

marriage to their mother is deemed to be against public policy, and will not be enforced by the Courts, although upon separation such an agreement is perfectly valid. During the lifetime of the father a mother has at common law no legal authority; but on the death of the father, without having appointed a guardian, she is entitled to the custody of her infant children. Where the father has by will appointed a guardian the mother has, by the common law, no right to interfere with him.

At common law the control of the parent (father or mother) lasts, under ordinary circumstances, until, and in all cases ends, when the child attains the age of twenty-one or marries under that age. Parents cannot at common law enter into legally binding agreements to deprive themselves of the custody and control of their children. If, however, as a matter of fact, parents do put their children into the control of others, they will not be permitted, at the hazard of injuring the children, to take them back into their own custody. The interest of the children is the sole guide to the Court in such a case.<sup>56</sup>

The obligation to maintain children is enforced by the Criminal Code.

"Everyone who as parent or guardian or head of a family is under a legal duty to provide necessities for any child under the age of sixteen years is criminally responsible for omitting, without lawful excuse, to do so while such child remains a member of his or her household, whether such child is helpless or not, if the death of such child is caused, or if his life is endangered, or his health is, or likely to be, permanently injured by such omission."<sup>57</sup>

An amendment passed in 1913<sup>58</sup> provides that if a parent so neglects his children when destitute or in necessitous circumstances, he shall be liable to a fine of \$500 or to one year's imprisonment, or to both. It is also an indictable offence, punishable by three years imprisonment, to abandon any child under the age of two years, whereby its life is endangered or its health is permanently injured.<sup>59</sup>

At common law a parent is not liable for necessities supplied to his children apart from agreement, express or implied. The same is true of the support of a parent by his child.

The common law of England as above outlined is in force in Canada unless changed by the Statutes of the various Provinces. The changes which have been made are, however, important. Thus, in Ontario the Supreme Court or the Surrogate Court has general authority to make orders as to the custody of children and the right of access of either parent, having regard to the welfare of the children and to the conduct of the parents, and "to the wishes as well of the mother as of the father."<sup>60</sup>

All the English speaking Provinces, and the territories have very similar statutes. In the Yukon and the North-West Territories the Court may give the mother the custody of the child, but only if the child is under twelve years of age. In 1913 British Columbia enacted a provision similar

<sup>56</sup>Eversley, "Domestic Relations," 2nd Edition, at p. 493 et seq.

<sup>57</sup>Revised Statutes of Canada (1906), Chap. 146, Sec. 242.

<sup>58</sup>Statutes of Canada, 314 George V., Chap. 13, Sec. 14.

<sup>59</sup>Revised Statutes of Canada (1906), Chap. 146, Sec. 245.

<sup>60</sup>Revised Statutes of Ontario (1914), Chap. 153, Sec. 2, Sub-sec. 1.