

*Amended
No 33 of 1945*

CHAPTER 5. No. 12.

INFANTS.

**AN ORDINANCE RELATING TO THE GUARDIANSHIP, CUSTODY,
AND PROPERTY OF INFANTS.**

Ordinance
Cap. 55-1925.

[18th June, 1925.]

Commencement.

1. This Ordinance may be cited as the Infants Ordinance.

Short title.

2. In this Ordinance—

Interpreta-
tion.

“ Court ” means the Supreme Court or a Judge thereof;

“ lands ” includes all lands of any tenure, and all estates or interest in any lands, not being settled estates within the meaning of the Leases and Sales of Settled Estates Ordinance;

“ parent ” includes any person at law liable to maintain a child, or entitled to his custody;

“ person ” includes any school or institution.

3. The minority of all males and females shall cease and determine within the Colony at the age of twenty-one years, and every male and female of or arriving at that age shall be of the age of majority as fully, freely, and effectually to all intents and purposes in the law, as he or she may or might have been by the law of England.

Age of
majority.

PART I.

GUARDIANSHIP AND CUSTODY OF INFANTS.

4. (1) On the death of the father of an infant, the mother, if surviving, shall, subject to the provisions of this Ordinance,

Rights of
surviving
parent as to
guardianship.

be guardian of the infant, either alone or jointly with any guardian appointed by the father. When no guardian has been appointed by the father, or if the guardian or guardians appointed by the father is or are dead or refuses or refuse to act, the Court may, if it thinks fit, appoint a guardian to act jointly with the mother.

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

Power of
father and
mother to
appoint
testamentary
guardians.

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

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

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

(4) If the mother or father so objects, or if the guardian so appointed as aforesaid considers that the mother or father is unfit to have the custody of the infant, the guardian may apply to the Court, and the Court may either refuse to make any order (in which case the mother or father shall remain sole guardian) or make an order that the guardian so appointed shall act jointly with the mother or father, or that he shall be sole guardian of the infant, and in the latter case may make such order regarding the custody of the infant and the right of access thereto of its mother or father as, having regard to the welfare of the infant, the Court may think fit, and may further order that the mother or father shall pay to the guardian towards the maintenance of the infant such weekly or other periodical sum as, having regard to the means of the mother or father, the Court may consider reasonable.

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

6. Every guardian under the two last preceding sections shall have all such powers over the estate and the person, or over the estate, as the case may be, of an infant as a guardian appointed by will or otherwise has in England under the Act twelve Charles the Second, chapter 24.

Powers of guardian.

7. The Court may, upon the application of the mother of any infant, make such order as it may think proper regarding the custody of such infant and the right of access thereto of either parent, having regard to the welfare of the infant, and to the conduct of the parents, and to the wishes as well of the mother as of the father, and may alter, vary, or discharge such order on the application of either parent, or, after the death of either parent, of any guardian under this Ordinance, and in every case may make such order respecting the costs of the mother and the liability of the father for the same or otherwise as to costs as it may think just.

Mother may apply to court for order as to custody of infant.

8. Where, in any proceeding before the Court, the custody or upbringing of an infant, or the administration of any property belonging to or held on 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 of 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.

Principle on which questions relating to custody, upbringing, etc., of infants are to be decided.

9. The mother of an infant shall have the like powers to apply to the Court in respect of any matter affecting the infant as are possessed by the father.

Equal right of mother to apply to court.

10. (1) The power of the Court under section 7 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.

Powers of court with respect to the custody and maintenance of infants.

(2) Where the Court, under the said 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.

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

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

Court may
remove
guardian.

11. The Court may, in its discretion, on being satisfied that it is for the welfare of the infant, remove from his office any testamentary guardian, or any guardian appointed or acting by virtue of this Ordinance, and may also, if it shall deem it to be for the welfare of the infant, appoint another guardian in place of the guardian so removed.

In case of
separation
deed between
father and
mother.

12. No agreement contained in any separation deed made between the father and the mother of an infant shall be held to be invalid by reason only of its providing that the father of such infant shall give up the custody or control thereof to the mother: Provided always, that no court shall enforce any such agreement if the Court shall be of opinion that it will not be for the benefit of the infant to give effect thereto.

Disputes
between joint
guardians.

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

Enforcement
of orders for
payment of
money.

14. (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 Ordinance shall give notice of any change of address to such person (if any) as may be specified in the order, and any person failing, without reasonable excuse, to

give such a notice shall be liable, on summary conviction, to a fine of ten dollars.

(2) Where the Court has made any such order, the Court shall, in addition to any other powers for enforcing compliance with the order, have power 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 payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to the person by whom the pension or income is payable.

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

Power of Court to refuse production of child.

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

Power of Court to order repayment by parent of costs of bringing up child.

17. Where the parent has—

(a) abandoned or deserted his child, or

(b) allowed his child to be brought up by another person at that person's expense for such a length of time and under such circumstances as to satisfy the Court that the parent was unmindful of his parental duties,

Court in making order to have regard to conduct of parent.

the Court shall not make an order for the delivery of the child to the parent, unless the parent has satisfied the Court that,

having regard to the welfare of the child, he or she is a fit person to have the custody of the child.

