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THE INFANTS ACT 1908

1908, No. 86

An Act to consolidate certain enactments of the General Assembly relating to infants [4 August 1908]

1. **Short Title, etc.**—(1) The Short Title of this Act is the Infants Act 1908.

(2) This Act is a consolidation of the enactments mentioned in the Schedule hereto, and with respect to those enactments the following provisions shall apply:

(a) All rules, regulations, orders, licences, warrants, registers, records, instruments, and generally all acts of authority which originated under any of the said enactments or under any enactment thereby repealed, and are subsisting or in force on the coming into operation of this Act, shall enure for the purposes of this Act as fully and effectually as if they had originated under the corresponding provisions of this Act, and accordingly shall, where necessary, be deemed to have so originated.

(b) All persons duly registered as licensees under the Infant Life Protection Act 1896 shall be deemed to be licensed as foster parents under this Act.

(c) All matters and proceedings commenced under any such enactment, and pending or in progress on the coming into operation of this Act, may be continued, completed, and enforced under this Act.

(3) This Act is divided into Parts, as follows:

PART I—Guardianship and Custody of Infants.
(Sections 2 to 11.)

PART II—Contracts and Wills of Infants. (Sections 12 to 14.)

PART III—Adoption of Children. (Sections 15 to 26.)

PART IV—Protection of Children. (Sections 27 to 38.)

PART V—Infants' Homes. (Sections 39 to 56.)

Cf. 1907, No. 42, s. 19 (2)

The Guardianship of Infants Act 1926 is to be read with and deemed part of Part I of this Act. See s. 1 of that Act.

Part III was repealed by s. 30 (1) of the Adoption Act 1955.

PART I

GUARDIANSHIP AND CUSTODY OF INFANTS

2. Interpretation—In this Part of this Act, if not inconsistent with the context, "Court" means the Supreme Court.

Cf. 1887, No. 4, s. 2

Extension of jurisdiction to Courts of summary jurisdiction—Section 7 of the Guardianship of Infants Act 1926 provides as follows:

7. (1) For the purposes of this Act and of Part I of the Infants Act 1908, as amended by this Act, the expression "the Court" shall include a Magistrate's Court presided over by a Stipendiary Magistrate:

Provided that a Magistrate's Court shall not be competent by virtue of this section—

(a) To entertain any application relating to an infant who has attained the age of sixteen years, unless the infant is physically or mentally incapable of self support; or

(b) To entertain any application involving the administration or application of any property belonging to or held in trust for an infant, or the income thereof.

(2) Where on an application to a Magistrate's Court under this Act the Court makes or refuses to make an order, an appeal shall lie to the Supreme Court:

Provided that where any such application is made to a Magistrate's Court and the Court considers that the matter is one which would more conveniently be dealt with by the Supreme Court, the Magistrate's Court may refuse to make an order, and in such case no appeal shall lie to the Supreme Court.

Principle on which questions relating to custody, upbringing, etc., of infants are to be decided—Section 2 of the Guardianship of Infants Act 1926 provides as follows:

2. Where in any proceeding before the Supreme Court or any other Court of competent jurisdiction the custody or upbringing of an infant, or the administration of any property belonging to or held on trust for an infant, or the application of the income thereof, 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 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.

Cf. Guardianship of Infants Act 1925, s. 1 (U.K.)

Equal right of mother to apply to Court—Section 3 of the Guardianship of Infants Act 1926 provides as follows:

3. The mother of an infant shall have the like powers to apply to the Supreme Court or any other Court of competent jurisdiction in respect of any matter affecting the infant as are possessed by the father.

Cf. Guardianship of Infants Act 1925, s. 2 (U.K.)

3. Repealed by s. 4 (3) of the Guardianship of Infants Act 1926.

Rights of surviving parent as to guardianship—Section 4 (1) and (2) of the Guardianship of Infants Act 1926 provides as follows:

4. (1) On the death of the father of an infant the mother, if surviving, shall, subject to the provisions of this Act, be guardian of the infant 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 an infant the father, if surviving, shall, subject to the provisions of this Act, be guardian of the infant, 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.

Cf. Guardianship of Infants Act 1925, s. 4 (U.K.)

Access of grandparents to infant—Section 3 of the Guardianship of Infants Amendment Act 1927 provides as follows:

3. In the event of the death before or after the passing of this Act of the parents or of one of the parents of an infant the Court may order that the maternal or paternal grandparents of such infant, or any one of them, shall have access to such infant at such times and places as the Court may deem proper.

4. Repealed by s. 5 (8) of the Guardianship of Infants Act 1926.

Power of father and mother to appoint testamentary guardians—Section 5 (1)–(7) of the Guardianship of Infants Act 1926 provides as follows:

5. (1) The father of an infant may by deed or will appoint any person to be guardian of the infant after his death.

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

(3) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the infant 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 infant, 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 infant,

and in the latter case may make such order regarding the custody of the infant and the right of access thereto of its mother or father as, having regard to the welfare of the infant, the Court may think fit; and may further order that the mother or father shall pay to the guardian towards the maintenance of the infant such weekly or other periodical sum as, having regard to the means of the mother or father, the Court may consider reasonable.

