

# Act of the Jamaican Assembly December 1761

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*This Act was passed in 1761, but not without three members of the Assembly, Norwood Witter, Edward Clarke and William Wynter, dissenting. Their objections are included at the end of the Act.*

An act to prevent the inconveniences arising from exorbitant grants and devises, made by white persons to negroes, and the issue of negroes; and to restrain and limit such grants and devises.

[19th of December, 1761.]

Whereas divers large estates, consisting of lands, slaves, cattle, stock, money, and securities for money, have from time to time been left by white persons to mulattoes, and other the offspring of mulattoes, not being in their own issue born in lawful wedlock: And whereas such bequests tend greatly to destroy the distinction requisite, and absolutely necessary, to be kept up in this island, between white persons and negroes, their issue and offspring, and may in progress of time be the means of decreasing the number of white inhabitants in this island: And whereas it is the policy of every good government to restrain individuals from disposing of property, to the particular prejudice and detriment of their heirs and relations, and to the injury and damage of the community in general: May it please your most sacred majesty that it may be enacted; Be it and therefore enacted by the lieutenant-governor, council, and assembly, of this your majesty's island of Jamaica, and it is here by enacted By the Authority of the Same, That, from and after the first day of January which will be in the year of our Lord one thousand seven hundred and sixty-two, no lands, negro, mulatto, or other slaves, cattle, stock, money, or other real or personal estate in this island whatsoever, shall be given, granted to, or declared to be in trust for, or to the use of, or devised by any white person to, any negro whatever, or to any mulatto, or other person not being in their own issue born in lawful wedlock, and being the issue of a negro, and deemed a mulatto, according to the true intent

and meaning of an act entitled, *An act to secure the freedom of elections, and directing the proceedings in the choice of members to serve in the assemblies in this island; and to ascertain who shall be deemed mulattos for the future*, or to or for the use of them, or any of them, by any deed, last will and testament, instrument in writing or by parole, or by any other way or device whatsoever, other than in manner hereinafter excepted.

II. And be it further enacted by the authority aforesaid, That if any white person or persons shall, from and after the first day of January, which will be in the year of our Lord one thousand seven hundred and sixty-two, give, grant, or devise, to any negro, mulatto, or other person not being his own or their own lawful issue born in wedlock, being the issue of a negro, and deemed a mulatto as aforesaid, or to any person or persons in trust for them, or any of them, any lands, negro, mulatto, or other slaves, cattle, stock, money, or other real or personal estate in this island whatsoever, that such negro, mulatto, or other person not so born in lawful wedlock as aforesaid, or his or their heirs, or any of them, or the person or persons appointed take in trust for them, or any of them shall take no estate, benefit or advantage, by such gift, grant, declaration, or devise, be the same by deed, will, instrument in writing, or by parole, or by any other form or devise whatsoever, or any part thereof, except as herein after is excepted; but the lands, negro, mulatto, or other slaves, cattle, stock, money, or other real or personal estate whatsoever, so given, granted, declared in trust or devised, and every part thereof, except in manner herein after excepted, shall vest in manner, and be to and for the uses, following; that is to say All the lands, slaves, and all other real estate, so given, granted, declared, or devised, shall go to and be for the sole use and benefit of the heir or heirs at law, or heir or heirs apparent, of such donor, granter, or testator or, as the case may require; and all the personal estate so given, granted, or bequeathed, shall go to and be for the use and benefit of such person or persons, as would have been entitled to the same under the statute of distributions, had such donor, granter or testator, died intestate, to and for such estates, and in such manner, as the same were mentioned and intended to be given, granted, declared in trust, or devised, to such negro, mulatto, or other person not so born in lawful wedlock as aforesaid, and

being in the issue of a negro, and deemed a mulatto, according to the true intent and meaning of the said herein-before mentioned act.

III. And be it further enacted by the authority aforesaid, That all gifts, grants, lease or leases, devises, covenants, conditions, provisos, [*and*] declarations, made or declared, either by writing, parole, or any other manner whatsoever, to any person or persons whatsoever, with an intent to evade and elude this act, shall be void as to passing any estates, trusts, or other benefit or advantage, contrary to the true intent and meaning of this act; and the estates, conditions, covenants, declarations, and provisos, given, granted, devised, declared, or provided for, and every other benefit arising therefrom, shall vest in and be for the uses, in the manner, herein before mentioned.

