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CHAPTER 215

MINORS

An Act relating to the guardianship, custody and property of minors.

1891--23.
1958--19.
1974--18.
L.N. 168/
1967.
1979--32.

[15th August, 1958] Commence-
ment.

PART I
Preliminary

1. This Act may be cited as the *Minors Act*.

Short title.

2. For the purposes of this Act

“Court” means the High Court or a Judge thereof;

Inter-
pretation.
L.N. 168/
1967.

“lands” includes all lands of any tenure, and all estates or interests in any lands, not being settled estates within the meaning of the *Settled Estates Act*;

Cap. 238.

“minor” means a person who is not of full age;

“parent” includes any person at law liable to maintain a child or entitled to his custody;

“person” includes any school or institution.

3. (1) A person shall attain full age on attaining the age of 18 instead of on attaining the age of 21; and a person shall attain full age on the 23rd May, 1974¹ if he has at that date already attained the age of 18 but not the age of 21.

Age of
majority.

(2) The foregoing subsection applies for the purposes of any rule of law, and, in the absence of a definition or of any indication of a contrary intention, for the construction of “full age”, “infant”, “infancy”, “minor”, “minority” and similar expressions in

(a) any statutory provision, whether passed or made before, on or after the 23rd May, 1974, and

¹Being the date of the commencement of the Minors Act, 1974-18.

(b) any deed, will or other instrument of whatever nature (not being a statutory provision) made on or after that date.

(3) In any statute or statutory instrument where infancy or minority is defined, whether expressly or by necessary implication, by reference to the age of 21 years there shall be substituted a reference to the age of 18 years.

(4) Notwithstanding any rule of law, a will or codicil executed before the 23rd May, 1974 shall not be treated for the purposes of this section as made on or after that date by reason only that the will or codicil is confirmed by a codicil executed on or after that date.

Time at which a person attains a particular age.

3A. (1) The time at which a person attains a particular age expressed in years shall be the commencement of the relevant anniversary of the date of his birth.

(2) This section applies only where the relevant anniversary falls on or after the 23rd May, 1974, and in relation to any enactment, deed, will or other instrument, has effect subject to any provision therein.

PART II

Guardianship and Custody of Minors

Rights of surviving parent as to guardianship.

4. (1) On the death of the father of a minor, the mother, if surviving, shall, subject to this Act, be guardian of the minor, either alone or jointly with any guardian appointed by the father.

(2) 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.

(3) On the death of the mother of a minor, the father, if surviving, shall, subject to this Act, be guardian of the minor, either alone or jointly with any guardian appointed by the mother.

(4) 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.

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

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

(3) Any guardian so appointed shall act jointly with the mother or father, as the case may be, of the minor so long as the mother or father remains alive, unless the mother or father objects to his so acting.

(4) Where the mother or father so objects or the guardian so appointed considers that the mother or father is unfit to have the custody of the minor, 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 minor, and in the latter case may make such order regarding the custody of the minor and the right of access thereto of its mother or father as, having regard to the welfare of the minor, the Court may think fit, and may further order that the mother or father shall pay to the guardian towards the maintenance of the minor such weekly or other periodical sum as, having regard to the means of the mother or father, the Court may consider reasonable.

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

6. Every guardian under sections 4 and 5 shall have all such powers over the estate and the person, or over the estate, as the case may be, of a minor as a guardian appointed by will or otherwise has in England under the *Tenures Abolition Act, 1660*, of the United Kingdom Parliament.¹

7. The Court may, upon the application of any parent of a minor, make such order as it may think proper regarding

Power of father and mother to appoint testamentary guardians.

Powers of guardian.

Any parent may apply to Court for order as to custody of a minor. 1979-32.

¹ 12 Car. 2. c. 24.

the custody of such minor and the right of access thereto of either parent, having regard to the welfare of the minor 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 may think just.

Welfare of minor to be paramount consideration in matters relating to minor.

8. Where, in any proceeding before the Court, the custody or upbringing of a minor or the administration of any property belonging to or held on trust for a minor, or the application of the income thereof, is in question, the Court, in deciding that question, shall regard the welfare of the minor 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.

Equal right of mother to apply to Court.

9. The mother of a minor shall have the like powers to apply to the Court in respect of any matter affecting the minor as are possessed by the father.

