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No. 129.

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2nd Session, 6th Parliament, 22 Victoria, 1859.

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## BILL

An Act to provide for the protection of Spendthrifts, and the custody of their real and personal property.

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Received and read, first time, Tuesday, 8th  
March, 1859.

Second reading, Thursday, 10th March, 1859.

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Mr. MCKELLAR.

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TORONTO:

PRINTED BY JOHN LOVELL, YONGE STREET.

**An Act to provide for the protection of Spendthrifts, and the custody and disposal of their real and personal property.**

**W**HILEAS many persons by excessive drinking, gaming, idleness, debauchery and other vicious habits, waste or lessen their state and thereby expose themselves and their families to want and suffering; And whereas it is expedient to provide for the care of such spendthrifts and the custody and disposal of their property; Therefore Her Majesty, &c., enacts as follows: Preamble.

I. Any person who by excessive drinking, gaming, idleness or debauchery of any kind, shall so waste, spend or lessen his estate, as hereby to expose himself or his family to danger of want or suffering, or expose his friends or the Municipality in which he resides to expense for the support of himself or any of his family, shall be deemed Spendthrift. Who shall be deemed a Spendthrift.

II. Upon complaint thereof in writing made to the Judge of the Surrogate Court for the County in which such spendthrift resides, by any relative or Councillor, setting forth the facts and circumstances and praying to have a guardian appointed, the said Judge shall appoint a day of hearing; and if upon due notice and examination had it shall appear to such Judge that such person comes within the description in the preceding section, such Judge shall appoint a suitable person to be Trustee over such spendthrift; Provided always, that any person so designated as a spendthrift may appeal from the decision of said Judge, whereupon he shall before the expiration of three days after the said hearing give notice in writing of such appeal to the clerk of the Division Court of the division in which said the Spendthrift resides, and such clerk shall immediately notify in writing the complainant or complainants of such appeal and command them to appear at the next ensuing sittings of such Division Court to be held in and for such Division for the trial of such fact; Provided always, that such notice of appeal shall be served at least ten days before the sitting of the said Court: And it shall also be the duty of the said clerk and he is hereby required to summon a jury, in the manner and according to the provisions 13 and 14 Vic., cap. 53, for the trial of the said appeal. Judge of Surrogate Court, after hearing complaint, may appoint a Trustee.  
Proviso: person complained against may appeal.

III. At the next ensuing sittings of the Division Court held in and for the Division in which the person designated as a spendthrift resides, the presiding Judge of such Court shall swear such jury, well and truly to try such appeal in the same manner as for the trial of issues in suits brought in the said Court, and witnesses may be subpoenaed and their Appeal to be tried by jury.

attendance and testimony enforced and shall be sworn and examined before the said jury in like manner.

As in ordinary cases, and to render a verdict.

IV. The said jury shall hear the evidence of such appellant and complainant or complainants and shall proceed in all respects as in trials at law to render their verdict, which verdict shall be entered by the clerk of the Court in a book to be provided by him for that purpose, and the said verdict or an attested copy of it under the seal of such Division Court shall be received and shall be deemed conclusive evidence of the fact thereby found in any action between the person alleged to be a Spendthrift and the party or parties who made complaint against him. 10

Costs of proceedings, by whom to be paid.

V. If by the verdict of the jury it shall be found that the person demanding such trial is a spendthrift, the Judge shall thereupon enter judgment against such person for the costs of complainants and witnesses (if any) in attending such trial, and such judgment and costs shall be enforced in the same manner as judgments in actions of debt in such Court; And if it be found that such person is not a spendthrift, such Judge shall thereupon enter judgment and award execution in favour of such appellant to be enforced in like manner against such complainant, unless it shall appear to such Judge that the complainant acted in good faith and had reasonable cause to believe such person a spendthrift, in which case the appellant and complainant or complainants shall pay their own costs. 15 20

Trustee to give bond for faithful discharge of trust.

VI. If the jury so summoned sustain the decision of the Judge from which an appeal was made, then the Trustee shall give a bond to the Judge in a reasonable sum with sufficient sureties upon conditions among other things for the faithful discharge according to law of the trust reposed in him and for rendering upon oath a true and just account of his trust when and so often as he shall be thereunto required. 25

To give public notice to tavern-keepers, forbidding them to sell liquor to his ward.

VII. Such trustee shall, immediately upon his appointment, give public notice thereof in some newspaper printed in the County in which such spendthrift resides, (if any there be) or in such newspaper as the judge shall direct, and in all cases shall post up a notice thereof in the public places in the Municipality, and serve a notice in writing under his hand forbidding all licensed tavern-keepers, common victualers and retailers in the Municipality where his ward resides to sell him any spirituous or intoxicating liquors during the period of said trust; and he may in like manner forbid the selling of any such liquors to such spendthrift by the licensed persons of any other Municipality to which the said spendthrift may resort. 30 35

Penalty on tavern-keepers disregarding such notice.

