

New South Wales.



ANNO VICESIMO QUINTO
GEORGII V REGIS.

Act No. 20, 1934.

An Act to amend the law with respect to the guardianship and custody and marriage of infants; to amend the Infants' Custody and Settlements Act of 1899, the Marriage Act, 1899, the Testator's Family Maintenance and Guardianship of Infants Act, 1916, and certain other Acts; and for purposes connected therewith. [Assented to, 31st October, 1934.]

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, 1934."

Guardianship of Infants.

Amendment of
Act No. 39, 1899.

2. The Infants' Custody and Settlements Act of 1899 is amended—

Substituted s. 5.

(a) by omitting section five and by inserting in lieu thereof the following new section:—

Custody of
infant.

49 & 50 Vic.,
c. 27, s. 5.

5. (1) The Supreme Court in its equitable jurisdiction, may, upon the application of the 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 of the mother as of the father.

The fact that a parent contemplates leaving the State shall not of itself be regarded as a reason for denying such parent the custody of the child or depriving such parent thereof if the court is satisfied that the welfare of the child will best be served by allowing such parent to have or retain such custody.

15 & 16 Geo.
V, c. 45, s. 3
(1)

(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 then residing with the father of the infant.

Ibid. s. 3 (2).

(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 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.

Ibid. s. 3 (3)

(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 any continuous period of three months after it is made the mother of the infant resides with the father. (5)

Guardianship of Infants.

(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 just. 49 & 50 Vic.
c. 27, s. 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.

(7) In any case in which a parent of an infant is dead, the court may, on the application of any relative of that parent, make such order as to access to the infant by such relative as to the court seems fit.

(8) 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 & 16 Geo.
V, c. 45, s. 3-
(4).

(9) Orders may be made and enforced under this Act notwithstanding that proceedings may have been instituted under the Matrimonial Causes Act, 1899, by the father or the mother, or that an order has been made in the proceedings:

Provided that no order shall be made or enforced under this Act in respect of any matter where any order in relation to such matter has already been made by the Supreme Court in its matrimonial causes jurisdiction or where at the date of any application made under this Act in respect of any matter, an application has already been filed in that Court and is then pending in respect of such matter:

Provided also that orders made under this Act may be subsequently varied by the Supreme Court in its matrimonial causes jurisdiction where the same subject matter arises in any proceedings within its jurisdiction instituted in that Court.

(b)

(b)

Guardianship of Infants.

New ss. 10A.,
10B, 10c, 10D.

Extension of
jurisdiction
to district
courts and
courts of
petty sessions
holden before
stipendiary
or police
magistrates.
cf. 49 & 50
Vic., c. 27,
s. 9, and 15 &
16 Geo. V,
c. 45, s. 7.

(b) by inserting next after section ten the following new sections :—

10A. (1) The jurisdiction conferred on the Supreme Court in its equitable jurisdiction by this Part may also be exercised by the district court of the district in which the respondent or respondents or any of them reside, or by a court of petty sessions nearest to the place of residence of the respondent or respondents or any of them :

Provided that—

(a) such court of petty sessions shall be constituted by a stipendiary or police magistrate sitting alone; and

(b) such court of petty sessions shall not be competent—

(i) to entertain any application relating to an infant who has attained the age of sixteen years, unless the infant is physically or mentally incapable of self support, or the application is one for the variation or discharge of a then subsisting order of a court of petty sessions; or

(ii) 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

(iii) to award the payment of sums towards the maintenance of any infant exceeding the sum of twenty shillings per week.

(2) (a) Where a district court makes or refuses to make an order on an application under this section an appeal shall lie to the Supreme Court in its equitable jurisdiction in the manner prescribed by the rules of that court.

(b)

Guardianship of Infants.

(b) Where a court of petty sessions makes or refuses to make such an order an appeal shall lie to a court of quarter sessions, and Part V of the Justices Act, 1902, shall be deemed to extend to such an appeal :

Provided that where the application is made to a district court, and such court considers that the matter is one which would be dealt with more conveniently by the Supreme Court in its equitable jurisdiction, or where any such application is made to a court of petty sessions and such court considers that the matter is one which would be dealt with more conveniently by the Supreme Court in its equitable jurisdiction or a district court, the court to which the application is made may refuse to make any order, and in such case no appeal shall lie to any court against such refusal.

(3) An order of a district court or of a court of petty sessions for the payment of money under this Part shall have the effect of and be deemed to be a judgment of the district court or of the court of petty sessions as the case may be and shall be enforceable by process of court as in pursuance of such judgment.

(4) Where an order under this Part contains a provision committing to the applicant or any other person the legal custody of any infant, a copy of the order may be served on any person in whose actual custody the infant may for the time being be, and if such person makes default in complying with such provision he shall be liable on summary conviction to a penalty not exceeding five pounds per day for each day he makes default in complying with such provision.

10B. When any application has been made under this Part to a district court or to a court of petty sessions, the Supreme Court in its equitable jurisdiction may, at the instance of any party to such application, order such application

Removal of Proceedings. cf. 49 & 50 Vic., c. 27, s. 10.

(c)

Guardianship of Infants.

application to be removed to the Supreme Court in its equitable jurisdiction and there proceeded with upon such terms as to costs of removal as it thinks proper.

Enforcement of orders for payment of money.

15 & 16 Geo. V, c. 45, s. 8 (1).

10c. (1) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money under this Part 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 penalty not exceeding ten pounds.

(2) Where any order for the payment of money has been made in exercise of the powers contained in this Part, the court making the order shall, in addition to any other powers for enforcing compliance with the order, have power 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 any 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 payments 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.

Rules of equity to prevail.

cf. 15 & 16 Geo. V, c. 49, s. 44.

10D. In any question relating to the custody or education of an infant in which is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter the rules of equity shall prevail in all courts exercising jurisdiction under this Act.

(c)

Guardianship of Infants.

(c) by inserting at the end of section three the following new definition:—

“Maintenance” includes education.

cf. 22 & 23, Geo. V. c. 46, s. 79 (3).

3. The Infants' Custody and Settlements Act of 1899 is further amended—

Further amendment of Act No. 39, 1899.

(a) by inserting next after section sixteen the following new Part:—

New Part IV.

PART IV.

Provisions applicable in all courts.

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.

Custody, upbringing, and property of infant.

15 & 16 Geo. V, c. 45, s. 1.

In this section “upbringing” includes religious instruction.

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.

(b) by inserting at the end of section one the following words and figures:—

Sec. 1. (Division into Parts.)

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

Guardianship of Infants.

Further
amendment
of Act No.
39, 1899, s. 4.
(Rules.)

4. (1) The Infants' Custody and Settlements Act of 1899, is further amended—

(a) by inserting in section four after the word "procedure" the words "in the Supreme Court and upon appeals thereto";

(b) by inserting at the end of the same section the following new subsections:—

(2) The district court judges or any four of them may make rules for regulating the practice and procedure upon applications made under Part I of this Act to district courts and for the enforcement of orders made upon such applications.

(3) The Governor may make rules for regulating the practice and procedure upon applications made under Part I of this Act to courts of petty sessions and for the enforcement of orders made upon such applications, and for regulating the practice and procedure upon appeals to courts of quarter sessions under this Act.

(4) Any rules made under this Act shall—

(a) be published in the Gazette;

(b) take effect from the date of publication, or from a later date specified in the rules;

(c) be laid before both Houses of Parliament within fourteen sitting days if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, the rule or part shall thereupon cease to have effect.

(2) The Infants' Custody and Settlements Act of 1899, as amended by this Act may be cited as the Infants' Custody and Settlements Act, 1899-1934.

Citation of Act
No. 39, 1899, as
amended.

Guardianship of Infants.

5. (1) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, is amended— Amendment of Act No. 41, 1916, ss. 13-16.

(a) by omitting sections thirteen, fourteen, fifteen, and sixteen, and by inserting in lieu thereof the following new sections:— Substituted ss. 13, 14.

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

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.

(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.

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.

14. (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 mother and father to appoint guardians.

(2) The mother of an infant may by deed or will appoint any person to be guardian of the infant after her death. Ibid. s. 5.

(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)

Guardianship of Infants.

(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.

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.

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 and education 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.

The powers conferred by this subsection may be exercised at any time and shall include power to vary or discharge any order previously made in virtue of those powers.

(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.

(b)

Guardianship of Infants.

(b) by inserting at the end of section seventeen the following new subsection:—

Sec. 17.
(Guardians may apply to court for directions.)

(2) The power conferred by the foregoing provisions of this section shall include power to vary or discharge any order made under this section or made by any court under the Infants' Custody and Settlements Act, 1899-1934, and, where one of the guardians is the mother or father of the infant, shall also include power—

cf. 22 & 23
Geo. V,
c. 46, s. 79
(1) (3).

(a) to make such orders regarding the custody of the infant and the right of access thereto as, having regard to the welfare of the infant, the court may think fit; and

(b) to order the mother or father to pay towards the maintenance or education 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.

(2) Any question as to the validity of any order made before the commencement of this Act under the Testator's Family Maintenance and Guardianship of Infants Act, 1916, shall be determined as if this Act had commenced immediately after that Act.

6. (1) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, is further amended—

Further amendment of Act No. 41, 1916, s. 18.

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

(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.

(2) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by this

Citation of Act No. 41, 1916, as amended.

Act

Guardianship of Infants.

Act may be cited as the Testator's Family Maintenance and Guardianship of Infants Act, 1916-1934.

Amendment of
Act No. 15, 1899.

Substituted
s. 9.

Consent in
case of
minority.

7. (1) The Marriage Act, 1899, is amended—

(a) by omitting section nine and by inserting in lieu thereof the following new section:—

9. (1) If either party to any intended marriage, not having been previously married or not being a widower or widow, is under the age of twenty-one years, such marriage shall not take place without production to the person about to celebrate the same of the written consent of the person or persons mentioned in the Fifth Schedule to this Act:

Provided that—

(a) if the person about to celebrate the marriage is satisfied that the consent of any person whose consent is so required cannot be obtained by reason of absence or inaccessibility, or by reason of his being under any disability, the necessity for the consent of that person shall be dispensed with if there is any other person whose consent is also required and has been obtained, and if the consent of no other person is required, or if so required cannot for any of the reasons abovementioned be obtained, a stipendiary or police magistrate or some justice of the peace appointed for that purpose may in writing consent to the marriage;

(b) if any person whose consent is required refuses his consent, the court may, on application in the prescribed form, consent to the marriage.

(2) Before a consent is given pursuant to paragraphs (a) and (b) of subsection one of this

Inquiry by
court,
magistrate, or
justice.

Guardianship of Infants.

this section an inquiry shall be made on oath or solemn affirmation as to the facts and circumstances of the case.

(3) The consent of the court or of a stipendiary or police magistrate or justice of the peace to any marriage pursuant to this section shall have the same effect as if it had been given by the person whose consent cannot be so obtained or, as the case may be, is so refused.

Effect of consent of court, magistrate, or justice.

(4) For the purposes of this section "the court" shall mean the Supreme Court in its equitable jurisdiction or a judge thereof, the district court of the district in which the minor resides, or the court of petty sessions nearest to the place of residence of the minor which is holden before a stipendiary or police magistrate sitting alone.

