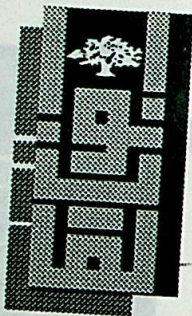




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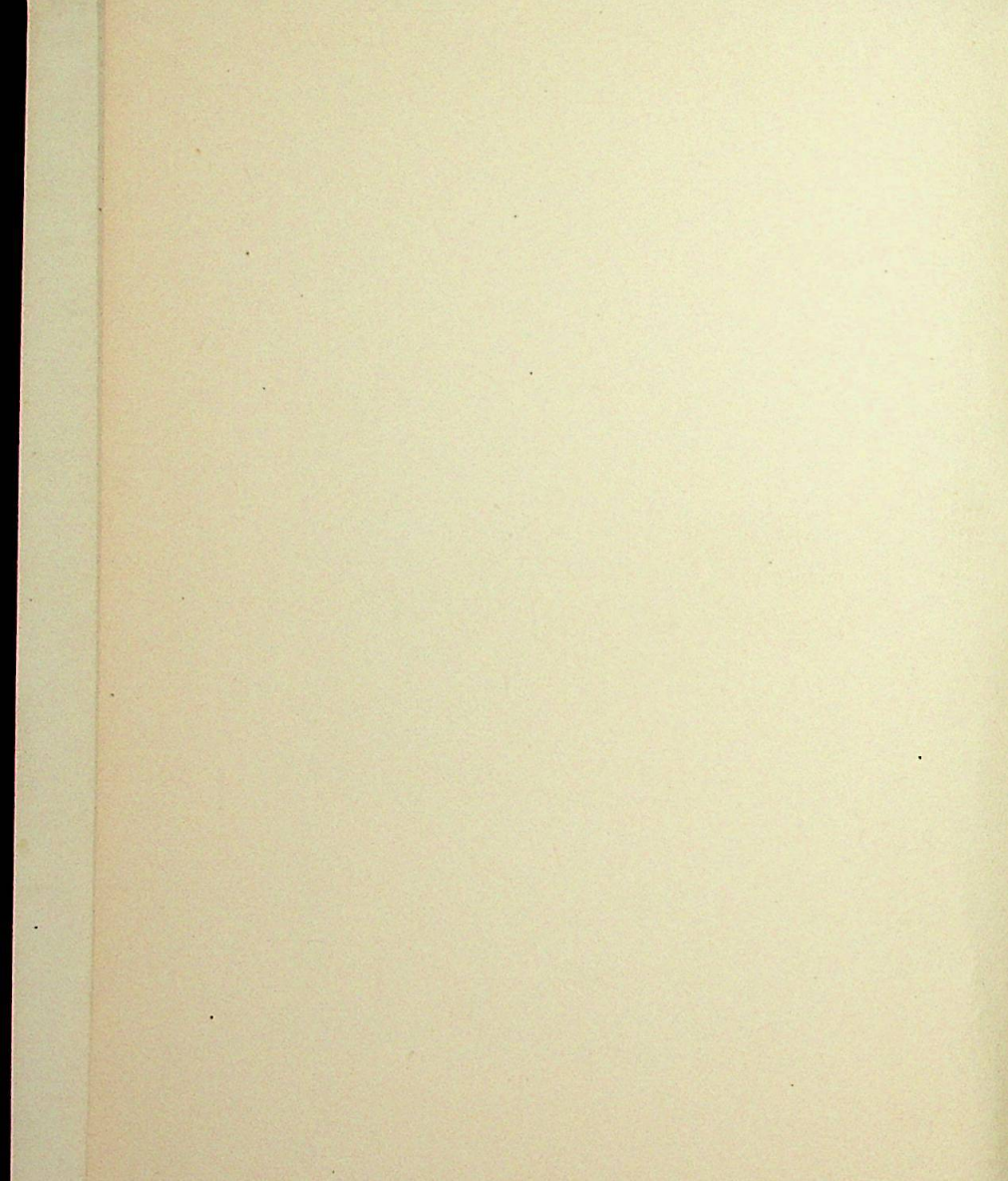
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THE LAW OF CHILD PROTECTION

BY

E. E. BOWERMAN, M.A.

OF THE MIDDLE TEMPLE
BARRISTER-AT-LAW

WITH A FOREWORD BY

THE RT. HON. LORD EUSTACE PERCY
P.C., M.P.



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FOREWORD

MISS BOWERMAN'S book appears opportunely at the moment when Parliament has completed a revision of what has come to be known as the "Children's Charter." But there are three ways of looking at a body of law, such as Miss Bowerman has described and analysed. One is to regard it as a completed structure, representing eternal verities now for the first time realized, and needing at the most a few finishing touches. No one who knows the children of this country is likely to fall into such comfortable conservatism. Another is to regard it as a rolling stone which has momentarily come to rest at one point on a continuous slope and requires only a little propulsion to continue its inevitable course. This is a commoner, but perhaps hardly a more enlightened, view; a belief in indefinite progress in the same direction may be as bad an opiate as an inclination to sit still. The third way is to regard such a body of law as marking a point where the wayfaring reformer is responsible for making his own choice of his future path from his own survey of the social landscape.

The problem of the juvenile to-day is perhaps graver than at any previous period of our history,

and in many aspects it is a new problem. We have protected him from cruelty and neglect and, on the positive side of our policy, we have made him a present of free education and have organized institutions of advice and guidance in order that he may find suitable employment. But it seems doubtful whether, in all our care for him, we have touched those springs of thought and action which can alone make him a responsible person, able to grasp the opportunities which we have sought to offer him. Those springs are surely being weakened by the whole trend of modern life and, at the best, we cannot claim to have done much to counteract these tendencies.

Such problems are too large to be discussed off-hand in a preface; but Miss Bowerman's valuable work will best fulfil its purpose if it is studied, as it has certainly been written, with an eye to the future. For if the body of law thus set forth, clearly and without clogging technicalities, should be found to provide firm ground for establishing in the future what we have not established hitherto, real co-operation between the State and the parent, then it might mark the point of departure for a new policy of which we see as yet only the faint beginnings, but which would indeed be an adventure worthy of a new era of reform.

EUSTACE PERCY

PREFACE

ONE of the most important results of the growth of a social conscience, which is so important an aspect of Modern life, is the effort which the law-makers have made to ensure the safety of children and young persons. Our forefathers were content to leave the rising generation to the tender mercies of their parents and guardians, regardless of the consequences. Although a child on reaching the age of seven could be punished by the state for his misdeeds with the same rigour as a full-grown citizen, yet practically nothing could deprive his legal guardian of full power over his person. This power could be exercised without any corresponding legal responsibility. Babies and boys and girls could be exploited with impunity on the principle that the rights of the strong were more important than the protection of the weak. It was not until Kingsley's *Tom*, Dickens' *Oliver Twist*, and sundry other child victims and heroes had roused the popular imagination that active steps were taken to remedy this state of affairs.

Both the Common Law and the Courts of Chancery had always paid much more attention to the protection of children's property than to

the safety of their persons, and by Parliament this aspect of their welfare was practically disregarded until the humanitarian movements of the nineteenth century began.

With the exception of certain provisions of the Poor Relief Act regarding a parent's duty to maintain his children (inserted with more concern for the ratepayers' pockets than for the children's well-being), and of the Chimney Sweepers Act of 1840, it is not until 1861 that any statute is found which makes special provision for the physical safety of children in general, though some classes had been catered for in the Acts dealing with apprentices and with children employed in textile factories. In this year in the Offences against the Person Act, a section especially provides for the punishment of any one who "shall unlawfully abandon or expose a child" whereby its life or health shall be endangered.

This and other statutes prepared the way for the great Charter of Children's safety, the Children Act of 1908, while scarcely a year has passed since then without some additional provisions being made for their further well-being. The Children and Young Persons Act, 1932, amplified the Act of 1908, and filled in many gaps in preceding legislation. The whole of these two Acts, with the exception of the sections dealing with Infant Life Protection, have now been repealed and their

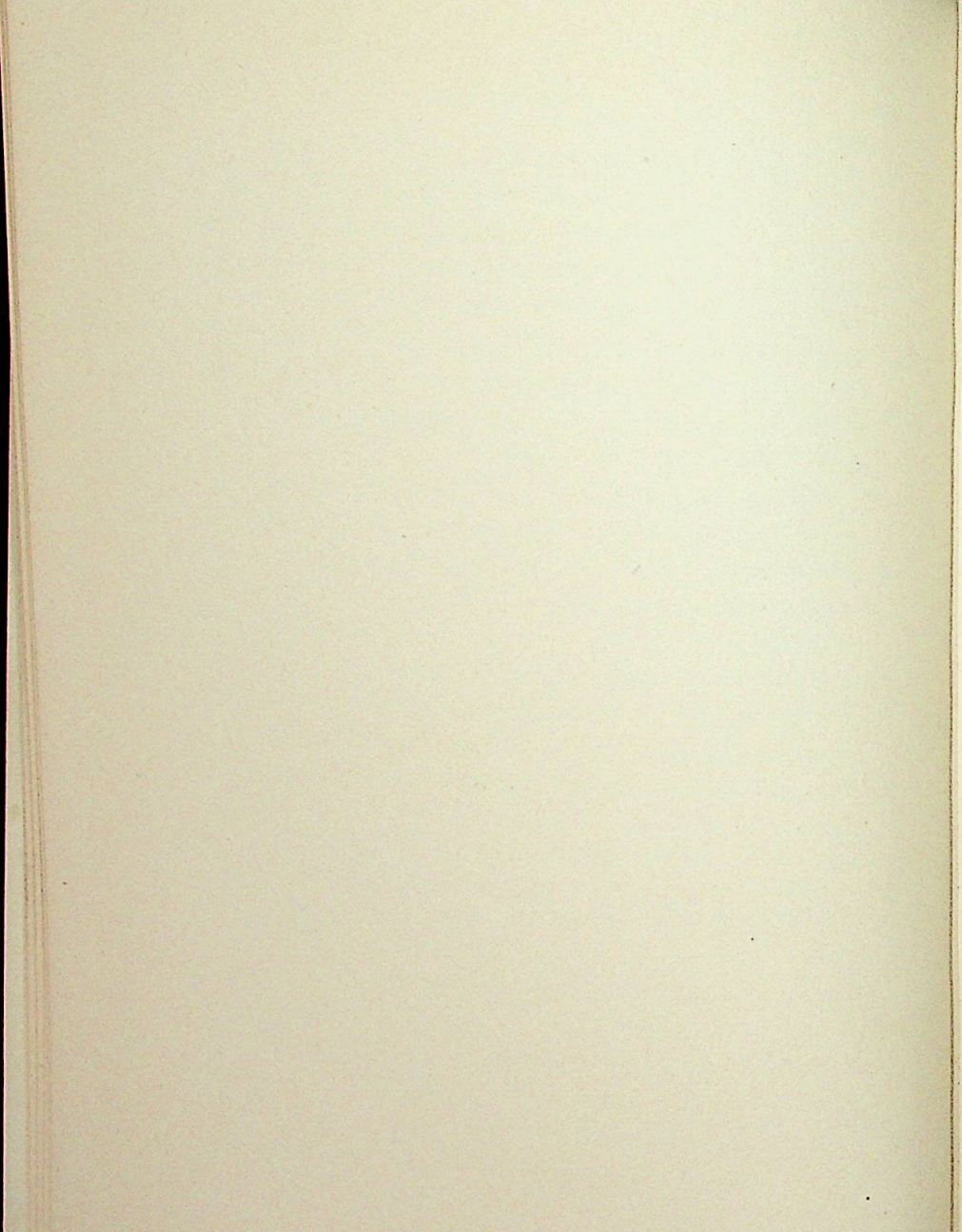
contents consolidated in the Children and Young Persons Act, 1933. The most important feature of this Act is the part dealing with young offenders and other juveniles needing care and supervision, and with the constitution and procedure of juvenile courts. It also brings into the Children Acts the legislation regarding the employment of children and young persons formerly included in the Education Act of 1921.

By slow degrees the cry of the children has been heard, so that now the adults, in whose power they live and work, can be made legally responsible for any abuse of this power. This book is an endeavour to set out in a concise and non-technical fashion an explanation of the laws which enforce this responsibility and their application to the different phases of the child's existence—in his home, at school, at work, at play, and amongst the public at large.

E. E. BOWERMAN

1 TEMPLE GARDENS, E.C.4.

July, 1933.



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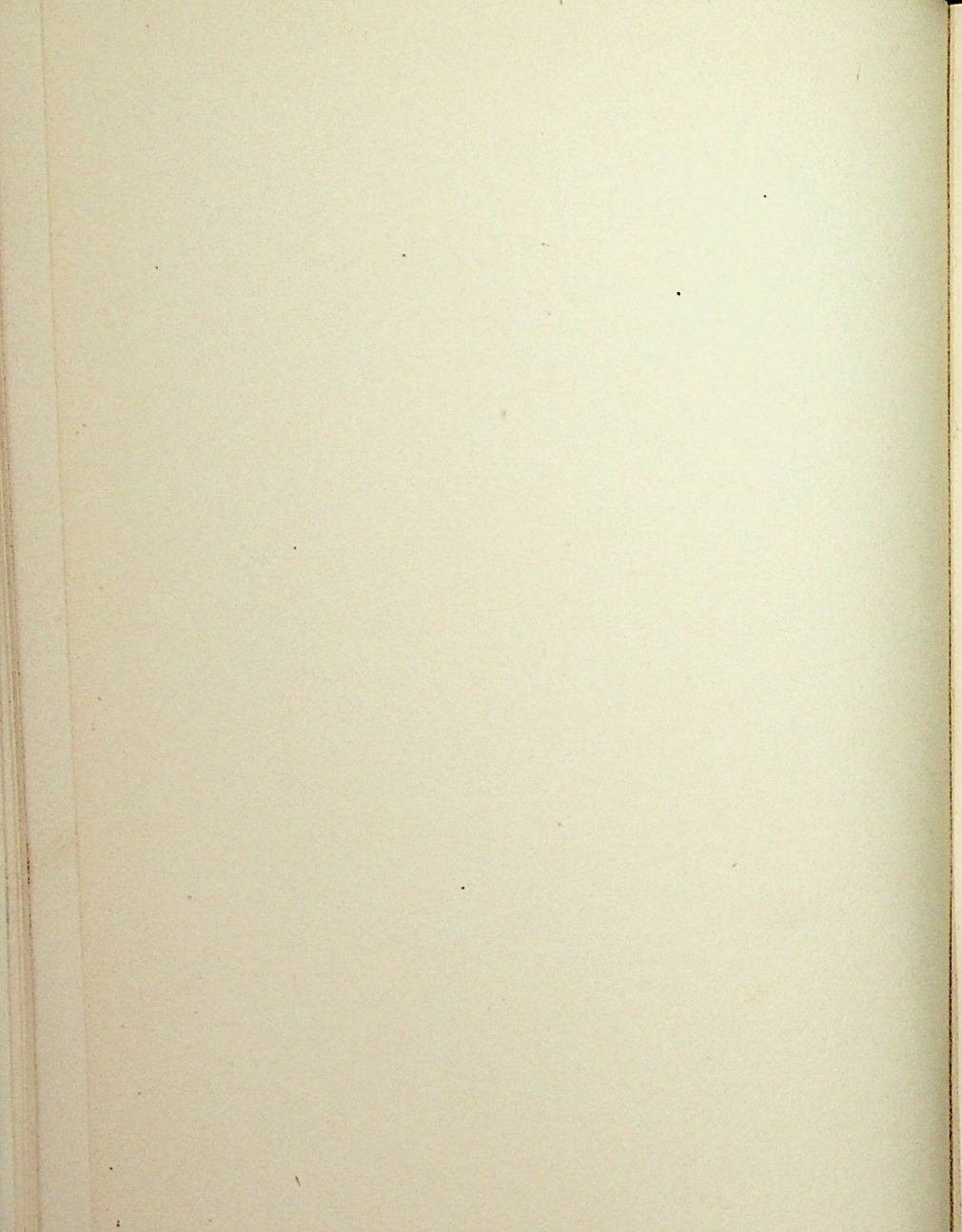


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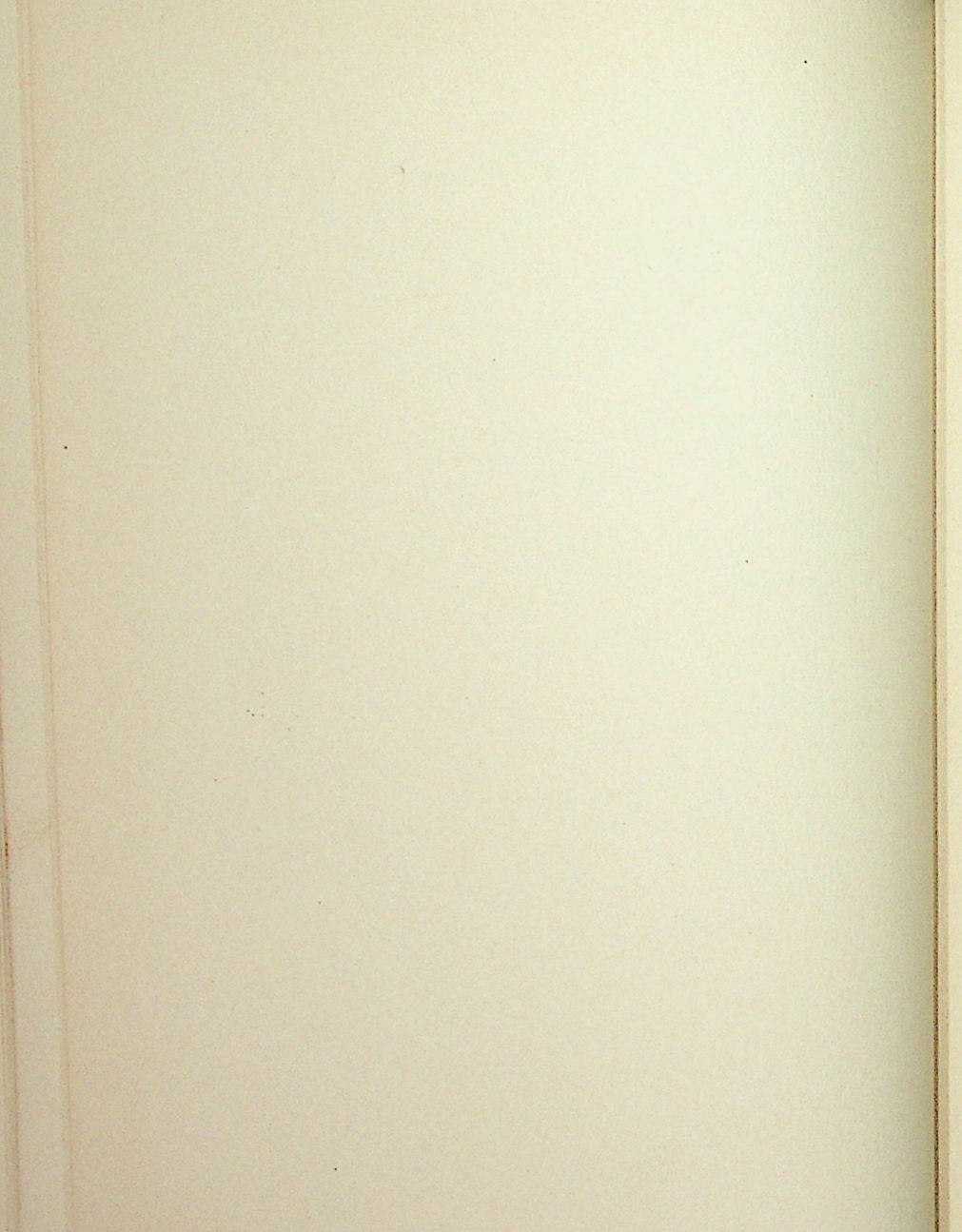


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THE LAW OF CHILD PROTECTION

PART I PARENTAL RIGHTS AND RESPONSIBILITIES

CHAPTER I

THE RIGHT OF CUSTODY

THE legal definition of a child in the many Statutes and decisions dealing with persons under age varies slightly but for most purposes the definition of the Children and Young Persons Act, 1933, section 107 is followed, and a "child" means a person below the age of fourteen years.¹ Similarly a young person is technically someone under seventeen but over fourteen,² and an infant any one below the age of twenty-one.³ The expression "child" viewed as a relationship does not include

¹ Children and Young Persons Act, 1933, s. 107; Education Act, 1921, s. 170 (13).

