

CHAPTER 141.

INFANCY.

[No. XIX of 1916.]

[28th October, 1916.]

Short title.

1. This Ordinance may be cited as the Infancy Ordinance.

Contracts by infants, except for necessities to be void :

2. All contracts henceforth entered into by infants (by which term minors are held to be meant and included) for the repayment of money lent or to be lent, or for goods supplied or to be supplied (other than contracts for necessities), and all accounts stated with infants, shall be absolutely void :

Proviso.

Provided that this enactment shall not invalidate any contract into which an infant, by any existing or future statute or by the rules of common law or equity, may enter except those now voidable by law.

No action to be brought on ratification of infant's contract.

3. No action shall be brought whereby to charge anyone upon any promise made after full age to pay a debt contracted during infancy, or upon any ratification made after full age of a promise or contract made during infancy, whether there is or is not any new consideration for that promise or ratification after full age.

Soliciting infant to make affidavit in connection with loan. Penalty.

4. If anyone, except under the authority of the Supreme Court (hereinafter referred to as the Court) solicits an infant to make an affidavit or statutory declaration for the purpose of or in connection with any loan, he shall be liable on summary conviction to imprisonment with or without hard labour for a term not exceeding one month, or to a fine not exceeding one hundred dollars, or to both imprisonment and fine, and if convicted on indictment to imprisonment with or without hard labour for a term not exceeding three months, or to a fine not exceeding five hundred dollars.

Avoiding contract for payment of loan advanced during infancy.

5.—(1) If an infant who has contracted a loan which is void in law agrees after he comes of age to pay any money which in whole or in part represents, or is agreed to be

paid in respect of, that loan and is not a new advance, that agreement and any instrument, negotiable or other, given in pursuance thereof or for carrying it into effect, or otherwise in relation to the payment of money representing or in respect of the loan, so far as it relates to money which represents or is payable in respect of the loan and is not a new advance, shall be void absolutely as against all persons whomsoever.

(2) For the purposes of this section any interest, commission, or other payment, in respect of the loan shall be deemed to be a part of the loan.

6.—(1) An infant may be appointed executor but cannot exercise the office until he has attained the full age of twenty-one years.

Infant
executors
and admin-
istrators.

(2) Letters of administration under the Deceased Persons Estates Ordinance shall not be granted to anyone before he has reached the age of twenty-one years, but if an infant is named as sole executor by a will, letters of administration *durante minore etate* may be granted to his guardian or to any other person the registrar of deeds or the Court deems fit.

Chapter 149.

7. An infant can make a will without the consent of parent or guardian if he has attained the full age of fourteen years if a male and if she has attained the full age of twelve years if a female, but subject as aforesaid an infant cannot make a will.

Wills of
infants.

8.—(1) A male infant above the age of twenty years and a female infant above the age of seventeen years may, with the sanction of the Court, upon or in contemplation of marriage make a valid and binding settlement or contract for a settlement of all or any property movable or immovable, real or personal, whether in possession, reversion, remainder, or expectancy, to or over which he or she is entitled or has any power of appointment, not being a power expressly declared to be incapable of being exercised during infancy; and all transports or conveyances, mortgages, appointments of property, and contracts to make a conveyance, or transport, mortgage, or appointment, executed by the infant with the approbation of the Court in order to give effect to the settlement shall be as valid as if the infant were of full age.

Marriage
settlements
with the
sanction of
the Court.

(2) The Court may sanction the settlement or contract upon petition, presented by the infant or his or her guardian, in a summary way without the institution of a suit, and, if there is no guardian, may or may not require a guardian to be appointed, and also may if it thinks fit require any persons interested or appearing to be interested to be served with notice of the petition.

Marriage not to render infant of full age.

9. An infant whether male or female shall be deemed by the mere fact of marriage to have attained full age, but the Court by order, made upon petition by the infant or his or her guardian, or by the Public Trustee, in a summary way without the institution of a suit, may give any directions it sees fit for the protection of the property of the parties until they have attained the age of twenty-one.

Parent under twenty-one may appoint guardian.

10. Subject to the other provisions of this Ordinance, a parent under twenty-one years whether male or female may, by will, deed, or document notarially executed, appoint as from the date of his or her death a guardian or guardians to any child or children who is or are unmarried at the date of his or her death.

Guardian's custody and management of infant's property during infancy.

11.—(1) Any guardian or guardians may assume the custody to the use of any infant of the profits of all his immovable property, and also the custody, tuition, and management of his movable property, until he reaches the age of twenty-one years or until his marriage, and bring any action or actions in relation thereto and may take or grant leases on his behalf.

Application of income of property of infants for purposes of education or otherwise.

(2) Where any property is held by a guardian, trustee, administrator, or executor, in trust for an infant, (whether the trust is express, implied, or constructive), either for life or for any greater interest, and whether absolutely or contingently on the infant attaining the age of twenty-one years, or on the occurrence of any event before the infant's attaining that age, the guardian, trustee, administrator, or executor, may at his sole discretion pay to the infant's parent or guardian (if any) or otherwise apply for or towards the infant's maintenance, education, or benefit, the income of that property or any part thereof, whether there is or is not any other fund applicable to the same purpose, or anyone bound by law to provide for the infant's maintenance or education.