(5) A copy under seal of any order made by the Court pursuant to the last preceding subsection for the payment of a weekly or other periodical sum towards the maintenance of any infant may be filed in the office of a Magistrate's Court, and thereupon it shall be of the same force and effect, and all proceedings may be taken thereon in the same manner, as if it were, and at all times since the making thereof had been, a maintenance order made by a Magistrate acting under the authority of the Destitute Persons Act 1910.

(6) Where guardians are appointed by both parents, the guardians so appointed shall after the death of the surviving parent act jointly.

(7) If under the last preceding section a guardian has been appointed by the Court to act jointly with a 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.

Cf. Guardianship of Infants Act 1925, s. 5 (U.K.)

5. Powers of guardian—Every guardian under this Act shall have all such powers over the estate and the person, or over the estate, as the case may be, of an infant as any guardian appointed by will or otherwise now has in England under the Act twelve Charles the Second, chapter twenty-four, or otherwise.

Cf. 1887, No. 4, s. 5

6. Court may make orders as to custody—The Court may, on the application of the [father or] mother of any infant (who may apply without next friend), make such order as it thinks fit regarding the custody of such 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 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 the costs of the mother and the liability of the father for the same or otherwise as to costs as it thinks just.

Cf. 1887, No. 4, s. 6

The words "father or " were inserted by s. 20 (2) of the Statutes Amendment Act 1949.

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

Cf. 1887, No. 4, s. 7

Disputes between joint guardians—Section 6 of the Guardianship of Infants Act 1926 provides as follows:

6. Where two or more persons act as joint guardians of an infant and they are unable to agree on any question affecting the welfare of the infant, any of them may apply to the Court for its direction, and the Court may make such order regarding the matters in difference as it may think proper.

Cf. Guardianship of Infants Act 1925, s. 6 (U.K.)

Making and enforcement of orders for guardianship and custody—Section 6A of the Guardianship of Infants Act 1926 provides as follows:

[6A. (1) In any case not provided for under the Divorce and Matrimonial Causes Act 1928 or the Destitute Persons Act 1910, an application for or in respect of the guardianship or custody of any infant may be made to the Supreme Court by motion, or, where a Magistrate's Court has jurisdiction, may be made to a Magistrate, and on any such application the Court may make such order as it thinks fit.

(2) For the purpose of enforcing any order for the guardianship or custody of an infant made in any Court, whether under the Divorce and Matrimonial Causes Act 1928 or under the Destitute Persons Act 1910, or otherwise, the Judge or Magistrate making the order or any other Judge or Magistrate, as the case may be, may at the time of

making the order or at any time thereafter issue a warrant authorising any constable or Child Welfare Officer, or any other person named in the warrant in that behalf, to take possession of the infant and to deliver him to the person entitled to his custody under the order.

(3) For the purpose of executing any such warrant any constable or Child Welfare Officer, or any other person named in the warrant, may enter and search any place, with or without assistance; and every person who resists or obstructs any person in the execution of the warrant, or who fails or refuses to afford to any person engaged in the execution of the warrant immediate entrance to any premises or to any part thereof, commits an offence and shall be liable on summary conviction to a fine not exceeding fifty pounds or to imprisonment for a term not exceeding one month.]

This section was inserted after s. 6 of the Guardianship of Infants Act 1926 by s. 20 (1) of the Statutes Amendment Act 1949.

8. Guardianship in case of divorce or judicial separation—

In any case where a decree for judicial separation, or a decree either *nisi* or absolute for divorce, is 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.

Cf. 1887, No. 4, s. 8

9. Agreements in separation deeds—No agreement contained in any separation deed made between the father and mother of an infant shall be held to be invalid by reason only of its providing that the father of such infant shall give up the custody or control thereof to the mother:

Provided that no such agreement shall be enforced by any Court if it is of opinion that it will not be for the benefit of the infant to give effect thereto.

Cf. 1882, No. 31, s. 13

10. Rules as to procedure—Rules for regulating the practice and procedure in any proceedings under this Part of this Act, and the forms in such proceedings, may from time to time be made in the same manner and by the same authority as general rules of practice and procedure may from time to time

be made for the Court under any Act for the time being in force authorising the making of such last-mentioned rules.

Cf. 1887, No. 4, s. 9

11. Saving clause—Nothing in this Part of this Act shall restrict or affect the jurisdiction of the Court to appoint or remove guardians or otherwise in respect of infants.

Cf. 1887, No. 4, s. 10

Saving of jurisdiction of Children's Courts—Section 9 of the Guardianship of Infants Act 1926 provides as follows:

9. Nothing in this Act shall limit the jurisdiction of a Children's Court established under the Child Welfare Act 1925, or the powers and duties of the Superintendent of the [Child Welfare Division] of the Department of Education in respect of children committed to his care pursuant to that Act.

The reference to the Child Welfare Division was substituted for a reference to the Child Welfare Branch by s. 12 (7) of the Child Welfare Amendment Act 1948.

PART II

CONTRACTS AND WILLS OF INFANTS

12. Contracts by infants: necessities—All contracts, whether by specialty or by simple contract, entered into by infants 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:

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

Cf. 1887, No. 4, s. 11

This Part of this Act binds the Crown. See s. 5 (2) of the Crown Proceedings Act 1950.

As to marriage settlements by minors, see s. 133 of the Property Law Act 1952.

