

marriage, or remains subject to be disposed of by her last will, or otherwise, as regulated by the law of their domicil, as selected by him, (*m*) and subject to the claims of his and her creditors accordingly. (*n*) As where the husband is allowed, by the law of their domicil, to sue for and recover his wife's personal estate in equity, without making any settlement upon her, on the ground of what is here called 'the wife's equity,' the sum claimed and due in her right, will accordingly be ordered to be paid to him without his making any such settlement upon her. (*o*)

Upon the ground of this duty which the state owes to its citizens, the general assembly of Maryland have, by sundry legislative enactments, provided, that where an infant, who has no natural or testamentary guardian, may be entitled to real estate by descent or devise, or to personal property by bequest, or in a course of distribution, or may have acquired any property by gift or purchase, the Orphans Court of the county where the land lies, or in which administration of the personal estate is granted, shall have power to appoint a guardian to such infant until the age of twenty-one years, if a male, and until the age of eighteen, if a female, or marriage; and that such guardian shall be charged with the care, maintenance and education of such infant, and with the management of his or her estate. (*p*) Declaring, however, in connection with those general provisions, that nothing therein contained should be construed to affect the general superintending power exercised by the Court of Chancery with respect to trust. (*q*)

Now, on recollecting what has been before said as to the jurisdiction of the Court of Chancery, as the representative of the state, in its duty to infants as *parens patriæ*; and that by an English statute, passed in the year 1660, and adopted here, *fathers* have been authorized to appoint guardians to their legitimate infant children, (*r*) it clearly appears, that the ordinary tribunals, whose jurisdiction has been thus defined, cannot appoint a guardian to any infant whose father or mother is alive; or who has a testamen-

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(*m*) *Lashley v. Hog*, Robbins' Succession, 430.—(*n*) *Feaubert v. Turst*, Prec. Cha. 207; *The Goods of Maraver*, 3 Eccle. Rep. 218.—(*o*) *Minet v. Hyde*, 2 Bro. C. C. 663; *Bourdillon v. Adair*, 3 Bro. C. C. 237; *Campbell v. French*, 3 Ves. 321; *Sawer v. Shute*, 1 Anstr. 63; *Dues v. Smith*, 4 Cond. Cha. Rep. 257.—(*p*) 1715, ch. 39, s. 13 and 15; 1798, ch. 101, sub ch. 12; 1807, ch. 136, s. 4; 1829, ch. 216, s. 5; 1831, ch. 305, s. 5 and ch. 315, s. 8, 9 and 11.—(*q*) 1798, ch. 101, sub ch. 12, s. 16; 1831, ch. 315, s. 17.—(*r*) 12 Car. 2, c. 24; *Kilty Rep.* 238; 1798, ch. 101, sub ch. 12; *Villareal v. Mellish*, 2 Swan. 536, note.