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c 215 Infants Act

Ontario

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CHAPTER 215.

The Infants Act.

CUSTODY OF INFANTS.

Orders as to
custody of
and right of
access to
infant, at
the instance
of father
or mother

1.—(1) The Supreme Court or the surrogate court of the county or district in which the infant resides, upon the application of the father or of the mother of an infant, who may apply without a next friend, may make such order as the court sees fit regarding the custody of the infant and the right of access thereto 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 the order on the application of either parent, or, after the death of either parent, of any guardian appointed 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 the court may deem just.

Order as
to main-
tenance.

(2) The court may also make an order for the maintenance of the infant by payment by the father, or out of any estate to which the infant is entitled, of such sum from time to time as, according to the pecuniary circumstances of the father or the value of the estate, the court deems reasonable. R.S.O. 1927, c. 186, s. 1.

Enforce-
ment of
order.

(3) Where it is made to appear to the judge of the surrogate court of the county or district in which the infant resides in whose favour an order has been made under subsection 2, that default has been made in payment of any sum of money so ordered to be paid, the judge of the surrogate court,—

(a) may from time to time summon the person in default to explain the default; and

(b) may, where service of the summons has been proved, and the person in default does not appear or sufficient reason for his absence is not given, or where it appears that the summons cannot be served, issue an order for the arrest of such person; and

(c) may, when an order has been issued, or where the person in default fails to satisfy the judge that such default is due to inability to pay, order and adjudge such person to be imprisoned for a term not exceeding three months unless the sums of money payable under the order are sooner paid. 1929, c. 48, s. 2.

2.—(1) Unless otherwise ordered by the court, and subject to the provisions of this Act, the father and mother of an infant shall be joint guardians and shall be equally entitled to the custody, control and education of such infant. Father and mother to be joint guardians.

(2) Where the parents are not living together or where the parents are divorced or judicially separated, they may enter into a written agreement as to which parent shall have the custody, control and education of such infant, and in the event of the parents failing to agree either parent may apply to the court for its decision. R.S.O. 1927, c. 186, s. 2.

3. In questions relating to the custody and education of infants the rules of equity shall prevail. R.S.O. 1927, c. 186, s. 3. Rules of equity

INFANT'S REAL ESTATE.

4.—(1) Where an infant is seised, possessed of or entitled to any real estate in fee or for a term of years, or otherwise, and the Supreme Court is of opinion that a sale, mortgage, lease or other disposition of the same, or of a part thereof, or of any timber, not being ornamental, growing thereon, is necessary or proper for the maintenance or education of the infant, or that for any cause his interest requires or will be substantially promoted by such disposition, the court may order the sale, mortgage, or the letting for a term of years, or other disposition of such real estate, or any part thereof, to be made under the direction of the court or of one of its officers, or by the guardian of the infant, or by a person appointed for the purpose, in such manner and with such restrictions as may be deemed expedient, and may order the infant to convey the estate. When sale or lease of infant's estate may be authorized

(2) No sale, mortgage, lease, or other disposition shall be made contrary to the provisions of a will or conveyance by which the estate has been devised or granted to the infant or for his use. Exception.

(3) The court, if it is of opinion that such course is for the benefit of the infant or that his interest requires it or will be substantially promoted thereby, may from time to time authorize the exchange of any lands held in fee or for a term Authorizing exchange of unproductive for productive property.

of years or otherwise by such infant, and which are unproductive, for lands which are productive, but no such exchange of lands shall be made contrary to the provisions of a will or conveyance.

Procedure.

(4) Every exchange of lands made pursuant to subsection 3 shall be conducted and confirmed in such manner as is required by the rules and practice of the Supreme Court in the case of the sale or other disposition of the lands of infants. R.S.O. 1927, c. 186, s. 4.

Surrender of lease.

5. The Supreme Court may sanction the surrender of any lease to which an infant is entitled and if deemed expedient the acceptance of a new lease in lieu thereof. R.S.O. 1927, c. 186, s. 5.

Renewal of lease.

6. Where an infant is entitled to lands subject to a lease containing a covenant for renewal the Supreme Court may sanction the execution of a new lease in accordance with the provisions of the covenant or with such modification as may be deemed expedient. R.S.O. 1927, c. 186, s. 6.

Validity of dispositions. Imp. Act, 11 Geo. IV, and 1 Wm. IV, c. 65, s. 31.

7. Every surrender and lease made or accepted by virtue of this Act shall be deemed to be as valid and effectual as if the person by whom or in whose place the same was made or accepted had been of full age and had made or accepted the same. R.S.O. 1927, c. 186, s. 7.

When a substitute may be appointed to convey.

