

No. , 1926.

A BILL

To amend the law relating to the guardianship, maintenance, and custody of infants ; to remove certain disabilities of married women with respect to the guardianship of their infant children ; to amend the Testator's Family Maintenance and Guardianship of Infants Act, 1916, the Infants Custody and Settlements Act, 1899, and certain other Acts ; and for purposes connected therewith.

[MISS PRESTON STANLEY ;—2 *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 New South Wales in Parliament assembled, and by the authority of

5 the same, as follows :—

1. This Act may be cited as the "Guardianship of Short title. Infants Act, 1926."

Interpreta-
tion.

See Act 1899
No. 39, s. 3,
and 1916 No.
41, s. 2.

2. In this Act "The Court" where appearing in sections five and nine has the meaning assigned to it in the Infants Custody and Settlements Act, 1899, and where appearing in sections nine and ten has the meaning assigned to it in the Testator's Family Maintenance and Guardianship of Infants Act, 1916. 5

Construction.

3. Sections five, six, seven, and eight of this Act shall be read and construed with the Infants Custody and Settlements Act, 1899; sections nine and ten shall be read and construed with the Testator's Family Maintenance and Guardianship of Infants Act, 1916. 10

Equal
guardianship
of father and
mother.

4. The mother of every legitimate child shall have the guardianship and custody of such child while an infant jointly with the father, and shall have equal authority, rights, and responsibilities with regard to such infant. 15

Court may on
application of
either make
order as to
custody or
access.

5. The Court may on the application of the father or mother of any infant make any such order as it may think fit regarding the custody of such infant and the right of access thereto of either parent, and may alter, vary, or discharge such order on the application of either parent, 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. 20 25

Repeal of
s. 5 of Act
No. 39, 1899.

6. Section five of the Infants Custody and Settlements Act, 1899, is hereby repealed.

Principle on
which
questions
relating to
custody, &c.,
of infants are
to be decided.

49 & 50 Vic.,
c. 27.

7. Where in any proceeding before any court whatsoever 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 of such property is in question, the court in deciding that question shall regard the welfare of the infant as the first and paramount consideration, though it may also take into consideration the conduct and the wishes of the parents: Provided that when the court shall take into consideration the wishes of the parents, then the wishes of the father shall be considered as of more importance in the case of a male infant of five years of age or over, and the wishes of a mother in the case of a female infant, or in the case of a male infant under the age of five years. 30 35 40

8.

8. In making an order for custody of any child the court shall not regard as a reason for depriving a father or mother of custody of the child the fact that he or she contemplates leaving the jurisdiction for the purpose of earning his or her living or for any other reason that the court shall deem sufficient.

Rights of parents leaving the jurisdiction.

9. (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.

(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, 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

10. (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.

(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 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

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

(5) Where guardians are appointed by both parents, the guardians so appointed shall after the death of the surviving parent act jointly. 10

Repeal of
ss. 13, 14, 15,
and 16 of Act
No. 41, 1916.

11. Sections thirteen, fourteen, fifteen, and sixteen of the Testator's Family Maintenance and Guardianship of Infants Act, 1916, are hereby repealed. 15

Capacity of
married
women to be
next friend
or guardian
ad litem.

12. A married woman shall be capable of suing as next friend and of being appointed guardian ad litem on behalf of her own children or any other infants whatsoever.

Service on
either parent
of infant
sufficient.

13. Where by any Act it is provided that the service of any proceeding against an infant shall be effected by serving the same on the father of the infant it shall be equally valid if served on the mother of such infant. 20