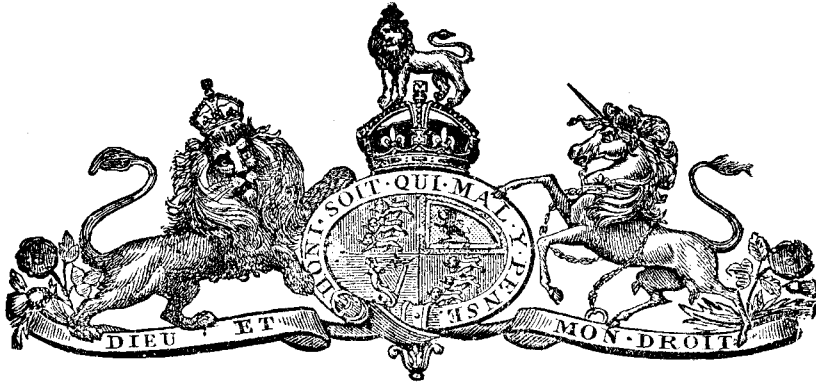


TASMANIA.



1934.

ANNO VICESIMO QUINTO
GEORGI V. REGIS.
 No. 29.

ANALYSIS.

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| <ol style="list-style-type: none"> 1. Short title. 2. Repeal. 3. Interpretation. 4. Power of father to appoint guardian. 5. Mother to be guardian on death of father. 6. Mother may appoint guardian in certain cases. 7. Court may make orders in case of dispute. 8. Powers of guardian. 9. Power to court to remove guardian. 10. Court may make orders as to custody. 11. Guardianship in case of divorce or judicial separation. | <ol style="list-style-type: none"> 12. Power of court as to production of child. 13. Power to court to order repayment of costs of bringing up child. 14. Court in making order to have regard to conduct of parent. 15. Power of court as to child's religious education. 16. Saving of power to consult child. 17. Definition of "parent" and "person." 18. In case of separation deed between father and mother. 19. Rules as to procedure. 20. Saving of existing jurisdiction of court. |
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AN ACT to consolidate certain Enactments relating to the Guardianship and Custody of Infants. [27 November, 1934.]

A.D.
 1934.

BE it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:—

1 This Act may be cited as the *Guardianship and Custody of Infants Act 1934.* Short title.

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2 The Acts set forth in the schedule are hereby repealed.**Repeal.**Interpretation.
51 Vict. No. 5,
s. 2.**3**—(1) In this Act the expression “the court” means the Supreme Court.

(2) The power conferred by this Act to appoint a guardian shall include power to appoint more persons than one to act as guardians; and references in this Act to a guardian shall be deemed to include references to guardians.

Power of
father to
appoint
guardian.Cf. 12 Car. 2,
c. 24, s. 8.**4**—(1) The father of any infant by deed or will may appoint any person to be the guardian of such infant during the minority of such infant or for any lesser term.

(2) The provisions of subsection (1) hereof shall be applicable to an infant born after the death of his father, and the power thereby conferred may be exercised by the father although he is under the age of twenty-one years.

Mother to be
guardian on
death of
father.51 Vict. No. 5,
s. 3 (substi-
tuted by 55
Vict. No. 32,
s. 1).Cf. 49 and 50
Vict., c. 27,
s. 2.[See now 15
and 16 Geo. V.,
c. 45, s. 4.]Mother may
appoint guar-
dian in certain
cases.51 Vict. No. 5,
s. 4; Cf. 49
and 50 Vict.,
c. 27, s. 3.[See now 15
and 16 Geo. V.,
c. 45, s. 5.]**5**—(1) On the death of the father of an infant, the mother if surviving shall be the guardian of such infant, either alone when no guardian has been appointed by the father, or jointly with any guardian appointed by the father.

(2) When no guardian has been appointed by the father, or if the guardian appointed by the father is dead, or refuses to act, the court, if it thinks fit, may appoint a guardian to act jointly with the mother.

6—(1) The mother of any infant by deed or will may—

- I. Appoint any person to be the guardian of such infant after the death of herself and of the father of such infant, if such infant be then unmarried:
- II. Provisionally nominate any person to act as guardian of such infant after her death jointly with the father, and, if after her death it be shown to the satisfaction of the court that the father is for any reason unfitted to be the sole guardian of his children, the court may—

(a) Confirm the appointment of such guardian, who shall thereupon be authorised and empowered so to act as aforesaid; or

(b) Make such other order in respect of the guardianship as the court may think right.

(2) Where guardians are appointed by each parent, they shall, after the death of both parents, act jointly.

Court may
make orders in
case of dispute.
51 Vict. No. 5,
s. 4 (3); 49
and 50 Vict.,
c. 27, s. 3 (3).**7** In the event of guardians being 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 such order or orders regarding the matter as it shall think proper.

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8 A guardian under this Act shall have, in relation to the person and estate, or to the estate, as the case may be, of the infant concerned, power to—

- I. Institute and maintain proceedings against any person wrongfully detaining or taking away the infant from the guardian's custody or control, and to recover damages in respect thereof to the use of the infant:
- II. Take into his custody and control the profits of all lands of the infant; the custody and tuition of the infant; and the management of his goods, chattels, and personal estate: and
- III. Institute and maintain such actions and proceedings in relation to the property of the infant as may be necessary for effectually carrying out any of the powers aforesaid.

