CHAPTER 33.

An Act to amend the law as to the duration and recovery of aliment for, and the custody of, illegitimate children in Scotland, and for other purposes connected therewith.

[1st August 1930.]

BE it enacted by the King'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 :—

Duration and amount of aliment.

1.—(1) The obligation of the mother and of the father of an illegitimate child to provide aliment for such child shall (without prejudice to any obligation attaching at common law) endure until the child attains the age of sixteen years.

(2) Where in any action of affiliation and aliment the court finds that the defender is the father of the child, the court shall in awarding any sum in name of inlying expenses, or in name of aliment, have regard to the means and position of the pursuer and the defender, and the whole circumstances of the case.

(3) The court shall have power on the application of any person who is entitled to the custody of an illegitimate child, whether such person is the father or the mother of the child or is a third party, to make an order for payment to the person so entitled to the custody, by the father or the mother or by the father and the mother, as the case may be, of such sum in respect of aliment of the child as having regard to the means and position of the father and the mother and the whole circumstances of the case the court may think reasonable.

(4) The court shall have power to recall or vary an order for the payment of any sum in respect of aliment made under subsection (2) or subsection (3) of this section.

Power of court to make order as to custody of

2.—(1) The court may, upon application by the mother or by the father of any illegitimate child, or in any action for aliment for an illegitimate child, make such order as it may think fit regarding the custody

of such child and the right of access thereto of either parent, having regard to the welfare of the child and to the conduct of the parents and to the wishes as well of the mother as of the father and may on the application of either parent recall or vary such order.

Custody of child and cesser of the right of father to meet claim for aliment by offer to assume custody.

(2) The father of an illegitimate child shall not be entitled to meet a claim for aliment by the mother of such child by an offer to assume custody of such child and his liability for aliment shall not be affected by such offer.

Power to raise action of affiliation and aliment before birth of child.

3.—(1) Any unmarried woman who is pregnant may before the birth of the child raise an action of affiliation and aliment against the person she alleges to be the father of the child, but no declarator of paternity shall be pronounced, no proof shall be taken, and, subject as hereinafter provided, no decree for payment shall be pronounced in such action until after the birth of the child, but where the action is undefended, or where paternity is admitted by the defender, the court may before the birth of the child grant decree for payment of a sum to account in respect of inlying expenses, and for payment of periodical sums in respect of aliment beginning at the date of the birth of the child and where any such decree has been granted the Court may, after the birth of the child, grant decree for payment of a further sum in respect of inlying expenses, and may review and alter the periodical sums so decerned for in respect of aliment.

(2) Notwithstanding anything in the foregoing subsection, it shall not be competent to raise any action of affiliation and aliment before the birth of the child unless the pursuer produces—

(*a*) A declaration sworn before a justice of the peace or magistrate that the defender is the father of the child, and

(*b*) A certificate signed by a duly qualified medical practitioner certifying that she is pregnant and specifying the date on which delivery may normally be expected;

and it shall not be competent to raise any such action more than three months before the date so specified.

Power to order payment to inspector of poor or other person of sums due in name of aliment.

4. Where a court grants or has granted decree against any person for payment of aliment for an illegitimate child, the court may, at the time of granting such decree or at any subsequent time, on the application of the inspector of poor, with the consent of the person in whose favour the decree has been granted, or on the application of any other person authorised by the person in whose favour the decree has been granted, order that any sums due thereunder shall be paid to the inspector of poor or to the person so authorised, as the case may be, and where any such order has been made the inspector of poor or the person so authorised, as the case may be, shall have the like right to enforce the decree by diligence including the right to take proceedings under the Civil Imprisonment (Scotland) Act, 1882, as if it were a decree in his favour, and shall pay over any sums recovered thereunder to the person in whose favour the decree was granted or shall expend such sums for behoof of the child.

45 & 46 Vict. c. 42.

Funeral expenses.

5. In the event of the death of an illegitimate child under the age of sixteen, the parents of such child shall (without prejudice to any liability incurred by them or either of them under contract) be liable for the funeral expenses jointly or in such proportions as the sheriff on summary application may determine: Provided that nothing in this section shall entitle any person to recover from either parent of such child any sum in respect of the funeral expenses, in so far as they exceeded such amount as the sheriff may consider reasonable in the circumstances, unless such parent was a party to the incurring of such expenses.

Definition.

6. The expression "the court" shall mean the court of session or the sheriff court.

Extent of Act.

7. This Act shall apply to Scotland only.

Short title.

8. This Act may be cited as the Illegitimate Children (Scotland) Act, 1930.