

INFANTS ACT

CHAPTER 46:02

Act

28 of 1925

Amended by

33 of 1945

28 of 1973

50 of 1976

45 of 1979

15 of 1981

*20 of 1981

**See Note on Amendment at page 2*

Current Authorised Pages

<i>Pages (inclusive)</i>	<i>Authorised by L.R.O.</i>
1- 17	..

Index of Subsidiary Legislation

Infants (Petition) Rules (R.G. 22.5.1867)	<i>Page</i> 8
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Note on Maintenance Orders made under the Act

For Maintenance Orders made under Part I of the Act (which has been repealed)—
See Section 20 and also Item 9 of the Schedule to Act No. 14 of 1988.

Note on Amendment

This Act has been amended by Act No. 20 of 1981 (Fifth Schedule) but Act No. 20 of 1981 had, not up to the date of the last revision of this Act, been brought into operation.

Note on section 28

For regulating the form and mode of procedure and generally, the practice of the Court in respect of the matters to which this Act relates, *see* Order 86 of the Rules of the Supreme Court (1975) inserted as an Appendix to this Act.

CHAPTER 46:02

INFANTS ACT

ARRANGEMENT OF SECTIONS

SECTION

1. Short title.
2. Interpretation.

PART I

GUARDIANSHIP AND CUSTODY OF INFANTS

- 3–18 [*Sections 3 to 18 repealed by the Family Law (Guardianship of Minors, Domicile and Maintenance, Act) Ch. 46:08*].

PART II

CONTRACTS OF INFANTS

19. Contracts by infants, except for necessities, to be void.
20. No action to be brought on ratification of infant's contract.

PART III

INFANTS' SETTLEMENTS

21. Infant may make settlement of marriage.
22. In case infant dies under age, appointment to be void.
23. Sanction of Court to be given on petition.

PART IV

SALE OF INFANTS' ESTATES

24. Court to authorise sale of infants' lands.
25. Notice of petitions to be published and persons may be heard.
26. Moneys to be paid to Comptroller of Accounts and applied to certain purposes.
27. Money to be invested pending application.

PART V

MISCELLANEOUS

28. Rules.

CHAPTER 46:02

INFANTS ACT

1950 Ed.
Ch. 5, No. 12.
28 of 1925.

An Act relating to the guardianship, custody, and property of infants.

Commencement.

[18TH JUNE 1925]

Short title.

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

Interpretation.

2. In this Act—

“Court” means the High 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;

Ch. 27, No. 15.
[1950 Ed.].

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

“person” includes any school or institution.

PART I

GUARDIANSHIP AND CUSTODY OF INFANTS

3–18 [Sections 3 to 18 repealed by the Family Law (Guardianship of Minors, Domicile and Maintenance) Act Ch. 46:08].

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; but this Act shall not invalidate any contract into which an infant may, by any existing or future written law, or by the Rules of Common Law or equity, enter, except such as now by law are voidable.

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UPDATED TO DECEMBER 31ST 2012

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 the promise or ratification after full age.

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

PART III

INFANTS' SETTLEMENTS

21. (1) Every female infant may upon or in contemplation of her marriage, with the sanction of the Court, make a valid and binding settlement or contract for a settlement of all or any part of her property, or any property over which she has any power of appointment, whether real or personal, and whether in possession, reversion, remainder or expectancy.

Infant may make settlement on marriage. [28 of 1973].

(2) 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 the infant with the approbation of the Court for the purpose of giving effect to the settlement, shall be as valid and effectual as if the person executing the same were of the full age of eighteen years.

(3) This section shall not extend to powers of which it is expressly declared that they shall not be exercised by an infant.

22. Where any appointment under a power of appointment or any disentailing assurance, is executed by any infant tenant in tail under this Part and the infant afterwards dies under age, the appointment or disentailing assurance shall thereupon become absolutely void.

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

23. (1) The sanction of the Court to any such settlement or contract for a settlement may be given upon petition presented by the infant or her guardian in a summary way, without the institution of a suit.

Sanction of Court to be given on petition.

(2) Where there is no guardian the Court may require a guardian to be appointed or not as the Court thinks fit.

(3) The Court also may, if it thinks fit, require that any persons interested or appearing to be interested in the property should be served with notice of the petition.