IV. And be it further enacted by the authority aforesaid, That in any suit or suits in the courts of equity, to be instituted against any person or persons, claiming either as trustees or *cessuy que* trusts under any gifts, grants, declarations of trust, or devises, prohibited and restrained by this act, or intended so to be, the defendant or defendants shall not be allowed to demur to such bill, but be compelled to put in an answer as to the discovery of any such trust or trusts, as shall and may be prayed by any bill to be filed against him, her, or them.

V. Provided always, That nothing in this act contained shall extend to any gifts or grants hereafter to be made, for any full, valuable, and adequate considerations, really and *bona fide* paid by such negro, mulatto, or other person not born in lawful wedlock, and being deemed a mulatto according to the true intent and meaning of the herein before-mentioned act, out of their own proper monies and effects; so as the whole of all such gifts, grants, and purchases, from all and every the granters, given and granted to and purchased by such negro, mulatto, or other person not born in lawful wedlock, shall not in the whole exceed the value of the sum of two thousand pounds in realty.

VI. Provided always, That nothing in this act shall extend, or be construed to extend, to any gifts or grants to be made to any negroes, mulattoes, or other person or persons the offspring of negroes,

and deemed mulattoes as aforesaid, by any white person or persons now absent, and resident in Great Britain or Ireland, or any other of his majesty's dominions, so as such gifts and grants be duly proved, and recorded in the secretary's office of this island, on or before the thirtieth day of September, which will be in the year of our Lord one thousand seven hundred and sixty-two.

VII. Provided likewise, That it shall and may be lawful to and for such negro, mulatto, or other person not born in lawful wedlock, and being deemed a mulatto according to the true intent and meaning of the herein before-mentioned act, to receive and take any lands, negro, mulatto, or other slaves, cattle, stock, money, or other estate real or personal in this island, so that the value and amount of such lands, negro, mulatto, or other slaves, cattle, stock, money, or other real or personal estate, given, granted, and devised, by all and every of the donors and testators (being white persons), exceed not the sum of two thousand pounds in the whole, to any one person; anything in this act to the contrary in anywise notwithstanding.

VIII. Provided likewise, That nothing in this act shall extend, or be construed to extend, to any devises or bequests made, or to be made, by will to any negro, mulatto, or other person or persons, the offspring of negroes deemed mulattoes as aforesaid, by any white person or persons now absent, and resident in Great Britain or Ireland, or any other of his Majesty's dominions, so as such devises or bequests do vest in such devisee or legatee, and the will giving and bequeathing the same be duly proved and recorded in the secretary's office of this island, on or before the said thirtieth day of September, which will be in the year of our Lord one thousand seven hundred and sixty-two.

IX. Provided likewise, That this act, or any thing therein contained, shall not extend, or be construed to extend, to any gifts or grants already made, and enrolled in the secretary's office of this island, or any devises or bequests already vested in any person or persons; any thing to the contrary thereof in anywise notwithstanding.

X. Provided always, That this act, or any thing therein contained, shall not extend, or be construed to extend, to restrain any gift, grant, or devise to mulattoes, or other persons not born in lawful wedlock, and being the offspring of a negro within the fourth degree, and described in the

aforementioned act, or their issue, to whom, or to whose ancestors, the same rights and privileges with English subjects, born of white parents, have been granted by any act of the governor or commander in chief, council, and assembly, of this island.

XI. And be it further enacted by the authority aforesaid, That any person or persons, who shall or may have any right, title, or claim, to any estate or hereditament, real, personal, or mixed, under this act, shall and may sue for the same, either in his majesty's supreme court of judicature, or in any court of equity in this island, as he, she, or they, shall or may be advised.

Transcribed by Anne Powers from *The Laws of Jamaica*, Vol.2, St Jago de la Vega (1802)

20 November 2011.

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*This transcription of the dissenters' objections to the proposed Act is taken from a copy held at the East Sussex Record Office among the papers of the Fuller family – ESRO SAS/RF 20/66.*

We dissent to the Bill intituled "An Act to prevent the Inconveniencies arising from Exorbitant Grants and Devises made by White persons to Negroes and the Issue of Negroes and to restrain and limit such Grants and Devises."

First. Because we can see that this Bill makes a very Considerable alteration in, and is a manifest violation of our most happy Constitution by limiting and restraining the Power of his Majesty's faithful and Freeborn Subjects in disposing of their Estates at their own pleasure, by last Wills and Testaments, or by Grants Deeds and other Instruments of Conveyance even when such Estates have been entirely the Acquisition of their own Industry and Æconomy, and is in direct Contradiction to the statutes of the thirty second and thirty fourth of Henry the Eighth, which this Bill takes upon itself in a great degree to repeal.

