

No. VI.

DEBTS OUT OF
REALTY.An Act for further facilitating the payment of
Debts out of Real Estate. [31st May, 1858.]

Preamble.

WHEREAS it is expedient to extend the provisions contained in the eleventh and twelfth sections of the Imperial Act eleventh George the Fourth and first William the Fourth chapter forty-seven adopted and applied to this Colony by the Act of Council fifth William the Fourth number eight in like manner as the same have been extended in England by the Imperial Acts second and third Victoria chapter sixty and eleventh and twelfth Victoria chapter eighty-seven Be it therefore enacted by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and Legislative Assembly of New South Wales in Parliament assembled and by the authority of the same as follows:—

Courts of Equity
authorized to direct
mortgages as well as
sales.

1. The said sections shall extend and the same are hereby extended to authorize Courts of Equity to direct mortgages as well as sales to be made of the estates of such infant heirs or devisees as are referred to in the said eleventh section of the said Act and also of lands tenements or hereditaments devised in settlement as mentioned in the said twelfth section and to authorize such sales and mortgages to be made in cases where the tenant for life or other person having a limited interest or the first executory devisee as referred to in the said Act is an infant.

Surplus of money
raised by sale or
mortgage after
defraying expenses
to descend or devolve
as the estate.

2. When any such sale or mortgage shall be made the surplus (if any) of the money raised by such sale or mortgage which shall remain after answering the purposes for which the same shall have been raised and defraying all legal costs and expenses shall be considered in all respects of the same nature and descend or devolve in the same manner as the estate or the lands tenements or hereditaments so sold or mortgaged and shall belong to the same persons be subject to the same limitations and provisions and be applicable to the same purposes as such estate or such lands tenements or hereditaments would have belonged and been subject and applicable to in case no such sale or mortgage had been made.

Provisions extended
to lands &c. of
deceased debtor in
certain cases.

3. In cases in other respects falling within the said hereinbefore recited provisions of the said Act the said twelfth section thereof shall extend and is hereby extended to any case in which any lands tenements or hereditaments of any deceased person shall by descent or otherwise than by devise be vested in the heir or co-heirs of such person subject to an executory devise over in favour of a person or persons not existing or not ascertained And in any such case it shall be lawful for the Court by whom any decree shall be made as mentioned in the said Act to direct such heir or co-heirs although an infant or infants to convey release assign surrender or otherwise assure the fee simple or other the whole interest to be sold to the purchaser or purchasers or as such Court shall think proper And every such conveyance release assignment surrender or other assurance shall be as effectual as if the heir or co-heirs making and executing the same was or were seized or possessed of the fee simple or other whole interest and estate so to be sold and if an infant or infants was or were of full age.