ANNO PRIMO & SECUNDO

VICTORIÆ REGINÆ.

****

C A P. LXIX.

An Act to remove Doubts respecting Conveyances of Estates vested in Heirs and Devisees of Mortgagees. [4th *August* 1838]

WHEREAS by an Act passed in the First Year of the Reign of His late Majesty King *William* the Fourth, intituled *An Act for amending the Laws respecting Conveyances and Transfers of Estates and Funds vested in Trustees and Mortgagees, and for enabling Courts of Equity to give Effect to their Decrees and Orders in certain Cases,* it was enacted, that where any Person seised of any Land upon any Trust should be out of the Jurisdiction of or not amenable to the Process of the Court of Chancery, or it should be uncertain, where there were several Trustees, which of them was the Survivor, or it should be uncertain whether the Trustee last known to have been seised as aforesaid were living or dead, or if known to be dead it should not be known who was his Heir, or if any Trustee seised as aforesaid, or the Heir of any such Trustee, should neglect or refuse to convey such Land for the Space of Twenty-eight Days next after a proper Deed for making such Conveyance should have been tendered for his Execution by, or by an Agent duly authorized by, any Person entitled to require the same, then and in every or any such Case it should be lawful for the said Court of Chancery to direct any Person whom 1 W. 4. c. 60.

7 S such

such Court might think proper to appoint for that Purpose, in the Place of the Trustee or Heir, to convey such Land to such Person and in such Manner as the said Court should think proper, and that every such Conveyance should be as effectual as if the Trustees seised as aforesaid or his Heir had made and executed the same; and by the same Act it was further enacted, that the several Provisions therein-before contained should extend to every Case of a constructive Trust, or Trust arising or resulting by Implication of Law, but that in every such Case, where the alleged Trustee had or claimed a beneficial Interest adversely to the Party seeking a Conveyance or Transfer, no Order should be made for the Execution of a Conveyance or Transfer by such alleged Trustee until after it had been declared by the Court of Chancery, in a Suit regularly instituted in such Court, that such Person was a Trustee for the Person so seeking a Conveyance or Transfer; but that the said Act should not extend to Cases upon Partition, or Cases arising out of the Doctrine of Election in Equity, or to a Vendor, except in any Case therein-before expressly provided for: And whereas by another Act passed in the Fourth and Fifth Years of the Reign of His said late Majesty King *William* the Fourth, intituled *An Act for the Amendment of the Law relative to the Escheat and Forfeiture of Real and Personal Property holden in Trust*, it was enacted, that where any Person seised of any Land upon any Trust or by way of Mortgage died without an Heir, it should be lawful for the Court of Chancery to appoint a Person to convey such Land in like Manner as was provided by the herein-before in part recited Act in case such Trustee or Mortgagee had left an Heir, and it was not known who was such Heir, and that such Conveyance should be as effectual as if there was such Heir: And whereas Doubts have arisen whether the Provisions of the said Acts extend to the Cases herein-after mentioned; and it is expedient that such Doubts should be removed by Authority of Parliament: May it therefore please Your Majesty that it may be enacted and declared; and be it enacted and declared by the Queen's most Excellent Majesty, by and with the Advice and Consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the Authority of the same, That where any Person seised of any Land by way of Mortgage shall have departed this Life without having been in Possession of such Land or in the Receipt of the Rents and Profits thereof, and the Money due in respect of such Mortgage shall have been or shall be paid to his Executor or Administrator, and the Devisee or Heir or other real Representative, or any of the Devisees or Heirs or real Representatives, of such Mortgagee shall be out of the Jurisdiction or not amenable to the Process of the Court of Chancery, or it shall be uncertain, where there were several Devisees or Representatives who were joint Tenants, which of them was the Survivor, or it shall be uncertain whether any such Devisee or Heir or Representative be living or dead, or if known to be dead it shall not be known who was his Heir, or where such Mortgagee or any such Devisee or Heir or Representative shall have died without an Heir, or if any such Devisee or Heir or Representative shall neglect or refuse to convey such Land for the Space of Twenty-eight Days

4 & 5 W. 4. c. 23.

In certain Cases to which it is doubtful whether the recited Act extends, the Court of Chancery to appoint Persons in Place of the Devisee, Heir, &c., to convey Land, &c.

next after a proper Deed for making such Conveyance shall have been tendered for his Execution by, or by an Agent duly authorized by, any Person entitled to require the same, then and in every such Case it shall be lawful for the said Court of Chancery to direct any Person whom such Court may think proper to appoint for that Purpose in the Place of the Devisee, Heir, or Representative, (whether such Devisee, Heir, or Representative shall or shall not have a beneficial Interest in the Money paid to the Executor or Administrator as aforesaid,) to convey such Land in like Manner as by the said first-recited Act the said Court is empowered to appoint a Person to convey in the Cases therein mentioned in the Place of a Trustee or the Heir of a Trustee, and every such Conveyance shall be as effectual as if such Devisee or Heir or Representative had executed the same.

Act to extend to England and Ireland, and to be construed as Part of recited Acts.

II. And be it further enacted, That the Words used in this Act shall have the same Effect in *England* and in *Ireland*, and shall embrace the same Objects as they would have had and embraced if the Provision herein-before contained had formed Part of the said recited Acts or either of them.

Recited Acts not to extend to any Cases of Mortgage other than herein provided for.

III. Provided always, and be it hereby enacted and declared, That the said recited Acts or either of them shall not be construed to extend to any Case of any Person dying seised of any Land by way of Mortgage, other than such as are herein-before expressly provided for.

LONDON: Printed by GEORGE EYRE and ANDRW SPOTTISWOODE, Printers to the Queen's most Excellent Majesty. 1838.