

No. 73.

3d Session, 3d Parliament, 19 Victoria, 1850.

BILL.

An Act to provide for the Appointment
of Guardians to restrain the Impro-
vinence of Persons incompetent to
manage their own property in Upper
Canada.

Received and Read a first time, Thursday, 6th
June, 1850.

Second Reading, Wednesday, 12th June, 1850.

MR. FLINT.

BILL.

An Act to provide for the appointment of Guardians to restrain the improvidence of persons incompetent to manage their own property in Upper Canada.

WHEREAS it is expedient to provide for the summary interdiction of persons in Upper Canada, who from intemperance and other causes become incompetent to manage their own affairs, and for the appointment of Guardians to such persons:—Be it therefore enacted, &c. Preamble.

That whenever any near relative, friend, or neighbour of any person in Upper Canada, hath reason to believe, and does believe that such person is from habitual intemperance, lunacy or idiocy, or from being addicted to gambling, or habits of reckless expenditure incompatible with his station of life and means, incompetent to manage his affairs without ruin or extreme injury to himself or his family, such near relative, friend or neighbour, may apply to the County Judge for the County in which the person to be interdicted resides, for the interdiction of such person; supporting his application by his own affidavit, and by the affidavits of any other persons who may be cognizant of the facts. Near relative, &c. of a drunkard, &c. may apply for his interdiction by County Judge.

II. And be it enacted, That if the County Judge shall be of opinion that a *prima facie* case for interdiction has been made out by the applicant, he shall issue a summons to the person to be interdicted to appear before him at a place and on a day to be named therein, which summons shall be served on or at the residence of the person to be interdicted, and the said Judge shall, at the same time, authorize an assembly of the relatives, friends and neighbours of the person to be interdicted, to be held before such Judge on the day and at the place where the party to be interdicted is summoned to appear; and at the time and place aforesaid, at least five of the relatives, friends or neighbours of the said party being there and then assembled, the said Judge shall, whether the party to be interdicted be present or absent, and in a summary manner, hear the arguments and evidence for or against the application, and determine upon the same; with power nevertheless to adjourn the proceedings or the decision to some future day, if in his opinion such adjournment be absolutely necessary to the ends of Justice; and if the County Judge may interdict such drunkard &c. after complying with certain formalities.

said Judge shall determine that the party ought to be interdicted, he shall make an order of interdiction accordingly, and shall then and there, with the advice and concurrence of the relatives, friends and neighbours aforesaid, appoint a proper person, or two proper persons, to be Guardian or Guardians to the person interdicted. 5

County Judge may determine whether applicant for interdiction is the proper person to make the application.

III. And be it enacted, That the County Judge, to whom any application under this Act shall be made, shall have full power to determine in his discretion, whether the applicant, and the persons who shall compose the assembly of relatives, friends and neighbours, to be held upon such application, is or are the proper persons to make such application, or to compose such assembly, according to the circumstances of the case, and the fact that the person to be interdicted has or has not other relatives, friends and neighbours who might more properly make such application, or hold such assembly, and to dismiss or maintain the application, or hold or adjourn the assembly accordingly. 10 15

After interdiction, no Deeds &c. by party interdicted, to be valid.

IV. And be it enacted, That from and after the making of the order of interdiction aforesaid, no deed, sale, will, gift, note, bill, agreement, contract, or engagement, written or verbal, made by the party interdicted, shall be valid or binding, unless the same be made with the express consent and approval in writing of his Guardian, or one of his Guardians, if there be more than one. 20 25

A party may be interdicted on his own application.

V. And be it enacted, That any such party as aforesaid may be interdicted on his own application, the other formalities hereinbefore prescribed being observed.

Notice of interdiction of any party to be inserted in Canada Gazette by Clerk of County Court.

VI. And be it enacted, That the Clerk of the County Court by the Judge whereof the order of interdiction shall have been made, shall forthwith, after the making thereof, insert in the *Canada Gazette* during one month, and for a like period in some newspaper published in the County, or if there be none, then in some adjoining County, a notice that the party, stating his name and addition, has been interdicted by the said Judge on the day on which the order shall have been made, and the names and additions of the Guardian or Guardians appointed, and warning all persons to govern themselves accordingly. 30 35 40

A Justice of the Peace may, on application of a near relative, &c. of a drunkard, prevent Tavern-keepers, &c. from selling liquor to such drunkard.

