

No. 19.—1864.

1st October.

AN ORDINANCE for further amending the Law of Property, and for the Relief of Trustees.

[L. S.] J. H. T. MANNERS-SUTTON.

BE it enacted by His Excellency the Governor, with the advice and consent of the Legislative Council, as follows :

Restriction on effect of license to alien.

1. Where any license to do any act which without such license would create a forfeiture or give a right to re-enter under a condition or power reserved in any lease heretofore granted or to be hereafter granted shall at any time after the passing of this Ordinance be given to any lessee or his assigns, every such license shall, unless otherwise expressed, extend only to the permission actually given, or to any specific breach of any proviso or covenant made or to be made, or to the actual assignment, under-lease, or other matter thereby specifically authorised to be done, but not so as to prevent any proceeding for any subsequent breach (unless otherwise specified in such license); and all rights under covenants and powers of forfeiture and re-entry in the lease contained shall remain in full force and virtue, and shall be available as against any subsequent breach of covenant or condition, assignment, under-lease or other matter not specifically authorised or made dispensable by such license in the same manner as if no such license had been given; and the condition or right of re-entry shall be and remain in all respects as if such license had not been given except in respect of the particular matter authorised to be done.

Restricted operation of partial licenses.

2. Where in any lease heretofore granted or to be hereafter granted there is or shall be a power or condition of re-entry on assigning or underletting or doing any other specified act without license, and a license at any time after the passing of this Ordinance shall be given to one of several lessees or co-owners to assign or underlet his share or interest or to do any other act prohibited to be done without license, or shall be given

to any lessee or owner, or any one of several lessees or owners to assign or underlet part only of the property or to do any other such act as aforesaid in respect of part only of such property, such license shall not operate to destroy or extinguish the right of re-entry in case of any breach of the covenant or condition by the co-lessee or co-lessees or owner or owners of the other shares or interests in the property, or by the lessee or owner of the rest of the property (as the case may be) over or in respect of such shares or interest or remaining property, but such right of re-entry shall remain in full force over or in respect of the shares or interests or property not the subject of such license.

3. Where the reversion upon a lease is severed, and the rent or other reservation is legally apportioned, the assignee of each part of the reversion shall, in respect of the apportioned rent or other reservation allotted or belonging to him, have and be entitled to the benefit of all conditions or powers of re-entry for non-payment of the original rent or other reservation in like manner as if such conditions or powers had been reserved to him as incident to his part of the reversion in respect of the apportioned rent or other reservation allotted or belonging to him.

Apportionment of conditions of re-entry in certain cases.

4. The Supreme Civil Court on the Equity side shall have power to relieve against a forfeiture for breach of a covenant or condition to insure against loss or damage by fire where no loss or damage by fire has happened, and the breach has, in the opinion of the Court, been committed through accident or mistake or otherwise without fraud or gross negligence, and there is an insurance on foot at the time of the application to the Court in conformity with the covenant to insure, upon such terms as to the Court may seem fit.

Relief against forfeiture for breach of covenant to insure in certain cases.

5. The Court, where relief shall be granted, shall direct a record of such relief having been granted to be made by enregistration in the office of the Registrar of a copy of the order granting such relief certified by the Registrar of the Court.

When relief is granted the same to be recorded.

6. The Court shall not have power under this Ordinance to relieve the same person more than once in

Court not to relieve any person more

than once in respect of the same covenant.

respect of the same covenant or condition; nor shall it have power to grant any relief under this Ordinance where a forfeiture under the covenant in respect of which relief is sought shall have been already waived out of Court in favour of the person seeking the relief.

Lessor to have benefit of an informal insurance.

7. The person entitled to the benefit of a covenant on the part of a lessee or mortgagor to insure against loss or damage by fire shall, on loss or damage by fire happening, have the same advantage from any then subsisting insurance relating to the building covenanted to be insured, effected by the lessee or mortgagor in respect of his interest under the lease or in the property, or by any person claiming under him, but not effected in conformity with the covenant, as he would have from an insurance effected in conformity with the covenant.

Protection of purchaser against forfeiture under covenant for insurance against fire in certain cases.