² Children and Young Persons Act, 1933, s. 107; Women and Young Persons Employment Act, 1920, s. 4.

³ *Hearle v. Greenbank* (1749), 3 Alk. 703; *Morgan v. Thorne* (1841), 7 M. & W. 408.

illegitimate children, unless their parents have subsequently married, or for the purposes of compensation under the Workmen's Compensation Act when the offspring of unmarried persons may be "dependents."¹

It has been judicially laid down that the father of legitimate children has supreme control over them.² This paternal power has been alluded to as a sacred right, and in spite of the limitation which justice and necessity have gradually imposed upon it, it is undeniably based on a conception of society deeply rooted in history. Sir Henry Maine says, "The authority of the patriarch or paterfamilias is the element or germ out of which all permanent power of man over man has gradually developed."³ It is doubtless for this reason that the rights of children remained for so long of secondary consideration.

Under Anglo-Saxon law any child born in wedlock was held to be in the father's *mund* though there was no institution comparable to the complete paternal power of the Roman law. It is possible that the father had power of life and death over any child which had not tasted food.⁴

¹ Workmen's Compensation Act, 1925, s. 4.

² *Agar Ellis v. Lascelles* (1883), 24 Ch.D. 317 at p. 336; *Thomasset v. Thomasset*, [1894] P. 298.

³ Maine: *Early History of Institutions*, p. 379.

⁴ Holdsworth: *History of English Law*, 2nd Edn., Vol. II, p. 97; *ibid.*, Vol. III, p. 510.

In cases of necessity he was permitted to sell children under seven years of age,¹ he could administer moderate chastisement and could veto the marriage of a daughter or even of a son under seventeen years of age. There were however, limits to all these powers, which were not indefinitely prolonged, while the *mund* included protective ideas as well as those of dominion. The date at which the child escaped from paternal control varied according to circumstances. This was also the case when feudal laws and customs had prevailed over Anglo-Saxon usage. The young burgess was of full age as soon as he could count and measure,² though the young knight did not attain his majority until he reached the age of twenty-one.³ This was doubtless owing to the latter's physical incapacity, before that age, for wearing the heavy armour which was one of the attributes of his rank. Gradually the age of knightly majority became the rule for all and the law for the gentry became the English Common Law in this matter.⁴ It is now settled that, on the day preceding the anniversary of his twenty-first birthday, he is freed from parental control.⁵

¹ Pollock & Maitland: *History of English Law*, 2nd Edn., Vol. II, p. 436.

² Holdsworth: *History of English Law*, 2nd Edn., Vol. II, p. 97; *ibid*, Vol. III, p. 510.

³ Holdsworth, Vol. III, p. 510.

⁴ Pollock & Maitland, Vol. II, p. 436.

⁵ *Shurey & Savory v. Shurey*, [1918] 1 Ch. 263.

Throughout these early periods guardianship and parental powers were regarded rather as profitable rights than as duties.¹ The idea that every infant should have a guardian was foreign to the legal notions of those times. The only children for whom protection was assured were those who owned property or land.² The others were left to manage as best they might, with the occasional assistance of the Ecclesiastical Courts. It is owing to the influence of these Courts and of the King acting through his Chancellor, then an ecclesiastical dignitary, that the rights of the children came to be recognized and the father's power over them limited. For in time occasions arose when the father's right of custody and control were successfully resisted, and to-day in addition to the Statutes which deprive parents of their powers, under certain conditions, the Court of Chancery can also step in and enforce similar restrictions. The parents may, of course, delegate their rights to tutors or other persons who stand *in loco parentis* towards the child.³

Nevertheless the Common Law rights still subsist, and unless the aid of the Court of Chancery or of the Statutes enabling them to be overridden, be called in, a father has still absolute power over

¹ Holdsworth, Vol. III, p. 61-66.

² Pollock & Maitland, 2nd Edn., Vol. I, pp. 318-319.

³ *Fitzgerald v. Northcote* (1865), 4 F. & F. 656; *Cleary v. Booth*, [1893] 1 Q.B. 465.

the person, education, and conduct of his legitimate offspring.¹ He has also a right to the services of such of his children as reside with him.² At Common Law the mother was entitled to reverence and respect only.³ The father could remove the children from her control, and bring them up in whatever religion he chose, while a Statute of Charles II further confirms his right to appoint other persons against whom the mother has no power whatever to be their guardians after his death.⁴ If he died intestate the mother succeeded to his rights over the children, though these could be superseded by the Court of Chancery if she proved unfit to exercise them. Even to-day no Court will interfere with the father in the exercise of these powers, unless he has forfeited his rights by the abdication of his parental authority, or by some gross moral turpitude, or unless the mother or some other person has obtained the right to the custody and control of the children under one of the Statutes enabling them to do so.

This power of control is absolute but not unlimited. It ceases with a daughter on her marriage, but otherwise comes to an end when the

¹ *Agar Ellis v. Agar Ellis & Lascelles* (1883), 24 Ch. 317, at p. 326.

² *Evans v. Walton* (1867), L.R. 2 C.P. 615.

³ *Re Thomas* (1853), 22 L.J.Ch. 1075.

⁴ 12 Car. II, c. 24, Statute abolishing military tenure of land conferred on father power to appoint guardian.

age of twenty-one is reached. It gives the father the right to use force if necessary to maintain his dominion, though the Court would interfere if the chastisement were excessive.¹ The father can control his child's marriage by withholding or granting his consent² though once the marriage has been solemnized, the lack of this consent does not invalidate it. A marriage between persons either of whom is under the age of sixteen is void under the Age of Marriage Act, 1929. A child cannot be bound as an apprentice by his father unless the deed is executed by the infant himself.³ Before the passage of the Judicature Act, 1873, the father could enforce his rights over his child at Common Law even against the mother by a writ of *habeas corpus* or by application to the Court of Chancery. If the former method were pursued the child would be handed over to his legal parent without demur unless the father were grossly unfit.⁴ If the child were old enough to use his own judgment as to whom he would live with, he was allowed to do so. The age of discretion was fourteen for boys and sixteen for girls.⁵ This writ may

¹ *R. v. Hopley* (1860), 2 F. & F. 202.; Children and Young Persons Act, 1933, s. 1.

² Guardianship of Infants Act, 1925, s. 9; Marriage Acts, 1823, s. 8.

³ *R. v. Arnesby* (1820), 3 B. & Ald. 584.

R. v. Greenhill (1836), 4 A. & E. 624.

⁵ *R. v. Clarke* (1857), 7 E. & B. 186; *R. v. Howes* (1860), 3 E. & E. 332.

be issued to educational institutions but not to any person outside the jurisdiction of the Court at the time of the order.¹ It is directed to any one detaining a person in custody and ordering him to produce the body of such person with the day and cause of his capture and detention, and to do whatever the Court awarding the writ may direct. Application was made to the Court of Chancery by petition. The court would then consider the merits of the case and all the circumstances and make such an order as the interests of the child required. Since the passage of the Judicature Act, 1873, the rules of equity must prevail in all matters dealing with the custody and education of infants,² so, whether the person desiring to enforce his rights proceeds by way of writ of *habeas corpus* or by petition, the Court will not give any one the custody unless it is considered that it will be for the benefit of the child to do so.³ The simplest way to safeguard the child's interests is to make it a ward of Court in the manner indicated below, especially as a parent does not surrender his right of control by so doing and the control of the Court of Chancery over its wards is maintained until they reach the age of twenty-one.

¹ *Barnardo v. Ford*, [1892] A.C. 326.

² *Re Goldsworthy* (1876), 2 Q.B.D. 75.

³ *Re Thain, Thain v. Taylor*, [1926] Ch. 676.

CHAPTER II

RESTRICTIONS ON THE RIGHT OF CUSTODY

THE first restrictions on these absolute rights of the father came from the Court of Chancery. The Middle Ages vacillated between two opinions and took some time to decide whether guardianship was a valuable right existing solely for the advantage of the guardian, or whether it also involved responsibilities towards the infant. At first the right of wardship had a definite pecuniary value. There was no provision in the law for guardians for children who had no land. The person in control of a boy's body could practically sell him in marriage (though the match had to be one befitting his station¹), and had other advantages derived from the child's land and property. With the rise of equitable jurisdiction a more adequate conception of a guardian's position developed. The king as *parens patriae* became the guardian, when required, of wards who had no one to protect their interests,² and exercising his power through the Lord Chancellor and later through the Court

¹ Blackstone's *Commentaries*, 463; Pollock & Maitland, Vol. I, p. 318.

² *Wellesley v. Duke of Beaufort* (1827), 2 Russ. 1; *De Manneville v. De Manneville* (1804), 10 Ves. 52.

of Chancery, gradually came to inquire into the way into which all guardians were fulfilling their trust. Thus it became possible for children to be made wards of Court, more popularly known as wards in Chancery. Once a child has been made a ward of Court, he cannot be removed from the jurisdiction of the Court without leave,¹ and this leave is only granted if the Court considers that the removal would be for the benefit of the child.² Any attempt to remove the child from the jurisdiction without leave is punishable as contempt of Court.³ An injunction can be granted to prevent such a removal and this even if it is the father who wishes to remove the child.⁴

To enable a child to become a ward of Court, some question of his property must be in issue. If no such cause is pending the parent or other person wishing to safeguard the child's interests or to secure control of his person must pay a sum of money into Court (a small amount will suffice) and make an application by summons at Chambers for the appointment of a guardian. Once a child is a ward of Court, the Court has power to inquire into all the surrounding circumstances of the case

¹ *Mountstuart v. Mountstuart* (1801), 6 Ves. 363; *De Manneville v. De Manneville* (1804), 10 Ves. 56; *Re Fynn* (1848), 2 De G. & Sm. 457; *Shaftesbury v. Hannam* (1677), Finch 323.

² *R. v. Gyngall*, [1893] 2 Q.B. 232.

³ *Wellesley's Case* (1831), 2 R. & M. 639.

⁴ *De Manneville v. De Manneville* (1804), 10 Ves. 52.

and to consider fully the interests of the ward. If the whereabouts of a ward are not known, the Chancery Division of the High Court can summon witnesses and compel them to disclose all they know.¹ It can order the child either to be delivered up to his guardian,² or to remain where he is,³ or to go at liberty.⁴ The Court further supervises the education of its wards. It can determine in what religion they are to be brought up⁵ and its permission must be obtained before they may marry. A male ward may not marry under the age of twenty, or a female ward under seventeen. Any one marrying a ward of Court without leave may be committed for contempt.

In addition to its powers over wards of Court the Chancery Division can act as the protector of any children whether they have property or not.⁶ It can interfere with the parents' right of custody in cases where they have shown themselves to be grossly immoral or otherwise unfit to have charge of a child,⁷ where they have treated the child with cruelty⁸ (though mere harshness not amounting to

¹ *Burton v. Earl of Darnley* (1869), L.R. 8 Eq. 576.

² *Rochford v. Hackman* (1854), Kay 309.

³ *Harrison v. Goodall* (1852), Kay 310.

⁴ *Bond v. Roberts* (1843), 13 Sim. 400.

⁵ *Re Newton Infants*, [1896] 1 Ch. 740 C.A.; *Ward v. Laverty*, [1925] A.C. 101.

⁶ *Re Spence* (1847), 2 Ph. 247; *Re McGrath Infants*, [1893] 1 Ch. 143, C.A.

⁷ *Re Goldsworthy* (1876), 2 Q.B.D. 75.

⁸ *Ex parte Warner* (1792), 4 Bro. C.C. 101

cruelty has been held not to justify interference¹) where they are seeking to promote an unsuitable marriage, or where by conduct or neglect they have waived their rights over the child.² The Court has moreover a general power to supersede a parent's rights where it is essential for the benefit of the child for it to do so.³ If the child is old enough to choose for itself the Court will take his wishes into consideration.

The main curtailment of the father's Common Law rights over his child comes from the various Statutes which have been passed to this end. The Infants' Custody Act of 1839 (Serjeant Talfourd's Act) conferred on the Court an absolute discretion as to the custody of children under seven years of age, which was extended to children of sixteen by the Act of 1873. This latter Act also provided that a separation deed was no longer invalid merely because in it the father had agreed to give up the custody or control of a child, but it may not be enforceable if the Court before which proceedings are taken holds that such enforcement would be detrimental to the child.⁴ Succeeding Acts gave greater powers and opportunities to the mother, but gradually in all questions relating to

¹ *Re Curtis* (1859), 28 L.J.Ch. 458; *Blake v. Wallscourt* (1846), 7 L.T.O.S. 545.

² *Thomas v. Roberts*, (1850), 19 L.J.Ch. 506.

³ *R. v. Gyngall*, [1893] 2 Q.B. 232.

⁴ *Re Besant* (1879), 11 Ch.D. 508.

the custody and upbringing of children the welfare of the child came to be the paramount consideration, until, in the Guardianship of Infants Act, 1925 (amending the Act of 1886), this principle is definitely established and the right of neither parent is to be considered as superior to that of the other. The Statutes have in fact so whittled away the father's Common Law rights that the Administration of Justice Act, 1928, in order to maintain the balance between the two parents, definitely confers on the father the right to apply for the custody of his child.

Applications under these Acts can be heard by Courts of Summary Jurisdiction as well as by the High Court and County Court. A Court of Summary Jurisdiction has not, however, the power to award the payment of any sum above 20s. a week for the maintenance of an infant. It is also unable to entertain applications involving the administration of property belonging to or held in trust for an infant, nor any application relating to an infant who has attained the age of sixteen years unless it be for the variation or discharge of an existing order under the Guardianship Act of 1886 as amended, or unless the infant is physically or mentally incapable of self-support. Appeal lies to the High Court from the Court of Summary Jurisdiction. Statutory Rules for regulating the Procedure in the various Courts under the

Guardianship Acts have been issued and must be followed.¹

There are also certain Statutes which enable a child to be removed from the custody of its parents when it would be contrary to its welfare to remain with them. By the Custody of Children Act, 1891, if a parent who applies for the custody of a child has previously abandoned it or otherwise shown himself indifferent to its welfare, the Court may refuse his application. If a child whose production has been asked for by writ has been maintained by the Poor Law or some other person the Court may, if it grants the parent the custody, order him to pay the whole or part of the cost of its previous upbringing. In such cases the Court will not allow the child to be handed over to the parent unless it is confident that the child's welfare will be served by this course and that the parent is a fit person to have charge of it. The Court may refuse custody to the parent but may order the child to be brought up in the parent's religion. The child's own wishes may be consulted by the Court if necessary.

By the Poor Law Act of 1930, section 52, if, for any reason, such as physical or mental incapacity, desertion, imprisonment, or death, the Council of

¹ For High Court Rules, see R.S.C. Ord. LV.a.; County Court Rules, Order XLVII; Summary Jurisdiction Rules, issued Sep. 29, 1925.

any County or County Borough considers that it would be for the benefit of the child that its parents should not be able to exercise their right of control over it, the Council may resolve that the rights and powers of the parents shall vest in itself until the child reaches the age of eighteen. After such a resolution has been passed, the parental rights are then automatically transferred to the Council whether or not the child is maintained by the Council. The Council has the power to rescind such a vesting resolution if it thinks fit, and the parents or guardian of the child have the right to appeal to a Court of Summary Jurisdiction to have their right of custody restored. The Children and Young Persons Act of 1933 contains many penalties for persons causing bodily harm to children. These provisions apply as much to parents as to any one else, but as they will be dealt with in other parts of this book, at this point it is only necessary to mention those sections which expressly restrict the rights of parents over their children. Under sections 61 and 62 of the Children and Young Persons Act, 1933, a parent or guardian of any child under seventeen years of age may be deprived of the custody of the child if he is either unfit or unable to fulfil his parental responsibilities. This can, however, only be done on the application of a constable or any other authorized person to the Juvenile Court. By the term

“Authorized persons” is meant both individuals and officers of societies who have the express sanction of the Home Office for the purpose. The local education authority is also bound by the same section to bring before the Juvenile Court any case in which a child is being neglected, and who would not otherwise be dealt with. Juvenile offenders, as will be seen later, may likewise be dealt with without consulting their parents.

Under the Criminal Law Amendment Act, 1885 (section 12), a parent or guardian who has caused or encouraged the seduction of a girl under sixteen years of age may be deprived of all authority over her and the Court may appoint a guardian for her till she reaches the age of sixteen. The High Court may from time to time, as may be necessary, rescind or vary such an order.

By the Summary Jurisdiction (Married Women) Act, 1895, and by the Separation and Maintenance Act, 1925, a husband may lose his right of custody if he has by his neglect or cruelty caused his wife to live apart from him. In these circumstances she may under these Acts, apply for custody of the children and a maintenance allowance for them, coupled with a separation order.

In proceedings for Divorce, nullity and judicial separation, the Court may make orders for the custody, maintenance, and education of children until they reach the age of twenty-one, but only

when both parties to a dispute are before the Court.¹ The Divorce Court now derives its power from the Supreme Court of Judicature Act, 1925, section 193. It can only exercise it however when a petition in a matrimonial cause has been filed. If the suit is dismissed it has no power to make any order.² The Act thus enables provision to be made for any children of a marriage which has been declared void, and any agreement between parents does not cut down this Statutory power.³ The good of the child is the paramount consideration. The Judge in the Divorce Court has a very wide discretion, and if neither parent appears suitable to have custody, third persons may be appointed as guardians.⁴ He is not bound by either Common Law or Chancery rules as to custody.⁵ When a matrimonial cause is pending, the Chancery Court will not interfere with regard to the children but leaves the parties to apply to the Divorce Court.⁶ Any order which is made while a suit is pending is an interim order only⁷ until the decree is made absolute, when a final

¹ *Thomasset v. Thomasset*, [1894] P. 295; *Stacey v. Stacey* (1862), 29 L.J. P.M. & A. 63.

