

GUARDIANSHIP OF INFANTS.

11^c Geo. V., No. XV.

No. 15 of 1920.¹

(Affected by Act No. 44 of 1939.)

[As amended by Acts No. 23 of 1926² assented to 19/11/26, and No. 46 of 1939 assented to 20/12/39; and reprinted pursuant to the Amendments Incorporation Act, 1938.]

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:—

1. This Act may be cited as the *Guardianship of Infants Act, 1920-1939*. Short Title.

2. [S. 2 repealed by No. 23 of 1926, s. 5 (3).] 23 of 1926,
s. 5.

3. [S. 3 repealed by No. 23 of 1926, s. 6 (7).] 23 of 1926,
s. 6.

¹ To be construed as one with the Guardianship of Infants Act, 1926 (No. 23 of 1926 as amended by No. 47 of 1948 and No. 31 of 1954). See No. 23 of 1926, s. 1.

² Came into operation 1/1/27. See No. 23 of 1926, s. 1.

Power of
guardian.

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.

Court may
make orders
as to
custody.

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 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.

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
maintenance
to mothers
during
period of
custody.

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.

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.

The case of separation deed between father and mother.

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 declare 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.

Guardianship in case of divorce or judicial separation.

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 Victoriæ, No. 19),¹ or any Act extending or amending the same.

Saving of existing jurisdiction.

11. [S. 11 repealed by No. 46 of 1939, s. 2.]

46 of 1939, s. 2.

¹ See No. 36 of 1935, s. 3.

Interpre-
tation.

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

Rules shall
be made.

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.