

New Zealand.



ANALYSIS.

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| <p>Title.</p> <ol style="list-style-type: none"> 1. Short Title and commencement. 2. Principle on which questions relating to custody, upbringing, &c., of infants are to be decided. 3. Equal right of mother to apply to Court. 4. Rights of surviving parent as to guardianship. Repeal. | <ol style="list-style-type: none"> 5. Power of father and mother to appoint testamentary guardians. Repeal. 6. Disputes between joint guardians. 7. Extension of jurisdiction to Courts of summary jurisdiction. 8. Consents required to marriage of infants. Consequential repeals. 9. Saving of jurisdiction of Children's Courts. Schedule. |
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1926, No. 32.

AN ACT to amend the Law with respect to the Guardianship, Custody, and Marriage of Infants. Title.
[31st August, 1926.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

1. (1.) This Act may be cited as the Guardianship of Infants Act, 1926, and shall be read together with and deemed part of Part I of the Infants Act, 1908. Short Title and commencement.

(2.) This Act shall come into force on the first day of January, nineteen hundred and twenty-seven.

2. Where in any proceeding before the Supreme Court or any other Court of competent jurisdiction 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, &c., of infants are to be decided.
15 & 16 Geo. V,
c. 45, sec. 1

3. The mother of an infant shall have the like powers to apply to the Supreme Court or any other Court of competent jurisdiction in respect of any matter affecting the infant as are possessed by the father. Equal right of mother to apply to Court.
Ibid., sec. 2

Rights of surviving parent as to guardianship.
15 & 16 Geo. V,
c. 45, sec. 4

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

Repeal.

(3.) This section is in substitution for section three of the Infants Act, 1908, and that section is hereby accordingly repealed.

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.

Ibid., sec. 5

(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.) A copy under seal of any order made by the Court pursuant to the last preceding subsection for the payment of a weekly or other periodical sum towards the maintenance of any infant may be filed in the office of a Magistrate's Court, and thereupon it shall be of the same force and effect, and all proceedings may be taken thereon in the same manner, as if it were, and at all times since the making thereof had been, a maintenance order made by a Magistrate acting under the authority of the Destitute Persons Act, 1910.

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

(7.) If under the last preceding section a guardian has been appointed by the Court to act jointly with a surviving parent, he shall continue to act as guardian after the death of the surviving parent; but if the surviving parent has appointed a guardian, the guardian appointed by the Court shall act jointly with the guardian appointed by the surviving parent.

(8.) This section is in substitution for section four of the Infants Act, 1908, and that section is hereby accordingly repealed.

6. Where two or more persons act as joint guardians of 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.

Repeal.

Disputes between joint guardians. Cf. 15 & 16 Geo. V, c. 45, sec. 6

7. (1.) For the purposes of this Act and of Part I of the Infants Act, 1908, as amended by this Act, the expression "the Court" shall include a Magistrate's Court presided over by a Stipendiary Magistrate:

Extension of jurisdiction to Courts of summary jurisdiction.

Provided that a Magistrate's Court shall not be competent by virtue of this section—

Ibid., sec. 7

(a.) To entertain any application relating to an infant who has attained the age of sixteen years, unless the infant is physically or mentally incapable of self-support; or

(b.) To entertain any application involving the administration or application of any property belonging to or held in trust for an infant, or the income thereof.

(2.) Where on an application to a Magistrate's Court under this Act the Court makes or refuses to make an order, an appeal shall lie to the Supreme Court:

Provided that where any such application is made to a Magistrate's Court and the Court considers that the matter is one which would more conveniently be dealt with by the Supreme Court, the Magistrate's Court may refuse to make an order, and in such case no appeal shall lie to the Supreme Court.

8. (1.) The consent required to the marriage of an infant shall be that of the person or persons mentioned in the Schedule to this Act:

Consents required to marriage of infants.

Provided that—

Ibid., sec. 9

(a.) If the Registrar of Marriages to whom notice of an intended marriage is given is satisfied that the consent of any person whose consent is so required cannot be obtained by reason of absence or inaccessibility, or by reason of his being under any disability, the necessity for the consent of that person shall be dispensed with if there is any other person whose consent is also required; and if the consent of no other person is also required the Court may, on application being made, consent to the marriage, and the consent of the Court so given shall have the same effect as if it had been given by the person whose consent cannot be so obtained; or the Registrar may, subject to the provisions of section twenty-seven of the Marriage Act, 1908, issue a certificate of marriage under that Act without obtaining any such consent:

(b.) If any person whose consent is required refuses his consent, the Court may, on application being made, consent to the marriage, and the consent of the Court so given shall have the same effect as if it had been given by the person whose consent is so refused.

(2.) This section is in substitution for sections nineteen and twenty of the Marriage Act, 1908, and those sections are hereby accordingly repealed.

Consequential repeals.

Saving of
jurisdiction of
Children's Courts.

9. Nothing in this Act shall limit the jurisdiction of a Children's Court established under the Child Welfare Act, 1925, or the powers and duties of the Superintendent of the Child Welfare Branch of the Department of Education in respect of children committed to his care pursuant to that Act.

Schedule.

SCHEDULE.

CONSENTS REQUIRED TO THE MARRIAGE OF AN INFANT.

I. Where the Infant is Legitimate.

Circumstances.	Person or Persons whose Consent is required.
1. Where both parents are living— (a.) If parents living together (b.) If parents are divorced or separated by order of Court or by agreement (c.) If one parent has been deserted by the other (d.) If both parents deprived of custody of infant by order of Court	Both parents. The parent to whom the custody of the infant is committed by order of any Court or by the agreement; or, if the custody of the infant is so committed to one parent during part of the year and to the other parent during the rest of the year, both parents. The parent who has been deserted. The person to whose custody the infant is committed by order of the Court.
2. Where one parent is dead— (a.) If there is no other guardian (b.) If a guardian has been appointed by the deceased parent	The surviving parent. The surviving parent and the guardian if acting jointly, or the surviving parent or the guardian if the parent or guardian is the sole guardian of the infant.
3. Where both parents are dead . .	The guardians or guardian appointed by the deceased parents or by the Court under section 4 of this Act.

II. Where the Infant is Illegitimate.

Circumstances.	Person whose Consent is required.
1. If the mother of the infant is alive	The mother, or, if she has by order of the Court been deprived of the custody of the infant, the person to whom the custody of the infant has been committed by order of the Court.
2. If the mother of the infant is dead	The guardian appointed by the mother.