PART IV

SALE OF INFANTS' ESTATES

Court to authorise sale of infants' lands.

24. The Court may, on the petition of any infant by his guardian or next friend, if it thinks it proper and for the benefit of the infant, from time to time authorise the sale of any lands of the infant, subject, if the Court so directs, 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.

25. Notice of any petition to the Court under section 24 shall be inserted in such newspapers as the Court directs, 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 the 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 thinks fit.

Moneys to be paid to Comptroller of Accounts and applied to certain purposes.

26. All money to be received on any sale effected under the authority of this Part shall be paid to the Comptroller of Accounts, to the account of the Registrar of the Court *ex parte* the petitioner in the matter of this Act; and the money, after payment of any costs attending the petition which may be allowed by the Court, shall be applied as the Court from time to time directs 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.

27. Until the money can be applied as under section 26, the same shall be from time to time invested in such securities authorised by the Court Funds Investment Act as the Court thinks fit, and the interest or dividends of the 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.
Ch. 7:06.

PART V
MISCELLANEOUS

***28.** The Rules Committee established by the Supreme Court of Judicature Act may make Rules for carrying the purposes of this Act 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 Act relates, and for regulating the fees and allowances to all Officers and Attorneys-at-law of the Court in respect of such matters.

Rules.
Ch. 4:01.

*See Note on page 2.

SUBSIDIARY LEGISLATION

INFANTS (PETITION) RULES

ARRANGEMENT OF RULES

RULE

1. Citation.
 2. Particulars of Petition.
 3. Verification.
 4. Day appointed.
 5. Notice.
 6. Filing, etc.
 7. Order of Court.
 8. Guardian.
 9. Fees and allowances.
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INFANTS (PETITION) RULES

R.G. 22.5.1867.

made under section 28

1. These Rules may be cited as the Infants (Petition) Rules. Citation.
2. The Petition shall state—
 - (a) the name, age and residence of the infant;
 - (b) the description, particular local situation, and present condition of the property intended to be sold;
 - (c) the nature and extent of the estate or interest of the infant, and value of the property or of the estate or interest, as the case may be;
 - (d) all the charges and encumbrances affecting the property or the estate or interest, as the case may be; and
 - (e) the circumstances which make it proper or expedient that the property or the estate or interest should be sold.Particulars of Petition.
3. The particulars stated in the Petition must be verified by affidavit. Verification.
4. On the application of the Attorney-at-law for the Petitioner an order will be made by one of the Judges in Chambers appointing a day for the hearing of the Petition, and directing (with reference to the circumstances of the case) in what newspapers, and how often, the notice required by section 25 of the Act is to be published. Day appointed.
5. The notice will be prepared by the Registrar and submitted to the Judge for his approval before it is published. Notice.
6. All Affidavits and Exhibits intended to be used in support of, or in opposition to the Petition must be filed or deposited in the office of the Registrar three clear days before the hearing of the Petition. Filing, etc.

[Subsidiary]

Order of Court. **7.** On the hearing of the Petition, and of any party opposing the same, the Court may make an order for the sale of the property, or of the Estate or interest of the infant, with such restrictions as to price, or reserve bidding, or such other conditions as to the Court seems proper, or may refer the matter to one of the Judges in Chambers for such enquiries, and with such powers and directions as to the Court may seem proper.

Guardian. **8.** Where it appears to the Court expedient that a Guardian should be appointed to the infant for the protection of his interests in the matter of the Petition, the Court will refer it to one of the Judges in Chambers to appoint the Guardian and to take the proper security.

Fees and allowances. **9.** The fees and allowances to the Officers and Attorneys-at-law of the Court, in respect of the matters under the Act, shall be the same as are allowed under the Rules of the Supreme Court.

APPENDIX

ORDER 86

**PROCEEDINGS RELATING TO MINORS, MATRIMONIAL
STATUS AND SPOUSES**

I. MINORS

Interpretation

1. In this Order—

“the Act” means the Infants Act, Ch. 46:02;

“the Family Law Act” means the Family Law (Guardianship
of Minors, Domicile and Maintenance) Act, Ch. 46:08.