As to receipts given after 1 January 1953 by married infants, see s. 36 of the Property Law Act 1952.

As to the validity of contracts of infants relating to assistance, see s. 17 of the Rehabilitation Amendment Act 1944 and s. 59 of the Finance Act (No. 2) 1948.

As to the rights of infants to sue for money due for wages or piecework, or for work as a servant, see s. 50 (1) of the Magistrates' Courts Act 1947.

Any person of the age of seventeen years and upwards may become a purchaser, lessee, or licensee under the Land Act 1948. See s. 70 (1) of that Act.

[12A. Power of infant to enter into contract with prior approval of Magistrate's Court—(1) Notwithstanding anything in this Act or in any other Act or any rule of law, no contract shall be void or voidable by reason of any party thereto being an infant if, before the contract is entered into by the infant, it has been approved under this section on behalf of the infant by a Magistrate's Court.

(2) Any application to a Magistrate's Court under this section may be made by the infant on whose behalf the contract is to be approved or by a parent or guardian of the infant.

(3) The Court may, in its discretion, refer any such application to a parent or guardian of the infant, or, where the Court deems it necessary for the purposes of the application, to a solicitor nominated by the Court, or to the Public Trustee or the Maori Trustee, or to any other person, and may order the applicant to pay the reasonable costs and expenses of any person to whom the application is so referred. Any person to whom the application is so referred may file a report in the Magistrate's Court setting out the results of his consideration and examination of the application and making in respect thereof such recommendations as he thinks proper, and may appear and be heard at the hearing of the application; but no such person shall be under any obligation to consider or examine any such application until his reasonable costs and expenses have been paid or secured to his satisfaction.]

This section was inserted by s. 14 of the Statutes Amendment Act 1951.

13. Ratification—No action shall be brought whereby to charge any person upon any promise made after full age to pay any debt contracted during infancy, or upon any ratification made after full age of any promise or contract made during infancy, whether there is or is not any new consideration for such promise or ratification after full age.

Cf. 1887, No. 4, s. 12

14. Repealed by s. 12 (2) of the Wills Amendment Act 1955.

As to the competency of every minor after marriage to make a valid will or revoke a will in all respects as if of full age, see s. 12 (1) of the Wills Amendment Act 1955.

Settlement of claims by infants—Section 35 of the Statutes Amendment Act 1945 provides as follows:

35. (1) This section shall be read together with the Infants Act 1908 (in this section referred to as the principal Act), and shall be deemed to form part of Part II of that Act.

(2) Where the payment of a sum of money has been agreed upon by way of compromise or settlement of a claim for money or damages made by or on behalf of an infant and the claim is not the subject of proceedings in any Court in New Zealand, then, upon application made in a summary manner to a Court of competent jurisdiction, the Court may, by order, authorise the execution by or on behalf of the infant of a release of the claim.

(3) For the purposes of this section the expression "Court of competent jurisdiction" means a Court in which proceedings could be taken to enforce the claim or, in the case of a claim that could not be the subject of proceedings in New Zealand, a Court in which proceedings could be taken to enforce a similar claim that could be the subject of proceedings in New Zealand.

(4) A release executed pursuant to an order made under this section shall be valid and binding in all respects.

(5) The Court, in its discretion, may refuse any application for an order under this section or may grant the application either unconditionally or upon or subject to such conditions as it thinks fit, whether as to the terms of the compromise or settlement, or as to the amount, payment, securing, application, or protection of the moneys paid or to be paid, or otherwise.

(6) Where the Court grants an application for an order under this section the Court may, in its discretion, order that [section sixty-six of the Public Trust Office Act 1957] shall apply with respect to the claim as if it were the subject of proceedings in the Court, and in any such case that section shall apply accordingly.

(7) The provisions of this section shall not be deemed to affect the provisions of [section sixty-six of the Public Trust Office Act 1957] in its application to claims that are the subject of proceedings in any Court, or to affect the powers of the Court to sanction or approve any compromise of any such claim.

In subs. (6) and (7), s. 66 of the Public Trust Office Act 1957, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed s. 13 of the Public Trust Office Amendment Act 1913.

As to the powers of the Court in relation to damages recovered under the Deaths by Accidents Compensation Act 1952, see ss. 17 and 21 of that Act.

PART III

ADOPTION OF CHILDREN

15-26. *Repealed by s. 30 (1) of the Adoption Act 1955.*

PART IV

PROTECTION OF CHILDREN

27. Interpretation—In this Part of this Act, if not inconsistent with the context,—

“Committed for trial” means committed to prison, or admitted to bail in manner provided in [the Summary Proceedings Act 1957]:

“Parent”, when used in relation to a child, includes guardian and every person by law liable to maintain the child:

“Street” includes a road, highway, or other public place, whether a thoroughfare or not.

Cf. 1890, No. 21, s. 2

In the definition of “committed for trial” the Summary Proceedings Act 1957, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Justices of the Peace Act 1908.

A definition of “place of safety” was repealed by s. 48 (2) of the Child Welfare Act 1925. S. 48 (1) of that Act provides that any institution established under that Act shall be deemed to be a “place of safety” within the meaning and for the purposes of this Part of this Act.