Definition of court.

Every court exercising jurisdiction under this section shall sit in camera unless the court shall otherwise order.

(5) The form of applications to the Supreme Court or a district court and the procedure thereon shall be as prescribed by rules of court, or in the case of applications to a court of petty sessions shall be as prescribed by general rules made under the Justices Act, 1902.

(b) (i) by omitting from subsection one of section ten the words "Judges of the Supreme Court" and by inserting in lieu thereof the words "Registrar-General";

Sec. 10.

(ii) by omitting from subsection two of the same section the words "said Judges" and by inserting in lieu thereof the words "Registrar-General";

(c) by omitting from the Fourth Schedule the words "Marriage Act, No. , 1899," wherever occurring and by inserting in lieu thereof the words "Marriage Act, 1899-1934."

(d)

Guardianship of Infants.

New Sched.
Five.

Sec. 9.
cf. 15 & 16
Geo. V,
c. 45, Sch.

(d) by inserting after Fourth Schedule the following new Schedule:—

FIFTH SCHEDULE.

CONSENTS REQUIRED TO THE MARRIAGE OF AN INFANT.

Circumstances.	Person whose consent is required.
<i>I.—Where the infant is legitimate.</i>	
1. Where both parents are living—	
(a) if the parents are living together;	Both parents.
(b) if the parents are divorced or separated by order of court or by agreement;	The parent to whom the custody of the infant is committed by order of any court or by the agreement, or if the custody of the infant is so committed to one parent during a period of time and to the other parent during another period or periods of time, both parents.
(c) if one parent has been deserted by the other;	The parent who has been deserted.
(d) if both parents have been deprived of the custody of the infant by order of any court.	The person to whose custody the infant is committed by order of any court.
2. Where one parent is dead—	
(a) if there is no other guardian;	The surviving parent.
(b) if a guardian has been appointed by the deceased parent.	The surviving parent and the guardian if acting jointly, or the surviving parent or the guardian if the parent or guardian is the sole guardian of the infant.
3. Where both parents are dead.	The guardians or guardian appointed by the deceased parents or by any court, or if no such guardian has been appointed, a stipendiary or police magistrate or justice of the peace appointed in that behalf in accordance with section ten of this Act.

Guardianship of Infants.

FIFTH SCHEDULE—*continued.*CONSENTS REQUIRED TO THE MARRIAGE OF AN INFANT—*continued.*

Circumstances.	Person whose consent is required.
II.— <i>Where the infant is illegitimate.</i>	
If the mother of the infant is alive.	The mother, or if she has by order of any court been deprived of the custody of the infant, the person to whom the custody of the infant has been committed by order of the court.
If the mother of the infant is dead.	The guardian appointed by the mother or by any court, or if no such guardian has been appointed, a stipendiary or police magistrate or justice of the peace appointed in that behalf in accordance with section ten of this Act.

(2) The Marriage Act, 1899, as amended by the Marriage (Amendment) Act, 1924, the Marriage (Amendment) Act, 1925, the Marriage (Amendment) Act, 1934, and this Act, may be cited as the Marriage Act, 1899-1934.

(3) Any person appointed pursuant to section ten of the Marriage Act, 1899, prior to the commencement of this section and whose appointment is at such commencement in force shall be deemed to have been appointed pursuant to the Marriage Act, 1899-1934.

(4) This section shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

By Authority:

ALFRED JAMES KENT, I.S.O., Government Printer, Sydney—1934.

General Provisions

Section 11
of 1934 Act
No. 20

Consent required for the Marriage of an Infant—
FIFTH SCHEDULE—continued.

Person whose consent is required.

11.—If the mother of the infant is living, the mother or if she has been deprived of the custody of the infant, the person to whom the custody of the infant has been committed by order of the court, or if no such guardian has been appointed, a stipendiary or police magistrate or justice of the peace appointed in that behalf in accordance with section ten of this Act, and if the father of the infant is living, the father or if he has been deprived of the custody of the infant, the person to whom the custody of the infant has been committed by order of the court, or if no such guardian has been appointed, a stipendiary or police magistrate or justice of the peace appointed in that behalf in accordance with section ten of this Act, shall give his consent to the marriage of the infant.

(3) The Marriage Act, 1899, as amended by the Marriage (Amendment) Act, 1925, the Marriage (Amendment) Act, 1934, and this Act, may be cited as the Marriage Act, 1899-1934.

(3) Any person appointed pursuant to section ten of the Marriage Act, 1899, prior to the commencement of this section and whose appointment is at such commencement in force shall be deemed to have been appointed pursuant to the Marriage Act, 1899-1934.

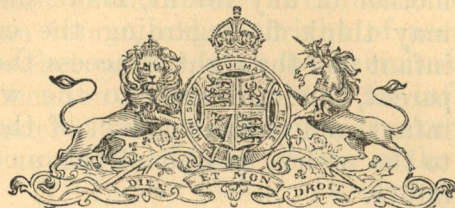
(4) This section shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

By Authority:
Government Printer, Sydney—1934.

I certify that this PUBLIC BILL, which originated in the LEGISLATIVE ASSEMBLY, has finally passed the LEGISLATIVE COUNCIL and the LEGISLATIVE ASSEMBLY of NEW SOUTH WALES.

W. R. McCOURT,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 23 October, 1934.

New South Wales.



ANNO VICESIMO QUINTO
GEORGI V REGIS.

Act No. 20, 1934.

An Act to amend the law with respect to the guardianship and custody and marriage of infants; to amend the Infants' Custody and Settlements Act of 1899, the Marriage Act, 1899, the Testator's Family Maintenance and Guardianship of Infants Act, 1916, and certain other Acts; and for purposes connected therewith. [Assented to, 31st October, 1934.]

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, 1934."

2.

I have examined this Bill, and find it to correspond in all respects with the Bill as finally passed by both Houses.

W. W. HEDGES,
Chairman of Committees of the Legislative Assembly.

Guardianship of Infants.

Amendment of Act No. 39, 1899. **2.** The Infants' Custody and Settlements Act of 1899 is amended—

Substituted s. 5. (a) by omitting section five and by inserting in lieu thereof the following new section:—

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

5. (1) The Supreme Court in its equitable jurisdiction, may, upon the application of the 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 of the mother as of the father.

The fact that a parent contemplates leaving the State shall not of itself be regarded as a reason for denying such parent the custody of the child or depriving such parent thereof if the court is satisfied that the welfare of the child will best be served by allowing such parent to have or retain such custody.

15 & 16 Geo. V, c. 45, s. 3
(1)

(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 then residing with the father of the infant.

Ibid. s. 3 (2).

(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 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.

Ibid. s. (3).

(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 any continuous period of three months after it is made the mother of the infant resides with the father. (5)

Guardianship of Infants.

(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 just. ^{49 & 50 Vic, c. 27, s. 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.}

(7) In any case in which a parent of an infant is dead, the court may, on the application of any relative of that parent, make such order as to access to the infant by such relative as to the court seems fit.

(8) 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 & 16 Geo. V, c. 45, s. 3 (4).}

(9) Orders may be made and enforced under this Act notwithstanding that proceedings may have been instituted under the Matrimonial Causes Act, 1899, by the father or the mother, or that an order has been made in the proceedings:

Provided that no order shall be made or enforced under this Act in respect of any matter where any order in relation to such matter has already been made by the Supreme Court in its matrimonial causes jurisdiction or where at the date of any application made under this Act in respect of any matter, an application has already been filed in that Court and is then pending in respect of such matter:

Provided also that orders made under this Act may be subsequently varied by the Supreme Court in its matrimonial causes jurisdiction where the same subject matter arises in any proceedings within its jurisdiction instituted in that Court. (b)

Guardianship of Infants.

New ss. 10A,
10B, 10C, 10D.

Extension of
jurisdiction
to district
courts and
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holden before
stipendiary
or police
magistrates.

cf. 49 & 50
Vic., c. 27,
s. 9, and 15 &
16 Geo. V.,
c. 45, s. 7.

(b) by inserting next after section ten the following new sections :—

10A. (1) The jurisdiction conferred on the Supreme Court in its equitable jurisdiction by this Part may also be exercised by the district court of the district in which the respondent or respondents or any of them reside, or by a court of petty sessions nearest to the place of residence of the respondent or respondents or any of them :

Provided that—

- (a) such court of petty sessions shall be constituted by a stipendiary or police magistrate sitting alone; and
- (b) such court of petty sessions shall not be competent—
 - (i) to entertain any application relating to an infant who has attained the age of sixteen years, unless the infant is physically or mentally incapable of self support, or the application is one for the variation or discharge of a then subsisting order of a court of petty sessions; or
 - (ii) 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
 - (iii) to award the payment of sums towards the maintenance of any infant exceeding the sum of twenty shillings per week.

(2) (a) Where a district court makes or refuses to make an order on an application under this section an appeal shall lie to the Supreme Court in its equitable jurisdiction in the manner prescribed by the rules of that court.

(b)

Guardianship of Infants.

(b) Where a court of petty sessions makes or refuses to make such an order an appeal shall lie to a court of quarter sessions, and Part V of the Justices Act, 1902, shall be deemed to extend to such an appeal:

Provided that where the application is made to a district court, and such court considers that the matter is one which would be dealt with more conveniently by the Supreme Court in its equitable jurisdiction, or where any such application is made to a court of petty sessions and such court considers that the matter is one which would be dealt with more conveniently by the Supreme Court in its equitable jurisdiction or a district court, the court to which the application is made may refuse to make any order, and in such case no appeal shall lie to any court against such refusal.

(3) An order of a district court or of a court of petty sessions for the payment of money under this Part shall have the effect of and be deemed to be a judgment of the district court or of the court of petty sessions as the case may be and shall be enforceable by process of court as in pursuance of such judgment.

(4) Where an order under this Part contains a provision committing to the applicant or any other person the legal custody of any infant, a copy of the order may be served on any person in whose actual custody the infant may for the time being be, and if such person makes default in complying with such provision he shall be liable on summary conviction to a penalty not exceeding five pounds per day for each day he makes default in complying with such provision.

10B. When any application has been made under this Part to a district court or to a court of petty sessions, the Supreme Court in its equitable jurisdiction may, at the instance of any party to such application, order such application

Removal of proceedings. cf. 49 & 50 Vic., c. 27, s. 10.

(d)

Guardianship of Infants.

application to be removed to the Supreme Court in its equitable jurisdiction and there proceeded with upon such terms as to costs of removal as it thinks proper.

Enforcement
of orders for
payment of
money.

15 & 16 Geo.
V, c. 45, s. 8
(1).

10c. (1) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money under this Part 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 penalty not exceeding ten pounds.

(2) Where any order for the payment of money has been made in exercise of the powers contained in this Part, the court making the order shall, in addition to any other powers for enforcing compliance with the order, have power 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 any 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 payments 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.

Rules of
equity to
prevail.
cf. 15 & 16
Geo. V, c. 49,
s. 44.

10D. In any question relating to the custody or education of an infant in which is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter the rules of equity shall prevail in all courts exercising jurisdiction under this Act.

(c)

Guardianship of Infants.

