that he was ousted, and kept or held out of the land by such lessor, reversioner, tenant in possession, or other person, whether the person, upon whose life such estate depends is living or dead at the time of bringing of the action. 1 Geo. V. c. 25, s. 39.

Order for pro-
duction of
person at
instance of
reversioner,
etc.

44.—(1) The Supreme Court may, on the application of any person who has any claim or demand in, or to, any remainder, reversion, or expectancy, in, or to, any estate in land, after the death of any person within age, married woman, or any other person whomsoever, upon affidavit made by the person so claiming such estate of his title, and that he has cause to believe that such minor, married woman, or other person, is dead, and that his, or her, death is concealed by the guardian, trustee, husband, or any other person, which application may be made once a year if the person aggrieved shall think fit, order that such guardian, trustee, husband, or other person concealing, or suspected to conceal, such person, do, at such time and place as the Court shall direct, on personal or other due service of such order, produce and show to such person and persons, not exceeding two, as shall in such order be named by the party prosecuting such order such minor, married woman, or other person.

Order for pro-
duction of
person before
commissioner.

(2) If such guardian, trustee, husband, or such other person refuses or neglects to produce or show such minor, married woman, or such other person, on whose life any such estate depends, according to the directions of the order, the Court is hereby authorized and required to order such guardian, trustee, husband, or other person, to produce such minor, married woman, or other person concealed, in the Court, or otherwise before commissioners to be appointed by the Court, at such time and place as the Court shall direct, two of which commissioners shall be nominated by the party prosecuting such order, at his costs and charges.

Presumption
on failure to
produce.

(3) If such guardian, trustee, husband, or other person, refuses or neglects to produce such minor, married woman, or other person so concealed, in Court, or before such commissioners, whereof return shall be made by such commissioners, and filed in the Central Office, at Osgoode Hall, in either, or any, of such cases, such minor, married woman, or other person, shall be taken to be dead, and it shall be lawful for any person claiming any right, title, or interest, in remainder or reversion, or otherwise, after the death of such minor, married woman or other person, to enter upon such land as if such minor, married woman, or other person were actually dead. 1 Geo. V. c. 25, s. 40.

6 Anne. c. 72
(or c. 18 in
Ruffhead's
Ed.). s. 1.

45. If it appears to the Court by affidavit that such minor, married woman, or other person, is, or lately was, at some certain place out of Ontario in the affidavit to be mentioned, the party prosecuting such order, at his costs and charges, may send over one or both of the persons appointed by the order to view such minor, married woman, or other person, and if such guardian, trustee, husband, or other person, concealing, or suspected to conceal, such person, refuses or neglects to produce, or procure to be produced to such person or persons a personal view of such minor, married woman, or other person, then such person or persons shall make a true return of such refusal or neglect to the Court, which shall be filed in the Central Office, and thereupon such minor, married woman, or other person, shall be taken to be dead, and any person claiming any right, title, or interest, in remainder, reversion, or otherwise, after the death of such minor, married woman, or other person, may enter upon such land as if such minor, married woman, or other person were actually dead. 1 Geo. V. c. 25, s. 41.

Where person required to be produced is out of Ontario.

6 Anne, c. 72, (or c. 18 in Ruffhead's Ed.), s. 2.

46. If it shall afterwards appear, upon proof in any action to be brought, that such minor, married woman, or other person was alive at the time such order was made, such minor, married woman, guardian, or trustee, or other person, having any estate or interest determinable upon such life, may re-enter upon the land, and may maintain an action against those who, since the order, received the profits thereof, or their executors, or administrators, and recover full damages for the profits of the same received from the time that such minor, married woman, or other person, having any estate or interest determinable upon such life, was ousted of the possession of such land. 1 Geo. V. c. 25, s. 42.

When it appears that person required to be produced was alive.

6 Anne, c. 72 (or c. 18 in Ruffhead's Ed.), s. 2.

47. If any such guardian, trustee, husband, or other person, holding or having any estate or interest determinable upon the life of any other person, shall show, to the satisfaction of the Court, that he has used his utmost endeavour to procure such minor, married woman, or other person, on whose life such estate or interest depends, to appear in Court, or elsewhere according to the order, and that he cannot procure or compel such appearance, and that such minor, married woman, or other person, is living, or was living at the time such return was made and filed the Court may order that such person may continue in the possession of such estate, and receive the rents and profits thereof, during the infancy of such minor, and the life of any other person, on whose life such estate or interest next depends, as fully as he might have done if this and the three next preceding sections had not been passed. 1 Geo. V. c. 25, s. 43.

When it appears that guardian, etc., cannot produce person who is alive.