28. Punishment for ill-treatment and neglect of children—

(1) Any person who, having the custody, control, or charge of a child, being a boy under the age of fourteen years or being a girl under the age of sixteen years, wilfully ill-treats, neglects, abandons, or exposes such child or causes or procures such child to be ill-treated, neglected, abandoned, or exposed, in a manner likely to cause such child unnecessary suffering or injury to its health, is liable—

- (a) On conviction on indictment, at the discretion of the Court, to a fine not exceeding one hundred pounds, or alternatively, or in default of payment of such fine, or in addition to payment thereof, to imprisonment . . . for any term not exceeding two years; or
- (b) On conviction in a summary way, at the discretion of the Court, to a fine not exceeding fifty pounds, or

alternatively, or in default of payment of such fine, or in addition thereto, to imprisonment . . . for any term not exceeding three months.

(2) If it is proved that a person convicted on indictment as aforesaid was interested in any sum of money accruable or payable in the event of the death of the child, and had knowledge that such sum of money was accruing or becoming payable, the Court may, in its discretion, increase the amount of the said fine so that it shall not exceed two hundred pounds.

(3) Such interest as aforesaid in any sum of money accruable or payable in the event of the death of the child shall be charged in the indictment and put to the jury in the same way, as far as may be, as a previous conviction is now charged and put.

Cf. 1890, No. 21, ss. 3, 4

The words "with or without hard labour" were omitted from paras. (a) and (b) of subs. (1) by s. 40 (1) of the Criminal Justice Act 1954.

Proceedings for offences against children may be heard in a Children's Court; see s. 21 (1) of the Child Welfare Amendment Act 1927. Proceedings relating primarily to children and involving their attendance at any Court are to be heard in a Children's Court; see s. 29 of the Child Welfare Act 1925.

29. Restrictions on employment of children—(1) Any person who causes or procures—

- (a) Any child, being a boy under the age of fourteen years or being a girl under the age of sixteen years, to be in any street for the purpose of begging or receiving alms, or of inducing the giving of alms, whether under the pretence of singing, playing, performing, offering anything for sale, or otherwise; or
- (b) Any child, being a boy under the age of fourteen years or being a girl under the age of sixteen years, to be in any street, or in any premises licensed for the sale of any intoxicating liquor, other than premises licensed according to law for public entertainments, for the purpose of singing, playing, or performing for profit, or offering anything for sale, between nine in the evening and six in the morning; or
- (c) Any child under the age of ten years to be at any time in any street, or in any premises licensed for the sale of any intoxicating liquor, or in premises licensed according to law for public entertainments, or in any circus or other place of public amusement to which the public are admitted by payment, for the purpose of singing, playing, or performing for profit, or offering anything for sale,—

is liable on conviction in a summary way, at the discretion of the Court, to a fine not exceeding twenty-five pounds, or alternatively, or in default of payment of the said fine, or in addition thereto, to imprisonment . . . for any term not exceeding three months.

(2) Any Magistrate who for the time being is exercising jurisdiction within the district of any local authority may, if he thinks it necessary or desirable so to do, from time to time by a written permission extend or restrict the hours mentioned in paragraph (b) of this section, either on every day or on any specified day or days of the week, and either as to the whole of such district or as to any specified area therein.

(3) In the case of any entertainment or series of entertainments to take place in premises licensed according to law for public entertainments, or in any circus or other place of public amusement as aforesaid, where it is shown to the satisfaction of a Magistrate that proper provision has been made to secure the health and kind treatment of any children proposed to be employed thereat, the Magistrate, anything in this Act notwithstanding, may grant a licence, for such time and during such hours of the day and subject to such restrictions and conditions as he thinks fit, for any child exceeding seven years of age, of whose fitness to take part in such entertainment or series of entertainments without injury he is satisfied, to take part in such entertainment or series of entertainments; and such licence may at any time be varied, added to, or rescinded by the same or any other Magistrate, on sufficient cause being shown; and such licence shall be sufficient protection to all persons acting under or in accordance with the same.

(4) A Magistrate may assign to any Inspector appointed under [the Factories Act 1946] the duty of seeing whether the restrictions and conditions of any licence under this section are duly complied with; and any such Inspector shall have the same power to enter, inspect, and examine any place of public entertainment at which the employment of a child is for the time being licensed under this section as he has to enter, inspect, and examine a factory under the said Act.

Cf. 1890, No. 21, s. 5

In subs. (1) the words "with or without hard labour" were omitted by s. 40 (1) of the Criminal Justice Act 1954.

In subs. (4) the Factories Act 1946, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Factories Act 1908.

As to the employment of young persons in ships, see s. 49 of the Shipping and Seamen Act 1952.

See the note to s. 28.

30. Taking of offender into custody, and protection of child—(1) Any constable may take into custody without warrant any person who within view of such constable commits an offence against this Part of this Act, where the name and residence of such person are unknown to and cannot be ascertained by such constable; and any constable may take to a place of safety any child in respect of whom an offence against section twenty-eight or paragraph (a) of section twenty-nine hereof has been committed, and the child may there be detained until it can be brought before a Justice; and such Justice may cause the child to be dealt with as circumstances admit and require until the charge made against any person in respect of the said offence has been determined by the committal for trial, or conviction, or discharge of such person.