Court may order child, though not delivered to parent, to be brought up in such religion as he has a right to require.

18. Upon any application by the parent for the production or custody of a child, if the Court is of opinion that the parent ought not to have the custody of the child, and that the child is being brought up in a different religion to that in which the parent has a legal right to require that the child should be brought up, the Court shall have power to make such order as it may think fit to secure that the child be brought up in the religion in which the parent has a legal right to require that the child should be brought up. Nothing in this Ordinance contained shall interfere with or affect the power of the Court to consult the wishes of the child in considering what order ought to be made, or diminish the right which any child now possesses to the exercise of its own free choice.

PART II.

CONTRACTS OF INFANTS.

Contracts by infants, except for necessities, to be void.

19. All contracts, whether by specialty or by simple contract, henceforth entered into by infants for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessities), and all accounts stated with infants, shall be absolutely void: Provided that this Ordinance shall not invalidate any contract into which an infant may, by any existing or future enactment, or by the rules of Common Law or equity, enter, except such as now by law are voidable.

No action to be brought on ratification of infant's contract.

20. No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there shall or shall not be any new consideration for such promise or ratification after full age.

PART III.

INFANTS' SETTLEMENTS.

21. It shall be lawful for every infant upon or in contemplation of his marriage, with the sanction of the Court, to make a valid and binding settlement or contract for a settlement of all or any part of his property, or any property over which he has any power of appointment, whether real or personal, and whether in possession, reversion, remainder, or expectancy; and every conveyance, transfer, appointment, and assignment of such real or personal estate, or contract to make a conveyance, transfer, appointment, or assignment thereof, executed by such infant with the approbation of the Court for the purpose of giving effect to such settlement, shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years: Provided that this section shall not extend to powers of which it is expressly declared that they shall not be exercised by an infant.

Infant may make settlement on marriage.

22. Provided always, that in case any appointment under a power of appointment, or any disentailing assurance, shall have been executed by any infant tenant in tail under the provisions of this Part of this Ordinance, and such infant shall afterwards die under age, such appointment or disentailing assurance shall thereupon become absolutely void.

In case infant die under age, appointment to be void.

23. The sanction of the Court to any such settlement or contract for a settlement may be given upon petition presented by the infant or his guardian in a summary way, without the institution of a suit; and if there be no guardian, the Court may require a guardian to be appointed or not as the Court shall think fit; and the Court also may, if it shall think fit, require that any persons interested or appearing to be interested in the property should be served with notice of such petition.

Sanction of Court to be given on petition.

24. Nothing in this Part of this Ordinance contained shall apply to any male infant under the age of twenty years, or to any female infant under the age of seventeen years.

Limit of age.

PART IV.

SALE OF INFANTS' ESTATES.

Court to
authorise sale
of infant's
lands.

25. It shall be lawful for the Court, on the petition of any infant by his guardian or next friend, if it shall deem it proper and for the benefit of such infant, from time to time to authorise the sale of any lands of such infant, subject, if the Court shall so direct, to any charge or encumbrance affecting the same; and every such sale shall be conducted and confirmed in the same manner as, by the rules and practice of the Court for the time being, is or shall be required in the sale of lands sold under a decree of the Court.

Notice of
petitions to
be published
and persons
may be heard.

26. Notice of any petition to the Court under the last preceding section shall be inserted in such newspapers as the Court shall direct, and any person, whether interested in the lands or not, may apply to the Court, by motion, for leave to be heard in opposition to or in support of any such petition, and the Court is hereby authorised to permit such person to appear and be heard in opposition to or in support of any such petition on such terms as to costs or otherwise, and in such manner, as it shall think fit.

Moneys to be
paid into
Treasury and
applied to
certain
purposes.

27. All money to be received on any sale effected under the authority of this Part of this Ordinance shall be paid to the Treasurer, to the account of the Registrar of the Court *ex parte* the petitioner in the matter of this Ordinance; and such money, after payment of any costs attending such petition which may be allowed by the Court, shall be applied as the Court shall from time to time direct to some one or more of the following purposes, namely, the discharge or redemption of any encumbrance affecting the lands in respect of which money was paid, or the payment to any person becoming absolutely entitled.

Money to be
invested
pending
application.

28. Until the money can be applied as aforesaid, the same shall be from time to time invested in such securities authorised by the Court Funds Investment Ordinance as the Court shall think fit, and the interest or dividends of such securities, or such parts thereof as the Court may from time to time direct,

shall be paid to the guardian for the time being of the infant, or such other person as would have been entitled to the rents and profits of the lands so sold if the same had not been sold.

PART V.

MISCELLANEOUS.

29. (1) The Chief Justice, with the concurrence of a Puisne Rules. Judge, may make rules for carrying the purposes of this Ordinance into effect, and for regulating the form and mode of procedure and, generally, the practice of the Court in respect of the matters to which this Ordinance relates, and for regulating the fees and allowances to all officers and solicitors of the Court in respect of such matters.

(2) The provisions of section 43 of the Judicature Ordinance shall apply to such rules in the same manner as they apply to rules of court made under that Ordinance.