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No. 192.

2nd Session 3rd Parliament, 12 Victoria, 1849.

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,

Received and Read a first time, Monday, 15th
March, 1849.

Second Reading, Monday, 2nd April, 1849.

Mr. FLINT.

PRINTED BY LOVELL AND GIBSON.

192.

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.

Acte pour pourvoir à la nomination de gardiens ou curateurs pour mettre un frein à l'imprévoyance des personnes qui sont incapables d'administrer leurs propres biens, dans le Haut-Canada.

SOMMAIRE.

Les personnes dans le Haut-Canada, qui sont incapables d'administrer leurs affaires, pourront être interdites par un juge de district.

II. Le juge de district pourra assermenter la partie que l'on prétend être incapable d'administrer ses affaires ainsi qu'un certain nombre de ses parents et amis.

Il sera nommé un curateur ou des curateurs, si l'interdiction est prononcée.

III. Le juge de district décidera dans sa discrétion quelles devront être les personnes qui peuvent demander l'interdiction ou servir comme parents ou amis.

IV. Effet de l'interdiction.

V. Une personne pourra être interdite à sa propre demande.

VI. Il sera publié un avis de l'interdiction.

VII. Il pourra être donné main-levée de l'interdiction sur demande et preuve convenable: et il sera donné avis de telle main-levée.

VIII. Il pourra être nommé un autre curateur en cas de mort, incompétence, etc.

IX. La sentence d'interdiction du juge de district pourra être mise de côté par le B. R. à Toronto.

X. Le juge de district ou de la cour du B. R. pourra taxer les frais dans les procédures en vertu du présent acte.

XI. Les pouvoirs conférés par cet acte seront subordonnés à ceux de la cour de chancellerie.

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

Persons in U. C. incompetent to manage their own affairs may be interdicted by a District Judge. And it is hereby enacted by the authority of the same, 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 in 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 District Judge for the District 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.

District Judge may summon the party alleged to be incompetent, and a certain number of his relatives and friends. II. And be it enacted, That if the District 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 said Judge shall deter-

A Guardian or Guardians to be appointed if the interdiction is pronounced.

mine 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, 5 friends and neighbours aforesaid, appoint a proper person or two proper persons to be Guardian or Guardians to the person interdicted.

10 III. And be it enacted, That the district 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 the relatives, friends and 15 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 20 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.

Discretionary power to the District Judge as to who ought to be the applicant, or to act as relatives or friends.

25 IV. And be it enacted, That from and after the making of the order of interdiction aforesaid, no deed, sale, gift, agreement or contract, written or verbal, made by the party interdicted, shall be valid or binding unless 30 the same be made with the express consent and approval of his Guardian, or of one of his Guardians if there be more than one.

Effect of the interdiction.

V. And be it enacted, That any such party as aforesaid may be interdicted on his 35 own application, the other formalities herein before prescribed being observed.

A Person may be interdicted on his own application.

VI. And be it enacted, That the Clerk of the District Court by the Judge whereof the order of interdiction shall have been made, 40 shall forthwith after the making thereof, insert in the *Canada Gazette* during one month, and for a like period in some news-

Notice of the interdiction to be published.

paper published in the District, or if there be none then in some adjoining District, 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. 5

Interdiction may be removed on proper application and proof; notice of the removal to be published.

VII. And be it enacted, That the interdiction may be removed by the Judge of the District 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 shew 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 District in the manner hereinbefore provided with regard to the notice of the interdiction. 10 15 20

And the Guardian may be appointed in case of the death, incompetency, &c., of any Guardian.

VIII. And be it enacted, That if the Guardian or one of the Guardians shall die or become incompetent to act, his appointment may be annulled and another may be appointed in his stead by the District 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. 25 30

Order of District Judge may be set aside by Q. B. at Toronto.

IX. And be it enacted, That any order made by a District Judge under the authority of this Act shall be liable to be set aside by the Court of Queen's Bench for Upper Canada, on motion made with due notice to the parties concerned, and upon such hearing, evidence and proceedings as the said Court shall deem sufficient and right. 35 40

X. And be it enacted, That the District Judge of the said Court of Queen's Bench when 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 of Judge ought to pay the same, and may direct that any part thereof 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.

District Judge or Court of Queen's Bench may tax costs or proceedings under this Act.

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

Powers given by this Act to be subordinate to those of the Court of Chancery.