

GUARDIANSHIP OF INFANTS.

17° Geo. V., No. XXIII.

No. 23 of 1926.

[Amended by Acts No. 47 of 1948 assented to 7/1/49, and No. 31 of 1954 assented to 8/11/54; and reprinted pursuant to the Amendments Incorporation Act, 1938.]

AN ACT to amend the Law with regard to the Guardianship and Custody of Infants.

[Assented to 19th November, 1926.]

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. (1) This Act may be cited as the *Guardianship of Infants Act, 1926-1954*, and shall be construed as one with the Guardianship of Infants Act, 1920, and that Act and this Act may be cited together as the *Guardianship of Infants Acts, 1920 and 1926*.

Short title, construction, and commencement. 31 of 1954, s. 1.

(2) This Act shall come into operation on the first day of January, nineteen hundred and twenty-seven.

2. Where in any proceeding before any court (whether or not a court within the meaning of the Guardianship of Infants Act, 1920) the custody or upbringing of an infant, or the administration of any property belonging to or held in trust for an infant, or the application of the income thereof, is in question, the court, in deciding that question, shall regard the welfare of the infant as the first

Principle on which questions relating to custody, upbringing, etc., of infants are to be decided. 15 and 16 Geo. V., c. 45, s. 1.

and paramount consideration, and shall not take into consideration whether from any other point of view the claim by the father, or any right at common law possessed by the father, in respect of such custody, upbringing, administration, or application is superior to that of the mother, or the claim of the mother is superior to that of the father.

Equal right of mother to apply to court. *Ibid.*, sec. 2.

3. The mother of an infant shall have the like powers to apply to the court in respect of any letter affecting the infant as are possessed by the father.

Amendment of No. 15 of 1920, sec. 5, with respect to the custody and maintenance of infants, and repeal of 2 and 3 Vic., c. 54 (relating to the custody of infants). *cf. Ibid.*, sec. 3.

4. (1) The power of the court under section five of the Guardianship of Infants Act, 1920, to make an order as to the custody of an infant and the right of access thereto may be exercised notwithstanding that the mother of the infant is then residing with the father of the infant.

(2) When the court, under the said section as so amended, makes an order giving the custody of the infant to the mother, then, whether or not the mother is then residing with the father, the court may further order that the father shall pay to the mother towards the maintenance of the infant such weekly or other periodical sum as the court, having regard to the means of the father, may think reasonable.

(3) No such order, whether for custody or maintenance, shall be enforceable and no liability shall accrue while the mother resides with the father, and any such order shall cease to have effect if for a period of three months after it is made the mother of the infant continues to reside with the father.

(4) Any order so made may, on the application either of the father or the mother of the infant, be varied or discharged by a subsequent order.

(5) The Statute 2 and 3 Victoriæ, Chapter 54, intituled "An Act to amend the Law relating to the custody of infants," shall no longer be in force in this State.

5. (1) On the death of the father of an infant, the mother if surviving, shall, subject to the provisions of this Act, be guardian of the infant, either alone 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 thinks fit appoint a guardian to act jointly with the mother.

Rights of surviving parent as to guardianship.
Ibid., sec. 4.

(2) On the death of the mother of an infant, the father, if surviving, shall, subject to the provisions of this Act, be guardian of the infant, either alone or jointly with any guardian appointed by the mother. When no guardian has been appointed by the mother, or if the guardian or guardians appointed by the mother is or are dead or refuses or refuse to act, the court may, if it thinks fit, appoint a guardian to act jointly with the father.

(3) Section two of the Guardianship of Infants Act, 1920, is hereby repealed.

6. (1) The father of an infant may by deed or will appoint any person to be guardian of the infant after his death.

Power of father and mother to appoint testamentary guardians.
Ibid., sec. 5.

(2) The mother of an infant may by deed or will appoint any person to be guardian of the infant after her death.

