

Laws of Her Majesty's Province of United Canada, passed in the year 1854. Quebec: Stewart Derbyshire and George Desbarts, 1854.

18 Victoria – Chapter 126

An Act to amend the Law relating to the custody of Infants. Assented to 30th May, 1855.

Whereas it is desirable that the law relating to the custody of infant children shall be so amended as to enable the Judges of the Superior Courts of Law or Equity in Upper Canada, to give the custody of such children to their mothers in certain cases: Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and of the Legislative Assembly of the Province of Canada, constituted and assembled by virtue of and under the authority of an Act passed in the Parliament of the United Kingdom of Great Britain and Ireland, and intituled, *An Act to re-unite the Provinces of Upper and Lower Canada, and for the Government of Canada*, and it is hereby enacted by the authority of the same, as follows:

- I. It shall be lawful for any of the Superior Courts of Law or Equity in Upper Canada, or for any Judge of either of such Courts, upon hearing the petition of the mother of any infant, being in the sole custody or control of the father thereof, or of any person by his authority, or of any guardian after the death of the father, if such Court or Judge shall see fit, to make order for the access of the petitioner to such infant, at such times and subject to such regulations as such Court and Judge shall think convenient and just, and if such infant shall be within the age of twelve years, to make order for the delivery of such infant to the petitioner, to remain in the care and custody of the petitioner until such infant shall attain such age of twelve years, subject to such regulations as such Court or Judge shall direct, and also to make order for the maintenance of such infant by the father thereof, or out of any estate to which such infant may be entitled, by the payment by such father or out of such estate, of such sum or sums of money from time to time, as according to the pecuniary circumstances of such father or the value of such estate, such Court or Judge shall think just and reasonable.
- II. Such Court or Judge as aforesaid shall have power to enforce the attendance of any person before such Court or Judge, to testify on oath respecting the matter of such petition, by order or rule to be made for that purpose, on the service of a copy thereof and the payment of expenses as a witness, in the same manner as in any proceeding in any suit or action in the said Courts respectively, or to receive affidavits respecting the matters in such petition, such affidavits to be sworn before any Master, ordinary or extraordinary, in Chancery, or any Commissioner for taking affidavits in either of the Superior Courts of Common Law; and any person who shall swear falsely and corruptly on any personal examination, or in any affidavit so sworn, in such matter, shall be deemed guilty of perjury and incur the penalties thereof.
- III. All orders that shall be made by any Court or Judge by virtue of this Act, shall be enforceable by process of contempt by the Court or any Judge thereof, by which or whom such order was made.

IV. No order shall be made by virtue of this Act, whereby any mother, against whom adultery shall be established by judgment in an action for criminal connection, at the suit of her husband against any person, shall have the custody of any infant, or access to any infant; any thing herein contained to the contrary notwithstanding.

V. This Act shall apply only to Upper Canada.