{L. S.}

BRITISH COLUMBIA.

ANNO TRICESIMO

VICTORIÆ REGINÆ.

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NO. 32.

An Ordinance to give to Mortgagees certain powers now commonly inserted in Mortgages.

[*2nd April*, 1867.]

WHEREAS it is expedient that certain powers and provisions should be incident to the Estates of Mortgagees; **Preamble.**

Be it enacted by the Governor of British Columbia, with the advice and consent of the Legislative Council thereof, as follows:

I. Where any principal money is secured or charged by Deed on any Hereditaments of any tenure, or on any interest therein, the person to whom such money shall for the time being be payable his executors, administrators, and assigns shall at any time after the expiration of Six Months from the time when such principal shall become payable, according to the terms of the Deed, or after any interest on such principal money shall have been in arrear for Three Months, or after any omission to pay any premium on any Insurance which by the terms of the Deed ought to be paid by the person entitled to the property subject to the charge, have the following powers to the same extent (but no more) as if they had been in terms conferred by the person creating the charge, namely: **Powers of Mortgagees,**

1. A power to sell or concur with any other person in selling the whole or any part of the property by Public Auction or Private Contract, subject to any reasonable conditions he may think fit to make, and to rescind or vary contracts for sale, or buy in and resell the property from time to time in like manner. **To sell;**

2. A power to insure and keep insured from loss or damage by Fire the whole or any part of the property (whether affixed to the Freehold or not), which is in its nature insurable, and to add the premium paid for any such Insurance to the principal money, secured at the same rate of interest. **To insure.**

II. Receipts for purchase money given by the person or persons exercising the power of sale hereby conferred, shall be sufficient discharges to the purchasers, who shall not be bound to see to the application of such purchase money. **Receipts a sufficient discharge to purchasers.**

III. No such sale as aforesaid shall be made until after Three Months notice in writing, given to the person or one of the persons entitled to the property subject to the charge, or affixed on some conspicuous part of such property; but when a sale has been effected in professed exercise of the powers hereby conferred, the Title of the purchaser shall not be liable to be impeached on the ground that no case had arisen to authorize the exercise of such power, or that no such notice as aforesaid had been given; but any person damnified by any such unauthorized exercise of such power shall have his remedy in damages against the person selling. **Three months notice of sale to be given.**

IV. The

Proceeds of sale how to be applied.

IV. The money arising by any sale effected as aforesaid shall be applied by the person receiving the same, as follows: First, in payment of all the expenses incident to the sale or incurred in any attempted sale; Secondly, in discharge of all interest and costs then due in respect of the charge in consequence whereof the sale was made; and, Thirdly, in discharge of all the principal moneys then due in respect of such charge, and the residue of such money shall be paid to the person entitled to the property subject to the charge, his heirs, executors, administrators, or assigns, as the case may require.

Mortgagee can become purchaser.

V. If the person exercising the power of sale hereby conferred, or the Mortgagee, his heirs, executors, administrators or assigns in case of an express power of sale existing in the Mortgage Deed, shall be desirous to purchase the property so sold, and to convey or assign to, or vest the same in himself, or themselves, he or they shall be at liberty by petition in a summary way, to apply *ex parte* to any Judge of the Supreme Court sitting in Chambers, for leave to bid either by himself or themselves or any agent at any sale of such property.

Supreme Court to make order and conditions.

VI. The said Court or any Judge thereof, upon being satisfied of the service of notice as provided in Section III, of this Ordinance, or in case of an express power of sale in the Mortgage Deed of the service required by such Deed, shall make such order on the application so made, and shall annex thereto such conditions as to personal notice, notice by advertisement, or otherwise, and from time to time he or another Judge may make such further or other order as shall appear just.

Mortgagee to file affidavit after sale.

VII. Immediately after every sale made by leave of the Court as aforesaid, the Mortgagee, his heirs, executors, administrators, or assigns shall file an affidavit, verifying the facts of the sale, the amount of the purchase money, and any necessary matter connected therewith.

Power to Mortgagee to assign property purchased.

VIII. The person exercising the power of sale hereby conferred, or in the case of a purchase by the Mortgagee under this Ordinance, such person as shall be named in that behalf in any order of the said Supreme Court shall have power by Deed to convey or assign to, and vest in the purchaser, the property sold for all the Estate and interest therein, which the person who created the charge had power to dispose of.

Powers of this Ordinance limited in certain cases.

IX. None of the powers or incidents hereby conferred or annexed to any Estate, shall take effect or be exerciseable if it is declared in the Mortgage Deed, or other Instrument creating the Estate, that they shall not take effect, and where there is no such declaration, then if any variations or limitations of any of the powers or incidents hereby conferred or annexed are contained in such Deed or Instrument, such powers or incidents shall be exerciseable, or shall take effect, subject to such variations or limitations.

Suspending Clause.

X. Provided that this Ordinance shall not take effect until Her Majesty's approval thereof shall have been published in this Colony.

Short Title.

XI. This Ordinance may be cited for all purposes as the "Mortgages Ordinance, 1867."

Passed the Legislative Council the 2nd day of April, A. D. 1867.

CHARLES GOOD, *Clerk.* ARTHUR N. BIRCH, *Presiding Member.*

Assented to, in Her Majesty's name, this 2nd day of April, 1867.

FREDERICK SEYMOUR, *Governor*

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