Powers of Court with respect to custody and maintenance of minors.

10. (1) The power of the Court under section 7 to make an order as to the custody of a minor and the right of access thereto may be exercised notwithstanding that the mother of the minor is then residing with the father of the minor.

(2) Where the Court, under section 7, makes an order giving the custody of the minor to the mother, then, whether or not the mother is then residing with the father, the Court may further order that the father shall pay to the mother towards the maintenance of the minor such weekly or other periodical sum as the Court, having regard to the means of the father, may think reasonable.

(3) No such order, whether for custody or maintenance, shall be enforceable, and no liability thereunder shall accrue, while the mother resides with the father, and any such order

shall cease to have effect if, for a period of three months after it is made, the mother of the minor continues to reside with the father.

(4) Any order so made may, on the application either of the father or the mother of the minor, be varied or discharged by a subsequent order.

(5) The powers of the Court under section 7 (as qualified by this section) to make orders as to the custody of a minor and the right of access thereto of either parent may be exercised upon the application of the father of a minor in like manner as those powers may be exercised upon the application of the mother of the minor.

11. The Court may, in its discretion, on being satisfied that it is for the welfare of the minor, 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 minor, appoint another guardian in place of the guardian so removed.

Court may
remove
guardian.

12. No agreement contained in any separation deed made between the father and the mother of a minor shall be held to be invalid by reason only of its providing that the father of such minor shall give up the custody or control thereof to the mother:

Custody
provisions in
separation
deed.

Provided always that no court shall enforce any such agreement if the Court is of opinion that it will not be for the benefit of the minor to give effect thereto.

13. Where two or more persons act as joint guardians to a minor and they are unable to agree on any question affecting the welfare of the minor, 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.

Disputes
between
joint
guardians.

14. (1) Any person for the time being under an obligation to make payments in pursuance of any order for the payment of money under this Act shall give notice of any change of address to such person (if any) as may be specified in the order, and any person failing, without reasonable excuse, to

Enforcement
of orders for
payment of
money.

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give such a notice shall be liable, on conviction by a court of summary jurisdiction, to a fine of ten dollars.

(2) Where the Court has made any such order, the Court shall, in addition to any other powers for enforcing compliance with the order, have power in any case, where there is any pension or income payable to the person against whom the order is made and capable of being attached, after giving the person by whom the pension or income is payable an opportunity of being heard, to order that such part as the Court may think fit of any such pension or income be attached and paid to the person named by the Court, and such further order shall be an authority to the person by whom such pension or income is payable to make the payment so ordered, and the receipt of the person to whom the payment is ordered to be made shall be a good discharge to the person by whom the pension or income is payable.

Power of Court to refuse production of child.

15. 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 the opinion that the parent has abandoned or deserted the child or that he has otherwise so conducted himself that the Court 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.

Power of Court to order repayment by parent of costs of bringing up child.

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

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

17. Where the parent has—
 (a) abandoned or deserted his child; or
 (b) 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 or she is a fit person to have the custody of the child.

18. (1) 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 may think fit to secure that the child be brought up in the religion in which the parent has a legal right to require that the child should be brought up.

Court may order child, though not delivered to parent, to be brought up in such religion as he has a right to require.

(2) Nothing in this Act contained 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.

PART III

Minors' Contracts

19. All contracts, whether by specialty or by simple contract, henceforth entered into by minors for the repayment of money lent or to be lent or for goods supplied or to be supplied (other than contracts for necessaries) and all accounts stated with minors, shall be absolutely void:

Contracts by minors, except for necessaries, to be void.

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

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

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

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PART IV

Minors' Settlements

Minor may make settlement on marriage.

21. (1) It shall be lawful for every minor upon or in contemplation of his marriage, with the sanction of the Court, to make a valid and binding settlement or contract for a settlement of all or any part of his property or any property over which he has any power of appointment, whether real or personal and whether in possession, reversion, remainder or expectancy.

(2) Every conveyance, transfer, appointment and assignment of such real or personal estate, or contract to make a conveyance, transfer, appointment or assignment thereof, executed by such minor with the approbation of the Court for the purpose of giving effect to such settlement, shall be as valid and effectual as if the person executing the same were of full age.