(c) by inserting at the end of section three the following new definition:—

“Maintenance” includes education.

cf. 22 & 23,
Geo. V. c. 46,
s. 79 (3).

3. The Infants' Custody and Settlements Act of 1899 is further amended—

Further
amendment of
Act No. 39,
1899.

(a) by inserting next after section sixteen the following new Part:—

New Part IV.

PART IV.

Provisions applicable in all courts.

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.

Custody,
upbringing,
and property
of infant.
15 & 16 Geo.
V, c. 45, s. 1.

In this section “upbringing” includes religious instruction.

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.

(b) by inserting at the end of section one the following words and figures:—

Sec. 1.
(Division
into Parts.)

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

(c)

Guardianship of Infants.

Further amendment of Act No. 39, 1899, s. 4. (Rules.)

4. (1) The Infants' Custody and Settlements Act of 1899, is further amended—

(a) by inserting in section four after the word "procedure" the words "in the Supreme Court and upon appeals thereto";

(b) by inserting at the end of the same section the following new subsections:—

(2) The district court judges or any four of them may make rules for regulating the practice and procedure upon applications made under Part I of this Act to district courts and for the enforcement of orders made upon such applications.

(3) The Governor may make rules for regulating the practice and procedure upon applications made under Part I of this Act to courts of petty sessions and for the enforcement of orders made upon such applications, and for regulating the practice and procedure upon appeals to courts of quarter sessions under this Act.

(4) Any rules made under this Act shall—

(a) be published in the Gazette;

(b) take effect from the date of publication, or from a later date specified in the rules;

(c) be laid before both Houses of Parliament within fourteen sitting days if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, the rule or part shall thereupon cease to have effect.

Citation of Act No. 39, 1899, as amended.

(2) The Infants' Custody and Settlements Act of 1899, as amended by this Act may be cited as the Infants' Custody and Settlements Act, 1899-1934.

5.

Guardianship of Infants.

5. (1) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, is amended—

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

(a) by omitting sections thirteen, fourteen, fifteen, and sixteen, and by inserting in lieu thereof the following new sections:—

Substituted ss. 13, 14.

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.

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

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.

(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.

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.

14. (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 mother and father to appoint guardians. *Ibid.* s. 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)

(d)

Guardianship of Infants.

(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.

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.

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 and education 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.

The powers conferred by this subsection may be exercised at any time and shall include power to vary or discharge any order previously made in virtue of those powers.

(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.

(b)

Guardianship of Infants.

(b) by inserting at the end of section seventeen the following new subsection:—

Sec. 17.
(Guardians may
apply to court
for directions.)

(2) The power conferred by the foregoing provisions of this section shall include power to vary or discharge any order made under this section or made by any court under the Infants' Custody and Settlements Act, 1899-1934, and, where one of the guardians is the mother or father of the infant, shall also include power—

cf. 22 & 23
Geo. V,
c. 46, s. 79
(1) (3).

(a) to make such orders regarding the custody of the infant and the right of access thereto as, having regard to the welfare of the infant, the court may think fit; and

(b) to order the mother or father to pay towards the maintenance or education 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.

(2) Any question as to the validity of any order made before the commencement of this Act under the Testator's Family Maintenance and Guardianship of Infants Act, 1916, shall be determined as if this Act had commenced immediately after that Act.

6. (1) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, is further amended—

Further
amendment
of Act No. 41,
1916, s. 18.

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

(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.

(2) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by this

Citation of
Act No. 41,
1916, as
amended.

Act

Guardianship of Infants.

Act may be cited as the Testator's Family Maintenance and Guardianship of Infants Act, 1916-1934.

Amendment of
Act No. 15, 1929.

Substituted
s. 9.

Consent in
case of
inority.

In substituted
section in
court in
judicial
proceedings

Inquiry by
court,
magistrate, or
justice.

7. (1) The Marriage Act, 1899, is amended—

(a) by omitting section nine and by inserting in lieu thereof the following new section:—

9. (1) If either party to any intended marriage, not having been previously married or not being a widower or widow, is under the age of twenty-one years, such marriage shall not take place without production to the person about to celebrate the same of the written consent of the person or persons mentioned in the Fifth Schedule to this Act:

Provided that—

(a) if the person about to celebrate the marriage is satisfied that the consent of any person whose consent is so required cannot be obtained by reason of absence or inaccessibility, or by reason of his being under any disability, the necessity for the consent of that person shall be dispensed with if there is any other person whose consent is also required and has been obtained, and if the consent of no other person is required, or if so required cannot for any of the reasons abovementioned be obtained, a stipendiary or police magistrate or some justice of the peace appointed for that purpose may in writing consent to the marriage;

(b) if any person whose consent is required refuses his consent, the court may, on application in the prescribed form, consent to the marriage.

(2) Before a consent is given pursuant to paragraphs (a) and (b) of subsection one of this

Guardianship of Infants.

this section an inquiry shall be made on oath or solemn affirmation as to the facts and circumstances of the case.

(3) The consent of the court or of a stipendiary or police magistrate or justice of the peace to any marriage pursuant to this section shall have the same effect as if it had been given by the person whose consent cannot be so obtained or, as the case may be, is so refused.

(4) For the purposes of this section "the court" shall mean the Supreme Court in its equitable jurisdiction or a judge thereof, the district court of the district in which the minor resides, or the court of petty sessions nearest to the place of residence of the minor which is holden before a stipendiary or police magistrate sitting alone.

Every court exercising jurisdiction under this section shall sit in camera unless the court shall otherwise order.

(5) The form of applications to the Supreme Court or a district court and the procedure thereon shall be as prescribed by rules of court, or in the case of applications to a court of petty sessions shall be as prescribed by general rules made under the Justices Act, 1902.

- (b) (i) by omitting from subsection one of section ten the words "Judges of the Supreme Court" and by inserting in lieu thereof the words "Registrar-General";
- (ii) by omitting from subsection two of the same section the words "said Judges" and by inserting in lieu thereof the words "Registrar-General";
- (c) by omitting from the Fourth Schedule the words "Marriage Act, No. , 1899," wherever occurring and by inserting in lieu thereof the words "Marriage Act, 1899-1934."

(d)

Guardianship of Infants.

New Sched.
Five.

(d) by inserting after Fourth Schedule the following new Schedule:—

Sec. 9.
cf. 15 & 16
Geo. V,
c. 45, Sch.

FIFTH SCHEDULE.

CONSENTS REQUIRED TO THE MARRIAGE OF AN INFANT.

Circumstances.	Person whose consent is required.
<i>I.—Where the infant is legitimate.</i>	
1. Where both parents are living—	
(a) if the parents are living together;	Both parents.
(b) if the parents are divorced or separated by order of court or by agreement;	The parent to whom the custody of the infant is committed by order of any court or by the agreement, or if the custody of the infant is so committed to one parent during a period of time and to the other parent during another period or periods of time, both parents.
(c) if one parent has been deserted by the other;	The parent who has been deserted.
(d) if both parents have been deprived of the custody of the infant by order of any court.	The person to whose custody the infant is committed by order of any court.
2. Where one parent is dead—	
(a) if there is no other guardian;	The surviving parent
(b) if a guardian has been appointed by the deceased parent.	The surviving parent and the guardian if acting jointly, or the surviving parent or the guardian if the parent or guardian is the sole guardian of the infant.
3. Where both parents are dead.	The guardians or guardian appointed by the deceased parents or by any court, or if no such guardian has been appointed, a stipendiary or police magistrate or justice of the peace appointed in that behalf in accordance with section ten of this Act.

FIFTH

*Guardianship of Infants.*FIFTH SCHEDULE—*continued.*CONSENTS REQUIRED TO THE MARRIAGE OF AN INFANT—*continued.*

Circumstances.	Person whose consent is required.
II.— <i>Where the infant is illegitimate.</i>	
If the mother of the infant is alive.	The mother, or if she has been deprived of the custody of the infant, the person to whom the custody of the infant has been committed by order of the court.
If the mother of the infant is dead.	The guardian appointed by the mother or by any court, or if no such guardian has been appointed, a stipendiary or police magistrate or justice of the peace appointed in that behalf in accordance with section ten of this Act.

(2) The Marriage Act, 1899, as amended by the Marriage (Amendment) Act, 1924, the Marriage (Amendment) Act, 1925, the Marriage (Amendment) Act, 1934, and this Act, may be cited as the Marriage Act, 1899–1934.

(3) Any person appointed pursuant to section ten of the Marriage Act, 1899, prior to the commencement of this section and whose appointment is at such commencement in force shall be deemed to have been appointed pursuant to the Marriage Act, 1899–1934.

(4) This section shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

In the name and on behalf of His Majesty I assent to this Act.

Government House,

Sydney, 31st October, 1934.

PHILIP GAME,

Governor.

I certify that this Bill was introduced in the House-
of Representatives on the 15th day of October, 1934.
The Legislative Assembly of New South Wales.

W. M. COURT,
Speaker of the Legislative Assembly.

Printed and Published by the Government Printer, Sydney, New South Wales.

11.—Where the infant is illegitimate
If the mother of the infant is alive
The mother of the infant is the guardian of the infant
If the mother of the infant is dead
The guardian of the infant is the person appointed by the court
If the mother of the infant is dead and no guardian has been appointed by the court
The guardian of the infant is the person appointed by the court
If the mother of the infant is dead and no guardian has been appointed by the court and no person has been appointed by the court
The guardian of the infant is the person appointed by the court

(2) The Marriage Act 1930, as amended by the Marriage (Amendment) Act 1931, the Marriage (Amendment) Act 1932, the Marriage (Amendment) Act 1933, and the Act may be cited as the Marriage Act 1930-1934.

(3) Any person appointed pursuant to section ten of the Marriage Act 1930, prior to the commencement of this section and whose appointment is in force shall be deemed to have been appointed pursuant to the Marriage Act 1930-1934.

(4) This section shall commence on a day to be appointed by the Governor and notified in the Gazette.
Walter in Parliament assented, and by the authority of the House of Representatives, and by the authority of the Senate, as follows:—
1. This Act may be cited as the Guardianship of Infants Act 1934.

PHILIP GARDNER
Governor

Government House
Sydney, 15th October, 1934.
W. M. COURT,
Speaker of the Legislative Assembly.

GUARDIANSHIP OF INFANTS BILL, 1934.

SCHEDULE of the Amendments referred to in Message of 11th October, 1934.