(3) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the infant so long as the mother or father remains alive, unless the mother or father objects to his so acting.

(4) If the mother or father so objects, or if the guardian so appointed as aforesaid considers that the mother or father is unfit to have the custody of the infant, the guardian may apply to the court, and the court may either refuse to make any order (in which case the mother or father shall remain sole guardian) or make an order that the guardian so appointed shall act jointly with the mother or father, or that he shall be sole guardian of the

infant, and in the latter case may make such order regarding the custody of the infant and the right of access thereto of its mother or father as, having regard to the welfare of the infant, the court may think fit, and may further order that the mother or father shall pay to the guardian towards the maintenance of the infant such weekly or other periodical sum as, having regard to the means of the mother or father, the court may consider reasonable.

(5) Where guardians are appointed by both parents, the guardians so appointed shall, after the death of the surviving parent, act jointly.

(6) If under the preceding section a guardian has been appointed by the court to act jointly with a surviving parent, he shall continue to act as guardian after the death of the surviving parent; but if the surviving parent has appointed a guardian, the guardian appointed by the court shall act jointly with the guardian appointed by the surviving parent.

(7) Section three of the Guardianship of Infants Act, 1920, is hereby repealed.

Power of Court to appoint guardians in certain cases.
S. 6A
inserted by No. 47 of 1948, s. 3.

6A. Where, on the death of the surviving parent of an infant, there is no appointed guardian of the infant, or a guardian or guardians has or have been appointed but is or are dead or cannot be found or refuses or refuse to act, the Court may, if it thinks fit, appoint any person or persons to act as guardian or guardians of the infant, and may make such order as to the custody of the infant and the right of access thereto of any person (whether a relative of the infant or not) as to the Court seems fit.

Disputes between joint guardians.
15 & 16 Geo. V., c. 45, s. 6.

7. Where two or more persons act as joint guardians of an infant and they are unable to agree on any question affecting the welfare of the infant, any of them may apply to the court for its direction, and the court may make such order regarding the matters in difference as it may think proper,

8. (1) For the purposes of the Guardianship of Infants Act, 1920, as amended by this Act, the expression "the court" shall include a court of summary jurisdiction:

Extension of jurisdiction to courts of summary jurisdiction. Amended by No. 31 of 1954, s. 2. [15 & 16 Geo. V., c. 45, s. 7.]

Provided that a court of summary jurisdiction shall not be competent—

- (a) to entertain any application other than an application for variation or discharge of an existing order under the Guardianship of Infants Act, 1920, as so amended, relating to an infant who has attained the age of sixteen years, unless the infant is physically or mentally incapable of self support; or
- (b) to entertain any application involving the administration or application of any property belonging to or held in trust for an infant, or the income thereof; or
- (c) to award the payment of sums towards the maintenance of any infant exceeding two pounds ten shillings a week.

(2) The Governor may make rules regulating the procedure in courts of summary jurisdiction under this section, and may by those rules make provision for enabling applications to be heard and determined otherwise than in open court, and may also by such rules empower a court of summary jurisdiction to punish, by a fine not exceeding ten pounds, or by imprisonment for not exceeding one month, any person wilfully disobeying any order made by any court of summary jurisdiction under the Guardianship of Infants Act, 1920, as amended by this Act, other than an order for the payment of money.

(3) When on an application to a court of summary jurisdiction, under the Guardianship of Infants Act, 1920, as amended by this Act, the court makes or refuses to make an order, an appeal shall, in accordance with the Justices Act, 1902-1920,¹ lie to the Supreme Court:

Provided that where any such application is made to a court of summary jurisdiction, and the court considers that the matter is one which would more

¹ Now Justices Act, 1902-1957.

conveniently be dealt with by the Supreme Court, the court of summary jurisdiction may refuse to make an order, and in such case no appeal shall lie to the Supreme Court.