(3) The guardian, trustee, administrator or executor aforesaid shall accumulate all the residue of that income in the way of compound interest by investing it and the resulting income thereof from time to time on securities on which he is by the settlement (if any) or by law authorised to invest trust money, and shall hold those accumulations for the benefit of the person who ultimately becomes entitled to the property from which they arise; but so that the guardian, trustee, administrator, or executor may at any time, if he thinks fit, apply those accumulations or any part thereof, as if they were income arising in the then current year.

(4) This section applies,

- (a) only if and as far as a contrary intention is not expressed in the instrument (if any), under which the interest of the infant arises, and shall have effect subject to the terms of that instrument and to the provisions therein contained; and
- (b) whether the guardian, trustee, administrator, or executor acquired that capacity before or after the commencement of this Ordinance.

12.—(1) On the death of the father of an infant, and if he has died prior to the commencement of this Ordinance then from and after the commencement, the mother if surviving, shall be the guardian of the infant, either alone when no guardian has been appointed by the father, or jointly with any guardian appointed by him.

On death of father, mother to be guardian alone or jointly with others.

(2) When no guardian has been appointed by the father, or if the guardian or guardians appointed by him is or are dead, or refuses or refuse to act, the Court, if it thinks fit, may from time to time appoint a guardian or guardians to act jointly with the mother.

13.—(1) The mother of an infant may by will, deed, or document notarially executed,

Mother may appoint guardian in certain cases.

- (a) appoint any person or persons to be guardian or guardians of the infant after the death of herself and the father of the infant (if the infant is then unmarried), the guardians when appointed by both parents acting jointly;
- (b) provisionally nominate some fit person or persons to act as guardian or guardians of the infant after her death jointly with the father of the

infant, and the Court, after her death, if it be shown to its satisfaction that the father is for any reason unfitted to be the sole guardian of his children, may confirm the appointment of the guardian or guardians, who shall thereupon be authorised and empowered so to act as aforesaid, or may make any other order in respect of the guardianship the Court thinks right.

(2) If guardians are unable to agree upon a question affecting the welfare of an infant, any of them may apply to the Court for its direction, and the Court may make any order or orders regarding the matters in difference it thinks proper.

Illegitimate children.

14. The mother of an illegitimate infant shall be the guardian of that infant and shall be entitled to its custody but may be deprived by the Court of the guardianship or custody as in section sixteen of this Ordinance provided.

Court may make orders as to custody.

15. The Court, upon the application of the mother of an infant, may make any order it thinks fit regarding the custody of the infant and the right of access to the infant of either parent, having regard to the welfare of the infant and 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, any guardian under this Ordinance, and in every case may make any order respecting the costs of the mother and the liability of the father therefor, or otherwise as to costs, it thinks just.

Removal of guardian.

16. The Court, on being satisfied that it is for the welfare of the infant, may remove from his office any testamentary guardian or any guardian appointed or acting by virtue of this Ordinance, and the Court, if it deems it to be for the welfare of the infant, may also appoint another guardian in place of the guardian so removed.

Guardianship in case of divorce or judicial separation.

17. Wherever a decree for judicial separation, or a decree either nisi or absolute for divorce, is pronounced, the Court pronouncing the decree may thereby declare the parent by reason of whose misconduct the decree is made to be a person unfit to have the custody of the children (if any) of the marriage; and in that case the parent so declared

to be unfit, upon the death of the other parent, shall not be entitled as of right to the custody or guardianship of the children.

18. Applications under this Ordinance may be made to the Court in the manner prescribed by rules of court. Application to Court.

19. The Court upon hearing the petition of the mother of any infant under sixteen years of age, may order that the petitioner shall have access to the infant at the times and subject to the regulations the Court deems proper, or to order that the infant shall be delivered to the mother and remain in or under her custody or control, or if already in her custody or under her control remain therein, until the infant attains the age, not exceeding sixteen, directed by the Court; and further, may order that the custody or control shall be subject to any regulations regarding access by the father or guardian of the infant and otherwise the Court deems proper. Court may order that mother may have access to and custody of infant under sixteen years.

20. No agreement contained in any separation deed made between the father and mother of any infant shall be held to be invalid by reason only of its providing that the father of the infant shall give up the custody or control of the infant to the mother : In case of separation deed between father and mother :

Provided that the Court shall not enforce that agreement if the Court is of opinion that it will not be for the infant's benefit to give effect thereto. Proviso.

21. The Supreme Court may exercise in the matter of an infant any power which it has hitherto exercised as upper guardian of minors under the Roman-Dutch law practice or procedure, and may further exercise any power now or at any time hereafter exercised in those matters by the Chancery Division of the High Court of Justice in England in accordance with any practice or procedure of that Court. Supreme Court to retain upper guardianship.