- No. 1.—Page 2, clause 2, line 15. *Omit* “jurisdiction” *insert* “State”
- No. 2.—Pages 2 and 3, clause 2. *Omit* “a period of three months after it is made the mother of the infant continues to reside with the father” *insert* “any continuous period of three months after it is made the mother of the infant resides with the father”
- No. 3.—Page 3, clause 2. *After* line 30 *insert* the following proviso:—
“Provided that no order shall be made or enforced under this Act in respect of any matter where any order in relation to such matter has already been made by the Supreme Court in its matrimonial causes jurisdiction or where at the date of any application made under this Act in respect of any matter, an application has already been filed in that Court and is then pending in respect of such matter:
Provided also that orders made under this Act may be subsequently varied by the Supreme Court in its matrimonial causes jurisdiction where the same subject matter arises in any proceedings within its jurisdiction instituted in that Court.”
- No. 4.—Page 4, clause 2, line 15. *After* “court” *insert* “of petty sessions.”
- No. 5.—Page 6, clause 2, line 2. *After* “jurisdiction” *insert* “and there proceeded with.”
- No. 6.—Page 6, clause 2, line 3. *After* “costs” *insert* “of removal”
- No. 7.—Page 6, clause 2, line 13. *Omit* “two” *insert* “ten”
- No. 8.—Page 7, clause 3. *After* line 26 *insert* “In this section ‘upbringing’ includes religious instruction”
- No. 9.—Page 7, clause 4, line 41. *After* “Court” *insert* “and upon appeals thereto”
- No. 10.—Page 8, clause 4. *After* line 13 *insert* “and for regulating the practice and procedure upon appeals to courts of quarter sessions under this Act”
- No. 11.—Page 12, clause 7, lines 30 and 31. *Omit* “on application in the prescribed form” *insert* “in writing”
- No. 12.—Page 13, clause 7. *After* line 20 *insert*—
“(5) The form of applications to the Supreme Court or a district court and the procedure thereon shall be as prescribed by rules of court, or in the case of applications to a court of petty sessions shall be as prescribed by general rules made under the Justices Act, 1902.”
- No. 13.—Page 13, clause 7. *After* line 34 *insert*—
“(c) by omitting from the Fourth Schedule the words ‘Marriage Act, No. , 1899,’ wherever occurring and by inserting in lieu thereof the words ‘Marriage Act, 1899-1934.’”
- No. 14.—Page 14, clause 7, line 1. *Omit* “Schedule Four” *insert* “Fourth Schedule”
- No. 15.—Page 15, clause 7, line 26. *After* “1925” *insert* “the Marriage (Amendment) Act, 1934”
- No. 16.—Page 15, clause 7. *After* line 27 *insert*—
“(3) Any person appointed pursuant to section ten of the Marriage Act, 1899, prior to the commencement of this section and whose appointment is at such commencement in force shall be deemed to have been appointed pursuant to the Marriage Act, 1899-1934.”

THE HISTORY OF THE UNITED STATES

The history of the United States is a story of growth and change. From the first settlers to the present day, the nation has evolved through various stages of development. The early years were marked by exploration and the establishment of colonies. The American Revolution led to the birth of a new nation, and the subsequent years saw the expansion of territory and the growth of industry. The Civil War was a pivotal moment in the nation's history, leading to the abolition of slavery and the strengthening of the federal government. The 20th century brought significant social and economic changes, including the rise of the industrial revolution and the emergence of the United States as a world superpower. Today, the United States continues to face new challenges and opportunities, and its history remains a source of inspiration and guidance for the future.

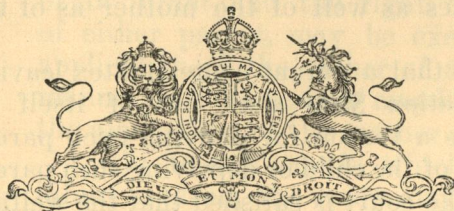
This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

W. R. McCOURT,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 17 May, 1934.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

C. H. H. CALVERT,
Clerk of the Parliaments.
Legislative Council Chamber,
Sydney, 11th October, 1934.

New South Wales.



ANNO VICESIMO QUINTO
GEORGII V REGIS.

Act No. , 1934.

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

BE it enacted by the King's Most Excellent Majesty, Short title;
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 Infants Act, 1934."

31749

1—

2.

NOTE.—The words to be *omitted* are ruled through; those to be *inserted* are printed in **black letter**.

Guardianship of Infants.

2. The Infants' Custody and Settlements Act of 1899 is amended—

(a) by omitting section five and by inserting in lieu thereof the following new section :—

5 5. (1) The Supreme Court in its equitable jurisdiction, may, upon the application of the 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 of the mother as of the father.

10 The fact that a parent contemplates leaving the ~~jurisdiction~~ State shall not of itself be regarded as a reason for denying such parent the custody of the child or depriving such parent thereof if the court is satisfied that the welfare of the child will best be served by allowing such parent to have or retain such custody.

15 (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 then residing with the father of the infant.

20 (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 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.

25 (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 made the mother of the infant continues

Amendment of Act No. 39, 1899.

Substituted s. 5.

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

15 & 16 Geo. V, c. 45, s. 3 (1).

Ibid. s. 3 (2).

Ibid. s. 3 (3).

Guardianship of Infants.

continues to reside with the father. any continuous period of three months after it is made the mother of the infant resides 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 just. 49 & 50 Vic, c. 27, s. 5.

10 (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.

15 (7) In any case in which a parent of an infant is dead, the court may, on the application of any relative of that parent, make such order as to access to the infant by such relative as to the court seems fit.

20 (8) 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 & 16 Geo. V, c. 45, s. 3 (4).

25 (9) Orders may be made and enforced under this Act notwithstanding that proceedings may have been instituted under the Matrimonial Causes Act, 1899, by the father or the mother, or that an order has been made in the proceedings:

30 **Provided that no order shall be made or enforced under this Act in respect of any matter where any order in relation to such matter has already been made by the Supreme Court in its matrimonial causes jurisdiction or where at the date of any application made under this Act in respect of any matter, an application has already been filed in that Court and is then pending in respect of such matter:**

35 **Provided also that orders made under this Act may be subsequently varied by the Supreme Court in its matrimonial causes jurisdiction where the same subject matter arises in any proceedings within its jurisdiction instituted in that Court.** (b)

Guardianship of Infants.

(b) by inserting next after section ten the following new sections :—

New ss. 10A, 10B, 10C, 10D.

5

10A. (1) The jurisdiction conferred on the Supreme Court in its equitable jurisdiction by this Part may also be exercised by the district court of the district in which the respondent or respondents or any of them reside, or by a court of petty sessions nearest to the place of residence of the respondent or respondents or any of them :

Extension of jurisdiction to district courts and courts of petty sessions holden before stipendiary or police magistrates.

10

Provided that—

cf. 49 & 50 Vic., c. 27, s. 9, and 15 & 16 Geo. V, c. 45, s. 7.

15

(a) such court of petty sessions shall be constituted by a stipendiary or police magistrate sitting alone ; and

(b) such court of petty sessions shall not be competent—

20

(i) to entertain any application relating to an infant who has attained the age of sixteen years, unless the infant is physically or mentally incapable of self support, or the application is one for the variation or discharge of a then subsisting order of a court of petty sessions ; or

25

(ii) 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

30

(iii) to award the payment of sums towards the maintenance of any infant exceeding the sum of twenty shillings per week.

35

(2) (a) Where a district court makes or refuses to make an order on an application under this section an appeal shall lie to the Supreme Court in its equitable jurisdiction in the manner prescribed by the rules of that court.

40

(b)

Guardianship of Infants.

5 (b) Where a court of petty sessions makes or refuses to make such an order an appeal shall lie to a court of quarter sessions, and Part V of the Justices Act, 1902, shall be deemed to extend to such an appeal :

10 Provided that where the application is made to a district court, and such court considers that the matter is one which would be dealt with more conveniently by the Supreme Court in its equitable jurisdiction, or where
15 any such application is made to a court of petty sessions and such court considers that the matter is one which would be dealt with more conveniently by the Supreme Court in its equitable jurisdiction or a district court, the court to which the application is made may refuse to make any order, and in such case no appeal shall lie to any court against such refusal.

20 (3) An order of a district court or of a court of petty sessions for the payment of money under this Part shall have the effect of and be deemed to be a judgment of the district court or of the court of petty sessions as the case may be and shall be enforceable by process of court as in pursuance of such judgment.

25 (4) Where an order under this Part contains a provision committing to the applicant or any other person the legal custody of
30 any infant, a copy of the order may be served on any person in whose actual custody the infant may for the time being be, and if such person makes default in complying with such provision he shall be liable on summary conviction to a penalty not exceeding five pounds per day for each day he makes default in
35 complying with such provision.

40 10B. When any application has been made under this Part to a district court or to a court of petty sessions, the Supreme Court in its equitable jurisdiction may, at the instance of any party to such application, order such application

Removal o
proceedings.
cf. 49 & 50
Vic., c. 27,
s. 10.

Guardianship of Infants.

application to be removed to the Supreme Court in its equitable jurisdiction **and there proceeded with** upon such terms as to costs **of removal** as it thinks proper.

5 10c. (1) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money under this Part 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 penalty not exceeding ~~two~~ **ten** pounds.

Enforcement of orders for payment of money. 15 & 16 Geo. V, c. 45, s. 8 (1).

15 (2) Where any order for the payment of money has been made in exercise of the powers contained in this Part, the court making the order shall, in addition to any other powers for enforcing compliance with the order, have power 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 any 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 payments 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.

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35 10d. In any question relating to the custody or education of an infant in which is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter the rules of equity shall prevail in all courts exercising jurisdiction under this Act.

Rules of equity to prevail. cf. 15 & 16 Geo. V, c. 49, s. 44.

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(c)

Guardianship of Infants.

(c) by inserting at the end of section three the following new definition:—

“ Maintenance ” includes education.

cf. 22 & 23, Geo. V. c. 46, s. 79 (3).

3. The Infants' Custody and Settlements Act of 1899 is further amended—

Further amendment of Act No. 39, 1899.

(a) by inserting next after section sixteen the following new Part:—

New Part IV.

PART IV.

Provisions applicable in all courts.

10

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.

Custody, upbringing, and property of infant. 15 & 16 Geo. V, c. 45, s. 1.

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In this section “ upbringing ” includes religious instruction.

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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.

(b) by inserting at the end of section one the following words and figures:—

Sec. 1. (Division into Parts.)

35

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

4. (1) The Infants' Custody and Settlements Act of 1899, is further amended—

Further amendment of Act No. 39, 1899, s. 4

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(a) by inserting in section four after the word “ procedure ” the words “ in the Supreme Court ”; and upon appeals thereto ”; (b)

(Rules.)

Guardianship of Infants.

(b) by inserting at the end of the same section the following new subsections :—

5 (2) The district court judges or any four of them may make rules for regulating the practice and procedure upon applications made under Part I of this Act to district courts and for the enforcement of orders made upon such applications.

10 (3) The Governor may make rules for regulating the practice and procedure upon applications made under Part I of this Act to courts of petty sessions and for the enforcement of orders made upon such applications.
15 **and for regulating the practice and procedure upon appeals to courts of quarter sessions under this Act.**

(4) Any rules made under this Act shall—
20 (a) be published in the Gazette ;
(b) take effect from the date of publication, or from a later date specified in the rules ;
25 (c) be laid before both Houses of Parliament within fourteen sitting days if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

30 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, the rule or part shall thereupon cease to have effect.

(2) The Infants' Custody and Settlements Act of 1899, as amended by this Act may be cited as the Citation of Act No. 39, 1899, as amended. Infants' Custody and Settlements Act, 1899-1934.

Guardianship of Infants.

5. (1) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, is amended— Amendment of Act No. 41, 1916, ss. 13-16.

