

1950

## c 180 Infants Act

Ontario

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CHAPTER 180

The Infants Act

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. R.S.O. 1937, c. 215, s. 1 (1).

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

(2) Where,

Removal of proceedings to Supreme Court.

- (a) custody proceedings have been commenced in a surrogate court under subsection 1; and
- (b) it is made to appear to a judge of the Supreme Court that proceedings in respect of custody of children, alimony, dissolution of marriage or annulment of marriage are pending between the father and mother in the Supreme Court,

the judge of the Supreme Court may order that the custody proceedings in the surrogate court be removed to the Supreme Court, and may make such order as to the hearing of the application for custody and as to costs as he may deem proper. 1947, c. 50, s. 1.

(3) 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.

Order as to maintenance.

(4) 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 3, that default has been made in payment of any sum of money so ordered to be paid, the judge of the surrogate court,

Enforcement of order.

- (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. R.S.O. 1937, c. 215, s. 1 (2, 3).

Father and mother to be joint guardians.

**2.**—(1) Unless otherwise ordered by the court, and subject to 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 the infant.

Agreement as to custody, etc.

(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 the infant, and in the event of the parents failing to agree either parent may apply to the court for its decision. R.S.O. 1937, c. 215, s. 2.

Rules of equity.

**3.** In questions relating to the custody and education of infants the rules of equity shall prevail. R.S.O. 1937, c. 215, s. 3.

When sale or lease of infant's estate may be authorized.

**4.**—(1) Where an infant is seized, 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 the disposition, the court may order the sale, mortgage, or the letting for a term of years, or other disposition of the 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,

(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 of years or otherwise by the 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. Authorizing exchange of unproductive for productive property.

(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. 1937, c. 215, s. 4. Procedure.

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. 1937, c. 215, s. 5. Surrender 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. 1937, c. 215, s. 6. Renewal of lease.

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. 1937, c. 215, s. 7. Validity of dispositions. Imp. Act, 11 Geo. IV, and 1 Wm. IV, c. 65, s. 31.

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. 1937, c. 215, s. 8. Conveyance by a substitute.

9. Where an infant is seised of the reversion of land subject to a lease, and the lease contains a covenant not to assign or sublet without leave, the Supreme Court may, on behalf Consent to assignment of lease by infant.

of the infant, consent to any assignment or transfer of the 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. 1937, c. 215, 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. 1937, c. 215, s. 10.

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

**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. 1937, c. 215, s. 11.

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

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

**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 the 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. 1937, c. 215, s. 12.

Indemnity to banks, etc.  
Imp. Act. 11 Geo. IV and 1 Wm. IV, c. 65, s. 44.

**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 the infant with the approbation of the court for the purpose of giving effect to the settlement, shall be as valid and effectual as if the person executing the same were of the full age of twenty-one years.

Power of infant with the approbation of the court to make valid marriage settlement.

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

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

Exception.

(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. 1937, c. 215, s. 13.

Notice to persons interested.  
Imp. Act. 18 and 19, Vict., c. 43, s. 3.

**14.** Where an appointment, under a power of appointment, or a disentailing assurance has been executed by an infant tenant in tail, under section 13, and the infant afterwards dies under age the appointment or disentailing assurance shall thereupon become absolutely void. R.S.O. 1937, c. 215, s. 14.

If infant dies under age, appointment or disentailing deed to be void.

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

**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. 1937, c. 215, s. 15.

Case of males under 20 or females under 17.

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

**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.

Appointment of guardians by surrogate court.

(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

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

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.

Letters of guardianship to have effect throughout Ontario.

(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. 1937, c. 215, s. 16.

Security by the guardian

Rev. Stat., cc. 162, 59.

**17.** Subject to *The Guarantee Companies Securities Act* and *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. 1937, c. 215, s. 17.

(NOTE.—As to appointment of trust company as guardian, see *The Loan and Trust Corporations Act*, Rev. Stat., c. 214.)

Removal of guardians.

**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.

Resignation of office by guardian.

(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. 1937, c. 215, s. 18.

Returns respecting guardians to surrogate court.

Rev. Stat., c. 380.

**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. 1937, c. 215, s. 19.

**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, Guardian's authority.

- (a) shall have authority to act for and on behalf of the infant; and
- (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. 1937, c. 215, s. 20.

**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. 1937, c. 215, s. 21. Appeal from order or judgment of surrogate court.

**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. 1937, c. 215, s. 22. Practice and procedure. Rev. Stat., c. 380.

**23.** Nothing in this Act shall deprive the Supreme Court of jurisdiction in matters provided for by this Act. R.S.O. 1937, c. 215, s. 23. Jurisdiction of Supreme Court not affected.

**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. 1937, c. 215, s. 24. Religious education of infant.

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