CHAPTER 27.

An Act to amend the Law relating to the Guardianship and Custody of Infants. [25th June 1886.]

A.D. 1886.

WHEREAS it is expedient to amend the law relating to the guardianship and custody of infants:

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

Short title.

1. This Act may be cited as the Guardianship of Infants Act, 1886.

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

2. On the death of the father of an infant, and in case the father shall have died prior to the passing of this Act then from and after the passing of this Act, 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. 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 shall think fit, from time to time appoint a guardian or guardians to act jointly with the mother.

Mother may appoint guardian, in certain cases.

3. (1.) The mother of any infant may by deed or will appoint any person or persons to be guardian or guardians of such infant after the death of herself and the father of such infant (if such infant be then unmarried), and where guardians are appointed by both parents they shall act jointly.

(2.) The mother of any infant may by deed or will provisionally nominate some fit person or persons to act as guardian or guardians of such infant after her death jointly with the father of such infant, and the court, after her death, if it be shown to the satisfaction of the court that the father is for any reason unfitted to be

A.D. 1886.

the sole guardian of his children, may confirm the appointment of such guardian or guardians who shall thereupon be authorized and empowered so to act as aforesaid, or make such other order in respect of the guardianship as the court shall think right.

(3.) 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 matters in difference as it shall think proper.

Powers of guardian.

4. Every guardian in England and Ireland 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 in Ireland under the Act of the Irish Parliament fourteen and fifteen Charles the Second, chapter nineteen, or otherwise.

Court may make orders as to custody.

5. The court may, upon the application of the mother of any infant (who may apply without next friend), make such order as it may think 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 may think just.

Power to Court to remove guardian.

6. In England and Ireland the High Court of Justice, in any division thereof, and in Scotland either division of the Court of Session, may, in their 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 they shall deem it to be for the welfare of the infant, appoint another guardian in place of the guardian so removed.

Guardianship in case of divorce or judicial separation.

7. 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.

Application of Act to Scotland.

8. In the application of this Act to Scotland the word guardian shall mean tutor, and the word infant shall mean pupil.

Interpretation of terms

9. In the construction of this Act the expression "the Court" shall mean—

In England the High Court of Justice or the county court of the district in which the respondent or respondents or any of them may reside:

In Ireland the High Court of Justice or the county court of the district in which the respondent or respondents or any of them may reside:

In Scotland the Court of Session or the sheriff court within whose jurisdiction the respondent or respondents or any of them may reside.

Any application under this Act to the High Court of Justice in England or to the High Court of Justice in Ireland shall be made to the Chancery Division of the said Courts respectively in such manner as may be prescribed by Rules of Court.

In Scotland the expression "the Court of Session" shall mean either division of the said court, and in vacation the Lord Ordinary on the Bills.

As to removing proceedings and appeals.

10. In England and Ireland when any application has been made under this Act to a county court the High Court of Justice shall, at the instance of any party to such application, order such application to be removed to the High Court of Justice and there proceeded with before a judge of the Chancery Division, on such terms as to costs as it may think proper.

In England and Ireland an appeal shall lie to the High Court of Justice from any order made by a county court under this Act; and, subject to any rules of court made after the passing of this Act, any such appeal shall be heard by a judge of the Chancery Division of the High Court of Justice at chambers or in court, as he shall direct.

In Scotland any application made under this Act to a sheriff court may be removed to the Court of Session, at the instance of any party, in the manner provided by and subject to the conditions prescribed by the ninth section of the Sheriff Courts (Scotland) Act, 1877. 40 & 41 Vict. c. 50.

In Scotland an appeal shall lie to either division of the Court of Session from any order made by the Lord Ordinary on the Bills or a sheriff court under this Act.

A.D. 1886.

Rules as to procedure.

11. Rules for regulating the practice and procedure in any proceedings under this Act, and the forms in such proceedings may from time to time be made—

(*a*) so far as respects the High Court of Justice or Her Majesty's Court of Appeal in England or Ireland by Rules of Court; and

(*b*) so far as respects the Court of Session in Scotland by Act of Sederunt; and

(*c*) so far as respects any county court in England or Ireland and the Sheriff Court in Scotland in like manner as rules and orders respecting those courts can respectively for the time being be made.

Tutors.

12. In Scotland tutors being administrators-in-law, tutors-nominate, and guardians appointed or acting in terms of this Act who shall, by virtue of their office, administer the estate of any pupil, shall be deemed to be tutors within the meaning of an Act passed in the twelfth and thirteenth years of the reign of Her Majesty, intituled "An Act for the better protection of the property of "pupils, absent persons, and persons under mental incapacity, "in Scotland," and shall be subject to the provisions thereof: Provided always, that such tutors being administrators-in-law, tutors-nominate, and guardians aforesaid shall not be bound to find caution in terms of the twenty-sixth and twenty-seventh sections of the last recited Act, unless the court, upon the application of any party having interest, shall so direct.

Saving clause.

13. Nothing in this Act contained shall restrict or affect the jurisdiction of the High Court of Justice in England, and of the High Court of Justice in Ireland, or of any division of the said Courts, and of the Court of Session in Scotland, to appoint or remove guardians, or (in the case of Scotland) tutors or factors loco tutoris or otherwise in respect of infants.

LONDON: Printed by EYRE and SPOTTISWOODE,
Printers to the Queen's most Excellent Majesty. 1886.