8. Where on the bona fide purchase after the passing of this Ordinance of a leasehold interest under a lease containing a covenant on the part of the lessee to insure against loss or damage by fire, the purchaser is furnished with the written receipt of the person entitled to receive the rent, or his agent, for the last payment of rent accrued due before the completion of the purchase, and there is subsisting at the time of the completion of the purchase an insurance in conformity with the covenant, the purchaser or any person claiming under him shall not be subject to any liability by way of forfeiture or damages, or otherwise in respect of any breach of the covenant committed at any time before the completion of the purchase, of which the purchaser had not notice before the completion of the purchase; but this provision is not to take away any remedy which the lessor or his legal representatives may have against the lessee or his legal representatives for breach of covenant.

Preceding provisions to apply to leases for terms of years, &c.

9. The preceding provisions shall be applicable to leases for a term of years absolute or determinable on a life or lives, or otherwise, and also to a lease for the life of the lessee or the life or lives of any other person or persons.

Release of part of land charged not to be an.

10. The release from a rent-charge of part of the hereditaments charged therewith shall not extinguish the whole rent-charge, but shall operate only to bar the

right to recover any part of the rent-charge out of the hereditaments released, without prejudice nevertheless to the rights of all persons interested in the hereditaments remaining unreleased and not concurring in or confirming the release. extinguishment.

11. The release from a judgment of part of any hereditaments charged therewith shall not affect the validity of the judgment as to the hereditaments remaining unreleased, or as to any other property not specifically released, without prejudice nevertheless to the rights of all persons interested in the hereditaments or property remaining unreleased and not concurring in or confirming the release. Release of part of land charged not to affect judgment.

12. A deed hereafter executed in the presence of and attested by two or more witnesses in the manner in which deeds are required by law to be 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 it shall have been expressly required that a deed or instrument in writing made in exercise of such power should be executed or attested with some additional or other form of execution or attestation or solemnity: Provided always that this provision shall not operate to defeat any direction in the 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 instrument, and nothing herein contained shall prevent the donee of a power from executing it conformably to the power by writing or otherwise, than by an instrument executed and attested as an ordinary deed, and to any such execution of a power this provision shall not extend. Mode of execution of powers.

13. Where, by any will which shall come into operation after the passing of this Ordinance, the testator shall have charged his real estate or any specific portion thereof with the payment of his debts, or with the payment of any legacy or other specific sum of money, and shall have devised the estate so charged to any trustee or trustees for the whole of his estate or Devisee in trust may raise money by sale, notwithstanding want of express power in the will.

interest therein, and shall not have made any express provision for the raising of such debt, legacy, or sum of money out of such estate, it shall be lawful for the said devisee or devisees in trust, notwithstanding any trusts actually declared by the testator, to raise such debts, legacy, or money as aforesaid, by a sale and absolute disposition by public auction or private contract of the said hereditaments, or any part thereof, or by a mortgage of the same, or partly in one mode and partly in the other; and any deed or deeds of mortgage so executed may reserve such rate of interest and fix such period or periods of repayment as the person or persons executing the same shall think proper.

Powers given by last section to extend to survivors, devisees, &c.

14. The powers conferred by the last Section shall extend to all and every person or persons in whom the estate devised shall for the time being be vested by survivorship, descent or devise, or to any person or persons who may be appointed under any power in the will, or by the Supreme Civil Court to succeed to the trusteeship vested in such devisee or devisees in trust as aforesaid.

Executors to have power of raising money &c., where there is no sufficient devise.

15. If any testator who shall have created such a charge as is described in the thirteenth Section of this Ordinance shall not have devised the hereditaments charged as aforesaid in such terms as that his whole estate and interest therein shall become vested in any trustee or trustees, the executor or executors for the time being named in such will (if any) shall have the same or the like power of raising the said moneys as is hereinbefore vested in the devisee or devisees in trust of the said hereditaments, and such power shall from time to time devolve to and become vested in the person or persons (if any) in whom the executorship shall for the time being be vested; but any sale or mortgage under this Ordinance shall operate only on the estate and interest, whether legal or equitable, of the testator, and shall not render it unnecessary to get in any outstanding subsisting legal estate.