² *Seddon v. Seddon* (1862), 31 L.J. P.M. & A. 101.

³ *Bishop v. Bishop*, *Judkins v. Judkins*, [1897] P. 138.

⁴ *Chetwynd v. Chetwynd* (1865), L.R. 1 P. & D. 39.

⁵ *Marsh v. Marsh* (1858), 28 L.J. P.M. & A. 13.; *Handley v. Handley*, [1891] P. 124, at page 127.

⁶ *Manders v. Manders* (1891), 63 L.T. 6, 27; *W— v. W—* (1926), 42 T.L.R. 490.

⁷ *Cubley v. Cubley* (1861), 30 L.J. P.M. & A. 161.

order can be obtained. This Court can also make orders allowing access to the children to persons to whom the custody has not been granted.¹

Under the Guardianship of Infants Act, 1886, section 7, when a decree in a matrimonial cause is obtained, the Court may, when pronouncing the decree, declare the guilty parent to be unfit to have the custody of the children of the marriage. In such a case the parent so declared to be unfit is not entitled to have the guardianship of the children on the death of the other parent.² The Court will postpone making the decree to enable the Petitioner to prove the unfitness of the Respondent,³ but the conduct unfitting the parent to have custody must have been of an aggravated nature.⁴ If a parent to whom custody has been given dies, the Divorce Court has no jurisdiction to hear an application by a stranger for custody.⁵

Certain Statutes dealing with children who have fallen into criminal or immoral habits enable children to be removed from the custody of their parents. The Infant Felons Act, 1840, gives power to the Court of Chancery to assign such children to the care of any persons willing to undertake their education and maintenance, provided the

¹ *Hyde v. Hyde* (1859), 29 L.J. P.M. & A. p. 150.

² *Skinner v. Skinner* (1888), 13 P.D. 90.

³ *Robinson v. Robinson* (1886), 57 L.T. 118.

⁴ *Woolnoth v. Woolnoth* (1902), 86 L.T. 598.

⁵ *Davis v. Davis* (1889), 14 P. & D. 162.

child is not sent outside the jurisdiction of the Court. Such an order is binding and obligatory on the parents. The provisions of the Criminal Law Amendment Act and the Children and Young Persons Act for similar circumstances have already been referred to. The legal capacity of a child to commit crime and the punishment of juvenile offenders will be dealt with in a later Chapter. If a child is charged with any offence and his parent is unable to provide bail, he is removed from his custody and control.

CHAPTER III

VOLUNTARY RELINQUISHMENT OF PARENTAL RIGHTS

UNTIL the passage of the Adoption of Children Act, 1926, it was impossible for a father voluntarily to deprive himself of his rights and responsibilities in respect of his children. He can now only do so in the manner prescribed by this Act. Though he may agree to transfer these rights and responsibilities to a third person, such an agreement cannot dispose of the legal presumption that he has the custody of his child, and is ultimately liable for its maintenance and education.¹ Such an agreement if made would be revocable by the father at any time,² though it might be held to be valid if his conduct was so gross that the Court would remove the children from his custody.³ A father who has relinquished or abandoned his parental rights cannot however resume them at will if some other person has in the meantime taken over the care and maintenance of the child, and if the Court consents for the benefit of the

¹ *Re J. M. Carroll*, [1931] 1 K.B. 317; *Re Whitfield* (1922), W.W.P. 894; *Brooks v. Blount*, [1923] 1 K.B. 257.

² *R. v. Smith* (1853), 1 B.C.C. 132.

³ *Swift v. Swift* (1865), 34 Beav. 266.

child that he should be deprived of them.¹ The special provisions for costs of maintenance in such circumstances in the Custody of Children Act, 1891, have already been mentioned. If a stranger puts himself *in loco parentis*, however, he must accept responsibility for the child's maintenance and education until the parent resumes.² If a parent accepts a gift on condition of his resigning the management of his children, he must appoint a guardian in accordance with the terms of the contract so made. But mere acceptance of the gift is not considered an election to abide by the terms of the arrangement unless he knows he is making the election.³ In such circumstances, however, the guardian appointed would only be in law the agent of the father in carrying out his duties, and if the children were neglected the father would be liable. Under the Children and Young Persons Act, 1933, section 64, a parent or guardian who is unable to control his child may, if he desires, bring the child before the Juvenile Court to be dealt with at the discretion of the Court.

The Adoption of Children Act, 1926 provides a means whereby a parent may completely and finally transfer his or her rights and obligations

¹ *Re Mathieson* (1918), 87 L.J. Ch. 445; *Re O'Hara* (1900), 2 Ir.R. 232.

² *Powys v. Mansfield* (1837), 3 My. & Cr. 359, at p. 368.

³ Macpherson on Infants, p. 135; *Colston v. Morris* (1819), Jac. 257 n.

towards a child to a third person. In order to achieve this legal adoption the specific requirements of the Act must be complied with. The old law still applies to any adoption agreements which do not satisfy these requirements. Under the Act certain persons only can adopt and be adopted, certain consents must be obtained for the adoption and certain formalities must be observed in order to make it valid. Any person wishing to adopt a child under the Act must be a resident in England or Wales,¹ and must be at least twenty-five years of age and twenty-one years older than the child,² unless the applicant and child are within the prohibited degrees of consanguinity, when the Court may make a special order. The applicant must not be a male and the child a female³ unless the Court is satisfied that there are special circumstances which justify the adoption order being made. No order authorizing more than one person to adopt a child shall be made, except in the case of a husband and wife making a joint application.⁴ Neither the adopter nor the natural parent shall receive any money in respect of the adoption⁵, and the adopter may be required by the Court to make provision for the child by bond or otherwise.⁶ No person may be adopted who is over twenty-one

¹ Adoption of Children Act, 1926, s. 2 (5).

² *Ibid.*, s. 2 (1).

⁵ *Ibid.*, s. 3 (c).

³ *Ibid.*, s. 2 (2).

⁶ *Ibid.*, s. 4.

⁴ *Ibid.*, s. 1.

years of age or married,¹ or who is not a resident in England or Wales and a British Subject.² An adoption order may also be made in respect of a child who has already been the subject of a previous adoption order.³ It is necessary to obtain the consent of the parent or guardian, or person having the actual custody of the child, whom it is proposed to adopt.⁴ In the case of one of two spouses wishing to adopt a child, he or she cannot do so without the consent of the other.⁵ Both these consents may be dispensed with at the discretion of the Court in certain circumstances. If a child has been previously adopted, the consent of the prior adopter is necessary.⁶

The formalities to be observed include application to the Court in the prescribed manner, and no adoption is legal until the formal order of the Court has been obtained.⁷ An interim order may be granted, if necessary, pending inquiries as to the circumstances of the persons concerned, and giving custody of the child to the proposed adopters for a probationary period not exceeding two years.⁸ Consents are required for an interim as for a final order.

The Act gives jurisdiction to Courts of Summary

¹ Adoption of Children Act, 1926, s. 1.

² *Ibid.*, s. 2 (5).

³ *Ibid.*, s. 7.

⁴ *Ibid.*, s. 2 (3).

⁵ *Ibid.*, s. 2 (4).

⁶ *Ibid.*, s. 7.

⁷ *Ibid.*, s. 1 (1).

⁸ *Ibid.*, s. 6.

Jurisdiction and to County Courts as well as to the High Court to make adoption orders, subject to the rules as to procedure in these various Courts.¹ Application for Adoption Orders coming before Petty Sessional Courts are dealt with in the Juvenile Courts,² but these courts have no power under any circumstance to make an order in favour of an applicant who has already been refused by either the High Court or County Court. The effect of a legal adoption under the Act is to make the person adopted the child of the adopter in the eyes of the law and in all respects³ except that no artificial blood relationship is created and the child may marry into the adopter's family. Also for purposes of inheritance the child remains a member of the family of its natural parents.⁴

It obtains no rights to the adopter's estate,⁴ save for any voluntary gift or bequest, or for any provision which the Court may have required the adopter to make at the time of the adoption. All personal rights and obligations of a parent over the child are transferred to the adopter, and the order is irrevocable. Every adoption order is registered in the special register called the Adopted Children Register which the Registrar General is

¹ Adoption of Children Act, 1926, s. 8.

² S.J. Rules, Dec. 18, 1926.

³ Adoption of Children Act, 1926, s. 5.

⁴ *Ibid.*, s. 5 (2).

obliged to keep.¹ A certified copy of any entry in this register is evidence of adoption and can be used in lieu of a birth certificate when required. This provision saves much hardship in the case of illegitimate children.

¹ Adoption of Children Act. 1926, s. 11.

CHAPTER IV

PARENTAL DUTIES

AT Common Law the father's rights over his child did not bring corresponding duties. The law cannot compel a man to maintain his child unless his neglect is such as to bring him within the Criminal Law,¹ or under the operation of the Poor Law Statutes.² A mother is similarly immune from legal liability. The Court of Chancery, however, has for many centuries recognized the moral obligation of a father to provide for his offspring "according to their expectations." This obligation can only be enforced indirectly,³ as, by refusing to allow the father to use the children's own property for their maintenance if he has means of his own. A mother's obligation though recognized in similar circumstances, is not held to be so great.⁴ The Court will allow the children's own property to be used for their maintenance when they are in her charge. A father is not

¹ *Cooper v. Martin* (1803), 4 East. 84; *Bazeley v. Forder* (1868), L.R. 3 Q.B. 565.

² Poor Law Act, 1930.

³ *Wellesley v. Duke of Beaufort* (1827), 2 Russ. 28; *Butler v. Freeman* (1743), 3 Atk. 58; *Hill v. Chapman* (1787), 2 Bro.C.C. 231.

⁴ *Faulkner v. Watt* (1742), 1 Atk. 408.

legally compelled to pay his child's debts, even for necessities, unless they are incurred with his authority and sanction.¹

There are, however, many Statutes in force which oblige a father to maintain his children. A father can be convicted under the Vagrancy Act, 1824 (section 3), if he wilfully neglects or runs away from his children so that they become chargeable to the parish.² A married woman, however, who is deserted by her husband and similarly abandons her children, cannot be so convicted if she has no means with which to maintain them.³ The Poor Law Act of 1930 (section 14) obliges a man to maintain his own children and those of his wife by a former marriage until they reach the age of sixteen, or later if he retains the custody of them after that age. If a married woman has separate property she is also compelled to maintain her children and grandchildren if her husband is unable to do so. By the Summary Jurisdiction (Married Woman) Act, 1895, a wife can obtain an order against her husband for the maintenance of herself and their children. Similar provisions are also to be found in the Matrimonial Causes Acts which give the Divorce Court extensive powers to safeguard the children of separated or divorced persons. The Children

¹ *Shelton v. Springett* (1851), 11 C.B. 452.

² *Bannister v. Sullivan* (1904), 91 L.T. 380.

³ *Peters v. Cowie* (1877), 2 Q.B.D. 131.

and Young Persons Act, 1933 (sections 86 and 87), makes parents or, failing them, other relatives of children committed to the care of "fit persons," or sent to approved schools, liable to contribute to their maintenance according to the scale prescribed by the Home Office. It also provides for the enforcement of orders for payment under this head. The Trustee Act, 1925, empowers trustees of property held in trust for persons under age to apply funds, if necessary, for the maintenance and education of the children. This does not apply to trusts which became effective before the commencement of the Act.

At Common Law parents could not be forced to educate their children. The Education Act now makes secular education compulsory.¹ The child's health is safeguarded by section 1 of the Children and Young Persons Act of 1933, which makes parents or any one having the custody of the child or young person criminally liable for any injury to his health or other unnecessary suffering or cruelty. It is possible that failure to allow children to undergo operations or other medical treatment if required may be considered an offence under this section. There are many other duties imposed upon adults for the protection of children by this and subsequent Acts, but as these are not exclusively parents liabilities, they will be dealt with hereafter.

¹ Education Act, 1921, s. 42.

CHAPTER V

THE ILLEGITIMATE CHILD

THE position of the illegitimate child, that is to say, any child born out of lawful wedlock, may here be considered. At Common Law the bastard was no man's child. Technically he was as much a stranger to his mother as to his father, though in feudal times his estate was always that of his mother. Gradually, however, through the influence of the Court of Chancery, the moral claim of the mother to the custody of her illegitimate children came to be recognized.¹ This was closely bound up with her obligation to maintain them until the age of sixteen years, which is now statutory under the Poor Law Act of 1930 (section 14). The mother can obtain a contribution from the father towards this maintenance by means of an affiliation order under the Bastardy Acts.² Payments under an affiliation order may be directed by the Court to be made to persons other than the mother if they have become liable for the child's maintenance

¹ *Barnardo v. McHugh*, [1891] A.C. 388.

² Poor Law Amendment Act, 1844; Bastardy Act, 1845; Bastardy Laws Amendment Acts, 1872 & 1873; Affiliation Orders Act, 1914; Bastardy Act, 1923.

and have custody of it.¹ In certain circumstances the father of a mentally defective illegitimate child or of one who is classed as a youthful offender, or as needing care and protection,² may be made to contribute towards its maintenance. The mother of an illegitimate child cannot divest herself of her rights and obligations towards it³ except by marriage after the birth of the child and residence with her husband, or by allowing an adoption order to be made in respect of it. In the former case her husband is obliged to maintain the child until her death as one of his family.⁴ After her death whether she has married or not, it becomes no man's child again, unless she has appointed a guardian or her husband continues to act *in loco parentis*.⁵ If the mother has obtained an affiliation order against any man and she subsequently dies, or becomes ill, or in prison, or of unsound mind, the Justices may appoint a guardian to collect the money due on behalf of the child and to be responsible for its welfare,⁶ but failing such an affiliation order the law gives no indication as to who should have prior right to the motherless child's custody or be liable for its maintenance.

¹ See Affiliation Orders Act, 1914, s. 3, and Bastardy Laws Amendment Act, 1872, s. 7.

² Children and Young Persons Act, 1933, s. 88; Mental Deficiency Act, 1913, s. 14.

³ *Humphrys v. Polak*, [1901] 2 K.B. 385.

⁴ Poor Law Act, 1930, s. 14.

⁵ *Ruttinger v. Temple* (1863), 4 B. & S. 491.

⁶ Poor Law Amendment Act, 1844.

Under the Poor Law Act, 1930, section 52, where a child is maintained by any council of a county or borough, and has no parents or guardians, the council may by resolution vest in itself the duties and rights of parents in respect of the child. Such a resolution may, if required, be put an end to by order of a Court of Summary Jurisdiction. Any claims put forward by the father of an illegitimate child would doubtless be taken into account,¹ but the welfare of the child and the wishes of the mother, if expressed, would be given the first consideration. In disputes as to custody during the lifetime of the mother, she has undoubtedly the first claim, and her wishes are always taken into account so long as they do not run counter to the child's welfare.² The mother can enforce her right to custody by means of a writ of *habeas corpus*. The father may make a contract with the mother to support his illegitimate child. This is a binding contract, and need not be in writing. It is not discharged by bankruptcy nor is it a bar to affiliation proceedings,³ but it is terminated by the death of the mother.⁴

The position of the mother of an illegitimate child is not the same as that of the parent of a

¹ *St. Mary Abbots, Kensington Guardians, Re an Illegitimate Child* (1887), 4 T.L.R. 63.

² *Re Connor*, [1919] 1 I.R. 361; *Re Carrol*, [1931] 1 K.B. 317.

³ *Follit v. Koetzow* (1860), 2 E. & E. 730.

⁴ *James v. Morgan*, [1909] 1 K.B. 564.

child born in lawful wedlock, nevertheless she is primarily responsible for its maintenance, and no Court will disregard her views as to its custody and upbringing except when she has so neglected her duty as to cease to deserve consideration.

An illegitimate child has no claim under Lord Campbell's Act for compensation for the death of its parent, but it may be awarded damages as a dependent under the Workmen's Compensation Act, 1925.

PART II
SCHOOLS, INSTITUTIONS, AND
THE TREATMENT OF JUVENILE
OFFENDERS

CHAPTER VI

INFANT LIFE PROTECTION

THE lives of unborn babes and very young children are well protected by the Criminal Law. Under the Infant Life (Preservation) Act, 1929, "Any person who with intent to destroy the life of a child capable of being born alive by any wilful act causes a child to die before it has an existence independent of its mother shall be guilty of felony, to wit child destruction," unless such an act was done in good faith to preserve the mother's life. The punishment for this offence can be penal servitude for life. By the Infanticide Act, 1922, a mother who by neglect or otherwise wilfully causes the death of her newly-born child may be indicted for the crime of infanticide if it is considered that at the time she was not responsible for her actions, otherwise she may be indicted for murder or manslaughter. If an infant dies from suffocation through overlaying in bed by any

person over the age of sixteen who is under the influence of drink at the time, the person may be indicted for cruelty and neglect, and punished accordingly.¹

Children under the age of nine, who are in schools or institutions away from the direct control of their parents are safeguarded by the Children Acts.² The parts of these Acts which deal with infant life protection regulate the supervision and conduct of persons undertaking the nursing and maintenance of young children for reward. The local authority,³ which in the City of London is the Common Council, the London County Council in the remainder of the Metropolis, and the Borough or County Council in other places,⁴ must be kept fully informed as to the whereabouts, movements, and general welfare of the infants. Forty-eight hours before receiving a child under nine, the person taking charge of it for reward must notify the local authority, giving full particulars as to the child's name, age, and sex, and the address at which it is to be kept. If he has never received a child for reward before, he must give seven days' notice. If he has previously looked after the child gratuitously, he must give

¹ Children and Young Persons Act, 1933, s. 1 (2).

² Children Act, 1908, Part I; Children and Young Persons Act, 1932, Part V.

³ Children Act, 1908, s. 10.

⁴ Local Government Act, 1929, s. 2.

the necessary notice not less than forty-eight hours after agreeing to accept payment.¹ If he removes with the infant to a new address, he must give similar notice to the authority of the place to which he goes at least seven days before the removal, or in case of emergency, within forty-eight hours of his arrival there.² If the child is removed from his care he must likewise inform the authority and the person from whom he received it, giving also the address to which it has been transferred.³ If the child dies he must give similar notices within twenty-four hours of the death, and also inform the coroner, unless an adequate medical certificate as to the cause of death can be obtained.⁴ Notices may be sent to the local authority by post in a registered letter addressed to them or to their clerk at their offices and notice to the coroner by registered letter addressed to him at his office or residence.⁵

Local authorities have power under the Acts to prevent overcrowding by fixing the number of infants to be kept for reward in any one dwelling, or by imposing conditions if the number is exceeded.⁶ They can also remove children who are

¹ Children and Young Persons Act, 1932, s. 65 (1).

