

55 Vic. No. 13, 1891. *Guardianship and Custody of Infants Act.*

INFANTS.

An Act to Amend the Law as to the Guardianship and Custody of Infants. 55 Vic. No. 13.
THE
GUARDIAN-
SHIP AND
CUSTODY OF
INFANTS ACT
OF 1891.

[ASSENTED TO 7TH OCTOBER, 1891.]

WHEREAS it is expedient to amend the law as to the guardianship and custody of infants: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Queensland in Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as "*The Guardianship and Custody of Infants Act of 1891.*" Short title.

2. "The Court" means the Supreme Court of Queensland or a Judge thereof. Interpreta-
tion.

The expression "Parent" of an infant includes any person at law liable to maintain such infant or entitled to his custody, and "Person" includes any scholastic or charitable institution. [54 Vict. c. 3,
s. 5.]

3. On the death of the father of an infant, and in case the father has died prior to the passing of this Act, then from and after the passing of this Act the mother, if surviving, and not expressly excluded by the deed or will of the father, shall be the guardian of the infant, either alone, when no guardian has been appointed by the father, 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, from time to time appoint a guardian or guardians to act jointly with the mother if she is a guardian. On death of
father,
mother to be
guardian
alone or
jointly with
others.
49 & 50 Vict.
c. 27, s. 2.

When the mother has been expressly excluded by the father the Court may, nevertheless, appoint her to be a guardian to act either alone or jointly with any guardian appointed by the father or by the Court.

4. (1.) The mother of an infant may, by deed or will, appoint any person or persons to be guardian or guardians of the infant after the death of herself and the father of the infant (if the infant is then unmarried), and where guardians are appointed by both parents they shall act jointly. Mother may
appoint
guardian in
certain cases.
49 & 50 Vict.
c. 27, s. 3.

(2.) The mother of an infant may, by deed or will, provisionally nominate some fit person or persons to act as guardian or guardians of the infant after her death jointly

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with the father of the infant, and the Court, after her death, if it is shown to the satisfaction of the Court that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment of such guardian or guardians, who shall thereupon be authorised and empowered so to act as aforesaid, or may make such other order in respect of the guardianship as the Court shall think right.

(3.) In the event of guardians being unable to agree upon a question affecting the welfare of an infant, any of them may apply to the Court for its direction, and the Court may make such order or orders regarding the matters in difference as it thinks proper.

Powers of guardian.
49 & 50 Vict.
c. 27, s. 4.

5. Every guardian in Queensland under this Act 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 now has under the Act twelve Charles the Second, chapter twenty-four.

Court may make orders as to custody.
49 & 50 Vict.
c. 27, s. 5.

6. The Court may, upon the application of the mother of an infant (who may apply without next friend), make such order as it thinks fit regarding the custody of the infant and the right of access to the infant 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 Act, 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 the Court thinks just.

Power to court to remove guardian.
49 & 50 Vict.
c. 27, s. 6.

7. The Court may, in its discretion, remove from his office any testamentary guardian, or any guardian appointed or acting by virtue of this Act, and may also, if the Court deems it to be for the welfare of the infant, appoint another guardian in place of the guardian so removed.

Guardianship in case of divorce or judicial separation.
49 & 50 Vict.
c. 27, s. 7.

8. In any case where a decree for judicial separation, or a decree either *nisi* or absolute for divorce, is pronounced, the Court pronouncing the decree may thereby declare the parent by reason of whose misconduct the decree is made to be a person unfit to have the custody of the children (if any) of the marriage; and in such case the parent so declared to be unfit shall not, upon the death of the other parent, be entitled as of right to the custody or guardianship of such children.

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9. No agreement contained in a separation deed made between the father and mother of any 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 of the infant to the mother: Provided always that no Court shall enforce any such agreement if the Court is of opinion that it will not be for the benefit of the infant or infants to give effect to it.

In case of separation deed between father and mother. 36 Vict. c. 12, s. 2.

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

Power of Court as to production of infant. 51 Vict. c. 3, s. 1.

11. If at the time of the application for a writ or order for the production of the infant, the infant is being or has been brought up by another person or persons, the Court may, in its discretion, if it orders the infant to be given up to the parent, further order that the parent shall pay to such other person or persons the whole of the costs properly incurred by him or them in bringing up the infant, 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 to Court to order repayment of costs of bringing up infant. 54 Vict. c. 3, s. 2.

12. Where a parent has—

- (a) Abandoned or deserted his infant, or
- (b) Allowed his infant to be brought up by any other person or persons at such person or persons' 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. 54 Vict. c. 3, s. 3.

the Court shall not make an order for the delivery of the infant to the parent unless the parent has satisfied the Court that, having regard to the welfare of the infant, he is a fit person to have the custody of the infant.

13. Upon any application by the parent for the production or custody of an infant, if the Court is of opinion that the parent ought not to have the custody of the infant, and that the infant is being brought up in a different religion to that in which the parent has a legal right to require that the infant should be brought up, the Court shall have power to make such order as it may think fit to

Power of Court as to infant's religious education. 54 Vict. c. 3, s. 4.

Crown Lands Act.

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secure that the infant be brought up in the religion in which the parent has a legal right to require that the infant should be brought up.

Nothing in this Act contained shall interfere with or affect the power of the Court to consult the wishes of the infant in considering what order ought to be made, or diminish the right which any infant now possesses to the exercise of its own free choice.

Rules as to
procedure.
49 & 50 Vict.
c. 27, s. 11.

14. Rules for regulating the practice and procedure in any proceedings under this Act, and the forms in such proceedings, may be made by the Judges of the Supreme Court, or any three of them, of whom the Chief Justice shall be one.

Saving clause.
49 & 50 Vict.
c. 27, s. 13.

15. Nothing in this Act shall restrict or affect the jurisdiction of the Supreme Court to appoint or remove guardians, or otherwise in respect of infants.

INFANTS, PROTECTION OF.

See CRIMINAL LAW.

IRRIGATION.

See WATER SUPPLY.

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