Purchasers, &c., not bound to inquire as to powers.

16. Purchasers or mortgagees shall not be bound to inquire whether the powers conferred by Sections thirteen, fourteen and fifteen of this Ordinance, or any

of them, shall have been duly and correctly exercised by the person or persons acting in virtue thereof.

17. The provisions contained in Sections thirteen, fourteen, and fifteen shall not in any way prejudice or affect any sale or mortgage already made or hereafter to be made under or in pursuance of any will coming into operation before the passing of this Ordinance; but the validity of any such sale or mortgage shall be ascertained and determined in all respects as if this Ordinance had not passed; and the said several Sections shall not extend to a devise to any person or persons in fee or in tail, or for the testator's whole estate and interest charged with debts or legacies, nor shall they affect the power of any such devisee or devisees to sell or mortgage as he or they may by law now do.

Sections 13, 14 and 15 not to affect certain sales, &c., nor to extend to certain devises.

18. Any person shall have power to assign personal property now by law assignable, including chattels real directly to himself and another person or other persons or corporation, by the like means as he might assign the same to another.

Assignment to self and others.

19. The bona fide payment to and the receipt of any person to whom any purchase or mortgage money shall be payable upon any express or implied trust shall effectually discharge the person paying the same from seeing to the application or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security.

Not to be bound to see to the application of purchase-money.

20. Any seller or mortgagor of land or of any chattels, real or personal, or choses in action conveyed or assigned to a purchaser or mortgagee, or the solicitor or agent of any such seller or mortgagor who shall, after the passing of this Ordinance, conceal any settlement, deed, will, or other instrument, material to the title, or any encumbrance from the purchaser or mortgagee, or falsify any pedigree upon which the title does or may depend, in order to induce him to accept the title offered or produced to him with intent in any of such cases to defraud, shall be guilty of a misdemeanour, and being found guilty shall be liable, at the discretion of the Court, to suffer such punishment by fine or

Punishment for fraudulent concealment of deeds or falsification of pedigree.

imprisonment for any time not exceeding two years, with or without hard labour, or by both, as the Court shall award, and shall also be liable to an action for damages at the suit of the purchaser or mortgagee, or those claiming under the purchaser or mortgagee, 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, but whose right was concealed by the falsification of such pedigree; and in estimating such damages where the estate shall be recovered from such purchaser or mortgagee or from those claiming under the purchaser or mortgagee, regard shall be had to any expenditure by them or either or any of them in improvements on the land; but no prosecution for any offence included in this section against any seller or mortgagor or any solicitor or agent shall be commenced without the sanction of Her Majesty's Attorney General, or in case that office be vacant, of Her Majesty's Solicitor General; and no such sanction shall be given without such previous notice of the application for leave to prosecute to the person intended to be prosecuted, as the Attorney General or the Solicitor General (as the case may be) shall direct.

Interpretation
of terms.

21. In the construction of the previous provisions in this Ordinance the term "land" shall be taken to include all tenements and hereditaments and any part or share of or estate or interest in any tenements or hereditaments of what tenure or kind soever; and the term "mortgage" shall be taken to include every instrument by virtue whereof land is in any manner conveyed, assigned, pledged or charged as security for the repayment of money or money's worth lent, and to be re-conveyed, re-assigned or released on satisfaction of the debt; and the term "mortgagor" shall be taken to include every person by whom any such conveyance, assignment, pledge, or charge as aforesaid shall be made; and the term "mortgagee" shall be taken to include every person to whom or in whose favour any such conveyance, assignment, pledge, or charge as aforesaid is made or transferred; and the term "judgment" shall be taken to include registered decrees, orders of the Supreme Civil Court in Equity, and other orders having the operation of judgments.

