

INFANTS' CUSTODY AND SETTLEMENTS ACT 1899.

COMMISSIONER'S MEMORANDUM AND CERTIFICATE.

THIS Bill consolidates the three following Acts :—

20 Vic. No. 2 ;
39 Vic. No. 16 ;
57 Vic. No. 10.

Sec. 5 of 20 Vic. No. 2 is omitted as unnecessary since 44 Vic. No. 18, ss. 1 and 2. The section was probably originally inserted in consequence of an old decision by Mr. Justice Therry that he had not, as Primary Judge, any jurisdiction over infants. And see the preamble to 11 Vic. No. 27.

Clause 4. See 4 Vic. No. 22, sec. 23 ; 44 Vic. No. 18, sec. 80 ; and C.L.P. Act of 1853, sec. 174. This clause is inserted to remove any doubt.

Clause 5. The original section required the application to be made by petition. These applications, which are very few, are nearly all made by very poor women, and the simpler the form of application the cheaper to them. The words "by her next friend" are omitted as unnecessary since the Married Woman's Property Act.

The word "child" is used in some of the Acts instead of "infants." It has been left unaltered, as the change might suggest a more extended jurisdiction than was intended.

Some verbal changes have been made here and there which do not affect the sense.

I certify that, except as aforesaid, this Bill solely consolidates, and in no way alters, adds to, or amends the law contained in the Acts thereby consolidated.

CHAS. G. HEYDON,

Commissioner for the Consolidation of the Statute Law.

TABLE

Showing how the sections of the Acts consolidated have been dealt with.

Section of Repealed Acts.	Section of Consolidated Act	Remarks.
20 Vic. No. 2, s. 1-4...	12-15	
5	Unnecessary. See ss. 1, 2 of the Equity Act of 1890.
3	Repealing section.
57 Vic. No. 10, s. 1-5..	6-10	
6	16	
7	3	
8	Short title.

ACT No. XXXIX, 1899.

No. 39.

An Act to consolidate the law relating to the custody of INFANTS. infants and the settlement of the property of infants. [Assented to, 22nd December, 1899]

BE it enacted by the Queen'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 "Infants' Custody and Settlements Act of 1899," and is divided into parts, as follows:— Short title.

PART I.—CUSTODY OF INFANTS—SS. 5-11.

PART II.—INFANTS' MARRIAGE SETTLEMENTS—SS. 12-15.

PART III.—THE SETTLEMENT OF DAMAGES RECOVERED ON BEHALF OF CHILDREN—S. 16.

2. The Acts mentioned in the Schedule to this Act are, to Repeal of Acts. the extent therein expressed, hereby repealed.

3. In this Act, unless the context or subject matter otherwise indicates or requires,— Interpretation.
57 Vic. No. 10,
s. 7.

"Parent" of a child includes the father and mother and any person at law liable to maintain such child or entitled to his custody.

"Person" includes any school or institution.

"Court" means the Supreme Court, and includes any Judge thereof sitting in chambers.

4 The Judges of the Supreme Court, or any three of them, may make such general rules and orders as from time to time seem necessary for better carrying the provisions and objects of this Act into effect, and for regulating the practice and procedure under this Act.

PART I

CUSTODY OF INFANTS.

5. The Supreme Court, in its equitable jurisdiction, upon the application of the mother of any infant under sixteen years of age may order that the applicant shall have access to such infant at such times and subject to such regulations as the said Court shall deem proper, or may order that such infant shall be delivered to the mother and remain in or under her custody and control, or shall, if already in her custody or under her control, Equity Court
may order mother
to have access to
infant.
39 Vic. No. 16,
s. 1.

No. 39. remain therein until such infant attains such age, not exceeding sixteen, as the said Court directs, and further may order that such custody or control shall be subject to such regulations as regards access by the father or guardian of such infant, and otherwise as the said Court deems proper.

Power of Court as to production of child.
57 Vic. No. 10, s. 1.

6. Where the parent of a child applies to the Supreme Court for a writ or order for the production of the child, or for any order under the last preceding section, and the Court is of opinion—

- (a) that the parent has abandoned or deserted or neglected the child ; or
- (b) that the parent has otherwise so conducted himself that the Court should refuse to enforce his right to the custody of the child ; or
- (c) that the tender age of the child or its state of health render it expedient that it should remain with its mother or some other person

the Court may decline to issue the writ or make the order.