(3) This section shall not extend to powers of which it is expressly declared that they shall not be exercised by a minor.

Where minor dies under age, appointment to be void.

22. Where any appointment under a power of appointment or any disentailing assurance is executed by a minor tenant in tail under this Part and such minor afterwards dies under age, such appointment or disentailing assurance shall thereupon become absolutely void.

Sanction of Court to be given on petition.

23. (1) The sanction of the Court to any such settlement or contract for a settlement may be given upon petition presented by the minor or his guardian in a summary way, without the institution of a suit.

(2) Where there is no guardian, the Court may require a guardian to be appointed or not as the Court thinks fit.

(3) The Court also may, if it thinks fit, require that any persons interested or appearing to be interested in the property should be served with notice of such petition.

Limit of age for Part IV. 1974-18.

24. Nothing in this Part shall apply to any minor under the age of seventeen years.

PART V

Sale of Minors' Estates

25. (1) It shall be lawful for the Court, on petition of any minor by his guardian or next friend, if it deems it proper and for the benefit of such minor, from time to time to authorise the sale of any lands of such minor, subject, if the Court so directs, to any charge or encumbrance affecting the same.

Court to authorise sale of minor's lands.

(2) Every such sale shall be conducted and confirmed in the same manner as, by the rules and practice of the Court for the time being, is required in the sale of lands sold under a decree of the Court.

26. Notice of any petition to the Court under section 25 shall be inserted in such newspapers as the Court directs, and any person, whether interested in the lands or not, may apply to the Court, by motion, for leave to be heard in opposition to or in support of any such petition, and the Court is hereby authorised to permit such person to appear and be heard in opposition to or in support of any such petition on such terms as to costs or otherwise, and in such manner, as it thinks fit.

Notice of petitions to be published and persons may be heard.

27. (1) All money to be received on any sale effected under the authority of this Part shall be paid to the Accountant-General, to the account of the Registrar of the Court *ex parte* the petitioner in the matter of this Act.

Moneys to be paid to Accountant-General and applied to certain purposes.

(2) Such money, after payment of any costs attending such petition which may be allowed by the Court, shall be applied as the Court from time to time directs to some one or more of the following purposes, namely, the discharge or redemption of any encumbrance affecting the lands in respect of which money was paid or the payment to any person becoming absolutely entitled.

28. Until the money can be applied as aforesaid, the same shall be from time to time invested in such securities as the Court thinks fit, and the interest or dividends of such securities, or such parts thereof as the Court may from time to time direct, shall be paid to the guardian for the time being of the minor

Money to be invested pending application.

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or such other person as would have been entitled to the rents and profits of the lands so sold if the same had not been sold.

PART VI

Miscellaneous

Oath to be taken by guardian.

Schedule. 1891-23.

29. Every guardian, before he obtains letters of guardianship, shall, before the Registrar or any person deputed by him to administer such oath, take the oath in the form in the Schedule.

Attorneys of guardians. 1891-23. L.N. 168/1967.

30. (1) All powers of attorney from any guardian who is duly qualified himself to act as such residing in any part of the Commonwealth shall be good and valid to all intents and purposes as if such guardian had been qualified in this Island.

(2) All persons whatsoever residing out of the Island as guardians shall be amenable themselves or by their attorneys-at-law to all the courts in this Island as if they personally resided here, and service of any writ, *subpoena* or process on their attorneys-at-law shall be deemed good service on the principals to all necessary legal and equitable purposes.

Rules. Cap. 117.

31. Rules may be made in like manner as rules may be made under and for the purposes of the Supreme Court of Judicature Act for carrying the purposes of this Act into effect and for regulating the form and mode of procedure and, generally, the practice of the Court in respect of the matters to which this Act relates and for regulating the fees and allowances to all officers of the Court and attorneys-at-law in respect of such matters.

s. 29.

SCHEDULE

“ I, A.B., do swear that I will faithfully administer all the estate of C.D. which shall come into my hands as guardian and be accountable for the same, and the profits thereof, when thereunto legally required; and that I will not, to the best of my skill and power, suffer any of the estate to be fraudulently levied upon and sold or otherwise disposed of unlawfully, unnecessarily or at an under-value, so help me God.”