(2) Where a constable arrests any person without warrant in pursuance of this section, the Inspector or constable in charge of the station to which such person is conveyed shall, unless in his belief the release of such person on bail would tend to defeat the ends of justice, or to cause injury or danger to the child against whom the offence is alleged to have been committed, release the person arrested on his entering into such a recognisance, with or without sureties, as may in his judgment be required to secure the attendance of such person upon the hearing of the charge.

Cf. 1890, No. 21, s. 6

An institution established under the Child Welfare Act 1925 is deemed to be a "place of safety"; see s. 48 (1) of that Act.
See the note to s. 28.

31. Disposal of child by order of Court—(1) Where the person having the custody or control of a child, being a boy under the age of fourteen or a girl under the age of sixteen years, has been—

- (a) Convicted of committing in respect of such child an offence under section twenty-eight hereof, or any offence involving bodily injury to the child and punishable with imprisonment; or
 - (b) Committed for trial for any such offence; or
 - (c) Bound over to keep the peace towards such child,—
- any person may bring such child before a Magistrate.

(2) The Magistrate, if satisfied on inquiry that it is expedient so to deal with the child, may order that the child be taken out of the custody of such person and committed to the charge of a relation of the child, or some other fit person

named by the Magistrate, such relation or other person being willing to undertake such charge until it attains the age of fourteen years, or in the case of a girl sixteen years, or in either case for any shorter period; and such Magistrate or any other Magistrate may of his own motion, or on the application of any person, from time to time renew, vary, or revoke any such order.

(3) No order shall be made under this section unless a parent of the child is under committal for trial for having been, or has been proved to have been, party or privy to the offence, or has been bound over to keep the peace towards such child.

(4) Any person to whom a child is so committed shall, whilst the order is in force, have the like control over the child as if he were its parent, and shall be responsible for its maintenance, and the child shall continue under the control of such person, notwithstanding that it is claimed by its parent; and any Magistrate having power so to commit a child shall have power to make the like orders under [the Destitute Persons Act 1910] on the parent of the child to contribute to its maintenance during such period as aforesaid as if the child were detained in [an institution established under the Child Welfare Act 1925], and such orders may be made on the complaint or application of the person to whom the child is for the time being committed; and the sums contributed by the parent shall be paid to such person as any Magistrate from time to time may name, and be applied for the maintenance of the child.

(5) In determining on the person to whom the child shall be so committed, the Magistrate shall endeavour to ascertain the religious denomination to which the child belongs, and shall, if possible, select a person of the same religious denomination, and such religious denomination shall be specified in the order; and in any case where the child has been placed pursuant to any such order with a person not of the same religious denomination as that to which the child belongs, the Magistrate who made the original order, or any other Magistrate, shall, on the application of any person in that behalf, and on its appearing that a fit person of the same religious denomination is willing to undertake the charge, make an order to secure his being placed with a person of the same religious denomination.

(6) But if the order to commit the child to the charge of some relation or other person is made in respect of any person having been committed for trial for an offence, as specified

in paragraph (b) of subsection one of this section, the Magistrate shall not be empowered to order the parent of the child to contribute to its maintenance prior to the trial of such person; and if he is acquitted of such charge, or if such charge is dismissed for want of prosecution, then any order made under this section shall forthwith be void, except with regard to anything lawfully done under it.

(7) The Minister of Internal Affairs may at any time in his discretion discharge a child from the custody of any person to whom it is committed in pursuance of this section, either absolutely or on such conditions as he approves; and may, if he thinks fit, from time to time make rules in relation to children so committed to any person, and to the duties of such persons with respect to such children.

Cf. 1890, No. 21, s. 7

In subs. (4) the Destitute Persons Act 1910, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Destitute Persons Act 1908.

The reference in subs. (4) to an institution established under the Child Welfare Act 1925 was substituted for a reference to an industrial school under the Industrial Schools Act 1908 by s. 46 (2) of the Child Welfare Act 1925.

See the note to s. 28.

32. Power of search—(1) If it appears to any Magistrate or to any two Justices, on information made before him or them on oath by any person who, in the opinion of the Magistrate or Justices, is *bona fide* acting in the interest of any child, that there is reasonable cause to suspect that such child, being a boy under the age of fourteen years or a girl under the age of sixteen years, has been or is being ill-treated or neglected in a manner likely to cause the child unnecessary suffering or to be injurious to its health, such Magistrate or Justices may issue a warrant authorising any person named therein to search for such child, and, if it is found to have been or to be ill-treated or neglected in manner aforesaid, to take it to and detain it in a place of safety until it can be brought before a Justice; and any such Justice before whom the child is brought may cause it to be dealt with in the manner provided by section thirty hereof.

(2) The Magistrate or Justices issuing such warrant may by the same warrant cause any person accused of any offence in respect of the child to be apprehended and brought before a Magistrate or two Justices, and proceedings to be taken for punishing such person according to law.

(3) Any person authorised by warrant under this section to search for any child, and to take it to and detain it in a

place of safety, may enter (if need be by force) any house, building, or other place specified in the warrant and remove the child therefrom.

(4) Every warrant issued under this section shall be addressed to and executed by some [commissioned officer of Police] or other superior officer of Police, who shall be accompanied by the person making the information, if such person so desires, unless the Magistrate or Justices otherwise direct, and may also, if the Magistrate or Justices so direct, be accompanied by a registered medical practitioner.