² Children Act, 1908, s. 1 (4), and 1932 Act, Sched. II.

³ Children Act, 1908, s. 1 (5) and 1932 Act, s. 65 (2).

⁴ Children Act, 1908, ss. 1 (5), and 6.

⁵ *Ibid.*, s. 8.

⁶ Children and Young Persons Act, 1932, s. 66.

kept in unsuitable premises or by unsuitable persons.¹ In such cases children can be removed on the order of a court of summary jurisdiction after a complaint by the local authority.² In cases of emergency upon proof that there is imminent danger to the health or well-being of the infant concerned, the child may be removed on a similar order made by a single justice on the complaint of a duly authorized visitor or inspector.³ Any person keeping children for reward who refuses to allow inspectors or any other person authorized by special warrant⁴ to examine the premises in which the children are kept, or in any other way fails to comply with the requirements of the Act with regard to infant protection can be punished on summary conviction by fine or imprisonment.⁴ It is also an offence punishable under Part I of the Act of 1908, to advertise for the charge of infants under nine years of age for reward without disclosing the name and address of the advertiser.⁵ The inspectors are appointed by the local authority under the Act, and if any of them is unable to obtain admission to any premises where infants under nine are kept for reward he may obtain a warrant from a justice enabling him to enter and

¹ Children and Young Persons Act, 1932, s. 67.

² *Ibid.*, s. 67.

³ *Ibid.*, s. 67 (1).

⁴ Children Act, 1908, ss. 2, (6), and s. 9.

⁵ Children and Young Persons Act, 1932, s. 68.

inspect the premises.¹ Certain institutions, such as convalescent homes and hospitals maintained by a public authority, or constituted by Royal Charter or Act of Parliament, or places which have obtained a certificate of exemption from the local authority, or where mental defectives under the supervision of the Board of Control are kept, or voluntary homes, are exempt from the above provisions,² as are relatives and legal guardians who undertake the nursing or maintenance of infants.³

Persons who have been guilty of any offence against children under the Children Acts or the earlier Infant Life Protection Act, are not permitted to take charge of young children for reward without the special written sanction of the local authority, nor are any children allowed to be kept in premises from which any child has previously been removed owing to their insanitary or dangerous condition.⁴ No person keeping a child for reward may have any interest in any insurance policy on the life of the child.⁵ In this connection it should be noted that under the Friendly Societies Act, 1924, section 2, the total amount payable by insurance companies in respect of the

¹ Children Act, 1908, s. 2 (6).

² Children and Young Persons Act, 1932, s. 69.

³ Children Act, 1908, s. 11.

⁴ *Ibid.*, s. 3.

⁵ *Ibid.*, s. 7; Friendly Societies Act, 1896, s. 67.

death of children shall not exceed £6 in the case of a child under three, £10 in the case of a child under six, and £15 in the case of a child under ten.¹ No sum shall be paid on the death of a child under ten to any one except the parent of the child or his personal representative, and then only upon a certificate of death from the registrar containing particulars as to the amount to be paid and the society by whom it is payable.² Insurance Societies issuing policies or making payments contrary to these provisions are punishable under the Children Act, 1908 (section 7). In the case of endowment policies a provision for the return of premiums in the event of the child's death before the age of ten is valid, and such a sum need not be taken into account in calculating the maximum of insurance payable on the child's life.³

Homes for the boarding, care, and maintenance of poor children and young persons supported wholly or partly by voluntary contributions are designated "Voluntary Homes" in the Children and Young Persons Act, 1933.⁴ Persons in charge of these homes are obliged to send to the Home Secretary such particulars as shall be from time to time prescribed.⁵ These particulars must be sent

¹ Cp. also Industrial Assurance Act, 1923, s. 4; *Harker v. Britannic Assurance Co., Ltd.*, [1928] 1 K.B. 766.

² Friendly Societies Act, 1896, ss. 63, 64.

³ Industrial Assurance and Friendly Societies Act, 1929, s. 2.

⁴ Children and Young Persons Act, 1933, s. 92.

⁵ *Ibid.*, s. 46.

within three months of the establishment of the institution, and thereafter annually, or in the case of homes in existence before the commencement of the Act before the expiration of three months after the commencement of the Act and thereafter annually.¹ The Home Secretary has power to cause these homes to be inspected from time to time, unless they are already under the supervision of some other Government Authority. The inspectors have power to enter these institutions at any time.² Any one obstructing them in their duties is liable to a fine not exceeding five pounds, while a refusal to allow a duly authorized person to enter one of the voluntary homes justifies the suspicion that a child or young person is being neglected on the premises and enables a warrant to be issued authorizing a search to be made of the premises and if necessary the removal of the children or young persons, and the apprehension of any one who has offended against the Act.³ The Home Secretary may give directions as to the conduct of voluntary homes if he is satisfied that the management or accommodation is such that the welfare of the children is endangered.⁴ If his directions are not complied with, and if the magistrates think fit, a summons may be served on the

¹ Children and Young Persons Act, 1933, s. 93.

² *Ibid.*, s. 94.

³ *Ibid.*, s. 40.

⁴ *Ibid.*, s. 95.

persons responsible for the management of the home, and an order may be obtained from a Court of summary jurisdiction on the complaint of a Home Office official for the removal of all children and young persons from the institution.¹ Appeals against such orders may be made to Quarter Sessions.¹

¹ Children and Young Persons Act, 1933, s. 95.

CHAPTER VII

PRIVATE AND STATE CONTROLLED SCHOOLS

THE provisions of the Children Acts for the inspection and control of institutions where children under the age of nine are kept apply to private schools for infants of this early age,¹ but there is no provision for inquiry into the conditions in private schools for older children. Unless actual cruelty is suspected no inspectors are entitled, except at the invitation of the management, to find out if the school premises are suitable and safe or if the persons in charge are fit and proper for the task.² The parents who have paid for the children's education in these institutions are doubtless expected to see that their own responsibilities have been delegated to satisfactory persons. If they find that this is not the case and that the health and well-being of the children have suffered in consequence, their remedy is an action against the schoolmaster for negligence or breach of contract. If the negligence is so gross as to become criminal neglect, the school authorities can be prosecuted for cruelty under the Children

¹ Children and Young Persons Act, 1932, ss. 65, 66.

² Report on Private Schools, 1932, Chapter IV, Section 3.

and Young Persons Act, 1933, Part I, which will be dealt with in a later chapter.

What constitutes "negligence" on the part of a schoolmaster depends largely on the facts in each case, but it has been laid down that he is "bound to take such care of his boys as a careful father would," and he must allow for the mischievous tendencies in the ordinary nature of young boys and place dangerous things out of reach.¹ The school premises must also be kept in an efficient and safe condition.² In technical institutes adequate protection against dangerous machinery must be provided.³

The health and well-being of scholars in state-controlled schools are expressly dealt with in the Education Act of 1921 (sections 80 to 88). Under this Act the education authority in every district must provide for the medical inspection and treatment of children attending the schools and make such arrangements with regard to their health as the Ministry of Health may from time to time direct. Parents are not obliged to allow their children to be inspected, but they can if necessary be prosecuted for failing to provide adequate medical aid⁴ or for the non-attendance of the

¹ *Williams v. Eady* (1893), 10 T. L. R. 42 (C.A.).

² *Ching v. Surrey C.C.*, [1910] 1 K.B. 736; *Abbott v. Isham* (1918), 124 L.T. 734.

³ *Smerkininch v. Newport Corporation* (1912), 10 L.G.R. 959.

⁴ Children and Young Persons Act, 1933, s. 1.

children at school¹ due to resistance to medical inspection. On the other hand it has also been held that fear of infection may in certain circumstances be a reasonable excuse for non-attendance.² The Act also gives the education authority power to provide meals for the children when necessary and to meet the cost of food out of the rates, though part of this cost and of the cost of medical attention may be recovered from the parents where possible. The authority may also if desired, make arrangements for the social and physical training of the children, organize holiday camps and vacation and play-centres. Provision is also made under the Act for the cleansing of verminous children. If any child is found to be verminous on inspection by the medical officer, or his duly authorized agent, the parents can be ordered to cleanse the child and its clothing within twenty-four hours. If this is not done the child can be removed and forcibly cleansed by the local sanitary authority. If the child is found in a verminous condition a second time the parents can be fined.³ The Education Act also empowers the local authority to provide vehicles and attendants for the conveyance of

¹ *Fox v. Burgess*, [1922] 1 K.B. 623.

² *Symes v. Brown* (1913), 109 L.T. 232; *Bowen v. Hodgson*, [1924] 130 L.T. 207.

³ Compare also Cleansing of Persons Act, 1897; Public Health Act, 1925, s. 48.

children to school who are unable to walk there, though the authority is not obliged to do so. Provision is also made for the establishment of schools for blind, deaf, epileptic, and other defective children. The parents of such children are compelled to send them to special schools when such are available, unless prevented by the impossibility of obtaining a guide or a conveyance. Complaints against parents who do not fulfil this obligation, and questions as to orders for the education of such children are to be heard by the Juvenile Courts established by the Children and Young Persons Act of 1933. Parents may be ordered to contribute towards any special expenses connected with the education of such children.

The various Acts dealing with the notification and control of infectious diseases have greatly reduced the number of epidemics amongst children. Under these Acts heads of families and medical practitioners must notify local authorities of any cases of disease specified by the Acts or by the authorities as notifiable,¹ while principals of schools in which any case of infectious disease has occurred may be compelled to furnish a list of the scholars attending the school. Full powers are also conferred upon the Ministry of Health and

¹ Infectious Disease (Notification) Act, 1889; Public Health (London) Act, 1891; Public Health Amendment Act, 1907, ss. 57, 58.

local authorities to make any necessary regulations for the prevention of infection and the stamping out of epidemics.

The Vaccination Acts¹ compel the parent or other person having custody of a child born in England to have the child vaccinated against smallpox within six months of its birth. This may be done by any medical practitioner or free of cost by the public vaccinator. Any person failing to comply with these Acts is liable to a penalty, unless the person responsible for the child conscientiously believes that vaccination would be prejudicial to the child's health and makes a statutory declaration to this effect. Such declarations must be made in the prescribed form and sent to the vaccination officer of the district within four months after the birth of the child.

The approved schools for juvenile delinquents and children needing care and protection established by the Children and Young Persons Act, 1933, will be dealt with in a later chapter.

¹ Vaccination Acts, 1867, 1871, 1874, 1898, and 1907.

CHAPTER VIII

JUVENILE COURTS

THE Children and Young Persons Act, 1933, provides for the establishment and conduct of Juvenile Courts.¹ The main purpose of these Courts is two-fold. First, to deal with juvenile offenders, and secondly, to safeguard neglected children. The Juvenile Courts have also power to deal with cases of non-compliance with school attendance orders,² with orders as to the special treatment of defective and epileptic children, and with vagrants who neglect the education of their children.³ The Lord Chancellor may also make rules assigning such other causes relating to children to the Juvenile Courts, as he considers desirable.⁴

These Courts have jurisdiction over all "children" (i.e. persons under fourteen) and "young persons"⁵ (i.e. persons over fourteen but under seventeen). If, however, a juvenile is charged with an offence in which an adult is also concerned,

¹ Children and Young Persons Act, 1933, s. 45.

² *Ibid.*, s. 46 and Schedule III.

³ *Ibid.*, ss. 10, 46, 61.

⁴ *Ibid.*, s. 46.

⁵ *Ibid.*, s. 107.

or if proceedings against him have been commenced in an ordinary Court in ignorance of his age, the ordinary Court may hear and determine the case if they think fit.¹ Likewise, if a person over seventeen is brought before a Juvenile Court, in the belief that he is a child or young person, the Juvenile Court may continue to hear and decide his case.²

Juvenile Courts must be held in a different building or room from that in which ordinary Courts are held, or if this is impossible, must sit on a different day from the ordinary Courts.³ Outside London these Courts must consist of members of a panel of justices specially selected for their qualifications for dealing with juvenile cases, and whose selection and chairman shall be regulated by rules made by the Lord Chancellor. In the Metropolitan area the constitution of the Juvenile Courts, the places in which they are to sit, and the area to be served by each are regulated by Order in Council.⁴ Each Court however, must have as its chairman, a stipendiary magistrate, nominated by the Home Secretary, and shall also consist of two justices of the peace (one of them being a woman), chosen from a panel of suitable persons prepared by the Home Secretary. In cases of

¹ Children and Young Persons Act, 1933, s. 46 1 (c).

² *Ibid.*, s. 48.

³ *Ibid.*, s. 47 (2).

⁴ *Ibid.*, Schedule II (See Appendix III).

emergency the chairman and one justice may sit alone. A Juvenile Court in this area has all the powers of a Metropolitan police magistrate.¹ In the City of London the constitution of Juvenile courts is determined by the Lord Mayor and Aldermen.² The procedure in Juvenile Courts is governed by rules made by the Lord Chancellor and laid before Parliament³, and the guiding principles to be observed by the Courts must be regard to the welfare of the children brought before them and the taking of all proper steps to remove them from undesirable surroundings and to provide for their education and training.⁴ These Courts may deal summarily at any sitting with indictable offences by juveniles.⁵

No person shall be present at any sitting of a Juvenile Court other than the officers of the Courts, persons directly concerned with the case, or specially authorized by the Court, and *bona fide* Press representatives.⁶ Publication of names leading to the identification of juveniles appearing before these Courts is forbidden, except with special permission of the Home Secretary.⁷ Similarly the publication of details of any proceedings in other Courts arising out of any offences

¹ Children and Young Persons Act, 1933, s. 48 (s). Halsbury: *Laws of England*, Vol. 19, p.575.

² *Ibid.*, Schedule II (See Appendix III).

³ *Ibid.*, ss. 46 (3), 101.

⁴ *Ibid.*, s. 44.

⁵ *Ibid.*, s. 48 (4).

⁶ *Ibid.*, s. 47.

⁷ *Ibid.*, s. 49.

against decency or morality in which children and young persons are concerned is now prohibited.¹ Power is also given for a Court to be cleared when a child or young person has to give evidence in certain cases.²

Parents can be compelled to attend Juvenile Courts before which their children are brought, if this is reasonably possible, or if the child has not been previously removed from their control. The person responsible for bringing the child before the Court, for whatever cause, must notify the parent or guardian of the impending hearing and warn him to attend.³ If the child's offence is punishable by fine or damages, the parent may be ordered to pay, or to give security for his good behaviour or in other ways to take responsibility.⁴ The parent or guardian has the right of appeal against such orders. A fine or damages may be imposed without a conviction being recorded against the child, and the words "conviction," and "sentence" can no longer be used in relation to juveniles dealt with summarily.⁵

¹ Children and Young Persons Act, 1933, s. 39.

² *Ibid.*, s. 37.

³ *Ibid.*, s. 34.

⁴ *Ibid.*, s. 55.

⁵ *Ibid.*, s. 59.

CHAPTER IX

JUVENILE OFFENDERS AND THEIR TREATMENT

UNDER Section 10 of the Summary Jurisdiction Act, 1879, as amended by Schedule III of the Children and Young Persons Act, 1933, any indictable offence, except homicide, committed by a child under fourteen, may be dealt with summarily without consulting the parent or guardian, unless the child is jointly charged with some adult person whom it is necessary in the interests of justice to commit for trial. In the latter case the Court may use its discretion as to whether the child should also be committed. Any Court has also the power to remit a juvenile offender to the Juvenile Court of the district in which he is brought up or resides.¹

The amended section does away with the right of parents to claim that the child should be tried by jury. It also provides that a boy offender may be punished by six strokes of the birch if necessary. Young persons from fourteen to seventeen years of age can only be dealt with summarily if they consent to this course, and can still claim

Children and Young Persons Act, 1933, s. 56.

the right to be tried by jury.¹ The maximum fine which can be imposed on a young person for an indictable offence is ten pounds,² and on a child forty shillings,³ but for any offence which in an adult would be punishable with imprisonment the juvenile may either be ordered to be sent to an "approved school" or to a remand home or to be committed to the care of a "fit person."⁴ If the last course is pursued the Court may also order the child or young person to be placed under the supervision of a Probation Officer.⁴ No child under the age of eight can be found guilty of any offence⁵, and no child under the age of ten may be sent to an approved school unless the Court is satisfied that no other course is open.⁶ No child under fourteen may be sent to prison, but if "young persons" are extremely unruly or depraved, they may be sent to prison, but not to penal servitude.⁷ No person under the age of eighteen can be sentenced to death.⁸ Where a serious crime such as murder or manslaughter has been committed by a juvenile he may be ordered to a special place of detention (an approved school if desirable), the condition and duration of his stay there to be left to the discretion of the Home

¹ Summary Jurisdiction Act, 1879, s. II; Children and Young Persons Act, 1933, Schedule III.

² Summary Jurisdiction Act, 1879, s. II.

³ Children and Young Persons Act, 1933, Schedule III.

⁴ *Ibid.*, s. 57.

⁶ *Ibid.*, 44 (2). ⁸ *Ibid.*, s. 53.

⁵ *Ibid.*, s. 50.

⁷ *Ibid.*, s. 52.

Secretary, who has also power to discharge him on licence.¹

When any application or charge regarding juveniles is to be heard in any Court, the person responsible for bringing the matter before the Court must notify, in the prescribed form, both a probation officer of the Court and the local authority of the district, except when the local or poor law authority is itself the "responsible person."² It is then the duty of the authority (unless a probation officer is already in charge of the case) to investigate the circumstances and record of the child or young person, and prepare a report thereon, and to suggest an approved school suitable for his reception so that the Court may have full information at its disposal. Whether such reports are to be available to the children's parents and guardians is a point which the Act does not make clear, but the Lord Chancellor may deal with it in his rules as to procedure. The "local authority" means, in respect of children under fourteen, the local education authority, and in respect of older persons the council of a county or borough.³

When a person under the age of seventeen is arrested the police have power to grant bail, unless he is charged with a grave crime, or the ends

¹ Children and Young Persons Act, 1933, s. 53 (2) and (4).

² *Ibid.*, s. 35.

³ *Ibid.*, ss. 96 and 97.

of justice would thereby be defeated, or it is necessary to remove him from evil associates.¹ If he is not released on bail he must be sent to a remand home unless the police officer certifies that this course is impracticable, or that he is too unruly or that it is inadvisable for reasons of health. This certificate is to be produced when the young offender is brought before the Court.² During detention in the police station or conveyance to or from any Court, arrangements must be made to prevent juveniles associating with any adults (other than relatives) charged with any offence, and to ensure that girls in these circumstances shall be in charge of a woman.³ Similarly no child (other than an infant in arms or messengers employed in the Court) may be present in Court during the trial of other persons.⁴ When a child or young person is remanded or committed for trial by the Court without bail being granted he must be sent to a remand home, unless he be too unruly or depraved for this treatment.⁵ The period of his remand with or without bail may be extended from time to time but he must be brought before the Court at least once in every twenty-one days.⁶

¹ Children and Young Persons Act, 1933, s. 32 (1).