8. Where it is deemed convenient the court may direct some other person to execute any conveyance, mortgage, lease or other document in the place of the infant and every such conveyance, mortgage, lease or other document whether executed by the infant or by such other person, shall be as effectual as if the infant had executed the same, and had been of the age of twenty-one years at the time. R.S.O. 1927, c. 186, s. 8.

Validity of such conveyance.

Consent to assignment of lease by infant.

9. Where an infant is seised of the reversion of land subject to a lease, and such lease contains a covenant not to assign or sublet without leave, the Supreme Court may, on behalf of the infant, consent to any assignment or transfer of such leasehold interest in the same manner and with the like effect as if the consent were given by a lessor under no such disability. R.S.O. 1927, c. 186, s. 9.

Compensation to owners of particular estates.

10. If any real estate of an infant is subject to dower, and the person entitled to dower consents in writing to accept in lieu of dower a gross sum which the court deems reasonable, or the permanent investment of a reasonable sum in such

manner that the interest thereof be made payable to the person entitled to dower during her life, the court may direct the payment of such sum in gross out of the purchase money to the person entitled to dower, as upon the principles applicable to life annuities may be deemed a reasonable satisfaction for such dower; or may direct the payment to the person entitled to dower of an annual sum or of the income or interest to be derived from the purchase money, or any part thereof, as may seem just, and for that purpose may make such order for the investment or other disposition of the purchase money, or any part thereof, as may be necessary. R.S.O. 1927, c. 186, s. 10.

(NOTE.—*As to conveyance by infants where land is sold by direction of the court for payment of debts of ancestor, see The Trustee Act, Rev. Stat. c. 165.*)

11. Where, by a will or other instrument, property is given beneficially to any person for his life with a power of devising or appointing the same by will in favour of his children, or of one or more of them, the Supreme Court may, on the application, or with the consent of the tenant for life, order that such portion of the proceeds of the property, as it may deem proper, shall be applied towards the maintenance or education of any infant child in whose favour the power might be exercised, notwithstanding that there is a gift over in the event of there being no children to take under the power, or that there is a right conferred upon the tenant for life, or upon some other person in such event to make a disposition of the property in favour of some person other than such children. R.S.O. 1927, c. 186, s. 11.

12.—(1) The Supreme Court may order and direct the sale of any personal property of an infant including any stock or bonds to which he is entitled and may direct any money belonging to an infant and all or any part of the dividends in respect of such stock or bonds to be paid for the maintenance and education or otherwise for the benefit of the infant, and payment in accordance with the order of the court shall operate as full release and discharge from all liability with respect to the money paid, and any transfer of any stock or bonds so sold shall be made in such manner as the court may direct.

(2) The order shall be a full and complete indemnity and discharge to all banks, companies and societies and their officers and servants for all acts and things done, or permitted to be done, pursuant thereto. R.S.O. 1927, c. 186, s. 12.

Order for maintenance where power of appointment in favour of children.

Order for application of dividends of stock for maintenance of infants.

Imp. Act.
11 Geo. IV
and 1 Wm.
IV, c. 65,
s. 32.

Indemnity to banks, etc.

Imp. Act.
11 Geo. IV
and 1 Wm.
IV, c. 65,
s. 44.

MARRIAGE SETTLEMENTS OF INFANTS.

Power of
infant with
the approba-
tion of the
court to
make valid
marriage
settlement.

Imp. Act,
18 and 19
Vict., c. 43,
s. 1.

13.—(1) Every infant upon or in contemplation of his marriage, with the sanction of the Supreme Court, may 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 a power of appointment, whether real or personal and whether in possession, reversion, remainder or expectancy, and every conveyance, appointment and assignment of such property, or contract to make a conveyance, appointment or assignment thereof, executed by such infant with the approbation of the 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.

Exception.

(2) This section shall not extend to a power which it is expressly declared shall not be exercised by an infant.

Notice to
persons
interested.

Imp. Act,
18 and 19
Vict., c. 43,
s. 3.

(3) The court may also require that any person interested or appearing to be interested in the property shall be served with notice of the application. R.S.O. 1927, c. 186, s. 13.

If infant dies
under age,
appointment
or disentail-
ing deed to
be void.

Imp. Act,
18 and 19
Vict., c. 43,
s. 2.

14. Where an appointment, under a power of appointment, or a disentailing assurance has been executed by an infant tenant in tail, under the provisions of section 13, and the infant afterwards dies under age such appointment or disentailing assurance shall thereupon become absolutely void. R.S.O. 1927, c. 186, s. 14.

Case of
males under
20 or females
under 17

Imp. Act,
18 and 19
Vict., c. 43,
s. 4.