(5) The powers hereinbefore conferred on any two Justices may be exercised by any one Justice, if on the information it appears to him to be a case of urgency.

Cf. 1890, No. 21, s. 8

An institution established under the Child Welfare Act 1925 is deemed to be a "place of safety"; see s. 48 (1) of that Act.

In subs. (4) the reference to a commissioned officer of Police was substituted for a reference to an Inspector by s. 5 (2) of the Police Force Act 1947.

33. Evidence of accused person—In any proceeding against any person for an offence against this Part of this Act such person shall be competent but not compellable to give evidence, and the wife or husband of such person may be required to attend to give evidence as an ordinary witness in the case, and shall be competent but not compellable to give evidence.

Cf. 1890, No. 21, s. 9

34. Evidence of child of tender years—(1) Where in any proceeding against any person for an offence against this Part of this Act the child in respect of whom the offence is charged to have been committed, or any other child of tender years who is tendered as a witness, does not, in the opinion of the Court, understand the nature of an oath, the evidence of such child may be received, though not given on oath, if, in the opinion of the Court, such child is possessed of sufficient intelligence to justify the reception of the evidence and understands the duty of speaking the truth.

(2) The evidence of such child, though not given on oath or affirmation, but otherwise taken and reduced into writing, in accordance with the provisions of [section one hundred and sixty-one of the Summary Proceedings Act 1957], shall be deemed to be a deposition within the meaning of [that section]:

Provided that a person shall not be liable to be convicted of the offence unless the testimony admitted by virtue of this section and given on behalf of the prosecution is corroborated by some other material evidence in support thereof implicating the accused.

(3) Any child whose evidence is received as aforesaid, and who wilfully gives false evidence, is liable to be indicted and tried for such offence, and on conviction thereof may be adjudged such punishment as is provided for by section two hundred and thirty of the Justices of the Peace Act 1908 in the case of juvenile offenders.

Cf. 1890, No. 21, s. 10

Subs. (1): In proceedings before a Children's Court no child is to be required to give evidence on oath, and s. 13 of the Oaths and Declarations Act 1957 applies; see s. 33 of the Child Welfare Act 1925.

In subs. (2), s. 161 of the Summary Proceedings Act 1957, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed ss. 138 and 139 of the Justices of the Peace Act 1908, and the words "that section" have accordingly been substituted for the words "those sections". As to the exclusion of the Summary Proceedings Act 1957 in relation to proceedings before a Children's Court, see s. 209 of that Act. See also s. 34 of the Child Welfare Act 1925.

Subs. (3): As to the trial and punishment of offences committed by children, see s. 34 (1) of the Child Welfare Act 1925. The Justices of the Peace Act 1908 was repealed by s. 390 of the Justices of the Peace Act 1927. S. 242 of the Justices of the Peace Act 1927, being the section corresponding to s. 230 of the 1908 Act, was repealed by s. 15 (1) of the Summary Jurisdiction Act 1952, and that Act was in turn repealed by s. 214 (1) of the Summary Proceedings Act 1957. There is no section in the 1957 Act corresponding to s. 242 of the Justices of the Peace Act 1927.

35. Presumption of age of child—Where a person is charged with an offence against this Part of this Act in respect of a child who is alleged in the charge or indictment to be under any specified age and the child appears to the Court to be under that age, such child shall for the purposes of this Act be deemed to be under that age unless the contrary is proved.

Cf. 1890, No. 21, s. 11

36. Recovery of fines and appeals—(1) Subject to the provisions of this Part of this Act as to proceedings on indictment, every penalty or fine imposed by or under this Part of this Act may be proceeded for and recovered in a summary way under the provisions of [the Summary Proceedings Act 1957].

(2) Where in pursuance of this Part of this Act any person is convicted in a summary way of an offence, and such person did not plead guilty or admit the truth of the information, or where in the case of any application to a Magistrate under section thirty-one hereof any party thereto thinks himself aggrieved by any order or decision of the Court or Magistrate,

he may appeal against such conviction, or order, or decision to the Supreme Court in accordance with the provisions of [the Summary Proceedings Act 1957].

Cf. 1890, No. 21, ss. 12, 13

In subs. (1) and (2) the Summary Proceedings Act 1957, being the corresponding enactment in force at the date of this reprint, has been substituted for the repealed Justices of the Peace Act 1908.

37. Saving for proceedings under other Act—Where an offence against this Act is also punishable under any other Act, it may be prosecuted and punished under either Act, but so that no person shall be punished twice for the same offence.

Cf. 1890, No. 21, s. 15

38. Right of parent, etc., to administer punishment—Nothing in this Part of this Act shall be construed to take away or affect the right of any parent, teacher, or other person having the lawful control or charge of a child to administer reasonable punishment to such child.

Cf. 1890, No. 21, s. 14

PART V

INFANTS' HOMES

39. Interpretation—In this Part of this Act, if not inconsistent with the context,—

“Foster parent” means the holder of a licence under this part of this Act to receive and retain any infant for the purpose of nursing and maintaining it apart from its parents or guardians:

“Foster home” means the place of abode in which a foster parent is licensed to receive and retain any infant:

“Infant” means a child under or apparently under the age of six years:

“Minister” means the Minister of Education:

“Prescribed” means prescribed by regulations made under the authority of this Part of this Act:

[“Superintendent” means the Superintendent of the **[[Child Welfare Division]]** of the Department of Education.]

