
2nd Session, 5th Parliament, 19 Victoria, 1856.

BILL.

An Act to make better provision for the administration of the property of Minors, Absentees, interdicted persons, and others incapable of administering their own affairs, in Lower Canada.

Received and read, first time, Friday, 7th
March, 1856.

Second reading, Monday, 10th March, 1856.

MR. BUREAU.

TORONTO:
PRINTED BY JOHN LOVELL,
YONGE STREET.

An Act to make better provision for the administration of the property of Minors, Absentees, interdicted Persons, and others incapable of administering their own affairs, in Lower Canada.

WHEREAS it frequently happens that Minors, Absentees, and persons incapable of administering their real and personal property, are exposed to considerable loss and damage through the negligence of their Tutors and Curators, from the want of importance attached to the choice of such Tutors and Curators, and it is necessary to make Legislative provision in this behalf; Therefore Her Majesty, &c., enacts as follows:—

Preamble.

I. No person shall hereafter be appointed Tutor or Curator to any Minor, Absentee, or other person considered incapable of administering his real and personal property, unless he shall be the proprietor of real estate, equal in value, after the payment of all debts and hypothecary charges, to the personal property possessed by, or belonging to such Minor, Absentee, or person considered incapable of administering his property as aforesaid:

Tutors or Curators must be proprietors of real estate equal to personal property of minors.

II. Tutors and Curators shall not hereafter act as Tutors and Curators, nor discharge any of the duties attached to their said office, until the Act of Tutorship and Curatorship, appointing and electing them Tutors and Curators, shall have been duly enregistered, in order to the creation in the first place of a hypothec upon the real estate of the said Tutors and Curators in favor of the said Minors, Absentees, interdicted persons, or persons deemed incapable as aforesaid, in conformity with the laws regulating the mode of enregistering the said Acts of Tutorship and Curatorship.

Acts appointing Tutors or Curators to be duly registered.

III. Tutors and Curators, after having caused the said Acts of Tutorship and Curatorship to be enregistered in the manner prescribed by the foregoing Section, shall be bound to appear before a Justice of the Superior or Circuit Court for Lower Canada, and shall produce the authentic certificate of the Registrar or Registrars, in conformity with the law, and such Tutors or Curators shall swear, that the registration of the said Acts of Tutorship and Curatorship has been duly made in accordance with the foregoing Section, which oath shall be made in the manner set forth in the Schedule A. And the said Tutors and Curators shall thereupon be invested with their said charges as Tutors and Curators.

Tutors and Curators to produce Registrar's certificate before a Justice of the Superior Court.

IV. Persons named and appointed at any meeting of relations and friends, to be Tutors and Curators as aforesaid, shall make and subscribe the declaration B (second schedule of this Act), in the presence of the said meeting of relations or friends, assembled and sworn for the appointment of the said Tutors and Curators, and in case the persons so called and appointed to the said offices of Tutors and Curators shall be unable to make and subscribe the said declaration, they shall be then ineligible to the said charges of Tutorship and Curatorship.

Declaration to be made previous to appointment as Tutors, &c.

Qualification not required in certain cases at discretion of Judge.

V. It shall not be necessary that the fathers and mothers, husbands and wives of the said Minors, Absentees, or persons incapable of administering their said personal and real property as aforesaid, shall possess the property qualification hereinabove prescribed, if the said fathers and mothers, husbands and wives shall not have in their possession, or be proprietors of any real estate; unless the Judge, with the advice of the relations and friends, shall decide the contrary, by the appointment, for instance, of an honorary and onerary Tutor, in accordance with the representation or suggestion made to that effect, to a Judge of the Superior or of the Circuit Court. 5 10

Proceedings to deprive Tutors, &c., of office.

VI. Within three months after the passing of this Act, Tutors and Curators possessing immoveable property, appointed to their said offices before the passing of this Act, who shall have neglected or refused to cause the Act of Tutorship or Curatorship appointing them such Tutors and Curators to be enregistered according to law, shall be liable to be deprived of their said offices, upon simple declaration (*requête libellée*) in the form C, addressed to one of the Judges of the Superior or of the Circuit Court, who shall fix the day, place, and hour for the hearing of and adjudication upon the merits of the said declaration (*requête libellée*) after due service of the said declaration and of the order of the Judge duly certified at the foot of the said declaration by the proper officer, shall have been made upon the said Tutors and Curators; the cancelling of whose appointment of Tutorship and Curatorship is prayed for. 15 20

Form of judgment.

VII. The discharge from office, if the same be pronounced after hearing of the parties interested, shall be established by a judgment in the form of schedule D. 25

Proceedings in case of cancelling of acts of Tutorship, &c.

VIII. Whensoever the cancelling of an act of Tutorship or Curatorship shall be prayed for a lawful reason and for the advancement of the interests of Minors, Absentees or other persons incapable of administering their property, the proceedings against such Tutor or Curator shall be summarily had by a declaration (*requête libellée*) addressed to one of the Judges of the Superior Court or of the Circuit Court for Lower Canada, and the mode of proceeding shall be the same as that prescribed in the two preceding sections. 30

When this Act comes into force.

IX. This Act shall come in force on the 35

FORM A.

FORM B.

I, A. B., of the Parish of _____ in the County of _____
 in the District of _____ being duly sworn upon the Holy Evan-
 gelists, do depose and say:—

That I hold and possess as proprietor, in the City, (Town or Parish)
 of _____ the real estate following [*particular description of the
 said property.*]

that the said real estate is worth at least £ _____, that it has been
 assessed by the Municipal (or School) Assessors at the sum of £ _____,
 that the said property, after deducting all hypothecary debts with which
 it is charged, is, to the best of my judgment and knowledge, at least
 equal in value to the moveable property in the possession of or belongidg
 to _____ for whom it is proposed, at the meeting now held
 for that purpose, that I should be elected Tutor and Curator.

And further Deponent saith not.

Sworn before me at
 this _____ day of _____ 18 _____

FORM C.

FORM D.