so, can at any moment resume their control over them." *In re Adah May Hutchinson* (1912), 21 O. W. R. 669, at p. 671, apparently doubt is cast upon these propositions; and it is suggested that the decision in *Re Davis* was as it was because the attention of the Court was not directed to the Act, 1 Geo. V. ch. 35, sec. 2 (no doubt a misprint for sec. 3) taken from R. S. O. 1897, ch. 340, sec. 2, of course, I Geo. V., had not been passed when *Re Davis* was decided; but the statute from which it was ultimately derived had been in force in England for two hundred and fifty years, and in our country since Upper Canada became a province, if not before.

Anon., 6 Gr. 632.

Davis v. *McCaffrey* (1874), 21 Gr. 554, etc. It has not given occasion for many decisions in Upper Canada; but the law is of every day application.

Our statute is derived from 12 Car. II. ch. 24, sec. 8, and carries the law no further than that statute. The effect of the statute is not (I speak with great deference), to take away any of the rights of the father, but to enable the father to take away the common law rights of others; it does not exclude the right of the father himself, but that of "all and every person or persons claiming the custody or tuition of such child or children as guardian in soccage or otherwise." And accordingly as Lord Esher says in *Reg.* v. *Barnardo* (1889), 23 Q. B. D. 305, at pp. 310, 311, "the parent of a child, whether father or mother, cannot get rid of his or her parental right irrevocably by such an agreement . . . as soon as the agreement was revoked, the authority to deal with the child would be at end."

The statute is considered in Blackstone, vol. 1, p. 362; Co. Litt. 886, and Hargraves notes; Eversley, 3rd ed., pp. 618, 619, 620, 622, 646, 743, 744; Simpson, 3rd ed., pp. 95, 105, 111, 113, 183, 184, 186, 188, 288. And I do not find any case or text in which it has been thought that the statute applied except after the death of the father.

The ordinary rule is that there cannot be a guardian in the lifetime of the father. *Ex p. Mountfort* (1808), 15 Ves, 445; *Barry* v. *Barry* (1828), 1 Molloy, 210; *Davis* v. *McCaffrey*, 21 Gr., at p. 562.

But not to press that point, a deed under the statute has been called by Lord Eldon, L.C., "only a testamentary instrument in the form of a deed." *Ex p. Earl of Ilchester*