Cf. 1907, No. 42, s. 2

The definition of “Superintendent” was substituted for the definition of “Secretary” by s. 48 (3) of the Child Welfare Act 1925; and the reference to the Child Welfare Division was substituted for a reference to the Child Welfare Branch by s. 12 (7) of the Child Welfare Amendment Act 1948.

As to Children's Homes, see Part I of the Child Welfare Amendment Act 1927.

40. Appointment of officers—The Minister may from time to time appoint such officers as he deems necessary for the purposes of this Part of this Act, and may assign to any such officer such duties, authorities, and functions as he thinks fit.

Cf. 1907, No. 42, s. 3

As to the appointment of officers of the Public Service, see s. 60 (3) of the Public Service Act 1912.

41. Unauthorised person not to receive infant—[(1) It shall not be lawful for any person to receive or retain in his care or charge any infant for the purpose of nursing or maintaining it apart from its parents or guardians for a longer period than seven consecutive days, unless—

- (a) The person is licensed under this Part of this Act as a foster parent; or
- (b) The infant is lawfully in the home of the person for the purpose of adoption and the requirements of section six of the Adoption Act 1955 are being complied with.]

(2) The Minister may from time to time by warrant exempt from the provisions of this section—

- (a) Any institution that is supported wholly or in part by moneys of the Crown or by public subscription; or
- (b) Any person who, being a near relative of an infant, desires to take charge thereof; or
- (c) Any person as to whom the Minister is satisfied that such provisions should not apply.

Cf. 1907, No. 42, s. 4

Subs. (1) was substituted for the original subsection (as amended by s. 43 (1) of the Child Welfare Act 1925) by s. 2 (1) of the Infants Amendment Act 1957.

42. Application for licence—Every person who desires to obtain a licence under the provisions of this Part of this Act shall make application in the prescribed form to the [Superintendent] or to such other officer as the Minister from time to time appoints to receive such applications.

Cf. 1907, No. 42, s. 5

The word "Superintendent" was substituted for the word "Secretary" by s. 48 (3) of the Child Welfare Act 1925.

43. Licence—(1) If, after such inquiry as he thinks fit, the [Superintendent] or other officer as aforesaid is satisfied as to the character and fitness of the applicant and the suitability of

the house proposed to be used by the applicant as a foster home, he shall issue a licence to the applicant.

(2) The holder of a licence shall be entitled to receive and maintain in the house specified in the licence any infants (not exceeding at any one time the number specified in the licence) for the purpose of nursing or maintaining such infants apart from their parents or guardians.

(3) *Repealed by s. 3 (3) of the Infants Amendment Act 1908.*

Cf. 1907, No. 42, s. 6

In subs. (1) the word "Superintendent" was substituted for the word "Secretary" by s. 48 (3) of the Child Welfare Act 1925.

Duration of licence—Section 3 (1) and (2) of the Infants Amendment Act 1908 provides as follows:

3. (1) A licence issued under section forty-three of the principal Act shall continue in force until revoked in pursuance of section forty-four of the said Act.

(2) This section shall extend and apply to any licence in force under Part V of the said Act on the passing of this Act.

44. Revocation of licence—(1) The licence may at any time during its currency be revoked by the Minister; and on any such revocation the Minister may make such order as he thinks fit for the removal of any infants then in the foster home and for their reception in some other foster home or otherwise

(2) *Repealed by s. 48 (3) of the Child Welfare Act 1925.*

Cf. 1907, No. 42, s. 7

In subs. (1) the words "or he may issue a warrant for the admission of any such infant to an industrial school" were omitted by s. 48 (3) of the Child Welfare Act 1925.

45. Record book—(1) The foster parent shall at all times keep a record book in the prescribed form, and shall at the prescribed times and in the prescribed manner enter in such record book such particulars as may be required by regulations to be entered.

(2) Any foster parent who fails to observe the requirements of this section, or who makes any false entry in any such record book, shall be liable to a fine not exceeding twenty pounds.

Cf. 1907, No. 42, s. 8

46. Provisions as to maintenance moneys—(1) No payment or reward shall be made or given to or received by a foster parent in respect of any infant except in pursuance of an agreement approved by the [Superintendent] or other person authorised by the Minister.

(2) If default is made in payment of any sum payable under any such agreement, the amount thereof, or such part of that amount as the [Superintendent] thinks fit, may be paid to the foster parent by the [Superintendent], and shall be recoverable by the [Superintendent] in the manner provided by section fifty-one hereof:

Provided that no such payment shall be made by the [Superintendent] after the child attains the age of fifteen years, or is removed from the foster home, or dies.

(3) Where any such agreement is for payment of a lump sum, such lump sum shall be deposited with the [Superintendent] or other officer as aforesaid and not paid to the foster parent, and in such case the foster parent shall be entitled to receive from the [Superintendent] out of the sum so deposited a weekly payment of such amount as may be agreed between the [Superintendent] and the foster parent:

[Provided that, save as aforesaid, no payment out of the sum so deposited shall be receivable by the foster parent after the infant dies or is removed from the foster home; and the residue then remaining in the hands of the [Superintendent] shall be applied from time to time, as the [Superintendent] thinks fit, in the maintenance of the infant or in the payment of any medical or funeral expenses incurred in respect thereof; and any moneys not required for any of those purposes shall be repaid to the person by whom the said sum was so deposited.]