Power to Court to order repayment of costs of bringing up child.
Ibid. s. 2.

7. 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, or is boarded out by any State board or other board, the Court may, in its discretion, if it orders the child to be given up to the parent, further order as a condition precedent or upon such terms as it may think fit that the parent shall pay to such person, or board, the whole of the costs properly incurred in bringing up the child, or such portion of the said costs 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.
Ibid. s. 3.

8. Where a parent has—

- (a) abandoned or deserted or neglected his child ; or
- (b) allowed his child to be brought up by another person at that person's expense, or at the expense of any State board, or other board, for such a length of time and under such circumstances as to satisfy the Court that the parent neglects 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 is a fit person to have the custody of the child.

Power of Court as to child's religious education.
Ibid. s. 4.

9. (1) 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 from that in

which the parent has a legal right to require that the child should be brought up, the Court may make such order as it may think fit to secure that the child shall be brought up in the religion in which the parent has a legal right to require that the child should be brought up.

No. 39.

(2) Nothing in this Act 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.

10. Whenever the Court is satisfied that the parent or person having the custody of a child is unfit to continue to have such custody by reason of cruelty or neglect to the child the Court may order that such child shall be given up to the custody of some near relative or other person willing to accept such custody, and may by such order impose terms for the child's maintenance chargeable upon the parent.

Court may order custody of children in certain cases.
57 Vic. No. 10, s. 5.

(2) Such order may be varied or revoked from time to time at the discretion of the Court.

11. No agreement contained in any separation deed made between the father and mother of any infants shall be held to be invalid by reason only of its providing that the father of such infants shall give up the custody or control thereof to the mother:

Agreement to give up children not to be invalid.
39 Vic. No. 16, s. 2.

Provided always that no Court shall enforce any such agreement if it is of opinion that it will not be for the benefit of the infants to give effect thereto.

PART II.

INFANTS' MARRIAGE SETTLEMENTS.

12 (1) Every infant, upon or in contemplation of his marriage, may, with the sanction of the Supreme Court in its equitable jurisdiction, make a valid and binding settlement or contract for a settlement of all or any part of his property or property over which he has any power of appointment, whether real or personal, and whether in possession, reversion, remainder, or expectancy, and every conveyance, appointment, and assignment of such real or personal estate, or contract to make a conveyance, appointment, or assignment thereof, executed by such infant with the approbation of the said 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.

Marriage settlements with consent of Equity Court.
20 Vic. No. 2, s. 1.

No. 39.

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

If infant tenant in tail die under age, appointment, &c., to be void.
20 Vic. No. 2.
s. 2.

13. If any appointment under a power of appointment or any disentailing assurance has been executed by any infant tenant in tail under the provisions of this Act or of any Act hereby repealed, and such infant afterwards dies under age, such appointment or disentailing assurance shall thereupon become absolutely void.

The sanction of the Supreme Court to be given upon petition.
Ibid. s. 3.

14. The sanction of the said Court to any such settlement or contract for a settlement may be given upon petition presented by the infant or his guardian, and if there is no guardian the Court may require a guardian to be appointed, and the Court also may require that any person interested or appearing to be interested in the property shall be served with notice of such petition.

Not to apply to males under twenty or females under seventeen years of age.
Ibid. s. 4.

15. Nothing in this Part of this Act 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 III.

SETTLEMENT OF DAMAGES RECOVERED ON BEHALF OF CHILDREN.

Court may appoint trustees for settlements for the benefit of children in certain cases.
57 Vic. No. 10,
s. 6.

16. (1) Whenever a verdict is recovered or a judgment entered for any amount as damages in any action of tort brought by any child by its next friend, the Court may order that a settlement of the same shall be made for the benefit of such child, and may appoint a trustee or trustees for such settlement.

(2) The terms of such settlement shall be fixed by the Court, or subject to its approval by some officer of the Court appointed so do.

(3) This power shall extend to the District Court as well as the Supreme Court.

Act.		
20 Vic. No. 2	... An Act to enable infants, with the approbation of the Supreme Court in its Equitable Jurisdiction, to make binding settlements of their real and personal property.	The whole Act.
39 Vic. No. 16	... An Act to amend the law as to the Custody of Infants.	The whole Act.
57 Vic. No. 10	... The Custody of Children and Children's Settlements Act of 1891.	The whole Act.

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