

Care Rights

Control of Mother over Children.

As between the father and mother there are two statutes, the Act of May 4th, 1855, and that of June 26th, 1895. P. Z. 316

The Act of 1855 provides that a mother shall have all rights over her children where her husband, by reason of drunkenness, profligacy or other cause, shall neglect or refuse to support them, provided she is a proper person. The act also gives the court power to appoint a guardian in such cases, where the mother is not a proper person, or where she is dead.

The more recent act, that of June, 1895, provides that a married woman, who is the mother of a minor child and who contributes toward its support, maintenance and education, shall have the same and equal power, control and authority over it, and the

same and equal right to its custody and services as that possessed by her husband, the father of the child, provided she is qualified as a fit and proper person to have the control and custody of the child.

The question has been before the courts in many cases. In one A, the father of two children, attempted to obtain the custody of them by writ of habeas corpus from B, their mother. It appeared that A and B had separated on account of incompatibility of temper; that A was well able to support the children; and that B had on several occasions abused the elder child. Court awarded custody of the older child to the father and that of the younger to the mother. Commonwealth vs. Snyder, 11 Lanc. Bar, 62. Decided in 1879.

A, the mother, attempted to obtain the custody of her two children who were in the care of B, the father. It appeared that A was unfit to have the custody by reason of excessive use of liquor. It was shown that she had reformed this habit and had

abstained from drinking for months before this application, on the express promise of B that upon her reformation the children should be restored to her. Court decided that the reformation of A was not sufficiently tested by time to warrant trusting her with the care of the children, but that she could visit them at reasonable times. Commonwealth vs. Smith, 1 Brewster, 547. Decided in 1868.

A left her husband, B, without legal cause, taking with her a child 2 1/2 years old. B retook the child and A obtained a writ of habeas corpus. The facilities of both A and B for bringing up the child were equal. The court held that while prior to the act of June 20th, 1895, the court would have awarded the child under these circumstances to the father, it was bound under the act to award the child to the mother, since the act required the court to decide such cases solely with a view to the welfare of the child, which, in the case of a child of tender years, was bound to be in favor of its remaining with the mother. Commonwealth vs. Myers, 6 D. R., 31. The children being on the streets, it is enough to

347 It would seem that the act of 1895 extended the power of the mother beyond that of the act of 1855. Each case, however, would be governed by its own facts and where either parent be found unfit the custody of the children given to the other. Under the act of 1895, however, the interest of the child is looked to more particularly, and, all other things being equal, the mother would probably be the custodian, especially if the child were one of tender years.

As regards the mother and third persons. On the death of the husband the mother becomes the natural guardian of her children and is entitled to their custody. A's two sons were living with their paternal grandparents, placed there by A on the death of her husband. It appeared that A was a missionary, had no permanent home, and had not visited the children in three years. The home

A N A C T

Relating to husband and wife who are the parents of minor children, enlarging and extending the power, control and authority of the mother over their minor children, under certain circumstances.

Section 1. Be it enacted, &c., That hereafter a married woman, who is the mother of a minor child and who contributes by the fruits of her own labor or otherwise toward the support, maintenance and education of her said minor child, shall have the same and equal power, control and authority over her said child and shall have the same and equal right to its custody and services as is now by law possessed by her husband, who is the father of such minor child: Provided, however, That the mother of such minor child is otherwise qualified as a fit and proper person to have the control and custody of said child.

Section 2. That in all cases of dispute between the father and mother of such minor child, as to which parent shall be entitled to its custody or services, the judges of the courts shall decide, in their sound discretion, as to which parent, if either, the custody of such minor child shall be committed, and shall remand such child accordingly, regard first being had to the fitness of such parent and the best interest and permanent welfare of said child.

Approved the 26th day of June, A. D. 1895.

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