5 (a) by omitting sections thirteen, fourteen, fifteen, and sixteen, and by inserting in lieu thereof Substituted ss. 13, 14. the following new sections:—

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

15 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.

20 (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.

25 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.

30 14. (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 mother and father to appoint guardians.

(2) The mother of an infant may by deed or will appoint any person to be guardian of the infant after her death. Ibid. s. 5.

35 (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)

Guardianship of Infants.

5 (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.

10 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.

15 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 and education 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.

20 25 The powers conferred by this subsection may be exercised at any time and shall include power to vary or discharge any order previously made in virtue of those powers. cf. 22 and 28 Geo. V. c. 46, s. 79 (2)

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

35 (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.

40 (b)

Guardianship of Infants.

(b) by inserting at the end of section seventeen the following new subsection :— Sec. 17. (Guardians may apply to court for directions.)

5 (2) The power conferred by the foregoing provisions of this section shall include power to vary or discharge any order made under this section or made by any court under the Infants' Custody and Settlements Act, 1899-1934, and, where one of the guardians is the mother or father of the infant, shall also include power— cf. 22 & 23 Geo. V, c. 46, s. 79 (1) (3).

10 (a) to make such orders regarding the custody of the infant and the right of access thereto as, having regard to the welfare of the infant, the court may think fit; and

15 (b) to order the mother or father to pay towards the maintenance or education 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.

20 (2) Any question as to the validity of any order made before the commencement of this Act under the Testator's Family Maintenance and Guardianship of
 25 Infants Act, 1916, shall be determined as if this Act had commenced immediately after that Act.

6. (1) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, is further amended— Further 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";

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

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

(2) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by this
 Act Citation of Act No. 41, 1916, as amended.

Guardianship of Infants.

Act may be cited as the Testator's Family Maintenance and Guardianship of Infants Act, 1916-1934.

7. (1) The Marriage Act, 1899, is amended—

Amendment of Act No. 15, 1899 substituted s. 9.

5 (a) by omitting section nine and by inserting in lieu thereof the following new section:—

10 9. (1) If either party to any intended marriage, not having been previously married or not being a widower or widow, is under the age of twenty-one years, such marriage shall not take place without production to the person about to celebrate the same of the written consent of the person or persons mentioned in the Fifth Schedule to this Act: Consent in case of minority.

Provided that—

15 (a) if the person about to celebrate the marriage is satisfied that the consent of any person whose consent is so required cannot be obtained by reason of absence or inaccessibility, or by reason of his being under any disability, the necessity for the consent of that person shall be dispensed with if there is any other person whose consent is also required and has been obtained, and if the consent of no other person is required, or if so required cannot for any of the reasons abovementioned be obtained, a stipendiary or police magistrate or some justice of the peace appointed for that purpose may ~~on application in the prescribed form~~ **in writing** consent to the marriage;

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35 (b) if any person whose consent is required refuses his consent, the court may, on application in the prescribed form, consent to the marriage.

(2) Before a consent is given pursuant to paragraphs (a) and (b) of subsection one of this Inquiry by court, magistrate, or justice.

Guardianship of Infants.

this section an inquiry shall be made on oath or solemn affirmation as to the facts and circumstances of the case.

5 (3) The consent of the court or of a stipendiary or police magistrate or justice of the peace to any marriage pursuant to this section shall have the same effect as if it had been given by the person whose consent cannot be so obtained or, as the case may be, is so refused.

Effect of consent of court, magistrate, or justice.

10 (4) For the purposes of this section "the court" shall mean the Supreme Court in its equitable jurisdiction or a judge thereof, the district court of the district in which the minor resides, or the court of petty sessions nearest to the place of residence of the minor which is holden before a stipendiary or police magistrate sitting alone.

Definition of court.

15 Every court exercising jurisdiction under this section shall sit in camera unless the court shall otherwise order.

20 (5) The form of applications to the Supreme Court or a district court and the procedure thereon shall be as prescribed by rules of court, or in the case of applications to a court of petty sessions shall be as prescribed by general rules made under the Justices Act, 1902.

25 (b) (i) by omitting from subsection one of section ten the words "Judges of the Supreme Court" and by inserting in lieu thereof the words "Registrar-General";

Sec 10.

30 (ii) by omitting from subsection two of the same section the words "said Judges" and by inserting in lieu thereof the words "Registrar-General";

35 (c) by omitting from the Fourth Schedule the words "Marriage Act, No. , 1899," wherever occurring and by inserting in lieu thereof the words "Marriage Act, 1899-1934."

(e)

Guardianship of Infants.

(e) (d) by inserting after ~~Schedule Four~~ **Fourth** New Sched. Five.
Schedule the following new Schedule:—

FIFTH SCHEDULE.

CONSENTS REQUIRED TO THE MARRIAGE OF AN INFANT.

Sec. 9.
 cf. 15 & 16
 Geo. V,
 c. 45, Sch.

	Circumstances.	Person whose consent is required.
	<i>I.—Where the infant is legitimate.</i>	
5	1. Where both parents are living—	
	(a) if the parents are living together;	Both parents.
10	(b) if the parents are divorced or separated by order of court or by agreement;	The parent to whom the custody of the infant is committed by order of any court or by the agreement; or if the custody of the infant is so committed to one parent during a period of time and to the other parent during another period or periods of time, both parents.
15	(c) if one parent has been deserted by the other;	The parent who has been deserted.
20	(d) if both parents have been deprived of the custody of the infant by order of any court.	The person to whose custody the infant is committed by order of any court.
25	2. Where one parent is dead—	
30	(a) if there is no other guardian;	The surviving parent.
35	(b) if a guardian has been appointed by the deceased parent.	The surviving parent and the guardian if acting jointly, or the surviving parent or the guardian if the parent or guardian is the sole guardian of the infant.
40	3. Where both parents are dead.	The guardians or guardian appointed by the deceased parents or by any court, or if no such guardian has been appointed, a stipendiary or police magistrate or justice of the peace appointed in that behalf in accordance with section ten of this Act.
45		

Qualification of Applicant

Section 1021. (a) Any person appointed pursuant to section ten of the Marriage Act, 1933, prior to the commencement of this

Act shall be deemed to have been appointed pursuant to the Marriage Act, 1933, and the provisions of that Act shall apply to him as if he had been appointed pursuant to that Act.

(b) Any person appointed pursuant to section ten of the Marriage Act, 1933, after the commencement of this Act shall be deemed to have been appointed pursuant to this Act.

(c) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a citizen of the United States shall be deemed to have been appointed pursuant to this Act.

(d) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of the District of Columbia shall be deemed to have been appointed pursuant to this Act.

(e) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of any other State or Territory shall be deemed to have been appointed pursuant to this Act.

(f) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of any foreign country shall be deemed to have been appointed pursuant to this Act.

(g) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of any other country shall be deemed to have been appointed pursuant to this Act.

(h) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of any other country shall be deemed to have been appointed pursuant to this Act.

(i) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of any other country shall be deemed to have been appointed pursuant to this Act.

(j) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of any other country shall be deemed to have been appointed pursuant to this Act.

(k) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of any other country shall be deemed to have been appointed pursuant to this Act.

(l) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of any other country shall be deemed to have been appointed pursuant to this Act.

(m) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of any other country shall be deemed to have been appointed pursuant to this Act.

(n) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of any other country shall be deemed to have been appointed pursuant to this Act.

(o) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of any other country shall be deemed to have been appointed pursuant to this Act.

(p) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of any other country shall be deemed to have been appointed pursuant to this Act.

(q) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of any other country shall be deemed to have been appointed pursuant to this Act.

(r) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of any other country shall be deemed to have been appointed pursuant to this Act.

(s) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of any other country shall be deemed to have been appointed pursuant to this Act.

(t) Any person appointed pursuant to section ten of the Marriage Act, 1933, who is a resident of any other country shall be deemed to have been appointed pursuant to this Act.

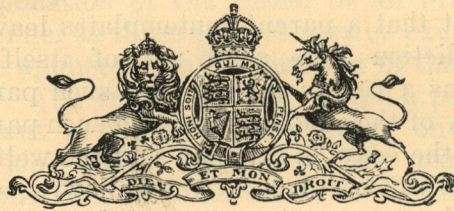
This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

W. R. McCOURT,
Clerk of the Legislative Assembly.
Legislative Assembly Chamber,
Sydney, 17 May, 1934.

The LEGISLATIVE COUNCIL has this day agreed to this Bill with Amendments.

Clerk of the Parliaments.
Legislative Council Chamber,
Sydney, October, 1934.

New South Wales.



ANNO VICESIMO QUINTO

GEORGII V REGIS.

Act No. , 1934.

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

BE it enacted by the King's Most Excellent Majesty, Short title.
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 Infants Act, 1934."

31749

1—

2.

NOTE.—The words to be *omitted* are ruled through; those to be *inserted* are printed in **black letter**.

Guardianship of Infants.

2. The Infants' Custody and Settlements Act of Amendment of
1899 is amended— Act No. 39, 1899.

(a) by omitting section five and by inserting in Substituted s. 5.
lieu thereof the following new section :—

5 5. (1) The Supreme Court in its equitable Custody of
jurisdiction, may, upon the application of the infant.
mother of any infant, make such order as it 49 & 50 Vic.,
may think fit regarding the custody of the c. 27, s. 5.
infant and the right of access thereto of either
10 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.

15 The fact that a parent contemplates leaving
the ~~jurisdiction~~ State shall not of itself be
regarded as a reason for denying such parent
the custody of the child or depriving such parent
thereof if the court is satisfied that the welfare
of the child will best be served by allowing such
20 parent to have or retain such custody.

(2) The power of the court under this 15 & 16 Geo.
section to make an order as to the custody of an V, c. 45, s. 3
infant and the right of access thereto may (1).
be exercised notwithstanding that the mother
25 of the infant is then residing with the father of
the infant.

(3) Where the court under this section *Ibid.* s. 3 (2).
makes an order giving the custody of the
infant to the mother, then, whether or not
30 the mother is then residing with the father,
the court may further order that the father
shall pay to the mother towards the main-
tenance of the infant such weekly or other
periodical sum as the court, having regard to
35 the means of the father, may think reasonable.

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

Guardianship of Infants.

continues to reside with the father. any continuous period of three months after it is made the mother of the infant resides 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 just. ^{49 & 50 Vic, c. 27, s. 5.}

10 (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.}

15 (7) In any case in which a parent of an infant is dead, the court may, on the application of any relative of that parent, make such order as to access to the infant by such relative as to the court seems fit.

20 (8) 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 & 16 Geo. V, c. 45, s. 3 (4).}

25 (9) Orders may be made and enforced under this Act notwithstanding that proceedings may have been instituted under the Matrimonial Causes Act, 1899, by the father or the mother, or that an order has been made in the proceedings:

30 **Provided that no order shall be made or enforced under this Act in respect of any matter where any order in relation to such matter has already been made by the Supreme Court in its matrimonial causes jurisdiction or where at the date of any application made under this Act in respect of any matter, an application has already been filed in that Court and is then pending in respect of such matter:**

35 **Provided also that orders made under this Act may be subsequently varied by the Supreme Court in its matrimonial causes jurisdiction where the same subject matter arises in any proceedings within its jurisdiction instituted in that Court.** (b)

40

Guardianship of Infants.