² *Ibid.*, s. 32 (2).

³ *Ibid.*, s. 31.

⁴ *Ibid.*, s. 36.

⁵ *Ibid.*, s. 33.

⁶ *Ibid.*, s. 48 (3).

The various types of treatment prescribed by the Act for neglected or delinquent juveniles should be briefly explained. Remand homes are places where juveniles awaiting trial or needing to be kept in a place of safety, or only requiring short periods of detention in custody, may be sent. Such a home must be provided by the Council of each borough and county, not by the police authorities as formerly. Two or more areas may combine, if desired, for purposes of economy. Special premises may be acquired for the purpose by the Council, or if desirable existing establishments willing and able to provide the necessary accommodation and supervision may be utilized.¹ When a juvenile is sent to a remand home he is in legal custody and when he is handed over to the persons in charge of the home the order authorizing his detention there must be delivered with him.² If he escapes he may be brought back without warrant. All remand homes are subject to Home Office inspection and control.³

Approved schools now take the place of the old time Industrial and Reformatory Schools. They are any schools intended for the training and education of juveniles sent there under the Children Acts, to which the Home Secretary's

¹ Children and Young Persons Act, 1933, s. 77.

² *Ibid.*, s. 78.

³ *Ibid.*, s. 78.

certificate of approval has been duly granted.¹ Approved schools are of various categories and are classified by the Home Office according to the age of the children received, the character of the education and training, their geographical position, religious persuasion, and otherwise. Rules are to be laid down by the Home Secretary for their management and discipline, and they are under the complete supervision and control of his department, though the education authorities in each district are responsible for providing adequate approved school accommodation.² Full provisions as to these schools and the treatment of the persons sent to them are set out in Sections 79-83 and in Schedule IV of the Children and Young Persons Act, 1933.³ Details as to approved school orders are to be found in Sections 68 to 76 of the same Act.⁴ The managers of approved schools have full parental rights over the children sent to them, subject only to the overriding authority of the Home Secretary. The pupils are in legal custody while in these schools. They may be arrested without warrant if they escape and can only obtain leave of absence with special permission. If they are guilty of serious misconduct they may be brought before a Court of

¹ Children and Young Persons Act, 1933, ss. 79 and 107 (See Appendix I).

² *Ibid.*, s. 80.

³ Appendix I.

⁴ Appendix II.

Summary Jurisdiction to have the period of their detention increased or if necessary to be ordered to go to a Borstal institution. The period of detention in an approved school varies with the age of the juvenile concerned.¹ A child is to be detained there for at least three years from the date of the order. Supervision is continued after the term of residence in the approved school expires.² If this ends before the juvenile is fifteen years old he remains under supervision until the age of eighteen. If his period of detention expires when he is fifteen years of age or older he is supervised for three years or until he attains the age of twenty-one whichever period is the shorter. Young persons under supervision are liable to be recalled to the school at any time up to the age of nineteen, but notice of such recall must be given by the school managers to the Home Secretary.

When a juvenile is committed to the care of a "fit person" the order remains in force until the boy or girl has attained the age of eighteen.³ The "fit person" may be some relative or other individual, or it may mean the local authority or the Ministry of Pensions, or an institution.⁴ Any "fit person" to whom the child or young person

¹ Children and Young Persons Act, 1933, s. 71.

² *Ibid.*, s. 74. (See Appendix II).

³ *Ibid.*, s. 75.

⁴ *Ibid.*, s. 76.

is committed has full parental rights and responsibilities while the order lasts, except for any conditions or restrictions imposed by the Home Secretary.¹ He may also be empowered by the Home Secretary to arrange for the emigration of the boy or girl in his charge, but only with the consent of the latter and after consultation, if feasible, with the parents.² When children are committed to the care of a local authority the latter may (subject to Home Office regulations) board them out, but such children may be visited from time to time by Home Office inspectors.³ The authority may also apply, if necessary, to a Juvenile Court to have any child in its care, and under the age of seventeen, transferred to an approved school.⁴

When children or young persons are either boarded out, sent to approved schools, or committed to the care of fit persons they must, if possible, be put in charge of persons of their own religious persuasion, which should be ascertained by the Court before making any order.⁵

Any young offender in respect of whom a Probation order is made, either with or without any of the above methods of treatment, is called

¹ Children and Young Persons Act, 1933, s. 75.

² *Ibid.*, s. 84 (5).

³ *Ibid.*, s. 84 (3).

⁴ *Ibid.*, s. 84. (8).

⁵ *Ibid.*, s. 84, (3) 6. & (7).

upon to enter into recognizances to be of good behaviour and to appear for sentence when called upon.¹ Certain conditions with respect to residence and other matters may also be imposed. This means that he can be put under the supervision of a trained probation officer whose duty it is to advise, assist and befriend him, and when necessary, to find him suitable employment, or he can be sent to a voluntary home for a specified time. The value of this system is now universally recognized.

¹ Probation of Offenders Act, 1907, ss. 1, 2; Children and Young Persons Act, 1933, s. 66.

CHAPTER X

JUVENILES NEEDING CARE AND PROTECTION

THE Children and Young Persons Act of 1933 substitutes for the limited categories of neglect prescribed in the Children Act, 1908, a more general definition of neglect on the lines recommended by the Young Offenders Committee. Under Sections 61 and 62 of the later Act any constable or authorized person (i.e. officer of a society or individual authorized by the Home Secretary) may in certain circumstances bring a child or young person before the Juvenile Court, and remove him to a place of safety pending the hearing. These circumstances are, either that he has a bad or useless parent or guardian, or none at all, or that he is falling into bad associations or exposed to moral danger and beyond control; or, in the case of a child, that he is in the company of vagrants who are preventing him from receiving education.¹ Children and young persons up to the age of seventeen may also be brought before the Juvenile Court if they are the victims of any sexual offence or bodily cruelty or neglect, or if they are members of a household in which a person convicted

¹ Children and Young Persons Act, 1933, ss. 61, 62, and 67.

or the victim of such offences resides.¹ The term "moral danger" includes all cases of children found wandering about, destitute or begging, or without visible means of support.² Poor Law Authorities³ and parents or guardians⁴ who are unable to control the children in their charge may also bring them before the Juvenile Court to be dealt with without charging them with any specific offences.

Children and young persons who come before the Court in this way may be ordered either to be sent to an approved school and to be committed to the care of a fit person, or to be placed under the supervision of a Probation Officer or some other person appointed by the Court.⁵ In cases of insufficient care and guardianship on the part of parents or others they may be ordered to enter into recognizances to fulfil their responsibilities.⁶ The section further provides that when a person is convicted by any ordinary Court of any of the offences against juveniles mentioned above, the Court may order the child or young person to come before the Juvenile Court or themselves make an order for his care and protection.⁷ In such cases, if no one else takes action with regard to neglected children, the local education authority

¹ Children and Young Persons Act, 1933, s. 61 (1).

² *Ibid.*, s. 61 (2).

³ *Ibid.*, ss. 65 and 98.

⁴ *Ibid.*, s. 64.

⁵ *Ibid.*, s. 62.

⁶ *Ibid.*, s. 62.

⁷ *Ibid.*, s. 63 (1).

is responsible for bringing them to the Juvenile Court to be dealt with.¹ When a child is brought before them by his parent or guardian the Juvenile Court may not order him to be sent to an approved school unless the local education authority agrees.² The Juvenile Court may also make interim orders with a maximum duration of twenty-eight days for the child's temporary detention in a place of safety, while they make investigations to enable them to decide what will be best for him.³

¹ Children and Young Persons Act, 1933, ss. 62 (2), 63 (2).

² *Ibid.*, s. 64, proviso.

³ *Ibid.*, s. 67 (2).

PART III
EMPLOYMENT OF CHILDREN
AND YOUNG PERSONS

CHAPTER XI

GENERAL REGULATION OF JUVENILE
EMPLOYMENT

(a) *At Common Law.*

At Common Law infants do not receive any greater protection against the perils of their employment than adults. It is true that the degree of care due from an employer to his employee is greater when the latter is not of full age,¹ but the doctrine of "common employment" may be pleaded if the child is injured through negligence on the part of his fellow servants and the employer is not liable.² Contributory negligence on the part of the infant does not curtail his right to damages for injuries received to such an extent as it would that of an adult in like case.³

¹ *Grizzle v. Frost* (1863), 3 F. & F. 622; *Robinson v. Smith* (1901), 17 T.L.R. 423.

² *Cribb v. Kynoch*, [1907] 2 K.B. 548.; *Young v. Hoffman Co.*, [1907] 2 K.B. 646.

³ *Lynch v. Nurdin* (1841), 1 Q.B. 29.

(b) *By Statute Generally.*

Since the Chimney Sweepers Act, 1840, which was the first Act to make regulations as to the labour of children other than those engaged as apprentices or in specific kinds of factory work, many Statutes controlling both the hours and conditions of juvenile employment have been passed.

The Children and Young Persons Act, 1933, Part II, completely forbids the employment of children under the age of twelve,¹ and of children under the age of fourteen before the close of school hours,² or before 6 a.m. or after 8 a.m.³ or for more than two hours on Sunday⁴ or on any day on which they are required to attend school (except when they are taking part in any entertainment duly licensed under the Act).⁵

“Employment” is defined in the Children and Young Persons Act, 1933, as “assisting at any trade or occupation carried on for profit” whether the person so engaged receives reward for his labour or not. This definition does not apply to choir-boys in religious services.⁶ It is further forbidden by this Act to employ a child to move or carry anything so heavy as to be likely to cause him injury.⁷ The local education authority is

¹ Children and Young Persons Act, 1933, s. 18 (1) a.

² *Ibid.*, s. 18 (1) b.

³ *Ibid.*, s. 18 (1) c.

⁴ *Ibid.*, s. 18 (1) d.

⁵ *Ibid.*, s. 18 (3).

⁶ *Ibid.*, s. 30.

⁷ *Ibid.*, s. 18 (1) f.

however given power, subject to the limitations of the Act, to make by-laws for the regulation of the employment of children in its district to any extent and for modifying the rules as to children under twelve, by permitting them to do light agricultural and horticultural work for their parents, also to allow all children if desired to work for not more than one hour before school hours.¹

The local authority has also power under Section 91 of the Act to make by-laws with respect to the employment of juveniles under eighteen, but this Section only becomes operative on a resolution to this effect being passed by both Houses of Parliament. Even then the authority will have no power to regulate the employment of young persons employed in factories, workshops, mines, agriculture, quarries, ships, shops, offices, or on domestic, building, engineering, and transport work with the exception of van boys, messengers, and non-resident daily servants.² Any local authority in whose area Section 93 of the Education Act, 1921, has come into operation, may also, subject to appeal to the Board of Education, restrict the hours of employment of young persons attending continuation schools by any period up to two hours daily, to ensure their physical and mental fitness to receive instruction.³

¹ Children and Young Persons Act, 1933, s. 18 (2).

² *Ibid.*, s. 19.

³ Education Act, 1921, s. 93; S.R. & O., 1922, No. 847.

The authority may also forbid or restrict the employment of children of school age in any manner prejudicial to their health,¹ though their requirements in this respect must be reasonable.² Both employers and parents are obliged to furnish the local authority with all information required by them.³

(c) *Street Trading.*

Local authorities may prohibit street trading by persons under the age of eighteen, though sixteen is the age limit fixed by the Children Act.⁴ Children under this age may also be permitted by local by-law to engage in street trading on behalf of their parents.⁴ By-laws may also be made with regard to the granting of hawkers' licences, and the hours and places at which street trading is to be permitted, the wearing of badges and other kindred matters.⁵ All by-laws made under this part of the Act must be confirmed by the Home Secretary. They must be published at least thirty days before confirmation, and objections may be lodged by persons interested and if necessary a local inquiry may be held.⁶ The penalty for contravention of these provisions of the Act by

¹ Education Act, 1921, ss. 94 and 95.

² *Margerison v. Hind & Co.*, [1922] 1 K.B. 214.

³ Education Act, 1921, s. 93.

⁴ Children and Young Persons Act, 1933, s. 20.

⁵ *Ibid.*, s. 20 (2). ⁶ *Ibid.*, s. 27.

any person under eighteen may be a maximum fine of 20s. for a first offence, and 40s. for a second, while his employer or any other person liable may be fined £5 or £20.¹

(d) *Entertainments.*

No child under the age of fourteen, or until the end of the school term during which he attains that age may take part in any entertainment for which a charge is made without a licence from the local education authority.² This rule may be relaxed when the proceeds of the performance are not for the private profit of the promoters and the child has not taken part in more than six such entertainments in the preceding six months.³ Even then, if the entertainment is given in a place licensed to sell intoxicants the child may not take part without a special authority in writing signed by two Justices of the Peace,³ and unless the premises are also licensed for the performance of plays and music. Any person contravening this Section of the Act shall on summary conviction be liable to a maximum fine of £5 or, for a second or subsequent offence, £20.⁴

Licences for children over twelve to take part in entertainments in any district may be granted

¹ Children and Young Persons Act, 1933, s. 21.

² *Ibid.*, s. 22 (1).

⁴ *Ibid.*, s. 22 (1).

³ *Ibid.*, s. 22 (2).

by the local education authority subject to any condition prescribed by the Board of Education.¹ The holder of the licence must, at least seven days before the performance, also furnish the education authority of the district in which the entertainment is to take place with any such particulars as the Board of Education may require. The maximum penalty for failure to do so is £5.² No child is to be licensed for Sunday performances, and the local authority must be satisfied that he is physically fit to take part and that provision has been made for his health and kind treatment.³ Such licences may be revoked, varied or extended by the local authority within whose area the entertainment takes place.⁴ If an Applicant for a licence is dissatisfied with any decision of a local authority, he may appeal to the Board of Education.⁵

(e) *Dangerous Performances.*

No boy or girl under sixteen may take part in any performance in which life or limb is endangered, and any person responsible for the participation of boys and girls below this age in such performances is liable on summary conviction to

¹ Children and Young Persons Act, 1933, s. 22 (3).

² *Ibid.*, s. 22 (4).

⁵ *Ibid.*, s. 22 (6).

³ *Ibid.*, s. 22 (3).

⁴ *Ibid.*, s. 22 (5).

a maximum fine of £10 for a first offence, and £50 for subsequent offences.¹

No child under twelve may be trained to take part in dangerous performances, and children under sixteen may only be trained if a licence has been obtained for the purpose from a police court.² No such licence will be granted unless seven days' notice has been given to the chief officer of the police before applying for it, and the police may oppose it if they think fit.³ The licence must specify the place and conditions of training and the Court must be satisfied that the trainee will be kindly treated and his health safeguarded.⁴ These licences may be revoked, if due cause is shown, by any police Court acting for the same petty sessional division as the Court which granted the licence.⁵ An order to enter any place where juveniles are taking part in entertainments or training may be granted by a magistrate to any constable or officer of the local education authority, if any transgression of the above regulations is suspected.⁶ Where juveniles are performing or training under licence, constables or authorized education officers may enter and make inquiries at any time.⁷ Any person obstructing such officers in this duty is liable to a fine of £20.⁸

¹ Children and Young Persons Act, 1933, s. 23.

² *Ibid.*, s. 24 (1).

³ *Ibid.*, s. 24 (3).

⁴ *Ibid.*, s. 24 (4).

⁵ *Ibid.*, s. 24 (5).

⁶ *Ibid.*, s. 28 (1).

⁷ *Ibid.*, s. 28 (2).

⁸ *Ibid.*, s. 59 (3).

These restrictions do not apply to wireless performances by children over twelve under the auspices of the British Broadcasting Corporation, so long as no charge for admission is made to the public.¹

(f) *Employment of Children Abroad.*

No juvenile under eighteen² is permitted to go abroad to perform for profit without a special licence from a police magistrate, and then only subject to any restrictions which may be imposed.² A constable may take and keep in a place of safety any young person under seventeen whose departure from the country without a licence is anticipated, until he is restored to his relatives or other arrangements are made with regard to him.³

No licence will be granted except on the application and with the consent of parent or guardian⁴ and for the purpose of fulfilling a particular engagement.

The fitness, health, and good treatment of the young performer must be guaranteed,⁵ and he must have been furnished with a copy of his contract written in a language which he can

¹ Children and Young Persons Act, 1933, s. 29.

² *Ibid.*, s. 25.

³ *Ibid.*, s. 26 (6).

⁴ *Ibid.*, s. 25 (2) a and b.

⁵ *Ibid.*, s. 25 (2) c.

understand.¹ No licence may cover a period of more than three months, but they are renewable.² Seven days' notice of any application for a licence, or for the renewal of a licence, with various particulars, must be given to the police in the district where the young person resides, though in special circumstances and at the discretion of the magistrate this may be dispensed with.³

The magistrate may, if necessary, require the applicant to give security for the due observance of the conditions contained in the licence,⁴ and when it is granted and on every renewal or variation of the licence he must send full particulars to the Home Secretary for transmission to the British Consul in the place to which the young person is going.⁵ The licence may be revoked, renewed, or varied⁶ by the magistrate at any time, and he may, if he thinks fit, excuse the person to whom it relates from returning to the United Kingdom at the expiration of the licence.⁷ The licence may not be renewed unless the magistrate is satisfied by a report from the Consular Office or some other reliable source that its conditions are being complied with, and that the application is

¹ Children and Young Persons Act, 1933, s. 25 (2) *d*.

² *Ibid.*, s. 25 (4).

³ *Ibid.*, s. 25 (3).

⁴ *Ibid.*, s. 25 (6).

⁵ *Ibid.*, s. 25 (8).

⁶ *Ibid.*, s. 25 (5 and 6).

⁷ *Ibid.*, s. 25 (7).

made by or with the consent of the parent or guardian of the young person.¹ When applications for the renewal or variation of the licence are made it is not necessary for the young person to whom it relates to appear.² The magistrates from whom such licences may be obtained are the Chief Magistrate of the Metropolitan Police Courts, any magistrate of Bow Street Metropolitan Police Court, and any stipendiary magistrate upon whom such jurisdiction has been conferred by Order in Council.³ The maximum penalty for the infringement of these regulations is a fine of £100, with or without imprisonment.⁴ Any person who has induced a young person under eighteen to take employment abroad by false representation may be punished by imprisonment for a term not exceeding two years.⁵ If a person against whom it is proposed to institute proceedings under this Section is outside the United Kingdom at the time, proceedings may be begun at any time within six months of his return to this country.⁶ Special provision is also made making certain documentary evidence admissible in such proceedings.⁷

¹ Children and Young Persons Act, 1933, s. 25 (4).

² *Ibid.*, s. 25 (5).

³ *Ibid.*, s. 25 (9).

⁴ *Ibid.*, s. 26.

⁵ *Ibid.*, s. 26.

⁶ *Ibid.*, s. 26 (3).

⁷ *Ibid.*, s. 26 (4).

