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CHAPTER 132**GUARDIANSHIP AND CUSTODY OF INFANTS****ARRANGEMENT OF SECTIONS****SECTION**

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CHAPTER 132

GUARDIANSHIP AND CUSTODY OF INFANTS

48 of 1961. 27 of 1976. 5 of 1987

An Act relating to the guardianship and custody of infants.

[Commencement 31st July, 1961]

Short title.

1. This Act may be cited as the Guardianship and Custody of Infants Act.

Interpretation.

2. In this Act, unless the context otherwise requires-

27 of 1976, s. 2.

"child" means a person under eighteen years of age but does not include a person who is or has been married;

"court" means the Supreme Court;

"parent" includes any person liable by law to maintain a child or entitled to its custody;

"person" includes any local authority, school or institution.

Rights of surviving parent as to guardianship.

3. (1) On the death of the father of a child, the mother, if surviving, shall, subject to the provisions of this Act, be the guardian of the child, 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 a child, the father, if surviving, shall, subject to the provisions of this Act, be guardian of the child, 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.

Power of father and mother to appoint testamentary guardians.

4. (1) The father of a child may by deed or will appoint any person to be guardian of the child after his death.

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

(3) Any guardian so appointed shall act jointly with the mother or father as the case may be of the child 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 child, 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 child, and in the latter case may make such order regarding the custody of the child and the right of access thereto of its mother or father as, having regard to the welfare of the child, the court may think fit, and may further order that the mother or father shall pay to the guardian towards the maintenance of the child 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) If under section 3 of this Act a guardian has been appointed by the court to act jointly with the 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.

Powers of guardians.

5. Every guardian appointed under sections 3 and 4 of this Act shall have all such powers over the estate and the person, or over the estate, as the case may be, of a child as a guardian appointed by will or otherwise has in England.

Equal rights of mother to apply to court.

6. The mother of a child shall have the like powers to apply to the court in respect of any matter affecting the child as are possessed by the father.

The court may make order as to custody.

7. (1) The court may, upon the application of the father or mother of a child, make such order as it may think fit regarding the custody of such child and the right of access thereto of either parent, having regard to the welfare of the child, 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 costs as it may think just.

The power of the court under subsection (1) of this section to make an order as to the custody of a child and the right of access thereto may be exercised notwithstanding that the mother of the child is then residing with the father of the child.

Power of court to remove guardian.

8. The court may, in its discretion, on being satisfied that it is for the welfare of the child, remove from his office any testamentary guardian, or any guardian appointed or acting by virtue of this Act and may also, if the court shall deem it to be for the welfare of the child, appoint another guardian in place of the guardian so removed.

Dispute between joint guardians.

9. Where two or more persons act as joint guardians of a child and they are unable to agree on any question affecting the welfare of the child, any of them may apply to the court for its directions, and the court may make such order regarding the matters in difference as it may think proper.

Guardianship in case of divorce or judicial separation.

10. In any case where a decree for judicial separation, or a decree either *nisi* or absolute for divorce, shall be pronounced, the court pronouncing such decree may thereby declare the parent by reason of whose misconduct such 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.

In case of separation deed between father and mother.

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

Provided always that the court shall not enforce any such agreement if it is of the opinion that it will not be for the benefit of the child to give effect thereto.

Power of court as to production of child.

12. Where the parent of a child applies to the court for a writ or order for the production of the child and the court is of the opinion that such parent has abandoned or deserted the child, or that such parent has otherwise so conducted himself or herself that the court should refuse to enforce his or her right to the custody of the child, the court may, in its discretion, decline to issue the writ or make the order.

Power of court to order repayment of costs of bringing up child.

13. 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 the circumstances of the case.

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

14. Where the parent has-

- (a) abandoned or deserted his or her child; or
- (b) allowed his or her 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 or her 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.

Power of court as to child's religious education.

15. (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 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.

(2) Nothing contained in this section or in sections 12 to 14 (inclusive) of this Act 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 under this section, or : diminish the right which any child now possesses to the exercise of its own free choice.

Enforcement of orders for payment of money.***5 of 1987, s. 2.***

16. (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 Act 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 to a fine not exceeding one hundred dollars or to imprisonment for a term not exceeding three months.

(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.

Principle on which questions relative to custody, upbringing, etc., of children are to be decided.

17. Where in any proceeding before any court the custody or upbringing of a child or the administration of any property belonging to or held on trust for a child, or the application of the income thereof, is in question, the court in deciding that question shall regard the welfare of the child 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.

Repeal and saving.

17 of 1897.

18. The Guardianship of Infants Act, 1897 is hereby repealed:

Provided that notwithstanding the repeal of that Act, any order made under or by virtue thereof, and in force at the time of the coming into operation of this Act shall continue in force, so far as the same may not be rendered inapplicable by this Act, until other provision shall be made under, or by virtue of, this Act.