(b) by inserting next after section ten the following new sections :—

New ss. 10A,
10B, 10C, 10D.

5 10A. (1) The jurisdiction conferred on the Supreme Court in its equitable jurisdiction by this Part may also be exercised by the district court of the district in which the respondent or respondents or any of them reside, or by a court of petty sessions nearest to the place of residence of the respondent or respondents or any of them :

Extension of jurisdiction to district courts and courts of petty sessions holden before stipendiary or police magistrates.

10

Provided that—

cf. 49 & 50 Vic., c. 27, s. 9, and 15 & 16 Geo. V, c. 45, s. 7.

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(a) such court of petty sessions shall be constituted by a stipendiary or police magistrate sitting alone ; and

(b) such court of **petty sessions** shall not be competent—

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(i) to entertain any application relating to an infant who has attained the age of sixteen years, unless the infant is physically or mentally incapable of self support, or the application is one for the variation or discharge of a then subsisting order of a court of petty sessions ; or

25

(ii) 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

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(iii) to award the payment of sums towards the maintenance of any infant exceeding the sum of twenty shillings per week.

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(2) (a) Where a district court makes or refuses to make an order on an application under this section an appeal shall lie to the Supreme Court in its equitable jurisdiction in the manner prescribed by the rules of that court.

40

(b)

Guardianship of Infants.

(b) Where a court of petty sessions makes or refuses to make such an order an appeal shall lie to a court of quarter sessions, and Part V of the Justices Act, 1902, shall be deemed to extend to such an appeal:

5 Provided that where the application is made to a district court, and such court considers that the matter is one which would be dealt with more conveniently by the Supreme Court in its equitable jurisdiction, or where
10 any such application is made to a court of petty sessions and such court considers that the matter is one which would be dealt with more conveniently by the Supreme Court in
15 its equitable jurisdiction or a district court, the court to which the application is made may refuse to make any order, and in such case no appeal shall lie to any court against such refusal.

20 (3) An order of a district court or of a court of petty sessions for the payment of money under this Part shall have the effect of and be deemed to be a judgment of the district court or of the court of petty sessions as the
25 case may be and shall be enforceable by process of court as in pursuance of such judgment.

(4) Where an order under this Part contains a provision committing to the applicant
30 or any other person the legal custody of any infant, a copy of the order may be served on any person in whose actual custody the infant may for the time being be, and if such person makes default in complying with such
35 provision he shall be liable on summary conviction to a penalty not exceeding five pounds per day for each day he makes default in complying with such provision.

40 10B. When any application has been made under this Part to a district court or to a court of petty sessions, the Supreme Court in its equitable jurisdiction may, at the instance of any party to such application, order such application

Removal of proceedings. cf. 49 & 50 Vic., c. 27, s. 10.

Guardianship of Infants.

application to be removed to the Supreme Court in its equitable jurisdiction **and there proceeded with** upon such terms as to costs **of removal** as it thinks proper.

5 10c. (1) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money under this Part 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 penalty not exceeding ~~two~~ **ten** pounds.

Enforcement
of orders for
payment of
money.
15 & 16 Geo.
V, c. 45, s. 8
(1).

15 (2) Where any order for the payment of money has been made in exercise of the powers contained in this Part, the court making the order shall, in addition to any other powers for enforcing compliance with the order, have power 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 any 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 payments 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.

35 10d. In any question relating to the custody or education of an infant in which is any conflict or variance between the rules of equity and the rules of the common law with reference to the same matter the rules of equity shall prevail in all courts exercising jurisdiction under this Act.

Rules of
equity to
prevail.
cf. 15 & 16
Geo. V, c. 49,
s. 44.

40

(c)

Guardianship of Infants.

(c) by inserting at the end of section three the following new definition:—

“ Maintenance ” includes education.

cf. 22 & 23,
Geo. V. c. 46,
s. 79 (3).

3. The Infants' Custody and Settlements Act of 1899 is further amended—

Further amendment of Act No. 39, 1899.

(a) by inserting next after section sixteen the following new Part:—

New Part IV.

PART IV.

Provisions applicable in all courts.

10 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.

Custody, upbringing, and property of infant.
15 & 16 Geo. V, c. 45, s. 1.

In this section “ upbringing ” includes religious instruction.

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.

(b) by inserting at the end of section one the following words and figures:—

Sec. 1.
(Division into Parts.)

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

4. (1) The Infants' Custody and Settlements Act of 1899, is further amended—

Further amendment of Act No. 39, 1899, s. 4.

40 (a) by inserting in section four after the word “ procedure ” the words “ in the Supreme Court²²; and upon appeals thereto ”; (b)

Guardianship of Infants.

(b) by inserting at the end of the same section the following new subsections :—

5

(2) The district court judges or any four of them may make rules for regulating the practice and procedure upon applications made under Part I of this Act to district courts and for the enforcement of orders made upon such applications.

10

(3) The Governor may make rules for regulating the practice and procedure upon applications made under Part I of this Act to courts of petty sessions and for the enforcement of orders made upon such applications.

15

and for regulating the practice and procedure upon appeals to the courts of quarter sessions under this Act.

(4) Any rules made under this Act shall—

20

(a) be published in the Gazette ;

(b) take effect from the date of publication, or from a later date specified in the rules ;

25

(c) be laid before both Houses of Parliament within fourteen sitting days if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

30

If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, the rule or part shall thereupon cease to have effect.

(2) The Infants' Custody and Settlements Act of 1899, as amended by this Act may be cited as the Citation of Act No. 39, 1899, as amended. Infants' Custody and Settlements Act, 1899-1934.

Guardianship of Infants.

5. (1) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, is amended— Amendment of Act No. 41, 1916, ss. 13-16.

5 (a) by omitting sections thirteen, fourteen, fifteen, and sixteen, and by inserting in lieu thereof Substituted ss. 13, 14. the following new sections:—

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

15 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.

20 (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.

25 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.

30 14. (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 mother and father to appoint guardians. Ibid. s. 45.

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

35 (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)

Guardianship of Infants.

5 (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.

10 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.

15 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 and educa-
20 tion 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.

25 The powers conferred by this subsection may be exercised at any time and shall include power to vary or discharge any order previously made in virtue of those powers.

cf. 22 and 23
Geo. V, c. 46,
s. 79 (2)

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

35 (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
40 the guardian appointed by the surviving parent.

(b)

Guardianship of Infants.

(b) by inserting at the end of section seventeen the following new subsection:— Sec. 17.
(Guardians may apply to court for directions.)

5 (2) The power conferred by the foregoing provisions of this section shall include power to vary or discharge any order made under this section or made by any court under the Infants' Custody and Settlements Act, 1899-1934, and, where one of the guardians is the mother or father of the infant, shall also include power— cf. 22 & 23
Geo. V,
c. 46, s. 79
(1) (3).

10 (a) to make such orders regarding the custody of the infant and the right of access thereto as, having regard to the welfare of the infant, the court may think fit; and

15 (b) to order the mother or father to pay towards the maintenance or education 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.

20 (2) Any question as to the validity of any order made before the commencement of this Act under the Testator's Family Maintenance and Guardianship of
25 Infants Act, 1916, shall be determined as if this Act had commenced immediately after that Act.

30 **6.** (1) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, is further amended— Further amendment of Act No. 41, 1916, s. 18.

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

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

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

(2) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by this Citation of Act No. 41, 1916, as amended.
Act

Guardianship of Infants.

Act may be cited as the Testator's Family Maintenance and Guardianship of Infants Act, 1916-1934.

7. (1) The Marriage Act, 1899, is amended—

Amendment of Act No. 15, 1899. Substituted s. 9.

5 (a) by omitting section nine and by inserting in lieu thereof the following new section :—

10 9. (1) If either party to any intended marriage, not having been previously married or not being a widower or widow, is under the age of twenty-one years, such marriage shall not take place without production to the person about to celebrate the same of the written consent of the person or persons mentioned in the Fifth Schedule to this Act :

Consent in case of minority.

Provided that—

15 (a) if the person about to celebrate the marriage is satisfied that the consent of any person whose consent is so required cannot be obtained by reason of absence or inaccessibility, or by reason of his being under any disability, the necessity for the consent of that person shall be dispensed with if there is any other person whose consent is also required and has been obtained, and if the consent of no other person is required, or if so required cannot for any of the reasons abovementioned be obtained, a stipendiary or police magistrate or some justice of the peace appointed for that purpose may on application in the prescribed form in writing consent to the marriage;

20 25 30 (b) if any person whose consent is required refuses his consent, the court may, on application in the prescribed form, consent to the marriage.

35 (2) Before a consent is given pursuant to paragraphs (a) and (b) of subsection one of this Inquiry by court, magistrate, or justice.

Guardianship of Infants.

this section an inquiry shall be made on oath or solemn affirmation as to the facts and circumstances of the case.

(3) The consent of the court or of a stipendiary or police magistrate or justice of the peace to any marriage pursuant to this section shall have the same effect as if it had been given by the person whose consent cannot be so obtained or, as the case may be, is so refused.

Effect of consent of court, magistrate, or justice.

10

(4) For the purposes of this section "the court" shall mean the Supreme Court in its equitable jurisdiction or a judge thereof, the district court of the district in which the minor resides, or the court of petty sessions nearest to the place of residence of the minor which is holden before a stipendiary or police magistrate sitting alone.

Definition of court.

15

Every court exercising jurisdiction under this section shall sit in camera unless the court shall otherwise order.

20

(5) The form of applications to the Supreme Court or a district court and the procedure thereon shall be as prescribed by rules of court, or in the case of applications to a court of petty sessions shall be as prescribed by general rules made under the Justices Act, 1902.

25

(b) (i) by omitting from subsection one of section ten the words "Judges of the Supreme Court" and by inserting in lieu thereof the words "Registrar-General";

Sec 10.

30

(ii) by omitting from subsection two of the same section the words "said Judges" and by inserting in lieu thereof the words "Registrar-General";

35

(c) by omitting from the Fourth Schedule the words "Marriage Act, No. , 1899," wherever occurring and by inserting in lieu thereof the words "Marriage Act, 1899-1934."

(e)

Guardianship of Infants.

(e) (d) by inserting after ~~Schedule Four~~ **Fourth** ~~Schedule~~ the following new Schedule:—

New Sched.
Five.

FIFTH SCHEDULE.

Sec. 9.
cf. 15 & 16
Geo. V,
c. 45, Sch

CONSENTS REQUIRED TO THE MARRIAGE OF AN INFANT.