CHAPTER XII

FACTORIES, WORKSHOPS, AND SPECIFIED TRADES

THE restrictions on the employment of children or young persons in factories and workshops are mainly to be found in the Factory Act, 1901, and in the Employment of Women and Young Persons and Children Act, 1920. The latter Act was passed to give effect to certain recommendations of the International Labour Organization of the League of Nations, which are set out in full in the Schedule to the Act.¹

In these Acts the expression "Child" means a person under the age of fourteen, the expression "young person" means a person between the ages of fourteen and eighteen.² The 1920 Act fills in the gaps in previous British Factory legislation with regard to children and young persons and thus brings it into line with the Washington and Genoa Conventions.

In considering these Acts the terms used must be read in accordance with the definition given in the Act. Factories, workshops, and tenement

¹ Appendix III.

² Employment of Women and Children Act, 1920, s. 4.

factories are defined at length in Section 149 of the 1901 Act.¹ "Employment" means working in a factory or workshop in any capacity. It is fully defined in the Act of 1901, Section 152.²

An "industrial undertaking" is defined in Article 1 of the Schedule to the 1920 Act, and includes mines, quarries, and transport work of all kinds, as well as manufacturing and engineering works.³ The term "night" is defined in Article 3 of Part II of the same Schedule³ and signifies "a period of at least eleven consecutive hours including the interval between 10 p.m. and 5 a.m. except in mines, when the night period for young persons begins at 9 p.m."⁴

It is wholly forbidden to employ a child in a ship or in an industrial undertaking, except with members of his own family.⁵ In certain dangerous trades, such as white lead manufacture, neither children nor young persons may be employed. The full list of these trades is to be found in the Factory Act, 1901, Section 77.⁶ Young persons between the ages of fourteen and sixteen may not be employed in factories without a certificate of fitness.⁷ In some workshops (specified from time

¹ Appendix V.

² Appendix V.

³ Appendix IV.

⁴ Appendix VI.

⁵ Employment of Women and Children Act, 1920, ss. 1, 2.

⁶ Appendix V.

⁷ Factory Act, 1901, s. 63.

to time in special orders) when the Home Secretary considers it necessary to protect the health of young workers, a similar certificate is also required.¹ Young persons under sixteen in any factory who suffer from any disease or bodily infirmity may be forbidden to work by the visiting inspector, unless a certificate of fitness is obtained after a special medical examination for the purpose.² The authorized factory inspectors may, under the Act, and subject to Home Office regulations, appoint certifying surgeons in each area to make examinations and to grant certificates.³ If there is no such surgeon available the poor law medical officer for the district may be called upon to act.⁴ The fees for these services are payable by employers in accordance with a fixed scale.⁵ The certificate must be granted in accordance with the regulations given in Section 64 of the Act, it must be produced to an inspector of any factory when required.⁶

In a tenement factory it is valid for any part of the building.⁷ It is optional for workshops, except those in which the Secretary of State, as stated above, has made it compulsory.⁸ No young person under eighteen may be employed

¹ Factory Act, 1901, s. 66.

² *Ibid.*, s. 67.

³ *Ibid.*, s. 122.

⁴ *Ibid.*, s. 123.

⁵ *Ibid.*, s. 124.

⁶ *Ibid.*, s. 64.

⁷ *Ibid.*, s. 89.

⁸ *Ibid.*, s. 65.

on board ship as a trimmer or stoker at all, or in any capacity without a medical certificate.¹

There are many ways in which the work of children and young persons in industrial undertakings is restricted when not wholly forbidden. The times at which they may work are strictly regulated. No young person under eighteen may be engaged in work at night, except with members of his own family.² Young persons under sixteen working in mines are further forbidden to work after 9 p.m.³ An exception is made, however, in the case of male young persons over sixteen employed in certain processes in iron and steel manufacture, in glass paper, and raw sugar works, and in gold-mining reduction.⁴ In Part II of the Factory Act, 1901, Sections 23-53, the periods by which young persons may be employed in the various kinds of factories (textile, non-textile, bleaching, dyeing, bakehouses, etc.), are set out in detail (see Halsbury's *Statutes*, Vol. VIII, pages 531 *et seq.*). Additional restrictions on the work of young persons in mines are to be found in the Coal Mines Act, 1911, Section 92.⁵

The occupier of every factory and workshop

¹ Merchant Shipping (International Labour Convention) Act, 1925; Employment of Women and Children Act, 1920.

² *Ibid.*, s. 1 (3).

³ Appendix VI.

⁴ Appendix IV, Part II, Art. 2.

⁵ Appendix VI.

must display a notice stating the period of employment and the hours allowed for meals.¹ Young persons, except in some trades specially exempt, must all have their meal hours at the same time and are not permitted to eat their meals in any part of the building in which manufacturing or handicraft processes are going on.² In certain trades, such as glass-works or lucifer match works, they may not remain in the factory at all during meal hours.³

The hours fixed by the Factory Act for the employment of young persons prevent their being engaged after 7 or 8 p.m.,⁴ but under Section 2 of the Employment of Women, Young Persons and Children Act, 1920, the Home Secretary may, on the joint application of the employer or employees and workers in any factory or group of factories and workshops, make orders authorizing the employment of young persons over sixteen, in shifts of eight hours, up till 10 p.m. The Home Secretary may impose any such conditions as he considers necessary to safeguard the workers' health and interests, and if a majority of the workers or employers in the industry concerned object, he must withdraw the order. In addition to the safety regulations applicable to all industrial

¹ Factory Act, 1901, s. 32.

² *Ibid.*, s. 33.

³ *Ibid.*, s. 78.

⁴ *Ibid.*, ss. 24, 26.

workers, young persons are specially protected in that they are not allowed to clean any part of the machinery, even fixed parts,¹ which is power driven or mill gearing, while it is in motion.² Even picking saleable fluff off such machinery has been held to be cleaning contrary to the Act.³ Neither are they allowed to work between the fixed and traversing parts of any self-acting machine while it is in motion.⁴ The employer is liable if these rules are not obeyed but the words "must not be allowed" in the Statute do not mean "must be prevented" so there is no offence when a young person is within the prohibited space without the knowledge or consent of the person in charge.⁵

The above regulations with regard to hours of employment do not apply to Domestic Factories and Workshops, that is to say dwelling-houses which are used as factories or workshops within the meaning of the Act, though without mechanical power, and in which the only persons employed are members of the family dwelling there.⁶ Special restrictions on the employment of children and young persons in such places are to be found in Section III of the Factory Act, 1901, and though

¹ *Pearson v. Belgian Mills Co.*, [1896] 1 Q.B. 244.

² Factory Act, 1901, s. 13.

³ *Taylor v. Mark Dawson & Son., Ltd.*, [1911] 1 K.B. 145.

⁴ Factory Act, 1901, s. 12.

⁵ *Crabtree v. Fern Spinning Co., Ltd.* (1901), 66 J.P. 181.

⁶ Factory Act, 1901, s. III.

a "Domestic" Factory would doubtless be an "industrial undertaking" under the Act of 1920,¹ when the work is carried out by members of the same family, children may still be employed in it.² Their hours of labour are, however, limited by Sub-section (1) (d) of the Section and by the requirements of the Education Act³ and the Children and Young Persons Act, 1933, Part II.

Specially Regulated Trades.

In addition to the trades specially dealt with in the Factory Acts and in the Acts relating to the employment of women and young persons, special legislation relating to other dangerous occupations is also in force. By the Chimney Sweepers and Chimneys Regulation Acts of 1840 and 1864, no chimney-sweep may employ a child under ten except in his own house.⁴ The age would now be further limited by the Children Act to twelve. No person under the age of twenty-one is permitted to ascend or descend a chimney or enter a flue.⁵ No young person under sixteen may be apprenticed to a chimney-sweep,⁶ nor enter a house with a sweep who is going there for the purposes of his trade.⁷

¹ Appendix IV.

² Employment of Women and Children Act, 1920, s. 3.

³ Education Act, 1921, ss. 93-97.

⁴ 1864 Act, s. 6.

⁵ 1840 Act, s. 2.

⁶ 1840 Act, s. 3.

⁷ 1864 Act, s. 7.

The employment of young persons in certain processes of lead manufacture and involving the use of lead compounds is forbidden by an Act of 1920.¹ They are also forbidden by the Lead Paint (Protection against Poisoning) Act, 1926, from using lead paint for painting buildings. Exceptions are made in the case of apprentices to the painting trade under arrangements approved by the Home Secretary after consultation with representatives of the employers and workers organizations, and of young persons engaged in decorative work (not industrial) excluded by special order of the Home Secretary. The Coal Mines Act, 1911, and the Metalliferous Mines Regulation Acts contain restrictions regarding the employment of children and young persons in and about mines, but these are now covered by the Employment of Women and Young Persons Act, 1920, which includes mines and quarries in its definition of "industrial undertakings."

Registration.

This Act also requires that a register containing the names, date of birth, and date of entering and leaving the service of their employer be kept of all young persons employed in industrial undertakings and that it shall be open for inspection at all

¹ Women and Young Persons (Employment in Lead Processes) Act, 1920.

times.¹ A similar register must be kept by ships unless a list of young persons engaged, with full details with regard to them is included in the agreement with the crew.² In coal mines in addition to the above particulars the register must contain the addresses of the young persons concerned and any other particulars which may be prescribed from time to time by the Home Secretary.³ It must also be open to inspection by authorized representatives of the local education authority. The immediate employer of any boy under sixteen underground must report his intention to employ the lad to the manager or owner of the mine before the boy commences work.

The Shops Act.

By Section 2 of the Shops Act, 1912, no person under eighteen may be employed for more than seventy-four hours (including meal times) in one week. Section 2 also forbids the employment in shops of young persons who have already on the same day worked the number of hours permitted by the Factory Act in any factory or workshop, or for a longer period than will, together with any time put in elsewhere, total the maximum allowed.

¹ Employment of Women and Young Persons Act, 1920, s. 1 (4), (6).

² *Ibid.*, s. 1 (5).

³ Coal Mines Act, 1911, s. 94.

In every shop in which young persons are employed a notice stating the number of hours of employment permitted and the other provisions of the Section must be prominently displayed. Shops are defined by this Act as "premises where any retail trade or business is carried on,"¹ but the restrictions imposed by Section 2 apply equally to wholesale shops and to warehouses. They do not apply to persons wholly employed in domestic work.

¹ Shops Act, 1912, s. 19.

PART IV GENERAL

CHAPTER XIII

PREVENTION OF CRUELTY AND KINDRED OFFENCES

IN addition to the various forms of cruelty specified or made punishable by Section 1 of the Children and Young Persons Act, 1933, various other kindred offences may cause their perpetrators, if over the age of sixteen, to be similarly proceeded against, though the punishments for them vary. These offences are all misdemeanours and can be generically referred to as "offences under the First Schedule to the Children and Young Persons Act, 1933." They include the following offences against any person under the age of sixteen, namely: assault, ill-treatment, neglect, abandonment, exposure, offences against the person (such as abduction, child-stealing, aggravated assault), incest, seduction, and other sexual offences, the defilement and procurement of girls, allowing children and young persons to be in brothels, causing or allowing children and young persons to beg or to take part in dangerous performances contrary to Section 23 of the Children

and Young Persons Act, 1933, and exposure to the risk of burning. The term "neglect" has been widely interpreted and may include any omission by a parent or guardian to make proper provision for the maintenance and welfare of a child as well as failure to supply medical aid or to allow the performance of a necessary surgical operation.¹

Not only is the person who has actually committed any of the above offences liable to be convicted, but any one who has enabled them to be committed by remaining passive or failing to take the necessary steps for the child's protection or welfare may also be liable.²

Any person charged with any of these offences may either be tried summarily or on indictment and may be convicted even though the results of the cruelty or other offence have been obviated by the intervention of a third party or though the victim is dead or absent.³ Any one who is being tried for the manslaughter of a child or young person of whom he had the custody, or a woman charged with infanticide, may be found guilty of an offence under Section 1 (cruelty) if the jury think fit.⁴ If a person is indicted under the Criminal Law Amendment Act, 1885 (an Act for

¹ Children and Young Persons Act, 1933, s. 1; *Cole v. Pendleton* (1896), 60 J.P. 359; *R. v. Connor*, [1908] 2 K.B. 26; *Oakley v. Jackson*, [1914] 1 K.B. 216.

² *R. v. Senior*, [1899] 1 Q.B. 283.

³ Children and Young Persons Act, 1933, s. 1 (3).

⁴ *Ibid.*, s. 1 (4).

the protection of women and girls), he may be convicted under Section 3 of the Children and Young Persons Act, 1933 (i.e. for allowing children or young persons to be in brothels).

The maximum sentence for an offence of cruelty is one hundred pounds fine with imprisonment for any term up to two years, but when the offence is aggravated by the fact that the person convicted is interested either directly or indirectly in money or in the benefits of an insurance policy resulting from the death or injury of the victim of the offence the fine may be increased to £200, or the offender sent to penal servitude.¹

The police are given power under the Act to arrest without warrant any one whom they suspect of any of the offences under Part I if his name and address are unknown to them, or any person who has actually committed such an offence when they think he may abscond. Bail may be granted to such persons at the discretion of the officer in charge of the police station.² As explained in the chapter on juveniles needing care and protection, steps may be taken immediately by the police or local authority to remove the victims of such offences to a place of safety.

If necessary, a Justice of the Peace may, on information on oath as to suspected offences under

¹ Children and Young Persons Act, 1933, s. 1, ss. (1) (5).

² *Ibid.*, s. 13.

this Section, grant warrants authorizing search to be made for the child or young person concerned, for his forcible removal to safety, and for the arrest and due trial of the offender.¹ The constable in making his search may be accompanied, if desired,² by the informant, or by a certified medical practitioner should the warrant so direct. The child's name need not be given in the warrant.³ The person charged may give evidence on his own behalf but his or her wife or husband may be called upon to give evidence without the consent of the accused if required.⁴ The Act also provides that the written depositions of children and young persons may be admitted as evidence, and the case be dealt with in their absence, if it is undesirable for reasons of health for them to appear in person.⁵ Such depositions must be signed by the Justice of the Peace before whom they are sworn, and cannot be admitted unless the accused has due notice in writing of the intention to take such evidence and full facilities to be present or represented when it is heard.⁶ Evidence of children of tender years, not taken upon oath, either oral or in the form of written

¹ Children and Young Persons Act, 1933, s. 40 (1), (3).

² *Ibid.*, s. 40 (4).

³ *Ibid.*, s. 40 (5).

⁴ *Ibid.*, s. 15; Criminal Evidence Act, 1898, s. 4 (1), (2).

⁵ Children and Young Persons Act, 1933, ss. 41, 42.

⁶ *Ibid.*, s. 43; *R. v. Shurmer* (1886), 17 Q.B.D. 323.

depositions, may also be admitted if, in the opinion of the Court, the child is of adequate intelligence and understands the duty of speaking the truth. No one, however, may be convicted on such evidence without material corroboration, and any child who wilfully gives false evidence can be severely dealt with.¹ Information as to any offence under this part of the Act must be laid within six months of its commission, but when it is a continuous offence it is not necessary to specify its date either in the information, summons, or indictment.²

¹ Children and Young Persons Act, 1933, s. 38.

² *Ibid.*, s. 14.

CHAPTER XIV

RESTRICTIONS ON JUVENILE SMOKING AND OTHER SAFEGUARDS

JUVENILE smoking is restricted by Section 7 of the Children and Young Persons Act, 1933, which prohibits the sale of cigarettes and other smoking mixtures to any one apparently under the age of sixteen.¹ "Cigarettes" include tobacco in any form capable of immediate smoking.² The Act also empowers park-keepers and constables to seize any cigarettes found on any such child or young person in a street or public place,³ and gives Police Courts the right to hear complaints as to the use of automatic machines for the purchase of cigarettes by juveniles and if necessary to order their removal.⁴ These restrictions do not apply to persons employed in the tobacco trade or to messengers in uniform employed by a messenger company purchasing tobacco for adults.⁵

Section 5 of the Children and Young Persons Act, 1933, imposes a maximum fine of £3 on any

¹ Children and Young Persons Act, 1933, s. 7 (1).

² *Ibid.*, s. 7 (5).

³ *Ibid.*, s. 7 (3).

⁴ *Ibid.*, s. 7 (2).

⁵ *Ibid.*, s. 7 (4).

one found guilty of giving intoxicating liquor to a child under five, except in cases of illness. The penalties for the admission of children to the bar of licensed premises during the hours in which liquor is on sale are also severe.¹ The only defences for a person who has allowed a child on premises for which he holds the licence during the forbidden hours are either that he used all possible diligence to prevent the child's entry, or that the child is his own or is residing, but not employed, on the premises, or was passing through to another part of the building, or was apparently over the age of fourteen. A "bar" may for this purpose be defined as any part of the premises used exclusively or mainly for the sale of intoxicating liquor, and in the case of railway refreshment rooms or other premises mainly intended for other purposes the restrictions do not apply.²

Another restriction on dealings with persons under sixteen is the prohibition of the purchase of old metals from such persons to be found in Section 9 of the Act of 1933, by dealers in old metals and marine store dealers. "Old metal" includes scrap metal, broken metal or partly manufactured metal goods as well as old and defaced metal goods. The sale of gunpowder to children under thirteen is prohibited by the Explosives Act,

¹ Children and Young Persons Act, 1933, s. 6.

² *Ibid.*, s. 6; *Pilkington v. Ross*, [1914] 3 K.B. 321.

1875. The sending of circulars to infants inciting them to bet or to borrow money is also punishable,¹ as is the taking of articles in pawn from persons under fourteen.²

The safety of children in places of entertainment is dealt with in Section 12 of the 1933 Act, which provides that if in any entertainment for children the number attending exceeds one hundred, a sufficient number of attendants must be stationed at suitable parts of the building to prevent overcrowding and to regulate the exits and entrances, and to take all proper precautions for the safety of the audience. Any contravention of this section may render the proprietor of the building liable to heavy penalties, and if it is specially licensed for entertainments, to the loss of his licence. Any constable or duly authorized officer of the licensing authority may enter the building at any time to see that all the provisions of the section are carried into effect.

¹ Betting and Loans (Infants) Act, 1892, s. 1, 2.

² Children and Young Persons Act, 1933, s. 8.

APPENDIX I

CHILDREN AND YOUNG PERSONS ACT, 1933

(23 Geo. 5, c. 12)

SECTIONS 79, 106, 81, 82, AND FOURTH SCHEDULE

Approved Schools

79. (1) The managers of any school intended for the education and training of persons to be sent there in pursuance of this Act may apply to the Secretary of State to approve the school for that purpose, and the Secretary of State may, after making such inquiries as he thinks fit, approve the school for that purpose and issue a certificate of approval to the managers.

