

CHAPTER 55.

INFANTS.

Ordinance
No. 28 of 1925.

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

[18th June, 1925.]

Short title.

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

Interpreta-
tion.

2. In this Ordinance—

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

“ Lands ” includes all hereditaments 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;

Cap. 49.

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

“ Person ” includes any school or institution.

Age of
majority

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.

PART I.

Guardianship and Custody of Infants.

Rights of
surviving
parent as to
guardianship.

4. (1) On the death of the father of an infant, the mother, 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 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.

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

Power of father and mother to appoint testamentary guardians.

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

(3) Any guardian so appointed shall act jointly with 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.

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

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.

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

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.

Equal right of mother to apply to Court.

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.

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

10. (1) The power of the Court under section 7 of this Ordinance to make an order as to the custody of an infant and the right of access thereto may be exercised notwithstanding that the mother of the infant is then residing with the father of the infant.

(2) 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.

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.

Court may
remove
guardian.

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.

In case of
separation
deed between
father and
mother.

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.

Disputes
between
joint
guardians.

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 before a Magistrate, to a penalty not exceeding two pounds.

Enforcement
of orders for
payment of
money.

(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.

Power of Court to refuse production of child.

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

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

17. Where the parent has—

- (1) abandoned or deserted his child; or
- (2) 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,

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.

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.

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

PART II.

Contracts of Infants.

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 necessaries), and all accounts stated with infants, shall be absolutely void: Provided always, 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.

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

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.

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

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

Infant may make settlement on marriage.

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.

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

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.

Sanction of Court to be given on petition.

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.

Limit of age.

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.

PART IV.

Sale of Infants' Estates.

Court to authorize 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 authorize 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.

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 authorized 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.

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

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.

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

28. Until the money can be applied as aforesaid, the same shall be from time to time invested in such securities authorized 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.

Money to be invested pending application. Cap. 40.

PART V.

Miscellaneous.

29. (1) The Chief Justice, with the concurrence of a Puisne Judge, may make general rules and orders for

Rules.

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; and such rules or orders may from time to time be rescinded or altered by the like authority; and all such rules and orders shall take effect as general orders of the Court.

(2) All rules made under this section shall be published in the *Royal Gazette*.

CHAPTER 56.

LUNATICS (SUPREME COURT PROCEDURE).

AN ORDINANCE REGULATING THE PROCEDURE IN CASES OF LUNATICS. Ordinance No. 46.

[27th October, 1863.]

1. This Ordinance may be cited as the Lunatics Short title.
(Supreme Court Procedure) Ordinance.

2. It shall be lawful for the Supreme Court or any Judge thereof, on petition, and on its being made to appear by affidavit that any person is of unsound mind and incapable of managing himself or his affairs, to order that an enquiry be had under this Ordinance. Court may order enquiry.

3. All petitions in lunacy shall be addressed to the Chief Justice and the Judges of the Supreme Court. Address of petitions.

4. The enquiry to be made under this Ordinance shall be confined to the question whether or not the person who is the subject of the enquiry is, at the time of such enquiry, of unsound mind and incapable of managing himself or his affairs, and no evidence as to anything done or said by such person, or as to his demeanour or state of mind at any time being more than two years before the time of the enquiry, shall be receivable in proof of insanity on any such enquiry, unless the Court or Judge shall otherwise direct. Enquiry to be confined to certain points.

5. Such enquiry shall be had by and before the Supreme Court, unless the alleged lunatic shall demand an enquiry before a jury, in which case the Court or Judge shall order that the enquiry be before a jury. Enquiry may be before Court or jury.

6. Upon the hearing of any petition for enquiry, it shall be lawful for the alleged lunatic by himself or his Lunatic may demand a jury.

counsel or solicitor, orally or by petition addressed to the Supreme Court, to demand an enquiry by a jury.

Lunatic to be examined.

7. On every such enquiry, the alleged lunatic shall, if he is within the Colony, be examined before the taking of the evidence is commenced, and also at the close of the proceedings before the jury consult as to their verdict, unless on the enquiry before a jury the presiding Judge shall otherwise direct, and such examinations of the alleged lunatic shall take place either in open Court or in private as the Court or Judge presiding shall direct.

New trial.

8. It shall be lawful for the Supreme Court, upon a petition being presented within three months next after any enquiry before a jury, to order that a new trial shall be had of such issue, or a new enquiry as to the insanity of such person made before the Supreme Court, subject to such directions and upon such conditions as to the Court may seem proper.

Jury to be summoned by Marshal.

9. Where the Court or Judge shall direct an enquiry to be had before a jury, a precept shall issue to the Marshal, who shall thereupon summon a jury of not less than thirty-six persons from the persons liable to serve as jurors for the trial of issues in the Supreme Court.

Jury to be of 18, and 12 to concur in verdict.

10. On every such enquiry, the jury shall consist of eighteen persons at the least, who shall be sworn, and twelve at least of the persons so sworn shall concur in the verdict to be given on such enquiry.

Costs.

11. It shall be lawful for the Supreme Court to order the costs, charges, and expenses of any enquiry or other proceedings under this Ordinance to be paid either by the party or parties who shall have presented such petition, or by the party or parties opposing such petition, or out of the estate of the alleged lunatic, or partly in one way and partly in another, as the Court shall in each case think proper.

Orders as to property of limited amount.

12. Where it shall be established on affidavit to the satisfaction of the Supreme Court that any person is of unsound mind and incapable of managing his affairs, and that his property does not exceed one thousand pounds in value, or that the income thereof does not exceed fifty pounds per annum, the Supreme Court may, without

directing any enquiry, make such order as the said Court may consider expedient for the purpose of rendering the property of such person, or the income thereof, available for his maintenance or benefit, or for carrying on his trade or business: Provided that the alleged lunatic shall have such personal notice of the application for such order as aforesaid as the said Court shall, by general order to be made as hereinafter mentioned, direct.

13. For the purpose of giving effect to any such order, the Supreme Court may order any land, stock, or other property of such person as aforesaid to be sold, charged by way of mortgage, or otherwise disposed of, and a conveyance, transfer, charge, or other disposition thereof to be executed or made by any person on his behalf, and may order the proceeds of any such sale, charge, or other disposition, or the dividends or income of such land, stock, or property, to be paid to any relative of such lunatic or to such other person as it may be considered proper to trust with the application thereof, to be by him applied in the maintenance or for the benefit of the lunatic, or of him and his family, either at the discretion of such relative or person, or in such manner and subject to such control, and with or without such security for the application thereof, as the said Court may direct.

Orders as to sale of property.

14. Where any person shall, on the trial of any indictment, have been acquitted on the ground of insanity, it shall be lawful for the Supreme Court, on being satisfied by affidavit or otherwise of the continued insanity of such person, and of his being still in confinement, to make any such order with respect to the property of such person, and the application thereof for his maintenance or benefit, or that of his family, or for carrying on his trade or business, as is mentioned in the preceding sections of this Ordinance.

Property of person acquitted on ground of insanity.

15. The Chief Justice, with the concurrence of a Puisne Judge, may make such rules as may be necessary for regulating the procedure to be adopted under this Ordinance.

Rules.