22. No trustee, executor, or administrator making any payment or doing any act bona fide under or in pursuance of any power of attorney shall be liable for the moneys so paid or the act so done by reason that the person who gave the power of attorney was dead at the time of such payment or act, or had done some act to avoid the power, provided that the fact of the death or of the doing of such act as last aforesaid at the time of such payment or act bona fide done as aforesaid by such trustee, executor or administrator was not known to him: Provided always that nothing herein contained shall in any manner affect or prejudice the right of any person entitled to the money against the person to whom such payment shall have been made, but that such person so entitled shall have the same remedy against such person to whom such payment shall be made as he would have had against the trustee, executor or administrator if the money had not been paid away under such power of attorney.

Trustee, &c.
making
payment
under power
of attorney
not to be
liable by
reason of
death of party
giving such
power.

23. Where an executor or administrator liable as such to the rents, covenants or agreements contained in any lease or agreement for a lease granted or assigned to the testator or intestate whose estate is being administered shall have satisfied all such liabilities under the said lease or agreement for a lease as may have accrued due and been claimed up to the time of the assignment hereinafter mentioned, and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the lessee to be laid out on the property demised or agreed to be demised, although the period for laying out the same may not have arrived, and shall have assigned the lease or agreement for a lease to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said lease or agreement for a lease; and the executor or administrator so distributing the residuary estate shall not, after having assigned the said lease or agreement for a lease, and having where necessary set apart such sufficient fund as

As to liability
of executor or
administrator
in respect of
rents, cove-
nants or
agreements.

aforesaid, be personally liable in respect of any subsequent claim under the said lease or agreement for a lease; but nothing herein contained shall prejudice the right of the lessor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or amongst whom the said assets may have been distributed.

As to liability of executor, &c., in respect of rents &c., in conveyances rents-charge.

24. In like manner where an executor or administrator liable as such to the rent, covenants or agreements contained in any conveyance, on chief rent or rent-charge (whether any such rent be by limitation of use, grant, or reservation) or agreement for such conveyance granted or assigned to be made and entered into with the testator or intestate whose estate is being administered, shall have satisfied all such liabilities under the said conveyance or agreement for a conveyance as may have accrued due and been claimed up to the time of the conveyance hereinafter mentioned and shall have set apart a sufficient fund to answer any future claim that may be made in respect of any fixed and ascertained sum covenanted or agreed by the grantee to be laid out on the property conveyed or agreed to be conveyed although the period for laying out the same may not have arrived, and shall have conveyed such property or assigned the said agreement for such conveyance as aforesaid to a purchaser thereof, he shall be at liberty to distribute the residuary personal estate of the deceased to and amongst the parties entitled thereto respectively, without appropriating any part or any further part (as the case may be) of the personal estate of the deceased to meet any future liability under the said conveyance or agreement for a conveyance; and the executor or administrator so distributing the residuary estate shall not, after having made or executed such conveyance or assignment, and having where necessary set apart such sufficient fund as aforesaid, be personally liable in respect of any subsequent claim under the said conveyance or agreement for a conveyance; but nothing herein contained shall prejudice the right of the grantor or those claiming under him to follow the assets of the deceased into the hands of the person or persons to or among whom the said assets may have been distributed.

As to distribution of the

25. Where an executor or administrator shall have

given such or the like notices as in the opinion of the Court in which such executor or administrator is sought to be charged would have been given by the Supreme Civil Court in an administration suit, for creditors and others to send in to the executor or administrator their claims against the estate of the testator or intestate, such executor or administrator shall at the expiration of the time named in the said notices or the last of the said notices for sending in such claims, be at liberty to distribute the assets of the testator or intestate or any part thereof amongst the parties entitled thereto, having regard to the claims of which such executor or administrator has then notice, and shall not be liable for the assets or any part thereof so distributed to any person of whose claim such executor or administrator shall not have had notice at the time of distribution of the said assets or a part thereof (as the case may be); but nothing in this Ordinance contained shall prejudice the right of any creditor or claimant to follow the assets or any part thereof into the hands of the person or persons who may have received the same respectively.