(2) If at any time the Secretary of State is dissatisfied with the condition or management of an approved school, or considers its continuance as an approved school unnecessary, he may by notice served on the managers withdraw the certificate of approval of the school as from a date specified in the notice, not being less than six months after the date of the notice, and upon the date so specified (unless the notice is previously withdrawn) the withdrawal of the certificate shall take effect and the school shall cease to be an approved school—

Provided that the Secretary of State, instead of withdrawing the certificate of approval, may by a notice served on the managers of the school prohibit the admission of persons to the school for such time as may be specified in the notice, or until the notice is revoked.

(3) The managers of an approved school may, on giving six months' notice in writing to the Secretary of State of their intention so to do, surrender the certificate of approval of the school, and at the expiration of six months from the date of the notice (unless the notice is previously withdrawn), the surrender of the certificate

shall take effect, and the school shall cease to be an approved school.

(4) No person shall in pursuance of this Act be received into the care of the managers of an approved school after the date of the receipt by the managers of the school of a notice of withdrawal of the certificate of approval of the school or after the date of a notice of intention to surrender the certificate; but the obligations of managers with respect to persons under their care at the respective dates aforesaid shall continue until the withdrawal or surrender takes effect.

(5) The Secretary of State shall cause any grant of a certificate of approval of an approved school, and any notice of the withdrawal of, or intention to surrender, such a certificate, to be advertised within one month from the date thereof in the *London Gazette*.

106. (3) The production of a copy of the *London Gazette* containing a notice of the grant, or of the withdrawal or surrender, of a certificate of approval of an approved school shall be sufficient evidence of the fact of a certificate having been duly granted to the school named in the notice, or of the withdrawal or surrender of such a certificate, and the grant of a certificate of approval of an approved school may also be proved by the production of the certificate itself, or of a document purporting to be a copy of the certificate and to be authenticated as such by an Under-Secretary of State or Assistant Under-Secretary.

*Classification, Administration, and Management
of Schools*

81. (1) The Secretary of State may classify approved schools according to the age of the persons for whom they are intended, the religious persuasion of such persons, the character of the education and training given therein, their geographical position, and otherwise as he thinks best calculated to secure that a person sent to an approved school is sent to a school appropriate to his case, or as may be necessary for the purposes of this Act.

(2) The managers of an approved school shall be bound to accept any person who in pursuance of this Act

is sent or transferred to their school or otherwise to their care, unless—

(a) the school is a school for persons of a particular religious persuasion not being that of the person whom it is proposed to send or transfer; or

(b) the school is a school provided by a local authority which is not, or by a combination of local authorities no one of which is, liable to make contributions in respect of the person whom it is proposed to send or transfer; or

(c) the managers of the school satisfy the Secretary of State that there are already as many persons detained in that school, or, as the case may be, otherwise under their care, as is desirable.

Escapes from Approved Schools

82. (1) Any person who has been ordered to be sent to an approved school and who—

(a) escapes from the school in which he is detained, or from any hospital, home, or institution in which he is receiving medical attention; or

(b) being absent from his school on temporary leave of absence or on licence, runs away from the person in whose charge he is, or fails to return to the school upon the expiration of his leave, or upon the revocation of his licence; or

(c) being absent from his school under supervision, fails to return to the school upon being recalled, may be apprehended without warrant, and may (any other Act to the contrary notwithstanding) be brought before a court of summary jurisdiction having jurisdiction where he is found, or where his school is situate; and that court may, notwithstanding any limitations contained in this Act upon the period during which he may be detained in an approved school, order him—

(i) if he is under the age of sixteen years, to be brought back and to have the period of his detention in the school increased by such period not exceeding six months as the court may direct; or

(ii) if he has attained the age of sixteen years, to be brought back and to have the period of his detention

so increased, or to be sent to a Borstal institution for two years.

(2) Where a person is under the provisions of the last foregoing subsection brought back to his school, the period of his detention shall (notwithstanding any limitations contained in this Act upon the period during which he may be detained in an approved school) be increased over and above any increase ordered by a court by a period equal to the period during which he was unlawfully at large.

(3) The expenses of bringing a person back to a school shall be borne by the managers of the school.

(4) If any person knowingly—

(a) assists or induces a person to commit any such offence as is mentioned in sub-section (1) of this section; or

(b) harbours or conceals a person who has committed such an offence, or prevents him from returning, he shall, on summary conviction, be liable to be imprisoned for any term not exceeding two months, or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

(5) If a court of summary jurisdiction is satisfied by information on oath that such an offence as aforesaid has been committed and that there is reasonable ground for believing that some person named in the information could produce the offender, the court may issue a summons requiring that person to attend at the court on such day as may be specified in the summons, and to produce the offender, and, if he fails to do so without reasonable excuse, he shall, in addition to any other liability to which he may be subject under the provisions of this Act, be liable on summary conviction to a fine not exceeding five pounds.

FOURTH SCHEDULE

PROVISIONS AS TO ADMINISTRATION OF APPROVED
SCHOOLS AND TREATMENT OF PERSONS
SENT THERETO

GENERAL PROVISIONS

1. (1) The Secretary of State may make rules for the management and discipline of approved schools, and different rules may be made as respects different schools or classes of school.

(2) The managers of an approved school may make supplementary rules for the management and discipline of the school, but rules so made shall not have effect unless approved by the Secretary of State.

2. No substantial addition to, or diminution or alteration of, the buildings or grounds of an approved school shall be made without the approval in writing of the Secretary of State.

Treatment of Pupils

3. A minister of the religious persuasion to which a person in an approved school belongs may visit him at the school on such days, at such times, and on such conditions, as may be fixed by rules made by the Secretary of State, for the purpose of affording him religious assistance and instruction.

4. If it appears to the managers of an approved school that a person who has been ordered to be sent to their school requires medical attention before he can properly be received into the school, or that a person detained in the school requires such attention, they may make arrangements for him to be received into and detained in any hospital, home, or other institution where he can receive the necessary attention; and that person, whilst so detained, shall for the purposes of this Act be deemed to be under the care of the managers of the school, and shall, for the purposes of section nine of the Mental Deficiency Act, 1913 (3 and 4 Geo. V, c. 28), be deemed to be detained in the school.

Power to Place Out Pupils

5. At any time during the period of a person's detention in an approved school the managers of the school may grant leave to him to be absent therefrom in the charge of such person and for such period as they think fit, but during such leave he shall, for the purposes of this Act, be deemed to be under the care of the managers of the school, and the managers may at any time require him to return to the school.

6. (1) At any time during the period of a person's detention in an approved school the managers of the school may and, if the Secretary of State so directs, shall by licence in writing permit him to live with his parent, or with any trustworthy and respectable person (to be named in the licence) who is willing to receive and take charge of him—

Provided that, without the consent of the Secretary of State, a licence shall not be granted during the first twelve months of the period of a person's detention.

(2) The Secretary of State shall through his inspectors review the progress made by persons detained in approved schools with a view to ensuring that they shall be placed out on licence as soon as they are fit to be so placed out.

(3) The managers of the school may at any time by order in writing revoke any licence, and require the person to whom it relates to return to the school.

(4) For the purposes of this Act a person who is out on licence from an approved school shall be deemed to be under the care of the managers of the school.

7. If a person under the care of the managers of an approved school conducts himself well the managers of the school may, with his written consent, apprentice or place him in any trade, calling, or service, including service in the Navy, Army, or Air Force, or may, with his written consent and with the written consent of the Secretary of State, arrange for his emigration.

Before exercising their powers under this paragraph the managers shall, in any case where it is practicable so to do, consult with the parents of the person concerned.

Misconduct of Pupils

8. If a person detained in an approved school is guilty of serious misconduct, the managers, if authorized by the Secretary of State so to do, may bring him before a court of summary jurisdiction and that court may (notwithstanding any limitations contained in this Act upon the period during which he may be detained in an approved school) order him—

(a) if he is under the age of sixteen years, to have the period of his detention in the school increased by such period not exceeding six months as the court may direct; or

(b) if he has attained the age of sixteen years but is under the age of seventeen years, to have the period of his detention so increased, or to be sent to a Borstal institution for a period of two years; or

(c) if he has attained the age of seventeen years, to have the period of his detention so increased, or to be sent to a Borstal institution for two years, or to be imprisoned for three months.

Discharge and Transfer

9. (1) The Secretary of State may at any time order a person under the care of the managers of an approved school to be discharged, or to be transferred to the care of the managers of another school (. . . *provisions re transfer to Scotland*).

(2) Upon a person being so discharged or transferred as aforesaid, the Secretary of State shall cause notice to be sent to the local authority liable to make contributions in respect of him.

(3) (. . . *re Scotland*).

10. The provisions of section sixty-eight of this Act (which relate to religious persuasion) shall apply in relation to the transfer of persons to approved schools and orders made for that purpose as they apply in relation to the sending of persons to such schools and orders made for that purpose.

11. Where a person detained in an approved school is transferred to the care of the managers of another school, he shall be conveyed to his new school by and at the expense of the managers of the first-mentioned school.

*Powers and Duties of Managers and other Persons
in Charge of Pupils*

12. (1) Subject as hereinafter provided, all rights and powers exercisable by law by a parent shall as respects any person under the care of the managers of an approved school be vested in them—

Provided that, where a person out on licence or under supervision from an approved school is lawfully living with his parents or either of them, the said rights and powers shall be exercisable by the parents or, as the case may be, by the parent with whom he is living; but it shall be the duty of any such parent so to exercise those rights and powers as to assist the managers to exercise control over the person in question.

(2) The managers of an approved school shall be under an obligation to provide for the clothing, maintenance, and education of the persons under their care, except that while such a person is out on licence, or under supervision, their obligation shall be to cause him to be visited, advised and befriended and to give him assistance (including, if they think fit, financial assistance) in maintaining himself and finding suitable employment.

13. Every person who—

(a) is authorized by the managers of an approved school to take charge of a person under their care, or to apprehend such a person and bring him back to the school; or

(b) is authorized by a local or poor law authority or, being a probation officer, is authorized by a court, to take to an approved school a person ordered to be detained therein,
shall, for the purposes of his duty as aforesaid, have all the powers, protection, and privileges of a constable.

Superannuation of Officers

14. The managers of any approved school may, as part of the expenses of the management of the school, pay, or contribute towards the payment of—

(a) a superannuation allowance or gratuity—

(i) to any officer who retires by reason of old age or permanent infirmity of mind or body;

(ii) to any officer, who, in accordance with the terms of his appointment, is required to vacate his office by reason of the death, or the retirement on account of old age or permanent infirmity, of another officer;

(b) a gratuity to any dependant of an officer who has died in the service of the school—

Provided that no payment or contribution in respect of any such superannuation allowance or gratuity shall be made unless it is made in accordance with rules approved by the Secretary of State with the concurrence of the Treasury for regulating the grant of such allowances and gratuities, or unless it is specially sanctioned by the Secretary of State.

APPENDIX II

CHILDREN AND YOUNG PERSONS ACT, 1933

(23 Geo. 5, c. 12)

SECTIONS 68-74

Regard to be had to Religious Persuasion of Person sent to Approved School

68. (1) A court before making an approved school order with respect to any child or young person shall endeavour to ascertain his religious persuasion.

(2) A court, or the Secretary of State, in determining the approved school to which a person is to be sent shall, where practicable, select a school for persons of the religious persuasion to which he belongs.

(3) Where an order has been made sending a person to an approved school which is not a school for persons of the religious persuasion to which he belongs, his parent, guardian, or nearest adult relative may apply—

(a) if the order was made by a court of summary jurisdiction, to a juvenile court acting for the same petty sessional division or place; and

(b) in any other case, to the Secretary of State, to remove or send the person to an approved school for persons of his religious persuasion, and the court or Secretary of State shall, on proof of his religious persuasion and notwithstanding any declaration with respect thereto embodied in the approved school order, if any, relating to him, comply with the request of the applicant:

Provided that nothing in this subsection shall empower a court, or impose an obligation upon the Secretary of State, to comply with any such request as aforesaid unless the applicant has—

(i) made his application before, or within thirty days after, the person's arrival at the school; and

(ii) named a school for persons of the religious persuasion in question and shown to the satisfaction

of the court or Secretary of State that the managers thereof have accommodation available.

Coming into Force of Approved School Orders

69. (1) An approved school order may be made to take effect immediately, or its operation may be postponed to a later date specified in the order or to be subsequently specified by endorsement thereon in accordance with the provisions of this Act:

Provided that the operation of the order shall not be postponed except pending the completion of arrangements for the reception of the child or young person into a suitable school, or on account of his ill-health.

(2) If an approved school order is not made to take effect immediately, or if at the time when such an order takes effect the child or young person cannot be sent to the school, the court which made the order or any other court which would have jurisdiction to make an endorsement thereon under the next following section may make an order committing him either to custody in any place to which he might be committed on remand, or to the custody of a fit person to whose care he might be committed under this Act, and, subject as hereinafter provided, that order shall have effect until he is sent to an approved school in pursuance of the approved school order:

Provided that an order made under this subsection shall not remain in force for more than twenty-eight days, but if at the expiration of that period any such court as aforesaid considers it expedient so to do, the court may make a further order under this subsection.

Any order made under this subsection may be made in the absence of the child or young person concerned.

Contents of Approved School Orders

70. (1) Every approved school order shall contain a declaration—

(a) as to the age; and

(b) as to the religious persuasion;

of the child or young person with respect to whom it is made.

(2) Every approved school order, other than an order made on the application of a poor law authority in their

capacity as such or made by reason of the commission of an offence under section ten of this Act (which relates to the punishment of vagrants preventing children from receiving education), shall name the local authority within whose district the child or young person was resident, or if that is not known, the local authority or one of the local authorities within whose district the offence was committed or the circumstances arose (as the case may be) rendering him liable to be sent to an approved school:

Provided that—

(a) in determining for the purposes of this subsection the place of residence of a child or young person, any period during which he resided in any place as an inmate of a school or other institution, or while boarded out under this Act by a local authority to whose care he has been committed, or in accordance with the conditions of a recognisance, shall be disregarded; and

(b) in the case of a child or young person not resident in England, the order shall, instead of naming a local authority, state that he was resident outside England.

(3) Every approved school order which is made to take effect immediately shall—

(a) specify the approved school to which the child or young person with respect to whom the order is made is first to be sent, being that one of the available schools (whether situate within the jurisdiction of the court making the order or not) which the court, after considering any representations made to it by the local authority concerned, considers to be most suitable to the case; and

(b) state whether the local or poor law authority, if any, named therein or the probation officer or the police authority is to be responsible for conveying to his school the child or young person with respect to whom the order is made.

(4) Where an approved school order is not made to take effect immediately then if, either the date to which its operation is postponed or the school to which the child or young person is to be sent or the authority or person who is to be responsible for conveying him, is

not specified in the order, the date, school, authority, or person, shall be subsequently specified by endorsement thereon.

(5) If for any reason a child or young person with respect to whom an approved school order has been made cannot be received into the approved school specified or endorsed upon the order, another school may be specified by an endorsement or further endorsement thereon, as the case may be.

(6) An endorsement under the foregoing provisions of this section may be made either—

(a) by the court which made the approved school order; or

(b) if the order was made by a court of summary jurisdiction, by a juvenile court acting for the same petty sessional division or place; or

(c) if the order was made by a court not being a court of summary jurisdiction, by a juvenile court acting for the petty sessional division or place where the child or young person was committed for trial, or if he was not committed for trial, by a juvenile court acting for the petty sessional division or place within which he was resident;

and any such endorsement may be made in the absence of the child or young person concerned.

(7) An approved school order made on the application of a poor law authority in their capacity as such authority, and an approved school order made by reason of the commission of an offence under section ten of this Act (which relates to the punishment of vagrants preventing children from receiving education) shall state that it is so made.

Duration of Approved School Orders

71. (1) Where a court orders a child to be sent to an approved school, the order shall be an authority for his detention in an approved school until the expiration of a period of three years from the date of the order and, if at the expiration of that period he is under the age of fifteen years, for his further detention until he attains that age.

(2) Where a court orders a young person to be sent to an approved school, the order shall be an authority for his detention in an approved school—

(a) if at the date of the order he has not attained the age of sixteen years, until the expiration of a period of three years from the date of the order; and

(b) if at the date of the order he has attained the age of sixteen years, until he attains the age of nineteen years.

*Conveyance of Children or Young Persons to
Approved Schools*

72. (1) The court which makes, or makes any endorsement upon, an approved school order shall cause it to be delivered to the authority or person responsible for conveying the child or young person to his school, and the person who conveys him to the school shall deliver the order to the headmaster or person for the time being in charge of the school.

(2) The court by which an approved school order is made shall cause a record in the prescribed form, embodying all such information in the possession of the court with respect to the child or young person as is in the opinion of the court material to be known by the managers of the school, to be prepared and transmitted to the headmaster or person for the time being in charge of the school.

(3) The local or poor law authority, probation officer or police authority, stated by any approved school order to be responsible for conveying a child or young person to his school, shall be responsible for conveying him there at the expense of the local or poor law authority, the probation committee, or police authority, as the case may be.

(4) Where a child or young person has been ordered to be sent to an approved school, any person who harbours or conceals him after the time has come for him to go to his school shall on summary conviction be liable to be imprisoned for any term not exceeding two months, or to a fine not exceeding twenty pounds, or to both such imprisonment and fine.

(5) Where a person authorized to take a child or young

person to an approved school is, when the time has come for him to go to his school, unable to find him or unable to obtain possession of him, a court of summary jurisdiction may, if satisfied by information on oath that some person named in the information can produce the child or young person, issue a summons requiring the person so named to attend at the court on such day as may be specified in the summons and produce the child or young person and, if he fails to do so without reasonable excuse, he shall, in addition to any other liability to which he may be subject under the provisions of this Act, be liable on summary conviction to a fine not exceeding five pounds.

Extension of Period of Detention in Approved Schools

73. If the managers of an approved school are satisfied that a person whose period of detention therein is, under the foregoing provisions of this Act, about to expire needs further care or training and cannot without it be placed in suitable employment they may, if the Secretary of State consents, detain him for a further period not exceeding six months, so, however, that he is not detained beyond the date on which he will attain the age of nineteen years:

Provided that the powers conferred by this subsection shall not extend to a person who, having been a person undergoing detention in a Borstal Institution or sentenced to detention under subsection (2) of section fifty-three of this Act, is detained in an approved school by order of the Secretary of State.

Supervision and Recall after Expiration of Order

74. (1) A person sent to an approved school shall after the expiration of the period of his detention be under the supervision of the managers of his school—

(a) if at the expiration of that period he has not attained the age of fifteen years, until he attains the age of eighteen years;

(b) if he has at the expiration of that period attained the age of fifteen years, for a period of three years or until he attains the age of twenty-one years, whichever may be the shorter period.

(2) The managers may, and, if the Secretary of State so directs, shall, by notice in writing recall to the school any person under their supervision who is at the date of the recall under the age of nineteen years:

Provided that a person shall not be so recalled, unless in the opinion of the managers, or, as the case may be, of the Secretary of State, it is necessary in his interests to recall him.