VII. And be it enacted, That whenever any near relative, friend or neighbour of any person in Upper Canada, liable to interdiction, according to the intent and meaning of this Act, or the Guardian of any person interdicted under this Act, shall make affidavit before some Justice of the Peace, that he hath reason to believe, and doth believe, (stating the grounds of such belief), that such person is an habitual drunkard, and ought to be restrained from the use of all intoxicating liquors, such Justice may, by an order in writing, under his hand, describing such per- 45 50

son, require every merchant, distiller, shop-keeper, grocer, tavern-keeper or other dealer in spirituous liquors, wine or beer, and every other person upon whom or at whose ordinary residence a copy in writing of such order shall be served or left, and who shall reside within the city, town, village or township in which or adjoining that in which such habitual drunkard shall reside, not to give or sell or deliver under any pretence, any intoxicating drinks to such person so described, during a period not exceeding mentioned in such order, and any person on whom such order shall have been served, who, within such period as aforesaid, shall give, sell, or deliver any such liquor to such person so described, shall forfeit the sum of *Two pounds ten shillings*, for each offence, which penalty may be recovered upon complaint on the oath of one or more credible witnesses before any one Justice of the Peace, and by him applied to the use of the poor, in such manner as he shall see fit, and if the same be not forthwith paid, the offender may be committed to the common gaol of the County for the term of fifteen days, unless the penalty be sooner paid; and the order aforesaid may be served upon or left for any person by any Bailiff of a Division Court, whose certificate in writing appended to the original order shall be *prima facie* evidence that a true copy thereof was served or left, as in such certificate mentioned: and any such order as aforesaid may be rendered from time to time in the manner provided, as to the first granting thereof.

Penalty,
£2 10s.

VIII. And be it enacted, That the interdiction aforesaid may be removed by the County Judge of the County in which the order of interdiction was made, on the application of the party interdicted, the Guardian or Guardians being duly summoned to appear before the Judge, to show cause, if any they have, why such interdiction should not be removed, and the Judge being satisfied by sufficient evidence on oath, that the same ought to be removed; and notice of the order for the removal of the interdiction shall be given by the Clerk of the County Court in the manner hereinbefore provided with regard to the notice of the interdiction.

Interdiction
may be re-
moved on
cause being
shewn.

IX. And be it enacted, That if the Guardian or one of the Guardians shall die or become unable or incompetent to act, his appointment may be annulled, and another may be appointed in his stead, by the County Judge, in like manner, upon like application, and with the observance of the like formalities as are hereinbefore provided with regard to the appointment of such Guardian.

Provision in
case of death,
&c. of a
Guardian.

X. And be it enacted, That any order made by a County Judge or a Justice of the Peace, under the authority of this Act, shall be liable to be set aside by the Court of Queen's Bench, or of Common Pleas for Upper Canada, on motion made with due notice to the parties

Orders made
by County
Judge, &c.
under this Act,
may be set
aside by
Q. een's Bench.

after notice
and hearing,
&c.

concerned, and upon such hearing, evidence and proceedings as the said Court shall deem sufficient and right.

Provision
as to costs.

XI. And be it enacted, That the County Judge of the said Court of Queen's Bench or Common Pleas, when 5 acting under the authority of this Act, may allow and tax such costs and expenses on proceedings under the same, as they shall think reasonable and just, and may direct the same to be paid, wholly or in part, by such parties as in the opinion of such Court or Judge ought to pay the 10 same, and may direct that any part thereof may be paid or secured before the Act upon which the same are to accrue, shall be done by any officer of the Court or other person.

Powers of
Chancellor not
to be affected
by this Act.

XII. And be it enacted, That nothing in this Act or 15 any order made under it, shall be construed to limit or affect any power vested by law in the Chancellor, or either of the Vice Chancellors, or in the Court of Chancery for Upper Canada; and any order lawfully made by such Chancellor, Vice Chancellor or Court of Chancery, 20 shall supersede and annul any order of a County Judge made as aforesaid, which it shall expressly set aside, or with which it shall be incompatible.