6 Anne, c. 72 (or c. 18 in Ruffhead's Ed.), s. 4.

Guardians, trustees, etc., holding over without consent of remainderman, etc., deemed trespassers.

6 Anne, c. 72 (or c. 18 in Ruffhead's Ed.) s. 5.

Damages.

48. Every person having an estate or interest in land determinable upon any life, and the guardian or trustee for a minor having such an estate who, after the determination of such particular estate or interest, without the express consent of the person who is next and immediately entitled upon and after the determination of such particular estate or interest, holds over and continues in possession of any land, shall be deemed a trespasser, and every person entitled to any such land, upon and after the determination of such particular estate or interest, may recover in damages against every such person so holding over the full value of the profits received during such wrongful possession. 1 Geo. V. c. 25, s. 44.

ASSIGNMENTS OF CHOSSES IN ACTION.

Assignment of debt and choses in action.

49.—(1) Any absolute assignment, made on or after the 31st day of December, 1897, by writing under the hand of the assignor, not purporting to be by way of charge only, of any debt or other legal chose in action of which express notice in writing shall have been given to the debtor, trustee or other person from whom the assignor would have been entitled to receive or claim such debt or chose in action, shall be effectual in law, subject to all equities which would have been entitled to priority over the right of the assignee if this section had been enacted, to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same without the concurrence of the assignor.

Where several claimants under assignment.

(2) In case of an assignment of a debt or other chose in action, if the debtor, trustee or other person liable in respect of the debt or chose in action shall have had notice that such assignment is disputed by the assignor or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he thinks fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he thinks fit, pay the same into the Supreme Court under and in conformity with the provisions of law for the relief of trustees. 1 Geo. V. c. 25, s. 45.

DEBENTURES OF CORPORATIONS TRANSFERABLE.

Bonds and debentures of corporations.

50.—(1) The bonds or debentures of a corporation made payable to bearer, or to any person named therein or bearer, may be transferred by delivery, and if payable to any person or order, after general endorsement thereof by such person, shall be transferable by delivery.

Rights of holder.

(2) Any such transfer shall vest the property in the bond or debenture in the holder thereof and enable him to maintain an action thereon in his own name. 1 Geo. V. c. 25, s. 46.

AUCTIONS OF ESTATES.

51. Unless in the particulars or conditions of sale by auction of any land it is stated that such land will be sold subject to a reserved price, or to a right of the seller to bid, the sale shall be deemed to be without reserve. 1 Geo. V. c. 25, s. 47.

When sale deemed without reserve.

52. Upon any sale of land by auction, without reserve, it shall not be lawful for a seller or for a puffer to bid at such sale, or for the auctioneer to take, knowingly, any bidding from the seller or from a puffer. 1 Geo. V. c. 25, s. 48.

Idem. Prohibition against seller bidding.

53. Upon any sale of land by auction, subject to a right for the seller to bid, it shall be lawful for the seller or any one puffer to bid at such auction in such manner as the seller may think proper. 1 Geo. V. c. 25, s. 49.

When seller may bid.

54. Nothing in the next preceding three sections shall authorize any seller to become the purchaser at the sale. 1 Geo. V. c. 25, s. 50.

Seller not authorized to purchase.

FRAUDS IN SALES OR MORTGAGES OF PROPERTY.

55. If any seller or mortgagor of property or his solicitor or agent conceals any settlement, deed, will or other instrument material to the title, or any incumbrance, from the purchaser or mortgagee, or falsifies any pedigree upon which the title depends or may depend, in order to induce him to accept the title offered or produced to him, with intent to defraud, such seller, mortgagor, solicitor or agent, irrespective of any criminal liability he may thereby incur, shall be liable at the suit of the purchaser or mortgagee, or those claiming under him, for any loss sustained by them or either or any of them, in consequence of the settlement, deed, will or other instrument or incumbrance so concealed, or of any claim made by any person under such pedigree, whose right was so concealed by the falsification of such pedigree; and in the case of land in estimating such damages where the property is recovered from such purchaser or mortgagee, or from those claiming under him, regard shall be had to any expenditure by them, or either or any of them, in improvements on the land. 1 Geo. V. c. 25, s. 51.

Liability of vendor or mortgagor for fraudulent concealment of deeds, etc., or falsifying pedigree
Imp. Acts 22-23 V. c. 35, s. 24 and 23-24 V. c. 38, s. 8.

EFFECT OF ORDERS OF COURT.

56. An order of the Court under any statutory or other jurisdiction shall not, as against a purchaser, whether with or without notice, be invalidated on the ground of want of jurisdiction, or of want of any concurrence, consent, notice or service. 1 Geo. V. c. 25, s. 52.

Order of Court not invalidated as against purchaser for want of jurisdiction, etc.