

At the General Assembly of the Province of Nova Scotia, begun and holden at Halifax, on Monday, the Second Day of October, 1758, and in the 32nd year of His Majesty's Reign.

32 George II – Chapter 26

An Act directing the Guardianship of Minors.

Be it enacted by His Excellency the Governor, Council and Assembly, and by the authority of the same it is enacted, that, from and after the publication hereof, where any person shall have children under the age of twenty one years, and not married at the time of his death, it shall be lawful for the father of such children, whether born at the time of the decease of the father, or at that time in ventre sa mere, or whether such father be within the age of twenty one years or of full age by deed executed, or by his last will and testament in writing in the presence of two credible witnesses, to dispose of the custody and tuition of such children, for such time, as they shall respectively remain under the age of twenty one years or any lesser time, to any persons in possession or remainder, other than persons not Protestants. And such disposition of the custody of such children shall be good, against all persons claiming the custody and tuition of such children; and such person, to whom the custody of such children shall be disposed or devised, may maintain an action of ravishment of ward, or trespass, against any person who shall wrongfully take away or detain such child, and shall recover damages in the said action, for the use of such children.

And be it further enacted, that any persons, to whom the custody of such children shall be so disposed or devised, may take into their custody, to the use of such children, the profits of all lands, tenements, or hereditaments, and also the management of the goods and personal estate of such children, till their respective age of twenty one years, or any lesser time, according to such disposition, and may bring such actions in relation thereto, as such children themselves might do if arrived at full age.

And be it further enacted, that whensoever any person, not being a Protestant, shall die siezed of any such estate in lands, tenements, or hereditaments, for which his heirs should be in ward, his heirs being under the age of twenty one years at the time of the death of his ancestor, it shall be lawful for the governor, lieutenant governor, or commander in chief of the Province for the time being, after due proof to him of the death of such person not being a Protestant, and of his heir being so under age, to dispose of the custody and tuition of such heirs, for such time as they shall remain under the age of twenty one years, of any lesser time, to any persons next of kin to the heir, being a Protestant, if they shall apply for the same; or in default thereof to any other person being a Protestant as aforesaid.

And be it further enacted, that the Governor, Lieutenant Governor, or Commander in Chief for the time being, when and so often as there shall be occasion, be and hereby is empowered to allow of guardians, that shall be chosen by minors of the age of fourteen years, and to appoint guardians for such as shall be within that age, taking efficient securities of all such guardians, for the faithful discharge of the trust, as hereinafter directed, and to

account either to the Governor, Lieutenant Governor, or Commander in Chief, or minor when such minor shall arrive at full age, or at such other time as the said Governor, Lieutenant Governor, or Commander in Chief, upon complaint to him made, shall see cause.

And be it further enacted, that all such persons to whom the tuition and custody of such heirs shall be committed, shall first enter into recognisance, to the use of the said heir, with good sureties before the said Governor, Lieutenant Governor, or Commander in Chief, with condition for the educating the said heirs in the Protestant religion, and for the management and disposal of the estates of such heirs to their use and best advantage, and for the rendering a just account of the profits of such estates, to the said Governor, Lieutenant Governor, or Commander in Chief, when thereto required, or to such heirs when they shall come of full age, and for the not committing any waste thereupon: And such disposition of the custody of such heirs shall be good against all persons claiming the custody or tuition of such heirs; and such persons to whom the custody of such heirs shall be disposed as aforesaid, may maintain an action of ravishment of ward or trespass, against any persons who shall wrongfully take away or detain such heirs, for the recovery of such heirs, and shall recover damages in the said action, for the use of such heirs.

And be it further enacted, that such person, to whom the custody of such heirs shall be so disposed, may take into their custody, to the use of such heirs, the profits of all lands, or tenements, and also the management of the goods and personal estate of such heirs, till their respective age of twenty one years, or any lesser time, according to such disposition, and may bring such actions in relation thereunto as such heirs might do, if arrived at full age.

And be it further enacted, that if such person to whom such grant shall be made of the custody of such children, shall die before he hath yielded an account unto the said heirs, of the profits of such lands or tenements, and the management of such goods and chattels, deducing all necessary and just charges, the heirs, executors, or administrators of such guardian, shall be liable, and yield a full account unto the said heir, his executors and administrators, of such profits, goods, and chattels, real and personal, so received by the guardian, for the benefit of the said heirs, deducing all necessary and just charges as aforesaid, so far as they shall have assets from the said guardian, or in his right at the time of demand of satisfaction for the same; and if the said children shall die before they shall attain to their age of twenty one years, it shall be lawful for the executors or administrator's of such children to call the persons so trusted for the benefit of them, and the heirs, executors, or administrators, to an account for the same.

Provided always that this Act shall not extend to discharge any apprentice, from his apprenticeship, or such poor children, as may hereafter be bound out by the overseers of the poor, or such children as may hereafter be found proper objects of their care, as is provided for by law.

And for as much as it often happens, that children are not born till after the death of their fathers, and also have no provision made for them in their wills, be it therefore further

enacted by the authority aforesaid, that as often as any child shall happen to be born after the death of the father, without having any provision made in his will, every such posthumous child shall have right and interest in the estate of his or her father in like manner as if he had died intestate, and the same shall accordingly be assigned and set out as the law directs for the distribution of the estates of the intestates.