Secondly. Because this Bill seems directly Contrary to the Laws of Great Britain, as we apprehend it obliges persons to Answer upon Oath with respect to Forfeitures and to accuse themselves.

Thirdly. Because we apprehend that it tends to the Encouragement of Frauds and Perjurys, and in that respect is a Repeal of the Statute of the twenty ninth of Charles the Second, and introductory of those very evils which that Statute was made to remedy. For by this Bill Trusts by Parol in favour of Negroes and Mulattos are established so far, that altho' they cannot themselves take any Benefit from them, yet the Heir at Law or Heir apparent of the Grantor or Donor or Testator may under those trusts Claim and be intitled to the Forfeiture.

Fourthly. Because it will increase the vexatious Suits in Equity, by putting it in the Power of any Heir at Law or Heir apparent or Persons within the Statutes of Distribution, to file Bills against any Negro or Mulatto, or against any White person, upon a bare suggestion that his Ancestor or Relation had given a real or Personal Estate above the Sum Limited to such Negro or Mulatto, or to such White person, in trust for a Negro or Mulatto, to which Bill an Answer must be put in, and if any Real or personal Estate (tho' in fact under the Sum limited) shall appear to have been so given, an Account must be directed to be taken thereof in the Order to ascertain whether it is within or beyond the Sum limited, which will be an intolerable Vexation and Expense to such Defendants.

Fifthly. Because such Free Negroes and Mulattos as now have Money, or hereafter by their Industry may acquire Money, cannot lend the same out in this Island upon equal terms with other persons, as they are rendered incapable of taking mortgages from White persons or extending their Lands for above the Sum limited, and also as it will affect many White persons who manage Estates and occupy trades being under the restraints and Limitations of this Bill, and may oblige them to

send their Money out of this Country and most probably may induce them to follow it, whereby this island will lose many of its useful Members.

Sixthly. Because it lays a restraint on the natural Affections of the mind, by prohibiting all persons, under severe penaltys, from giving any property beyond the Certain value to their own Offspring, even tho' they should be removed 3<sup>o</sup> from the Negro Ancestor, and Consequently are seven eighths White, and not distinguishable from White Persons, and altho' the Ancestors of such Offspring on the mother's side may have been free for many Generations, And even altho' such Offspring may have been educated in Great Britain in the most Liberal manner and brought up in the Christian Religion according to the Church of England. Nay even if brought up to, qualified for, and actually admitted into any of the Learned Professions and it Consists without Knowledge that many such persons have been so educated and brought up and others are now in Great Britain receiving such Education. And tho' in the British Constitution there are some Instances of Laws to oblige Parents to provide for their Children, we never yet heard of any Law to hinder them from doing so, or to restrain their Liberality in making such provision.

Seventhly. Because we apprehend it a Breach of the Publick faith, given to those people by the Laws of the Land for the enjoyment of All their Rights and Privileges and the taking away any of them we Conceive to be manifestly injurious and may destroy the Confidence which they now have in the Publick, and create fears and apprehensions that the few Privileges intended to be left them maybe also taken away.

Lastly. Because the words in which the Bill is Conceived, are extremely dark and Confused, very ill fitted to the Capacities of the Lower Class of White people and the Mulattoes and Negroes who are Chiefly to be affected by it And in short as we apprehend no sufficient Cause now operating is assigned for bringing it in, And as we know that but very few Considerable Estates have in a long

Course of years been left to Mulattoes and that no Evils have attended the possession of property by them and Negroes of Free Condition, and are wholly ignorant of any Demerit on the part or offence Committed by them against the Community We think it unseasonable.

As it seems to oppress a quiet and peaceable people who have ever shown themselves true and faithful to the White Inhabitants, and some of whom were employed under an Express Act of the Legislature of this Island in the suppressing of the late Rebellion of the Slaves, We think it unreasonable.

As we apprehend it lays the Penalty on the innocent, We deem it severe

As we apprehend it tends to depopulate the Country, it is impolitic

As we apprehend it takes away the Right of Free Born Britons, it is unconstitutional

And as it lays a restraint on the parental affection it is unnatural

And on the whole we think it equally Inconsistent with Liberty, sound Policy, and pure Religion.

Signed

Norwood Witter

Edward Clarke

William Wynter

Transcribed by Anne Powers

25 November 2011