

INFANTS' CUSTODY AND SETTLEMENTS ORDINANCE 1956.*

An Ordinance relating to the Custody of Infants and the Settlement of the Property of Infants.

PART I.—PRELIMINARY.

Short title.

1. This Ordinance may be cited as the *Infants' Custody and Settlements Ordinance 1956*.*

Parts.

2. This Ordinance is divided into Parts, as follows:—

Part I.—Preliminary (Sections 1-5).

Part II.—Custody of Infants (Sections 6-12).

Part III.—Infants' Marriage Settlements (Sections 13-15).

Part IV.—Settlement of Damages recovered on behalf of Infants (Section 16).

Part V.—General Provisions relating to Custody and Property of Infants (Sections 17-18).

Repeal and saving.

3.—(1.) The Infants' Custody and Settlements Act of 1899 of the State of New South Wales, in its application to the Territory, is repealed and, subject to the next succeeding sub-section, the repeal has the same effect as if the repealed Act were an Ordinance.

(2.) An order made by the Court before the date of commencement of this Ordinance under a provision of the Act repealed by this section and in force immediately before that date continues in force subject to this Ordinance and shall be deemed, for the purposes of this Ordinance, to have been made under the corresponding provision of this Ordinance.

Administration.

4. This Ordinance shall be administered by the Attorney-General.

Definitions.

5. In this Ordinance, unless the contrary intention appears—

“parent”, in relation to an infant, includes a person at law liable to maintain the infant or entitled to his custody;

“person” includes the governing body of a school or institution;

“maintenance” includes education;

“the Court” means the Supreme Court.

* No. 2 of 1956, notified in the *Gazette* and commenced on 1st March, 1956.

PART II.—CUSTODY OF INFANTS.

6.—(1.) The Court may, upon the application of a parent of an infant, make such order as it thinks fit regarding the custody of the infant and the right of access of that parent or another parent to the infant, having regard to the welfare of the infant, and to the conduct and wishes of the parents. Custody of infant.

(2.) The Court shall not regard the fact that a parent contemplates leaving the Territory as being of itself a reason for denying that parent the custody of the infant or depriving that parent of the custody if the Court is satisfied that the welfare of the infant will be best served by allowing the parent to have or retain the custody of the infant.

(3.) The Court may make an order under this section notwithstanding that the mother of the infant resides with the father.

(4.) Where the Court makes an order under this section giving custody of an infant to his mother it may, whether or not the mother is residing with the father, order the father to pay to the mother towards the maintenance of the infant such weekly or other periodical sum as the Court, having regard to the means of the father, thinks reasonable.

(5.) An order made under this section in favour of the mother or the father of an infant, whether for custody or maintenance—

(a) is not enforceable and does not give rise to liability while the mother of the infant resides with the father; and

(b) ceases to have effect if, for any continuous period of three months after it is made, the mother of the infant resides with the father.

(6.) Where a parent of an infant is dead, the Court may, on the application of a relative of that parent, make such order as to access to the infant by that relative as to the Court seems fit.

(7.) An order made under this section may, on the application of a parent of the infant, be varied or discharged by a subsequent order.

(8.) Subject to the next succeeding sub-section, an order may be made and enforced under this Part notwithstanding that proceedings have been instituted in the matrimonial causes jurisdiction of the Court by the father or the mother of the infant or that an order has been made in those proceedings.

(9.) An order shall not be made under this Part in respect of a matter where an order in relation to the matter has already been made by the Court in its matrimonial causes jurisdiction or where, at the date of an application made under this Part in respect of the matter, an application in respect of that matter has already been filed in the Court and is then pending.

(10.) An order made under this Part may be varied by the Court in proceedings in its matrimonial causes jurisdiction where the same subject matter arises in those proceedings.

Power of Court as to production of infant.