9 The court, in its discretion, 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 Act and may also, if it shall deem it to be for the welfare of the infant, appoint another guardian in the place of the guardian so removed.

10 The court may, upon the application of the 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 any 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 may think just.

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

12 Where the parent of a child applies to the court for a writ or order for the production of a child and the court is of opinion that the parent has abandoned or deserted the child, or that he has otherwise so conducted himself that the court

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Powers of guardian.
51 Vict. No. 5, s. 5; Cf. 49 and 50 Vict., c. 27, s. 4, and 12 Car. II., c. 24, s. 9.

Power to court to remove guardian.
51 Vict. No. 5, s. 7; Cf. 49 and 50 Vict., c. 27, s. 6.

Court may make orders as to custody.
51 Vict. No. 5, s. 6; Cf. 49 and 50 Vict., c. 27, s. 5.

[See now 15 and 16 Geo. V., c. 45, s. 3; 18 and 19 Geo. V., c. 26, s. 16; 22 and 23 Geo. V., c. 46, s. 79.]

Guardianship in case of divorce or judicial separation.
51 Vict. No. 5, s. 8; Cf. 49 and 50 Vict., c. 27, s. 7.

Power of court as to production of child.

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55 Vict. No. 5,
s. 2; Cf. 54 and
55 Vict., c. 3,
s. 1.

Power to
court to order
repayment of
costs of bring-
ing up child.

55 Vict. No. 5,
s. 3; Cf. 54 and
55 Vict., c. 3,
s. 2.

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

55 Vict. No. 5,
s. 4; Cf. 54 and
55 Vict., c. 3,
s. 3.

Power of
court as to
child's
religious
education.

55 Vict. No. 5,
s. 5; Cf. 54 and
55 Vict., c. 3,
s. 4.

Saving of
power to
consult child.
Ib.

Definition of
"parent" and
"person."
55 Vict. No. 5,
s. 6; Cf. 54 and
55 Vict., c. 3,
s. 5.

In case of
separation
deed between
father and
mother.

should refuse to enforce his right to the custody of the child, the court may, in its discretion, decline to issue the writ or make the order.

13 If, at the time of the application for a writ or order for the production of a child, the child is being brought up by another person, the court, in its discretion, if it orders the child to be given up to the parent, may further order that the parent shall pay to such other person the whole of the costs properly incurred in bringing up the child, or such portion thereof as shall seem to the court to be just and reasonable having regard to all the circumstances of the case.

14 Where a parent has—

- I. Abandoned or deserted his child: or
- II. Allowed his child to be brought up by another person at that person's expense for such a length of time and under such circumstances as to satisfy the court that the parent was unmindful of his parental duties—

the court shall not make an order for the delivery of the child to the parent unless the parent has satisfied the court that, having regard to the welfare of the child, he is a fit person to have the custody of the child.

15 Upon any application by the parent for the production or custody of a child, if the court is of opinion that the parent ought not to have the custody of the child, and that the child is being brought up in a different religion from that in which the parent has a legal right to require that the child should be brought up, the court shall have power to make such order as it thinks fit to secure that the child is brought up in the religion in which the parent has a legal right to require that the child should be brought up.

16 Nothing in this Act shall interfere with or affect the power of the court to consult the wishes of the child in considering what order ought to be made, or diminish the right which any child now possesses to the exercise of its own free choice.

17 For the purposes of sections twelve to fifteen, the expression "parent of a child" includes any person at law liable to maintain such child or entitled to his custody; and "person" includes any school or institution.

18 No agreement contained in any separation deed made between the father and mother of an infant or infants shall be held to be invalid by reason only of its providing that the father of such infant or infants shall give up the custody or control thereof to the mother; but the court shall not be bound

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to enforce any such agreement if it is of opinion that it will not be for the benefit of the infant or infants to give effect thereto.

19 The judges of the Supreme Court may make rules for regulating the practice and procedure in any proceedings under this Act.

20 Nothing in this Act shall restrict or affect the jurisdiction of the court under any Statute or under the *Charter of Justice* to appoint guardians and keepers of infants and their estates.

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 38 Vict. No. 8, s. 2; Cf. 36 and 37 Vict., c. 12, s. 2.
 Rules as to procedure.
 51 Vict. No. 5, s. 9; Cf. 49 and 50 Vict., c. 27, s. 11.
 Saving of existing jurisdiction of court.
 51 Vict. No. 5, s. 10.

SCHEDULE.

ACTS REPEALED.

Regnal Year and Number.	Title of Act.
38 Vict. No. 8	<i>The Infants' Custody Act 1874</i>
51 Vict. No. 5	<i>The Guardianship of Infants Act 1887</i>
55 Vict. No. 5	<i>The Custody of Children Act 1891</i>
55 Vict. No. 32	<i>An Act to amend "The Guardianship of Infants Act 1887"</i>

