

GUARDIANSHIP OF INFANTS.

11° GEO. V., No. XV.

No. 15 of 1920.

AN ACT to amend the law relating to the Guardianship and Custody of Infants, and to assure to the Widow or Widower and Family of a Testator an adequate Maintenance from the Estate of such Testator.

[Assented to 15th December, 1920.]

BE it enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

Short title.

1. This Act may be cited as the *Guardianship of Infants Act*, 1920.

2. On the death of the father of an infant, and in case the father shall have died prior to the passing of this Act, then, from and after the passing of this Act, the mother, if surviving, shall be the guardian of such infant, either alone, when no guardian has been appointed by the father, or jointly with any guardian appointed by the father. When no guardian has been appointed by the father, or if the guardian or guardians appointed by the father is or are dead, or refuses or refuse to act, the court may, if it shall think fit, from time to time appoint a guardian or guardians to act jointly with the mother.

On death of father, mother to be guardian alone or jointly with others.
N.Z., 1903, No. 86, s. 3.

3. (1.) The mother of any infant may, by deed or will, appoint any person or persons to be guardian or guardians of such infant after the death of herself and the father of such infant (if such infant be then unmarried); and where guardians are appointed by both parents, they shall act jointly.

Mother may appoint guardian in certain cases.

Ibid., s. 4.

(2.) The mother of any infant may, by deed or will, provisionally nominate some fit person or persons to act as guardian or guardians of such infant after her death jointly with the father of such infant, and the court after her death, if it be shown to the satisfaction of the court that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment of such guardian or guardians, who shall thereupon be authorised and empowered so to act as aforesaid, or may make such other order in respect of the guardianship as the court shall think right.

(3.) In the event of guardians being unable to agree upon a question affecting the welfare of an infant, any of them may apply to the court for its direction, and the court may make such order or orders regarding the matters in difference as it shall think proper.

4. Every guardian under this Act shall have all such powers over the estate and the person, or over the estate (as the case may be), of an infant as any guardian appointed by will or otherwise now has.

Power of guardian.
Ibid., s. 5.

5. The court may, upon the application of the mother of any infant (who may apply without a next friend), make such order as it may think fit regarding the custody of such infant, and the right of access thereto of either parent, having regard to the welfare of the infant and to the conduct of

Court may make orders as to custody.
Ibid., s. 6.

the parents, and to the wishes as well of the mother as of the father; and may alter, vary, or discharge such order on the application of either parent, or, after the death of either parent, of any guardian under this Act; and in every case may make such order respecting the costs of the mother and the liability of the father for the same, or otherwise as to costs, as it may think just.

Power to Court
to remove
guardian.
Ibid., s. 7.

6. The court may, in their discretion, on being satisfied that it is for the welfare of the infant, remove from his office any testamentary guardian, or any guardian appointed or acting by virtue of this Act, and may also, if they shall deem it to be for the welfare of the infant, appoint another guardian in place of the guardian so removed.

Court may order
trustees, etc.,
to pay main-
tenance to
mothers during
period of
custody.
S.A., No. 40¹,
s. 9.

7. Where any guardian, trustee, executor, or person acting in a fiduciary capacity shall, under any will, gift, or settlement, or otherwise by law be possessed of any fund for the maintenance and education of any infant, or any fund a portion of which may by law be applied to such maintenance and education, and the court shall order the infant to be delivered to, or to remain in the custody of the mother, it shall be lawful for the court also to order such guardian, trustee, executor, or person acting in a fiduciary capacity, to pay to the mother from time to time during the continuance of such custody, for the purpose of the maintenance and education of such infant, such portion of such fund, not exceeding the portion lawfully applicable to such maintenance and education, as the court may deem proper: Provided always that, on proof that any money so paid for the purpose of such maintenance and education has been misapplied, it shall be lawful for such court to rescind, alter, or vary any order made as aforesaid.

The case of
separation deed
between father
and mother.
N.Z., 1908, No.
86, s. 9.

8. No agreement contained in any separation deed made between the father and mother of an infant or infants shall be held to be invalid by reason only of its providing that the father of such infant or infants shall give up the custody or control thereof to the mother: Provided always, that no such agreement shall be enforced if the court shall be of opinion that it will not be for the benefit of, the infant or infants to give effect thereto.

Guardianship
in case of divorce
or judicial
separation.
Ibid., s. 8.

9. In any case where a decree for judicial separation, or a decree either *nisi* or absolute for divorce shall be pronounced, the court pronouncing such decree may thereby de-

clare the parent by reason of whose misconduct such decree is made to be a person unfit to have the custody of the children, if any, of the marriage, and in such case the parent so declared to be unfit shall not, upon the death of the other parent, be entitled as of right to the custody or guardianship of such children.

10. Nothing in this Act contained shall restrict or affect the jurisdiction of the Supreme Court to appoint or remove guardians, or shall affect the exercise of any jurisdiction, power, or discretion vested in the Supreme Court, or any judge thereof, under the Ordinance to regulate Divorce and Matrimonial Causes (27 Victoria, No. 19), or any Act extending or amending the same.

Saving of existing jurisdiction. See *ibid*, s. 60.

11. (1) If any person (hereinafter called the testator) dying or having died after the 1st day of January, 1921, disposes of his or her property either wholly or partly by will in such manner that the widow, husband, or children of such person, or any or all of them are left without adequate provision for their proper maintenance, education, or advancement in life as the case may be, the court may at its discretion and taking into consideration all the circumstances of the case, on application by or on behalf of such wife, husband, or children, or any of them, order that such provision for such maintenance, education, and advancement as the court thinks fit, shall be made out of the estate of the testator for such wife, husband, or children, or any or all of them, and may attach such conditions to the order as it thinks fit: Provided that the court may refuse to make an order in favour of any person whose character or conduct is such as to disentitle him to the benefit of such order.

Where no adequate provision made by testator, court may make orders, etc.

(2) Every such order shall operate and take effect as if the same had been made by a codicil to the will of the deceased person executed immediately before his or her death.

12. In the construction of this Act the expression "the court" shall mean the Supreme Court or any judge thereof.

Interpretation.

13. Rules of court for regulating the practice, forms, and procedure in any proceedings under this Act may be made by the judges of the Supreme Court.

Rules shall be made.