7. Where the parent of an infant applies to the Court for a writ or order for the production of the infant or for an order under the last preceding section and the Court is of opinion that—

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

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

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

8. Where an infant in respect of whom an application by a parent for the production or custody of the infant is made is being brought up by another person or is boarded out under the law of the Territory relating to child welfare, the Court may, in its discretion, if it orders the infant to be given up to the parent, further order as a condition precedent or upon such terms as it thinks fit that the parent shall pay to that other person or to the Commonwealth the whole of the costs properly incurred in bringing up the infant or such portion of the costs as to the Court seems just and reasonable, having regard to all the circumstances of the case.

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

9. Where a parent has—

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

Power of Court as to infant's religious education.

10.—(1.) Upon an application by the parent of an infant for the production or custody of the infant, the Court may, if it 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 from that in which the parent has a legal right to require that the infant be brought up, make such order as it thinks fit to secure that the infant is brought up in the religion in which the parent has a legal right to require that the infant be brought up.

(2.) Nothing in this section affects the power of the Court to consult the wishes of an infant in considering what order ought to be made or diminishes any right of an infant to the exercise of his own choice.

11.—(1.) Where the Court is satisfied that the parent or other person having the custody of an infant is unfit to continue to have the custody of the infant because of cruelty to, or neglect of, the infant, the Court may order that the infant be given up to the custody of a person specified in the order, being a person who is willing to accept custody, and may by the order impose terms for the infant's maintenance, chargeable upon a parent.

Court may order custody of infants in certain cases.

(2.) An order under this section may be varied or revoked from time to time at the discretion of the Court.

12.—(1.) A Court shall not hold an agreement contained in a deed of separation made between the father and mother of an infant to be invalid by reason only that it provides that the father shall give up the custody or control of the infant to the mother.

Agreement to give up infant not to be invalid.

(2.) A Court shall not enforce an agreement referred to in the last preceding sub-section if it is of opinion that to give effect to it would not be for the benefit of the infant.

PART III.—INFANTS' MARRIAGE SETTLEMENTS.

13. This Part applies to male infants who have attained the age of twenty years and female infants who have attained the age of seventeen years.

Application of Part.

14.—(1.) An infant to whom this Part applies may, upon or in contemplation of his marriage and with the sanction of the Court, make a settlement or contract for a settlement of all or any part of his property or property over which he has a power of appointment, whether real or personal, and whether in possession, reversion, remainder or expectancy; and a conveyance, appointment or assignment, or contract to make a conveyance, appointment or assignment, of any real or personal property executed by the infant with the approval of the Court for the purpose of giving effect to the settlement is as valid and effectual as if the person executing it were of full age.

Marriage settlements with consent of Court.

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

Sanction of Court to be given upon petition.

15. The sanction of the Court to a settlement or contract for a settlement referred to in the last preceding section 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 may also require that any person interested or appearing to be interested in the property shall be served with notice of the petition.

PART IV.—SETTLEMENT OF DAMAGES RECOVERED ON BEHALF OF INFANTS.

Court may appoint trustees for settlements for benefit of infants.

16.—(1.) Where a verdict is recovered or a judgment entered for an amount as damages in an action brought in the Court by an infant by his next friend, the Court may order that a settlement of the amount be made for the benefit of the infant and may from time to time appoint a trustee or trustees for the settlement.

(2.) The terms of a settlement made in pursuance of the last preceding sub-section shall be fixed by the Court or, subject to the approval of the Court, by an officer of the Court appointed to do so.

PART V.—GENERAL PROVISIONS RELATING TO CUSTODY AND PROPERTY OF INFANTS.

Custody, upbringing and property of infant.

17.—(1.) Where, in a proceeding before a court, the custody or upbringing of an infant or the administration of property belonging to or held in trust for an infant or the application of the income of any such property 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 another point of view the claim by the father or a right at common law possessed by the father in respect of the 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.

(2.) In this section, "upbringing" includes religious instruction.

Equal right of mother to apply to Court.

18. The mother of an infant has the same powers as are possessed by the father of the infant to apply to a court in respect of a matter affecting the infant.