

Legislative Council.

No. , 1929.

A BILL

To amend the law with respect to the guardianship and custody of infants; to amend the Infants' Custody and Settlements Act of 1899, the Testator's Family Maintenance and Guardianship of Infants Act, 1916, and certain other Acts; and for purposes connected therewith.

[MR. BOYCE ;—17 *December*, 1929.]

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 the same, as follows:—

1. This Act may be cited as the "Guardianship of Short title, Infants Act, 1929."

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c 60—A (2)

2.

Amendment
of Act No. 39,
1899, s. 1.

2. The Infants' Custody and Settlements Act of 1899 is amended by inserting at the end of section one the following words and figures:—

PART IV.—*Provisions applicable in all courts*—ss. 17, 18.

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

3. The Infants' Custody and Settlements Act of 1899 is amended by omitting section five and by inserting in lieu thereof the following new section:—

Custody of
infant.
49 & 50 Vict.,
c. 27, s. 5.

5. (1) The Supreme Court in its equitable jurisdiction may, upon the application of the 10 mother of any infant, make such order as it may think fit regarding the custody of the 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 15 of the mother as of the father.

15 and 16
Geo. V, c. 45,
s. 3.

(2) The power of the court under this section 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 20 then residing with the father of the infant.

(3) Where the court under this section 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 25 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. 30

(4) 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 35 made the mother of the infant continues to reside with the father.

(5)

(5) In every case under this section the court 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 thinks fit.

5 (6) The powers of the court under this section to make orders regarding the custody of an infant, and the right of access thereto of either parent may be exercised upon the application of the father of an infant in like manner as those powers may be exercised upon the application of the mother of the infant. 18 & 19 Geo. V, c. 26, s. 16.

10 (7) Any order made under this section may, on the application either of the father or the mother or any guardian of the infant, be varied or discharged by a subsequent order.

15 4. (1) The Infants' Custody and Settlements Act of 1899 is amended by inserting next after section sixteen the following new Part:— Amendment of Act No. 39, 1899. New Part IV.

PART IV.

20 Provisions applicable in all courts.

25 17. Where in any proceeding before any court (whether or not a court within the meaning of this Act) 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 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. 15 & 16 Geo. V, c. 45, s. 1.

30 18. The mother of an infant shall have the like powers to apply to any court in respect of any matter affecting the infant as are possessed by the father. Equal right of mother to apply to court. Ibid. s. 2.

Amendment
of Act No. 41,
1916, ss. 13-
16.
New section.

5. (1) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, is amended by omitting sections thirteen, fourteen, fifteen, and sixteen, and by inserting in lieu thereof the following new sections :—

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Rights of
surviving
parent as to
guardianship.
15 & 16 Geo.
V, c. 45, s. 4.

13. (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.

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Where 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.

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(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.

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Where 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.

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Power of
mother and
father to
appoint
guardians.
15 & 16 Geo.
V, c. 45, s. 5.

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

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

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(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.

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(4) If the mother or father so objects, or if the guardian so appointed considers that the mother or father is unfit to have the custody of the infant, the guardian may apply to the court.

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5 The court may either refuse to make an 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.

10 Where the court makes an order that the guardian so appointed shall be the sole guardian of the infant, the court 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.

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

20 (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.

25 **6.** The Testator's Family Maintenance and Guardianship of Infants Act, 1916, is amended—

Amendment
of Act No. 41,
1916, s. 18.

30 (a) by omitting from section eighteen the words "of the Act" and by inserting in lieu thereof the words "of this Act";

35 (b) by inserting at the end of section eighteen the following new paragraph:—

The powers of the court under this section extend to the removal of either parent from guardianship under this Act.

Continuity of Interest

The court may, in its discretion, make an order for relief, and the order shall be made in favor of the party who has established the continuity of interest with the corporation.

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