5	Circumstances.	Person whose consent is required.
	<i>I.—Where the infant is legitimate.</i>	
	1. Where both parents are living—	
	(a) if the parents are living together;	Both parents.
10	(b) if the parents are divorced or separated by order of court or by agreement;	The parent to whom the custody of the infant is committed by order of any court or by the agreement, or if the custody of the infant is so committed to one parent during a period of time and to the other parent during another period or periods of time, both parents.
15	(c) if one parent has been deserted by the other;	The parent who has been deserted.
	(d) if both parents have been deprived of the custody of the infant by order of any court.	The person to whose custody the infant is committed by order of any court.
20	2. Where one parent is dead—	
	(a) if there is no other guardian;	The surviving parent.
30	(b) if a guardian has been appointed by the deceased parent.	The surviving parent and the guardian if acting jointly, or the surviving parent or the guardian if the parent or guardian is the sole guardian of the infant.
35	3. Where both parents are dead.	The guardians or guardian appointed by the deceased parents or by any court, or if no such guardian has been appointed, a stipendiary or police magistrate or justice of the peace appointed in that behalf in accordance with section ten of this Act.
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45		

FIFTH

*Guardianship of Infants.*FIFTH SCHEDULE—*continued.*CONSENTS REQUIRED TO THE MARRIAGE OF AN INFANT—*continued.*

Circumstances.	Person whose consent is required.
II.— <i>Where the infant is illegitimate.</i>	
5 If the mother of the infant is alive.	The mother, or if she has by order of any court been deprived of the cus- tody of the infant, the person to whom the cus- tody of the infant has been committed by order of the court.
10 If the mother of the infant is dead.	The guardian appointed by the mother or by any court, or if no such guar- dian has been appointed, a stipendiary or police magistrate or justice of the peace appointed in that behalf in accordance with section ten of this Act.

25 (2) The Marriage Act, 1899, as amended by the Marriage (Amendment) Act, 1924, the Marriage (Amendment) Act, 1925, **the Marriage (Amendment) Act, 1934**, and this Act, may be cited as the Marriage Act, 1899-1934.

30 (3) Any person appointed pursuant to section ten of the Marriage Act, 1899, prior to the commencement of this section and whose appointment is at such commencement in force shall be deemed to have been appointed pursuant to the Marriage Act, 1899-1934.

35 ~~(3)~~ (4) This section shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.

THE MARRIAGE ACT (AMENDMENT) ACT, 1934

1. This Act may be cited as the Marriage Act, 1934.

2. The Marriage Act, 1899 (Act No. 1899) shall be amended as follows:—

(1) The Marriage Act, 1899 (Act No. 1899) shall be amended as follows:—

(2) The Marriage Act, 1899 (Act No. 1899) shall be amended as follows:—

(3) Any person appointed pursuant to section 10 of the Marriage Act, 1899, prior to the commencement of this Act shall be deemed to have been appointed pursuant to the Marriage Act, 1899-1934.

(4) This section shall commence on a date to be appointed by the Governor and published by proclamation in the Gazette of India.

3. This Act may be cited as the Marriage Act, 1934.

This PUBLIC BILL originated in the LEGISLATIVE ASSEMBLY, and, having this day passed, is now ready for presentation to the LEGISLATIVE COUNCIL for its concurrence.

W. R. McCOURT,
Clerk of the Legislative Assembly.

*Legislative Assembly Chamber,
Sydney, 17 May, 1934.*

New South Wales.



ANNO VICESIMO QUINTO

GEORGII V REGIS.

Act No. , 1934.

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

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 Infants Act, 1934."

31749

1—

2.

Guardianship of Infants.

2. The Infants' Custody and Settlements Act of Amendment of Act No. 39, 1899. 1899 is amended—

(a) by omitting section five and by inserting in Substituted s. 5. lieu thereof the following new section:—

5 5. (1) The Supreme Court in its equitable Custody of infant. jurisdiction, may, upon the application of the 49 & 50 Vic., c. 27, s. 5. 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 10 infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father.

15 The fact that a parent contemplates leaving the jurisdiction shall not of itself be regarded as a reason for denying such parent the custody of the child or depriving such parent thereof if the court is satisfied that the welfare of the child will best be served by allowing such parent to have or retain such custody.

20 (2) The power of the court under this 15 & 16 Geo. V, c. 45, s. 3 section to make an order as to the custody of an (1). 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.

25 (3) Where the court under this section *Ibid.* s. 3 (2). 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.

30 (4) No such order, whether for custody *Ibid.* s. 3 (3). 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. (5)

40

Guardianship of Infants.

(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 just.

49 & 50 Vic,
c. 27, s. 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.

(7) In any case in which a parent of an infant is dead, the court may, on the application of any relative of that parent, make such order as to access to the infant by such relative as to the court seems fit.

(8) 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 & 16 Geo.
V, c. 45, s. 3
(4).

(9) Orders may be made and enforced under this Act notwithstanding that proceedings may have been instituted under the Matrimonial Causes Act, 1899, by the father or the mother, or that an order has been made in the proceedings.

(b) by inserting next after section ten the following new sections:—

New ss. 10A,
10B, 10c, 10D.

10A. (1) The jurisdiction conferred on the Supreme Court in its equitable jurisdiction by this Part may also be exercised by the district court of the district in which the respondent or respondents or any of them reside, or by a court of petty sessions nearest to the place of residence of the respondent or respondents or any of them:

Extension of
jurisdiction
to district
courts and
courts of
petty sessions
holden before
stipendiary
or police
magistrates.

Provided that—

cf. 49 & 50
Vic., c. 27,
s. 9, and 15 &
16 Geo. V,
c. 45, s. 7.

(a) such court of petty sessions shall be constituted by a stipendiary or police magistrate sitting alone; and

(b)

Guardianship of Infants.

(b) such court shall not be competent—

- 5 (i) to entertain any application relating to an infant who has attained the age of sixteen years, unless the infant is physically or mentally incapable of self support, or the application is one for the variation or discharge of a then subsisting order of a court of petty sessions; or
- 10 (ii) 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
- 15 (iii) to award the payment of sums towards the maintenance of any infant exceeding the sum of twenty shillings per week.

20 (2) (a) Where a district court makes or refuses to make an order on an application under this section an appeal shall lie to the Supreme Court in its equitable jurisdiction in the manner prescribed by the rules of that court.

25 (b) Where a court of petty sessions makes or refuses to make such an order an appeal shall lie to a court of quarter sessions, and Part V of the Justices Act, 1902, shall be deemed to extend to such an appeal:

30 Provided that where the application is made to a district court, and such court considers that the matter is one which would be dealt with more conveniently by the Supreme Court in its equitable jurisdiction, or where

35 any such application is made to a court of petty sessions and such court considers that the matter is one which would be dealt with more conveniently by the Supreme Court in its equitable jurisdiction or a district court, the court to which the application is made may

40 refuse

Guardianship of Infants.

refuse to make any order, and in such case no appeal shall lie to any court against such refusal.

5 (3) An order of a district court or of a court of petty sessions for the payment of money under this Part shall have the effect of and be deemed to be a judgment of the district court or of the court of petty sessions as the case may be and shall be enforceable by process of court as in pursuance of such judgment.

10 (4) Where an order under this Part contains a provision committing to the applicant or any other person the legal custody of any infant, a copy of the order may be served on any person in whose actual custody the infant may for the time being be, and if such person makes default in complying with such provision he shall be liable on summary conviction to a penalty not exceeding five pounds per day for each day he makes default in complying with such provision.

15 10B. When any application has been made under this Part to a district court or to a court of petty sessions, the Supreme Court in its equitable jurisdiction may, at the instance of any party to such application, order such application to be removed to the Supreme Court in its equitable jurisdiction upon such terms as to costs as it thinks proper.

20 30 10c. (1) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money under this Part 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 penalty not exceeding two pounds.

35 40 (2) Where any order for the payment of money has been made in exercise of the powers contained in this Part, the court making the

Removal of proceedings.
cf. 49 & 50
Vic., c. 27,
s. 10.

Enforcement of orders for payment of money.
15 & 16 Geo.
V, c. 45, s. 8
(1).

Guardianship of Infants.

5 the order shall, in addition to any other powers
 for enforcing compliance with the order, have
 power in any case where there is any pension
 or income payable to the person against whom
 the order is made and capable of being
 10 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 any 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
 payments so ordered, and the receipt of the
 15 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.

20 10D. In any question relating to the custody
 or education of an infant in which is any con-
 flict or variance between the rules of equity and
 the rules of the common law with reference
 to the same matter the rules of equity shall
 prevail in all courts exercising jurisdiction
 under this Act.

Rules of equity to prevail. cf. 15 & 16 Geo. V, c. 49, s. 44.

25 (c) by inserting at the end of section three the following new definition:—
 "Maintenance" includes education.

cf. 22 & 23, Geo. V, c. 46, s. 79 (3).

3. The Infants' Custody and Settlements Act of 1899 is further amended—

Further amendment of Act No. 39, 1899.

30 (a) by inserting next after section sixteen the following new Part:—

New Part IV.

PART IV.

Provisions applicable in all courts.

35 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,

Custody, upbringing, and property of infant. 15 & 16 Geo. V, c. 45, s. 1.

Guardianship of Infants.

5 thereof, is in question, the court, in deciding
that question, shall regard the welfare of the
infant as the first and paramount considera-
tion, and shall not take into consideration
10 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 appli-
cation is superior to that of the mother, or the
claim of the mother is superior to that of the
father.

15 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.
15 & 16 Geo. V,
c. 45, s. 2.

(b) by inserting at the end of section one the
following words and figures:— Sec. 1.
(Division
into Parts.)

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

20 **4.** (1) The Infants' Custody and Settlements Act of
1899, is further amended— Further
amendment
of Act No.
39, 1899, s. 4.
(Rules.)

(a) by inserting in section four after the word
"procedure" the words "in the Supreme
Court";

25 (b) by inserting at the end of the same section the
following new subsections:—

30 (2) The district court judges or any four of
them may make rules for regulating the
practice and procedure upon applications
made under Part I of this Act to district
courts and for the enforcement of orders made
upon such applications.

35 (3) The Governor may make rules for
regulating the practice and procedure upon
applications made under Part I of this Act to
courts of petty sessions and for the enforce-
ment of orders made upon such applications.

(4) Any rules made under this Act shall—

(a) be published in the Gazette;

(b)

Guardianship of Infants.

(b) take effect from the date of publication, or from a later date specified in the rules;

5 (c) be laid before both Houses of Parliament within fourteen sitting days if Parliament is then in session, and if not, then within fourteen sitting days after the commencement of the next session.

10 If either House of Parliament passes a resolution of which notice has been given at any time within fifteen sitting days after the rules have been laid before such House disallowing any rule or part thereof, the rule or
15 part shall thereupon cease to have effect.

(2) The Infants' Custody and Settlements Act of 1899, as amended by this Act may be cited as the Infants' Custody and Settlements Act, 1899-1934. Citation of Act No. 39, 1899, as amended.

5. (1) The Testator's Family Maintenance and Amendment of Act No. 41, 1916, ss. 13-16.
20 Guardianship of Infants Act, 1916, is amended—

(a) by omitting sections thirteen, fourteen, fifteen, and sixteen, and by inserting in lieu thereof the following new sections:— Substituted ss. 13, 14.

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

30 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.

35 (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.

Where

Guardianship of Infants.

5 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.

10 14. (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 mother and father to appoint guardians.

15 (2) The mother of an infant may by deed or will appoint any person to be guardian of the infant after her death. 15 & 16 Geo. V, c. 45, s. 5.

20 (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.

25 (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.

30 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.

35 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 and education 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.

The

Guardianship of Infants.