VIII. When the trustee, in execution of the foregoing provision, shall have prohibited the sale of spirituous liquors to any such spendthrift, if any person, except by the personal direction or on the written certificate of some medical practitioner in the Municipality, regularly licensed to practice according to the laws of the Province, stating that such liquor is necessary for the preservation or recovery of the health of such spendthrift shall, with the knowledge of such prohibition, give or sell, or purchase or procure for or in behalf of such prohibited person, or for his use, such spirituous or intoxicating liquors, he shall, on conviction thereof before any magistrate of the county forfeit for each offence not less than *ten dollars*, nor more than *forty dollars*, half of such fine to be 40 45 50

paid to the informant ; and if the offender be licensed to retail spirituous liquor, then such license shall be forfeited, and such offender be disqualified for obtaining a renewal or new license in such Municipality during the time such original license had to run.

5 IX. The trustee shall also make and retain a true and perfect inventory of the estate of his ward in the same manner as inventories of the estate of deceased persons are taken. Trustee to make an inventory of,

X. He shall take care as well of the person as of the estate both real and personal of his ward, shall improve the same frugally and without waste, and apply the annual profits and income thereof for the comfortable maintenance and support of his said ward, and his household and family, if any he have, shall collect the dues of his said ward, shall pay his just debts out of his property in the most economical manner, and shall protect the rights of his said ward. And administer estate of ward.

15 XI. Such ward shall sue and be sued, prosecute and defend by his trustee. As to suits at law.

XII. Every trustee appointed over any spendthrift shall inculcate habits of sobriety and industry in his ward, and may employ his ward or the children of his ward in any suitable labour, or bind such children out to labour by a written contract, for a term not exceeding one year. Trustee may employ his ward.

XIII. No bargain or sale of real or personal estate, and no contract of any nature whatever made by such spendthrift shall be valid in law, unless his trustee be a consenting party to such bargain, sale or contract. Trustee to consent to all sales, &c., of property of ward.

25 XIV. The trust of such trustee shall bear date and commence from the day when complaint for the appointment of such trustee was made to the judge. When trust to begin.

XV. The judge may authorize such trustee to sell at public auction the real estate of his ward, or any wood or timber growing thereon, whenever the sale thereof shall be necessary for the support of the ward or his family, or is conducive to his or their interest. Trustee may sell estate of ward in certain cases.

XVI. Before making any sale under such license the trustee shall take the following oath before the Judge or any Justice of the Peace, and shall fyle the same with the Clerk of the Municipality in which his ward resides: "I, A. B., trustee, do solemnly swear, that in disposing of the estate of my said ward, for which I have obtained a license, I will use my best judgment in fixing on and advertising the time and place of sale, and will exert my utmost endeavors that the same shall be sold in such manner as shall be of the greatest advantage to my ward without any sinister or selfish views whatever : So help me God." But must obtain license from Judge, and take an oath. Form of oath.

XVII. If the judge shall not be satisfied that the trustee has already given bond sufficient to bind him to conduct such sale with fidelity, and to account and respond for the proceeds thereof, he shall, before he issues license therefor, require of such trustee a bond sufficient for that purpose. Judge may require security from trustee in respect of sale.

- Trustee so licensed, &c., may give valid conveyance. XVIII. Every trustee so licensed and sworn, and having so advertised and sold any real estate, may execute and deliver a valid conveyance of such estate of the ward, so sold to the purchaser being the highest bidder, his heirs and assigns.
- Limitation of license. XIX. No license to any trustee for the purpose aforesaid shall be available to sustain any sale under the same, unless such sale is made within one year after granting such license. 5
- Perpetuation of evidence. XX. Any trustee, purchaser or other person interested may petition the judge to perpetuate the evidence of any facts set forth in such petition relating to any proceeding connected with such trust, and the judge, after due notice may decree that all or any of such facts are proved, and such decree shall be conclusive evidence of those facts. 10
- Removal of trustee. XXI. The judge, upon petition, and after due notice may remove any trustee, whenever in his opinion, it may be necessary or expedient, and appoint another in his stead. 15
- And of trust. XXII. If the cause for which any trust was created has ceased or is removed, such trust, upon like petition and notice may be removed.
- Compensation of trustee. XXIII. Every trustee shall be allowed a reasonable compensation for all proper expenses and services in the discharge of his trust; the balance (if any) of the trustees account due to him, shall be a lien upon all the estate of his ward, real and personal, not disposed of by the trustee, for the recovery of which, after he ceases to be a trustee, he may maintain an action for money paid and advanced for such ward at his request. 20
- Application. XXIV. This Act shall apply only to Upper Canada.