(4) An order of a court of summary jurisdiction for the payment of money under the Guardianship of Infants Act, 1920, as amended by this Act, shall be enforceable in the manner provided in the Justices Act, 1902-1920,¹ for the enforcement of payment of sums of money, and the provisions of such lastmentioned Act shall, so far as capable of application, apply to all proceedings in courts of summary jurisdiction under the Guardianship of Infants Act, 1920, as amended by this Act.

(5) Where an order made by a court of summary jurisdiction under the Guardianship of Infants Act, 1920, as amended by this Act, contains a provision committing to the applicant the legal custody of any infant, the court may by such order direct that any person in whose custody the infant may be for the time being shall, forthwith after being served with a copy of the order, give up the infant to the applicant, and any person who shall disobey such direction shall be guilty of an offence and liable on summary conviction to a fine not exceeding twenty pounds or to imprisonment for not exceeding two months.

Enforcement
of orders for
payment
of money.
[15 & 16 Geo.
V., sec. 8.]

9. (1) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money under the Guardianship of Infants Act, 1920, as amended by this Act, shall give notice of any change of address to such person (if any) as may be specified in the order, and any person failing without reasonable excuse to give such a notice shall be liable on summary conviction to a fine not exceeding two pounds.

(2) Where the court has made any such order, the court shall, in addition to any other powers for enforcing compliance with the order, have power,

¹ Now Justices Act, 1902-1957.

in any case where there is any pension or income payable to the person against whom the order is made and capable of being attached, after giving the person, by whom the pension or income is payable, an opportunity of being heard, to order that such part as the court may think fit of such pension or income be attached and paid to the person named by the court, and such further order shall be an authority to the person by whom such pension or income is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to the person by whom the pension or income is payable.

10. Where a parent of a child applies to the Supreme Court for a writ or order for the production of the child, and the court is of opinion that the parent has abandoned or deserted the child or that he has otherwise so conducted himself that the court should refuse to enforce his right to the custody of the child, the court may in its discretion decline to issue the writ or make the order.

Power of court as to production of child.
54 Vic., c. 3.

11. If at the time of the application for the writ or order for the production of the child, the child is being brought up by another person, the Supreme Court may in its discretion, if it orders the child to be given up to the parent, further order that the parent shall pay to such person the whole of the costs properly incurred in bringing up the child, or such portion thereof as shall seem to the court to be just and reasonable, having regard to all circumstances of the case.

Power of court to order repayment of costs of bringing up child.
Ibid., sec. 2.

12. Where a parent has—

- (a) abandoned or deserted his child; or
- (b) allowed his child to be brought up by another person at that person's expense for such a length of time and under such

Court in making order to have regard to conduct of parent.
Ibid., sec. 3.

circumstances as to satisfy the Supreme Court that the parent was unmindful of his parental duties;

the court shall not make an order for delivery of the child to the parent unless the parent has satisfied the court that, having regard to the welfare of the child, he is a fit person to have the custody of the child.

Construc-
tion.

13. (1) In the construction of this Act "the Supreme Court" shall mean the Supreme Court or any judge thereof.

(2) For the purposes of the last three preceding sections the expression "parent of a child" includes any person legally liable to maintain such child or entitled to his custody; and "person" includes any school or institution.

(3) The Secretary of the State Children Department shall have power (in his official name or style, as if he were a corporation sole) to take or appear in all or any proceedings which it may be necessary or convenient to take or appear in on behalf of such department for the purposes of any provision of this Act or in order to enforce any right conferred on such department under or by virtue of any such provision.

(4) The Governor may by regulations confer on any officer or agent of any school or institution such powers in respect of such school or institution as are hereinbefore conferred on the Secretary of the State Children Department in respect of such department.

(5) Nothing in this Act shall be deemed to confer on any Court power to order the release of any State child from the control of the State Children Department, or from any institution within the meaning of the State Children Act, 1907-1921.¹

¹ See now Child Welfare Act, 1947-1957.