26. Any trustee, executor or administrator shall be at liberty, without the institution of a suit, to apply by petition to the Supreme Civil Court on the equity side for the opinion, advice or direction of the Court on any question respecting the management or administration of the trust property or the assets of any testator or intestate; such petition to be served upon or the hearing thereof to be attended by all persons interested in such application or such of them as the said Court shall think expedient; and the trustee, executor or administrator acting upon the opinion, advice or direction given by the said court shall be deemed, so far as regards his own responsibility, to have discharged his duty as such trustee, executor or administrator in the subject-matter of the said application; provided nevertheless that this Ordinance shall not extend to indemnify any trustee, executor or administrator in respect of any act done in accordance with such opinion, advice or direction as aforesaid if such trustee, executor or administrator shall have been guilty of any fraud or wilful concealment or misrepresentation in obtaining such opinion, advice or direction; and the costs of such application as aforesaid shall be in the discretion of the said Court.

assets of
testator or
intestate after
notice given
by executor or
administrator.

Trustee,
executor, &c.,
may apply by
petition to
Supreme
Civil Court
for advice in
administra-
tion of trust
property.

Every trust instrument to be deemed to contain a clause for the indemnity and reimbursement of the trustees.

27. Every deed, will or other instrument creating a trust either expressly or by implication shall without prejudice to the clauses actually contained therein be deemed to contain a clause in the words or to the effect following, that is to say—"That the trustees or trustee for the time being of the said deed, will or other instrument shall be respectively chargeable only for such moneys, stocks, funds and securities as they shall respectively actually receive notwithstanding their respectively signing any receipt for the sake of conformity, and shall be answerable and accountable only for their own acts, receipts, neglects or defaults, and not for those of each other, nor for any banker, broker or other person with whom any trust moneys or securities may be deposited, nor for the insufficiency or deficiency of any stocks, funds or securities nor for any other loss, unless the same shall happen through their or his own wilful default respectively; and also that it shall be lawful for the trustees or trustee for the time being of the said deed, will or other instrument to reimburse themselves or himself or pay or discharge out of the trust premises all expenses incurred in or about the execution of the trusts or powers of the said deed, will or other instrument."

Trust fund may be vested in certain securities unless otherwise provided.

28. When a trustee, executor or administrator shall not, by some instrument creating his trust, be expressly forbidden to invest any trust fund in the Government Savings' Bank of this Colony, or in public debentures issued under the authority of and guaranteed by any Ordinance of the Governor and the Legislative Council, it shall be lawful for such trustee, executor or administrator to invest such trust fund in such securities or any of them; and he shall not be liable on that account as for a breach of trust; provided that such investment shall in other respects be reasonable and proper.

Legal estate vested in purchaser or mortgagee not to be taken in execution.

29. And whereas delay and expense may be occasioned upon purchases and mortgages of lands in consequence of judgments against mortgagees continuing to bind lands, although the mortgagees have been bona fide paid off, and the lands have been actually sold or mortgaged to purchasers or other mortgagees: for remedy thereof be it enacted that where any legal or equitable estate or interest or any disposing power in

or over any lands, tenements, or hereditaments shall under any conveyance or other instrument executed after the passing of this Ordinance become vested in any person as a purchaser or mortgagee for valuable consideration, such lands, tenements, or hereditaments shall not be taken in execution under any writ of execution to be sued out upon any judgment, decree, order, or rule against any mortgagee or mortgagees thereof who shall have been paid off prior to or at the time of the execution of such conveyance or other instrument, nor shall any such judgment, decree, lands, rule or order, or any money thereby secured be a charge upon such tenements or hereditaments so vested in such purchasers or mortgagees.

Passed in Council this first day of October in the year of our Lord one thousand eight hundred and sixty-four.

R. LECHMERE GUPPY,

Clerk of Council.

No. 20.—1864.

1st October.

AN ORDINANCE to amend the Law relating to Bills of Lading.

J. T. H. MANNERS SUTTON.

WHEREAS by the custom of merchants a Bill of Lading of goods being transferable by endorsement, the property in the goods may thereby pass to the endorsee, but nevertheless all rights in respect of the contract contained in the Bill of Lading continue in the original shipper or owner, and it is expedient that such rights should pass with the property: And whereas it frequently happens that the goods in respect of which Bills of Lading purport to be signed have not been laden on board, and it is proper that such Bills of Lading in the hands of a bona fide holder for value should not be questioned by the master or other person signing the