2. (1) Subject to paragraph (2) an application concerning
the maintenance or advancement of minors or made under the
Family Law Act or under Part III of the Act shall be made to a
Judge in Chambers by an originating summons intituled—

(i) in the case of an application under the
Family Law Act—

In the matter of the Minor

and

In the Matter of the Family Law
(Guardianship of Minors,
Domicile and Maintenance) Act,
Ch. 46:08;

(ii) in the case of an application under the
Act—

In the matter of the Minor

and

In the matter of the Infants Act,
Ch. 46:02.

(2) (a) Where any proceedings (including proceedings
for divorce or judicial separation) are pending in
relation to the minor; or

- (b) when the minor is a ward of Court or the administration of the estate or the maintenance or advancement of the minor is under the direction of the Court,

the application shall be made by summons.

Power of Judge pending Appeal

3. Where an appeal is entered against a judgment given or order made under rule 2 the Judge by whom the judgment was given or the order was made may make such orders either *ex parte* or otherwise as he may think proper.

Application to make a Minor a Ward of Court

4. (1) An application to make a minor a ward of Court must be made by originating summons.

(2) Where there is no person other than the minor who is a suitable defendant, an application may be made *ex parte* for leave to issue either an *ex parte* originating summons or an originating summons with the minor as defendant thereto; and except where such leave is granted, the minor shall not be made a defendant to an originating summons under this rule in the first instance.

(3) The date of the minor's birth shall, unless otherwise directed, be stated in the summons and the plaintiff shall—

- (a) on issuing the summons or before or at the first hearing thereof lodge in the appropriate Registry a certified copy of the entry in the Register of Births, or, as the case may be, in the Adopted Children Register relating to the minor; or
- (b) at the first hearing of the summons apply for directions as to proof of birth of the minor in some other manner.

(4) Unless the Court otherwise directs, the summons shall state the whereabouts of the minor or, as the case may be, that the plaintiff is unaware of the whereabouts.

(5) Every defendant other than the minor shall, forthwith after being served with the summons —

- (a) lodge in the appropriate Registry a notice stating the address of the defendant and the whereabouts of the minor, or as the case may be, that the defendant is unaware of his whereabouts; and
- (b) unless the Court otherwise directs, serve a copy of the notice on the plaintiff.

(6) Where any party other than the minor changes his address or becomes aware of any change in the whereabouts of the minor after the issue or, as the case may be, service of the summons, he shall, unless the Court otherwise directs, forthwith lodge notice of the change in the appropriate Registry and serve a copy of the notice on every other party.

(7) The summons shall contain a notice to the defendant informing him of the requirements of paragraphs (5) and (6).

(8) In this rule any reference to the whereabouts of a minor is a reference to the address at which and the person with whom he is living and any other information relevant to the question where he may be found.

When Minor ceases to be a Ward of Court

5. (1) A minor who, by virtue of section 35(2) of the Family Law Act, becomes a ward of Court on the issue of a summons under rule 4 shall cease to be a ward of Court—

Ch. 46:08.

- (a) if an application for an appointment for the hearing of the summons is not made within the period of 21 days after the issue of the summons, at the expiration of that period;
- (b) if an application for such an appointment is made within that period, on the determination of the application made by the summons unless the Court hearing it orders that the minor be made a ward of Court.

(2) Nothing in paragraph (1) shall be taken as affecting the power of the Court under section 35(3) of the Family Law Act to order that any minor who is for the time being a ward of Court shall cease to be a ward of Court.

Ch. 46:08.

(3) If no application for an appointment for the hearing of a summons under rule 4 is made within the period 21 days after the issue of the summons, a notice stating whether the applicant intends to proceed with the application made by the summons must be left at the appropriate Registry immediately after the expiration of that period.

Application under the Family Law Act, Ch. 46:08

Ch. 46:08. **6.** Where there is pending any proceeding by reason of which a minor becomes a ward of Court, any application relating to the guardianship of minors under the Family Law Act with respect to that minor may be made by summons in that proceeding, but except in that case any such application shall be made by originating summons.

Defendants to Guardianship Summons

Ch. 46:08. **7.** (1) Where the minor with respect to whom an application under the Family Law Act is made is not the plaintiff, he shall not, unless the Court otherwise directs, be made a defendant to the summons or, if the application is made by ordinary summons, be served with the summons, but subject to paragraph (2) any other person appearing to be interested in, or affected by the application shall be made a defendant or be served with the summons, as the case may be, including, where the application is made under section 13 of the Family Law Act with respect to a minor who has been received into the care of a certified school within the meaning of Part III of the Children Act, that school.