15. Nothing in sections 13 and 14 shall apply to a male infant under the age of twenty years or to a female infant under the age of seventeen years. R.S.O. 1927, c. 186, s. 15.

GUARDIANS

Appoint-
ment of
guardians by
surrogate
court.

When
infant's
consent
necessary.

Where no
father or
authorized
guardian or
infant does
not consent.

16.—(1) The surrogate court of the county or district in which the infant resides may appoint the father or mother of the infant, or may, with the consent of the father and the mother or of the surviving parent, appoint some other suitable person or persons to be the guardian or guardians of the infant, but if the infant is of the age of fourteen years no such appointment shall be made without his consent.

(2) If the infant has no parent living or any guardian authorized by law to take the care of his person and the charge of his estate, if any, or if he is of the age of fourteen years and does not give the consent mentioned in subsection 1, upon the written application of the infant, or of any friend of the infant residing within the jurisdiction of the surrogate

court to which the application is made, and after proof of twenty days' public notice of the application in some newspaper published within the county or district to the surrogate court to which the application is made, the court may appoint some suitable and discreet person or persons to be guardian or guardians of the infant, whether the infant is or is not entitled to any property.

(3) Letters of guardianship granted by a surrogate court shall have force and effect in all parts of Ontario, and an official certificate of the grant may be obtained as in the case of letters of administration. R.S.O. 1927, c. 186, s. 16.

Letters of guardianship to have effect throughout Ontario.

17. Subject to the provisions of *The Guarantee Companies Securities Act* and of *The Companies Act* the court shall take from every guardian, appointed under section 16, a bond in the name of the infant, in such penal sum and with such sureties as the judge approves, conditioned that the guardian will faithfully perform his trust, and that he, or his executors or administrators will, when the infant becomes of the full age of twenty-one years, or whenever the guardianship is determined, or sooner if thereto required by law, render a true and just account of all goods, money, interest, rents, profits or other estate of the infant, which shall have come into the hands of the guardian, and will thereupon without delay deliver and pay over to the infant, or to his executors or administrators, the estate or the sum which may be in the hands of the guardian belonging to the infant, deducting therefrom and retaining a reasonable sum for the expenses and charges of the guardian, and the bond shall be recorded by the registrar of the court in the books of his office. R.S.O. 1927, c. 186, s. 17.

Security by the guardian
Rev. Stat.
cc. 263, 251.

Condition of bond.

(NOTE.—As to appointment of trust company as guardian, see *The Loan and Trust Corporations Act*. Rev. Stat. c. 257.)

18.—(1) Testamentary guardians and guardians appointed or constituted by virtue of this Act shall be removable by the Supreme Court, or by the surrogate court for the same causes for which trustees are removable.

Removal of guardians.

(2) Any such guardian may, by leave of the court, resign his office upon such terms and conditions as may be deemed just. R.S.O. 1927, c. 186, s. 18.

Resignation of office by guardian.

19. A return of every appointment and removal or resignation of a guardian shall be made by the registrar of the court to the surrogate clerk in like manner as is required by *The Surrogate Courts Act* in the case of grants of probate or administration. R.S.O. 1927, c. 186, s. 19.

Returns respecting guardians to surrogate court.
Rev. Stat.
c. 106

AUTHORITY OF GUARDIANS.

Guardian's
authority

20. Unless where the authority of a guardian appointed or constituted by virtue of this Act is otherwise limited the guardian so appointed or constituted during the continuance of his guardianship,—

To act for
ward

(a) shall have authority to act for and on behalf of the infant; and

To manage
real and
personal
estate, etc

(b) shall have the charge and management of his estate, real and personal, and the custody of his person and the care of his education. R.S.O. 1927, c. 186, s. 20.

PRACTICE IN AND APPEALS FROM SURROGATE COURTS.

Appeal from
order or
judgment of
surrogate
court.

21. An appeal shall lie from an order or judgment of a surrogate court under this Act to the Court of Appeal. R.S.O. 1927, c. 186, s. 21.

Practice and
procedure.
Rev. Stat.
c. 106.

22. The practice and procedure under *The Surrogate Courts Act* and rules shall apply to proceedings in the surrogate court under this Act, and the power to make rules under that Act shall apply to proceedings under this Act. R.S.O. 1927, c. 186, s. 22.

GENERAL PROVISIONS.

Jurisdiction
of Supreme
Court not
affected.

23. Nothing in this Act shall deprive the Supreme Court of jurisdiction in matters provided for by this Act. R.S.O. 1927, c. 186, s. 23.

Religious
education
of infant.

24. Nothing in this Act shall change the law as to the authority of the father in respect of the religious faith in which his child is to be educated. R.S.O. 1927, c. 186, s. 24.