(3) A person who has been so recalled shall be released as soon as the managers think that he can properly be released, and in no case shall he be detained—

(a) after the expiration of a period of three months, or of such longer period not exceeding six months as the Secretary of State may, after considering the circumstances of his case, direct; or

(b) after attaining the age of nineteen years.

(4) The managers shall forthwith notify the Secretary of State of the recall of any person and shall state the reasons for his recall, and when the managers release any person so recalled they shall forthwith notify the Secretary of State that they have done so.

(5) For the purposes of this Act a person who is out under supervision from an approved school shall be deemed to be under the care of the managers of the school.

APPENDIX III

CHILDREN AND YOUNG PERSONS ACT, 1933

(23 Geo. 5, c. 12)

SECOND SCHEDULE

CONSTITUTION OF JUVENILE COURTS

Outside Metropolitan Areas

1. (1) The provisions of this paragraph shall have effect with respect to juvenile courts outside the metropolitan police court area and the City of London.

(2) Subject to the provisions of the next following sub-paragraph, a panel of justices specially qualified for dealing with juvenile cases shall be formed for the purposes of this Act in every petty sessional division, and no justice shall be qualified to sit as a member of a juvenile court unless he is a member of such a panel.

(3) The Secretary of State, after considering any representations made to him by the justices of the petty sessional divisions concerned, may by order direct that there shall be only one panel for any two or more petty sessional divisions and may by the same or a subsequent order provide for sittings of juvenile courts constituted from that panel being held at such places, whether within or without the petty sessional division for which the court is for the time being acting, as may be specified in the order.

An order under this sub-paragraph may contain such supplemental, incidental, and consequential provisions as appear to the Secretary of State to be necessary or proper for the purposes of the order, and may be varied or revoked by a subsequent order.

(4) Rules made by the Lord Chancellor shall provide—

(a) for the formation and periodical revision of panels of justices;

(b) for limiting the number of justices who may sit

as members of any juvenile court, and for the manner in which they are to be selected;

(c) for one of the justices acting as chairman of the court and for the manner in which the chairman is to be selected.

In Metropolitan Police Court Area

2. (1) His Majesty may by Order in Council specify as respects the metropolitan police court area the places (which, notwithstanding anything in the Metropolitan Police Courts Acts, 1839 and 1840, may be places other than police courts) in which juvenile courts are to sit, and assign as a division to each such place such portion of that area as may be specified in the Order.

(2) Every juvenile court in the metropolitan police court area shall be constituted of a metropolitan police magistrate nominated by the Secretary of State to act as chairman of juvenile courts within the said area and two justices of the peace for the county of London, one of whom shall be a woman, and both of whom shall be selected, in such manner as may be directed by Order in Council, from a panel of such justices nominated from time to time by the Secretary of State:

Provided that—

(a) if for special reasons the Secretary of State considers it advisable so to do, he may nominate such a justice of the peace as aforesaid to act as a chairman of juvenile courts within the said area; and

(b) if at any time, by reason of illness or other emergency, no person so nominated is available to act as chairman of a juvenile court, any metropolitan police magistrate although not so nominated, or, with the consent of the Secretary of State, any justice of the peace selected from the panel, may act temporarily as chairman; and

(c) where it appears to the chairman that the court cannot without adjournment be fully constituted, and that the adjournment would be inexpedient in the interests of justice, he may sit with one justice selected from the panel (whether a man or a woman) or, if he is a metropolitan police magistrate, may sit alone.

(3) The Secretary of State, in nominating the chairmen

of juvenile courts and the members of a panel, shall have regard to the previous experience of the persons available and their special qualifications for dealing with juvenile cases; and every such nomination shall be for a specified period and shall be revocable by the Secretary of State.

(4) An Order in Council made under this paragraph may contain such supplemental, incidental, and consequential provisions as appear to His Majesty in Council to be necessary or proper for the purposes of the Order.

In the City of London

3. Juvenile courts for the City of London shall be constituted in such manner as the Court of the Lord Mayor and Aldermen of the City may from time to time determine.

APPENDIX IV

EMPLOYMENT OF WOMEN, YOUNG PERSONS, AND CHILDREN ACT, 1920

(10 & 11 Geo. 5, c.65)

SCHEDULE

PART I

CONVENTION FIXING MINIMUM AGE FOR ADMISSION OF CHILDREN TO INDUSTRIAL EMPLOYMENT

Article 1

For the purpose of this Convention, the term "industrial undertaking" includes particularly—

(a) Mines, quarries, and other works for the extraction of minerals from the earth.

(b) Industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up or demolished, or in which materials are transformed; including shipbuilding, and the generation, transformation, and transmission of electricity and motive power of any kind.

(c) Construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gaswork, waterwork, or other work of construction, as well as the preparation for or laying the foundations of any such work or structure.

(d) Transport of passengers or goods by road or rail or inland waterway, including the handling of goods at docks, quays, wharves, and warehouses, but excluding transport by hand.

The competent authority in each country shall define the line of division which separates industry from commerce and agriculture.

Article 2

Children under the age of fourteen years shall not be employed or work in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed.

Article 3

The provisions of Article 2 shall not apply to work done by children in technical schools, provided that such work is approved and supervised by public authority.

Article 4

In order to facilitate the enforcement of the provisions of this Convention, every employer in an industrial undertaking shall be required to keep a register of all persons under the age of sixteen years employed by him, and of the dates of their births.

PART II

CONVENTION CONCERNING THE NIGHT WORK OF
YOUNG PERSONS EMPLOYED IN INDUSTRY*Article 1*

For the purpose of this Convention, the term "industrial undertaking" includes particularly—

(a) Mines, quarries, and other works for the extraction of minerals from the earth:

(b) Industries in which articles are manufactured, altered, cleaned, repaired, ornamented, finished, adapted for sale, broken up, or demolished, or in which materials are transformed; including shipbuilding, and the generation, transformation, and transmission of electricity or motive power of any kind:

(c) Construction, reconstruction, maintenance, repair, alteration, or demolition of any building, railway, tramway, harbour, dock, pier, canal, inland waterway, road, tunnel, bridge, viaduct, sewer, drain, well, telegraphic or telephonic installation, electrical undertaking, gaswork, waterwork, or other work of construction as well as the preparation for or laying the foundations of any such work or structure:

(d) Transport of passengers or goods by road or rail, including the handling of goods at docks, quays, wharves, and warehouses, but excluding transport by hand.

The competent authority in each country shall define the line of division which separates industry from commerce and agriculture.

Article 2

Young persons under eighteen years of age shall not be employed during the night in any public or private industrial undertaking, or in any branch thereof, other than an undertaking in which only members of the same family are employed, except as hereinafter provided for.

Young persons over the age of sixteen may be employed during the night in the following industrial undertakings on work which by reason of the nature of the process, is required to be carried on continuously day and night—

(a) Manufacture of iron and steel; process in which reverberatory or regenerative furnaces are used, and galvanizing of sheet metal or wire (except the pickling process).

(b) Glass works.

(c) Manufacture of paper.

(d) Manufacture of raw sugar.

(e) Gold mining reduction work.

Article 3

For the purpose of this Convention, the term "night" signifies a period of at least eleven consecutive hours, including the interval between ten o'clock in the evening and five o'clock in the morning.

In coal and lignite mines work may be carried on in the interval between ten o'clock in the evening and five o'clock in the morning, if an interval of ordinarily fifteen hours, and in no case of less than thirteen hours, separates two periods of work.

Where night work in the baking industry is prohibited for all workers, the interval between nine o'clock in the evening and four o'clock in the morning may be substi-

tuted in the baking industry for the interval between ten o'clock in the evening and five o'clock in the morning.

Article 4

The provisions of Articles 2 and 3 shall not apply to the night work of young persons between the ages of sixteen and eighteen years in cases of emergency which could not have been controlled or foreseen, which are not of a periodical character, and which interfere with the normal working of the industrial undertaking.

Article 7

The prohibition of night work may be suspended by the Government, for young persons between the ages of sixteen and eighteen years, when in case of serious emergency the public interest demands it.

PART IV

CONVENTION FIXING THE MINIMUM AGE FOR ADMISSION OF CHILDREN TO EMPLOYMENT AT SEA

Article 1

For the purpose of this Convention, the term "vessel" includes all ships and boats, of any nature whatsoever, engaged in maritime navigation, whether publicly or privately owned: it excludes ships of war.

Article 2

Children under the age of fourteen years shall not be employed or work on vessels other than vessels upon which only members of the same family are employed.

Article 3

The provisions of Article 2 shall not apply to work done by children on school ships or training ships,

provided that such work is approved and supervised by public authority.

Article 4

In order to facilitate the enforcement of the provisions of this Convention, every shipmaster shall be required to keep a register of all persons under the age of sixteen years employed on board his vessel, or a list of them in the articles of agreement, and of the dates of their births.

APPENDIX V

FACTORY ACT, 1901

(1 Edw. 7, c. 22)

SECTION 149

FACTORIES AND WORKSHOPS TO WHICH ACT APPLIES

149. (1) Subject to the provisions of this section, the following expressions have in this Act the meanings hereby assigned to them; that is to say—

The expression "textile factory" means any premises wherein or within the close or curtilage of which steam, water or other mechanical power is used to move or work any machinery employed in preparing, manufacturing or finishing or in any process incident to the manufacture of cotton, wool, hair, silk, flax, hemp, jute, tow, china-grass, coco-nut fibre, or other like material, either separately or mixed together, or mixed with any other material or any fabric made thereof:

Provided that print works, bleaching and dyeing works, lace warehouses, paper mills, flax scutch mills, rope works, and hat works shall not be deemed to be textile factories:

The expression "non-textile factory" means—

(a) any works, warehouses, furnaces, mills, foundries or places named in Part One of the Sixth Schedule to this Act; and

(b) any premises or places named in Part Two of the said Schedule wherein or within the close or curtilage or precincts of which steam, water or other mechanical power is used in aid of the manufacturing process carried on there; and

(c) any premises wherein or within the close or curtilage or precincts of which any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, namely—

(i) the making of any article or any part of any article; or

(ii) the altering, repairing, ornamenting or finishing of any article; or

(iii) the adapting for sale of any article, and wherein or within the close or curtilage or precincts of which steam, water or other mechanical power is used in aid of the manufacturing processes carried on there:

The expression "factory" means textile factory and non-textile factory or either of those descriptions of factories;

The expression "tenement factory" means a factory where mechanical power is supplied to different parts of the same building occupied by different persons for the purpose of any manufacturing process or handicraft, in such manner that those parts in law constitute separate factories; and for the purpose of the provisions of this Act with respect to tenement factories all buildings situate within the same close or curtilage shall be treated as one building.

The expression "workshop" means—

(a) any premises or places named in Part Two of the Sixth Schedule to this Act which are not a factory; and

(b) any premises, room or place, not being a factory, in which premises, room or place or within the close or curtilage or precincts of which premises any manual labour is exercised by way of trade or for purposes of gain in or incidental to any of the following purposes, namely—

(i) the making of any article or part of any article; or

(ii) the altering, repairing, ornamenting or finishing of any article; or

(iii) the adapting for sale of any article, and to or over which premises, room or place the employer of the persons working therein has the right of access or control:

The expression "workshop" includes a tenement workshop.

The expression "tenement workshop" means any

workplace in which, with the permission of or under agreement with the owner or occupier, two or more persons carry on any work which would constitute the workplace a workshop if the persons working therein were in the employment of the owner or occupier.

(2) A part of a factory or workshop may, with the approval in writing of the chief inspector, be taken for the purposes of this Act to be a separate factory or workshop.

(3) A room solely used for the purpose of sleeping therein shall not be deemed to form part of the factory or workshop for the purposes of this Act.

(4) Where a place situate within the close, curtilage or precincts forming a factory or workshop is solely used for some purpose other than the manufacturing process or handicraft carried on in the factory or workshop, that place shall not be deemed to form part of the factory or workshop for the purposes of this Act, but shall, if otherwise it would be a factory or workshop, be deemed to be a second factory or workshop and be regulated accordingly.

(5) A place or premises shall not be excluded from the definition of a factory or workshop by reason only that the place or premises is or are in the open air.

(6) The exercise by any young person or child in any recognized efficient school, during a portion of the school hours, or of any manual labour for the purpose of instructing the young person in any art or handicraft, shall not be deemed to be an exercise of manual labour for the purpose of gain within the meaning of this Act.

SECTION 152

DEFINITION OF EMPLOYMENT AND WORKING FOR HIRE

152. (1) A woman, young person or child who works in a factory or workshop, whether for wages or not, either in a manufacturing process or handicraft or in cleaning any part of the factory or workshop used for any manufacturing process or handicraft or in cleaning or oiling any part of the machinery or in any other kind

of work whatsoever incidental to or connected with the manufacturing process or handicraft or connected with the article made or otherwise the subject of the manufacturing process or handicraft therein, shall, save as is otherwise provided by this Act, be deemed to be employed therein within the meaning of this Act.

(2) For the purpose of this Act an apprentice shall be deemed to work for hire.

SECTION 77

PROHIBITION OF EMPLOYMENT OF YOUNG PERSONS AND CHILDREN IN CERTAIN FACTORIES AND WORKSHOPS

77. (1) In the part of a factory or workshop in which there is carried on—

(a) the process of silvering of mirrors by the mercurial process; or

(b) the process of making white lead

a young person or child must not be employed.

(2) In the part of a factory in which the process of melting or annealing glass is carried on, a female, young person, or a child must not be employed.

(3) In a factory or workshop in which there is carried on—

(a) the making or finishing off of bricks or tiles not being ornamental tiles; or

(b) the making or finishing of salt,

a girl under the age of sixteen must not be employed.

(4) In the part of the factory or workshop in which there is carried on—

(a) any grinding in the metal trade; or

(b) the dipping of lucifer matches

a child must not be employed.

(5) Notice of a prohibition contained in this section must be affixed in the factory or workshop to which it applies.

APPENDIX VI

COAL MINES ACT, 1911

(1-2 Geo. V, c. 50)

SECTION 92

EMPLOYMENT OF BOYS, GIRLS, AND WOMEN ABOVE GROUND

92. With respect to boys, girls, and women employed above ground, in connection with any mine, the following provisions shall have effect—

(1) No boy or girl under the age of thirteen years shall be so employed, unless lawfully so employed before the passing of this Act.

(2) No boy or girl of or above the age of thirteen years and no woman shall be so employed for more than fifty-four hours in any one week or more than ten hours in any one day.

(3) No boy, girl, or woman shall so be employed between the hours of nine at night and five on the following morning, nor on Sunday nor after two o'clock on Saturday afternoon.

(4) There shall be allowed an interval of not less than twelve hours between the termination of employment on one day, and the commencement of the next employment.

(5) A week shall be deemed to begin at midnight on Saturday night and to end at midnight on the succeeding Saturday night.

(6) No boy, girl, or woman shall be employed continuously for more than five hours, without an interval of at least half an hour for a meal, nor for more than eight hours on any one day, without an interval or intervals for meals amounting altogether to not less than one hour and a half.

(7) No boy, girl, or woman shall be employed in moving railway waggons, or in lifting, carrying or moving any thing so heavy as to be likely to cause injury to the boy, girl, or woman.

SECTION 122

[Extract]

"Boy" means a male under the age of sixteen years.

"Girl" means a female under the age of sixteen years.

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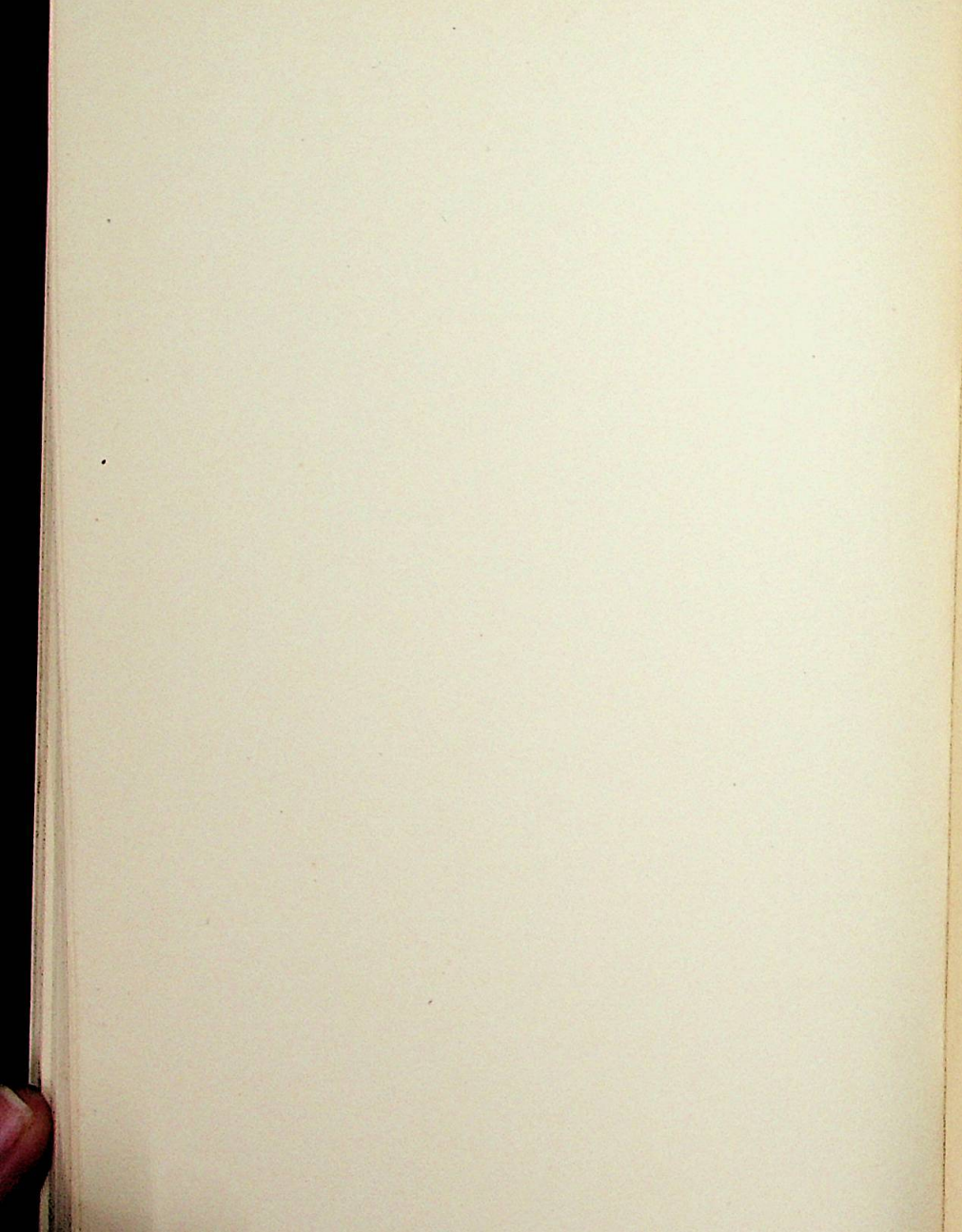
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