Ch. 46:08.

Ch. 46:01.

(2) The Court may dispense with service of the summons (whether originating or ordinary) on any person and may order it to be served on any person not originally served.

Guardianship Proceedings may be in Chambers

Ch. 46:08. **8.** Applications under the Family Law Act relating to the guardianship of minors may be disposed of in Chambers.

Applications for Paternity Orders under section 10 of the Status of Children Act, Ch. 46:07

Ch. 46:07. **9.** An application for a paternity order under section 10 of the Status of Children Act, shall be made by originating summons.

Removal of Proceedings from a Magistrate's Court

10. (1) An application for an order under section 46(1) of the Family Law Act for the removal of an application from a Magistrate's Court into the High Court shall be made *ex parte* by an originating summons, but the Court may direct that the summons shall be served on any person. Ch. 46:08.

(2) The application may be heard by the Registrar or by an Assistant Registrar, but, if an order is made for the removal to the High Court of an application to the Magistrate's Court, that application shall be heard by a single Judge of the Court.

(3) Where an order is made under the said section 46(1), the plaintiff shall send a copy of the order to the Clerk of the Peace of the Magistrate's Court from which the proceedings are ordered to be removed.

(4) On receipt of certified copies of all entries in the books of the Magistrate's Court relating to the proceedings together with all documents filed in the proceedings the Registrar shall forthwith file the said documents and give notice to all parties that the application is proceeding in the High Court.

(5) The application so removed shall proceed in the High Court as if it had been made by originating summons.

Application of Matrimonial Causes Rules

11. (1) Rules 68 to 71 (inclusive) of the Matrimonial Causes Rules (which relate to proceedings under section 50 of the Matrimonial Proceedings and Property Act) shall apply, with the necessary modifications, to proceedings under section 13 of the Family Law Act. Ch. 45:51.
Ch. 46:08.

(2) Rules 41, 44 and 45 of the Matrimonial Causes Rules (which relate to the drawing up and service of orders) shall apply to proceedings under this Part of this Order as if they were proceedings under those rules.

II. MATRIMONIAL STATUS

Application for Declaration affecting Matrimonial Status

12. (1) Where, apart from costs, the only relief sought in any proceedings is a declaration with respect to the matrimonial status of any person, the proceedings shall be begun by petition.

- (2) The petition shall state—
- (a) the names of the parties and the residential address of each of them at the date of presentation of the petition;
 - (b) the place and date of any ceremony of marriage to which the application relates;
 - (c) whether there have been any previous proceedings between the parties with reference to the marriage or the ceremony of marriage to which the application relates or with respect to the matrimonial status of either of them and, if so, the nature of those proceedings;
 - (d) all other material facts alleged by the petitioner to justify the making of the declaration and the grounds on which he alleges that the Court has jurisdiction to make it,

and shall conclude with a prayer setting out the declaration sought and any claim for costs.

(3) Nothing in the foregoing provisions shall be construed—

- (a) as conferring any jurisdiction to make a declaration in circumstances in which the Court could not otherwise make it; or
- (b) as affecting the power of the Court to refuse to make a declaration notwithstanding that it has jurisdiction to make it.

Further Proceedings on Petition under Rule 12

13. Subject to rule 12 the Matrimonial Causes Rules shall apply with the necessary modifications to the petition as if it were a petition in a matrimonial cause.

III. SPOUSES

Provisions as to Actions in Tort

14. (1) This rule applies to any action in tort brought by one of the parties to a marriage against the other during the subsistence of the marriage.

(2) On the first application by summons or motion in an action to which this rule applies, the Court shall consider, if necessary of its own motion, whether the power to stay the action under section 15(2) of the Married Persons Act, should or should not be exercised. Ch. 45:50.

(3) Notwithstanding anything in Order 13 or Order 19 judgment in default of appearance or of defence shall not be entered in an action to which this rule applies except with the leave of the Court.

(4) An application for the grant of leave under paragraph (3) must be made by summons and the summons must, notwithstanding anything in Order 65, rule 9, be served on the defendant.

(5) If the summons is for leave to enter judgment in default of appearance, the summons shall not be issued until after the time limited for appearing.