The powers conferred by this subsection may be exercised at any time and shall include power to vary or discharge any order previously made in virtue of those powers.

cf. 22 and 23
Geo. V. c. 46,
s. 79 (2)

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

10 (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
15 appointed by the court shall act jointly with the guardian appointed by the surviving parent.

(b) by inserting at the end of section seventeen the following new subsection:—

Sec. 17.
(Guardians may
apply to court
for directions.)

20 (2) The power conferred by the foregoing provisions of this section shall include power to vary or discharge any order made under this section or made by any court under the Infants' Custody and Settlements Act, 1899-1934, and, where one of the guardians is the mother or father of the infant, shall also include
25 power—

cf. 22 & 23
Geo. V,
c. 46, s. 79
(1) (3).

30 (a) to make such orders regarding the custody of the infant and the right of access thereto as, having regard to the welfare of the infant, the court may think fit; and

35 (b) to order the mother or father to pay towards the maintenance or education 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.

(2)

Guardianship of Infants.

(2) Any question as to the validity of any order made before the commencement of this Act under the Testator's Family Maintenance and Guardianship of Infants Act, 1916, shall be determined as if this Act had commenced immediately after that Act.

6. (1) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, is further amended— Further amendment of Act No. 41, 1916, s. 18.

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

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

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

(2) The Testator's Family Maintenance and Guardianship of Infants Act, 1916, as amended by this Act may be cited as the Testator's Family Maintenance and Guardianship of Infants Act, 1916-1934. Citation of Act No. 41, 1916, as amended.

7. (1) The Marriage Act, 1899, is amended— Amendment of Act No. 15, 1899. Substituted s. 9.

(a) by omitting section nine and by inserting in lieu thereof the following new section:—

25 9. (1) If either party to any intended marriage, not having been previously married or not being a widower or widow, is under the age of twenty-one years, such marriage shall not take place without production to the person about to celebrate the same of the written consent of the person or persons mentioned in the Fifth Schedule to this Act: Consent in case of minority.

Provided that—

30 (a) if the person about to celebrate the marriage is satisfied that the consent of any person whose consent is so required cannot be obtained by reason of absence or inaccessibility, or by reason of his being under any disability, the necessity for the consent of that person shall be
 35 dispensed

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5 dispensed with if there is any other
 person whose consent is also required
 and has been obtained, and if the con-
 10 sent of no other person is required, or if
 so required cannot for any of the
 reasons abovementioned be obtained, a
 stipendiary or police magistrate or
 some justice of the peace appointed
 for that purpose may on application in
 the prescribed form consent to the
 marriage;

(b) if any person whose consent is required
 15 refuses his consent, the court may, on
 application in the prescribed form,
 consent to the marriage.

(2) Before a consent is given pursuant
 20 to paragraphs (a) and (b) of subsection one of
 this section an inquiry shall be made on oath
 or solemn affirmation as to the facts and
 circumstances of the case.

(3) The consent of the court or of a
 25 stipendiary or police magistrate or justice of the
 peace to any marriage pursuant to this section
 shall have the same effect as if it had been
 given by the person whose consent cannot be so
 obtained or, as the case may be, is so refused.

(4) For the purposes of this section
 30 "the court" shall mean the Supreme Court in
 its equitable jurisdiction or a judge thereof,
 the district court of the district in which the
 minor resides, or the court of petty sessions
 nearest to the place of residence of the minor
 which is holden before a stipendiary or police
 magistrate sitting alone.

35 Every court exercising jurisdiction under
 this section shall sit in camera unless the
 court shall otherwise order.

(b) (i) by omitting from subsection one of section
 40 ten the words "Judges of the Supreme
 Court" and by inserting in lieu thereof
 the words "Registrar-General";

(ii)

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(ii) by omitting from subsection two of the same section the words "said Judges" and by inserting in lieu thereof the words "Registrar-General";

5 (c) by inserting after Schedule Four the following new Schedule:— New Sched. Five.

FIFTH SCHEDULE.

Sec. 9.
cf. 15 & 16
Geo. V,
c. 45, Sch

CONSENTS REQUIRED TO THE MARRIAGE OF AN INFANT.

Circumstances.	Person whose consent is required.
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10 I.—Where the infant is legitimate.

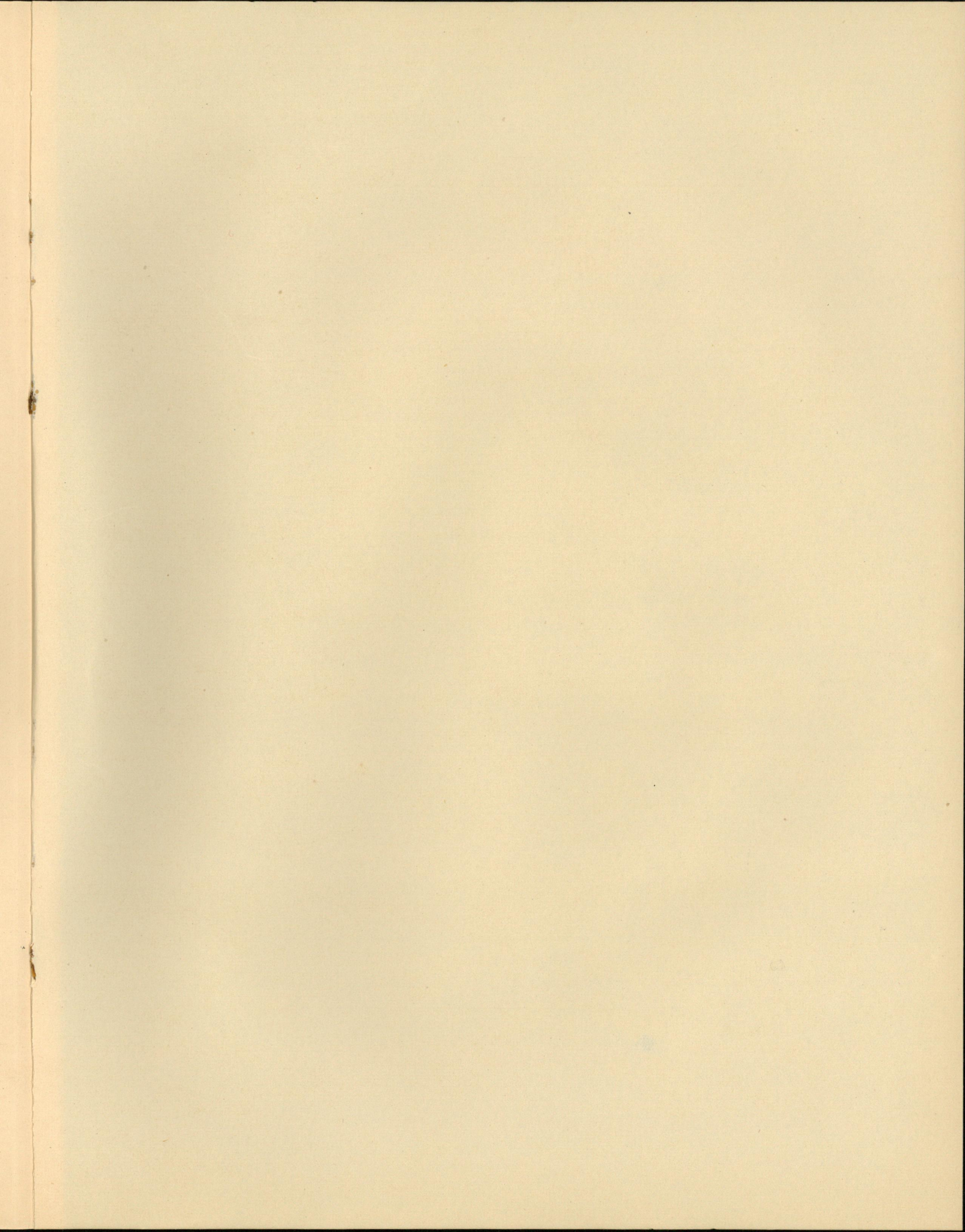
<p>1. Where both parents are living—</p> <p>(a) if the parents are living together;</p> <p>15 (b) if the parents are divorced or separated by order of court or by agreement;</p> <p>20</p> <p>(c) if one parent has been deserted by the other;</p> <p>25 (d) if both parents have been deprived of the custody of the infant by order of any court.</p> <p>30</p>	<p>Both parents.</p> <p>The parent to whom the custody of the infant is committed by order of any court or by the agreement, or if the custody of the infant is so committed to one parent during a period of time and to the other parent during another period or periods of time, both parents.</p> <p>The parent who has been deserted.</p> <p>The person to whose custody the infant is committed by order of any court.</p>
<p>2. Where one parent is dead—</p> <p>(a) if there is no other guardian;</p> <p>35 (b) if a guardian has been appointed by the deceased parent.</p> <p>40</p>	<p>The surviving parent.</p> <p>The surviving parent and the guardian if acting jointly, or the surviving parent or the guardian if the parent or guardian is the sole guardian of the infant.</p>

*Guardianship of Infants.*FIFTH SCHEDULE—*continued.*CONSENTS REQUIRED TO THE MARRIAGE OF AN INFANT—*continued.*

Circumstances.	Person whose consent is required.
I.— <i>Where the infant is legitimate—continued.</i>	
5 3. Where both parents are dead.	The guardians or guardian appointed by the deceased parents or by any court, or if no such guardian has been appointed, a stipendiary or police magistrate or justice of the peace appointed in that behalf in accordance with section ten of this Act.
II.— <i>Where the infant is illegitimate.</i>	
20 If the mother of the infant is alive.	The mother, or if she has been deprived of the custody of the infant, the person to whom the custody of the infant has been committed by order of the court.
25 If the mother of the infant is dead.	The guardian appointed by the mother or by any court, or if no such guardian has been appointed, a stipendiary or police magistrate or justice of the peace appointed in that behalf in accordance with section ten of this Act.

35 (2) The Marriage Act, 1899, as amended by the Marriage (Amendment) Act, 1924, the Marriage (Amendment) Act, 1925, and this Act, may be cited as the Marriage Act, 1899–1934.

40 (3) This section shall commence on a day to be appointed by the Governor and notified by proclamation published in the Gazette.



Guardianship of Infants.

FIFTH SCHEDULE—continued.
Cases referred to the Magistrate or a Justice—
continued.

Provision. Particulars of the case.

1.—Where the father is deceased—continued.

1. Where both parents are the possessor of guardian
rights.
The guardian appointed by the deceased
father or by any court,
if it is not possible for
him to exercise his
rights or if he is
unable to do so,
the guardian appointed
by the court.

2.—Where the father is living.

If the mother of the infant is alive.
The guardian appointed by the court,
if it is not possible for
her to exercise her
rights or if she is
unable to do so,
the guardian appointed
by the court.

If the mother of the infant is dead.
The guardian appointed by
the mother or by any
court, if it is not possible
for her to exercise her
rights or if she is
unable to do so,
the guardian appointed
by the court.

(3) The Marriage Act, 1952, as amended by the
Marriage (Amendment) Act, 1951, the Marriage
(Amendment) Act, 1950, and this Act, may be cited
as the Marriage Act, 1952.

(4) This section shall operate as if it had been
enacted by the Legislature and shall be published
in the Gazette.