Cf. 1907, No. 42, s. 9

The word "Superintendent" was substituted for the word "Secretary" throughout this section by s. 48 (3) of the Child Welfare Act 1925.

The proviso to subs. (3) was substituted for the original proviso by s. 4 of the Infants Amendment Act 1908.

As to the recovery of payment under subs. (2), s. 51, therein referred to, was repealed by s. 89 of the Destitute Persons Act 1910; see now s. 44 of the Child Welfare Act 1925.

In any prosecution for an offence against this section the onus of proof is on the defendant; see s. 53 of this Act.

47. Superintendent to have powers of guardian—When and so long as any sum of money recoverable by the [Superintendent] by virtue of the last preceding section remains unpaid, he shall have and may exercise, to the exclusion of any other person, the same powers and rights in respect of

the child on whose behalf the said sum was paid as if he were the guardian of such child appointed by the Supreme Court under Part I of this Act, but the powers and rights so conferred upon him shall cease when the child attains the age of fifteen years.

Cf. 1907, No. 42, s. 10

The word "Superintendent" was substituted for the word "Secretary" by s. 48 (3) of the Child Welfare Act 1925.

48. Powers of inspection—(1) Any officer appointed under this Part of this Act may at any time enter any foster home, or any premises in which he has reason to believe that any infant is being maintained contrary to the provisions of this Act, and may inspect every part of any such foster home or premises and examine the state and condition of the infants therein, and also the record book hereinbefore mentioned.

(2) Such officer may at any time be accompanied by a registered medical practitioner.

(3) Such officer may at any time in cases of emergency (of which he shall be sole judge) remove any infant from any foster home or other premises as aforesaid.

(4) Every person who obstructs or hinders any such officer in the performance of his duties is liable to a fine not exceeding twenty pounds.

Cf. 1907, No. 42, s. 11

49. Infant not to be removed from foster home except with consent of officer—Subject to the provisions of the last preceding section, it shall not be lawful for any person to remove any child (whether under or over the age of six years) from a foster home, or for the foster parent to permit such removal, except with the written consent of the [Superintendent] or other officer authorised by the Minister to give such consent.

Cf. 1907, No. 42, s. 12

The word "Superintendent" was substituted for the word "Secretary" by s. 48 (3) of the Child Welfare Act 1925.

50. Death of infant in foster home—(1) If any infant dies in a foster home, the foster parent shall within twenty-four hours after the death give notice thereof to the constable in charge of the nearest police station, who shall forthwith communicate to the Coroner the fact of the death and such circumstances relating to the same as he is aware of.

(2) On such communication the Coroner shall procure a report from a registered medical practitioner as to the cause of death, and shall then decide whether or not under the special circumstances of the case an inquest is necessary.

(3) It shall be the duty of the Coroner at such inquest to inquire not only into the immediate cause of death, but also into all the circumstances relating to the treatment and condition of the infant during life which in his opinion should be inquired into in the public interest.

(4) It shall not be lawful for the foster parent to cause or permit the body of such infant to be buried until the Coroner so authorises by writing under his hand.

(5) A full report of the circumstances attending the death of every such child shall be forwarded by the constable to the [Superintendent].

Cf. 1907, No. 42, s. 13

In subs. (5) the word "Superintendent" was substituted for the word "Secretary" by s. 48 (3) of the Child Welfare Act 1925.

51. Repealed by s. 89 of the Destitute Persons Act 1910.

52. Penalty for offences—Every person who commits a breach of any of the provisions of this Part of this Act is liable, if no express provision has been made in this Act to the contrary, to a fine not exceeding fifty pounds or to imprisonment for any period not exceeding six months.

Cf. 1907, No. 42, s. 15

53. Onus of proof—In any prosecution for an offence against . . . section forty-six hereof, the burden of proving that no payment or reward has been received by the defendant shall lie upon the defendant.

Cf. 1907, No. 42, s. 22

The words "section forty-one or" were omitted by s. 43 (2) of the Child Welfare Act 1925.

54. Cost of administration of this Part—The cost of administration of this Part of this Act shall be paid out of moneys from time to time appropriated by Parliament for that purpose.

Cf. 1907, No. 42, s. 16

55. Regulations—The Governor-General may from time to time, by Order in Council gazetted, make regulations to give effect to the provisions of this Part of this Act.

Cf. 1907, No. 42, s. 17

56. Repealed by s. 30 (1) of the Adoption Act 1955.

Section 1 (2)

SCHEDULE

ENACTMENTS CONSOLIDATED

- 1882, No. 31—The Law Amendment Act 1882: Section 13.
1885, No. 62—The Administration Act 1879 Amendment Act 1885:
Section 5.
1887, No. 4—The Infants' Guardianship and Contracts Act 1887.
1890, No. 21—The Children's Protection Act 1890.
1895, No. 8—The Adoption of Children Act 1895.
1906, No. 37—The Adoption of Children Act Amendment Act 1906.
1906, No. 58—The Statute Law Amendment Act 1906: Sections 2
and 3.
1907, No. 42—The Infant Life Protection Act 1907: Except sections
20 and 23.
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