Appointments of guardians by deed are not very frequent.[13] It seems to have been considered in Lord of Shaftesbury v. Hannam, Finch, 323, that a disposition of guardianship by deed was in its nature revocable, and so the Lord Chancellor thought in *Ex parte* Earl of Ilchester *supra*, that such a deed was a testamentary instrument in the form of a deed. However, in Lecone v. Sheires, 1 Vern. 442, it was held that if A., indebted to B., by deed grants the guardianship of his child to B., and covenants not to revoke it and dies, equity will not set aside the deed, unless the debt be paid or unless the trust be abused. It was doubted in Morgan v. Hatchet, 19 Beav. 86, whether such a deed is required to be attested at all, though the contrary is expressly decided in *Ex parte* Earl of Ilchester *supra*, but it was clearly held well executed, where the guardian himself was one of the attesting witnesses, by analogy to the cases of executors and legatees.

In Dorsey v. Sheppard, 12 G. & J. 192, it was observed that a guardian could not be appointed by a nuncupative will; it must be in writing. But the appointment takes effect under this Statute, and in Gilliat v. Gilliat, 3 Phillim. 222, probate to a will appointing a testamentary guardian was considered unnecessary. In Miller v. Harris, 14 Sim. 540, a testator directed the trustees of his will to procure a suitable house for the residence of his children, who were infants, and to engage a proper person to take the management and care of the house and *the children during **470** their minorities, and he requested his late wife's sister, if she should be alive at his decease, to take such management and care upon herself, and this was held a sufficient appointment of her as guardian; see also Mendes v. Mendes, 1 Ves. 89. Where a father had nominated a guardian for a legitimate child by a will not duly executed for that purpose, the person so nominated was appointed guardian by the Court of Exchequer without a reference, Hall v. Storer, 1 Y. & Coll. 556. A duly attested codicil amounting to a re-publication of the will is sufficient under the Statute, though the will be not well attested, De Bathe v. Lord Fingal, 16 Ves. Jun. 167. But a testamentary appointment of guardian is not revoked by a subsequent testamentary appointment not executed according to the Statute, and not importing directly revocation, *Ex parte* Earl of Ilchester *supra*. So where a testator devised property in trust for his children to certain persons, and designated his wife and them *by name* as guardians, a revocation of their appointment as trustees was held not to extend to the guardianship, *in Re* Park, 14 Sim. 89; and in like manner, where three persons, one of whom was the widow, were appointed guardians by a will, a codicil, leaving the care, charge and education of the children to the widow, was considered not to have revoked the first guardianship, Hare v. Hare, 5 Beav. 629. In Bedell v. Constable, Vaugh. 177, it is laid down, that the office of guardian under the Statute, as to the duty and power of the place, is left as that of guardian in socage, except that, 1°, it may be held longer, and 2°, by different persons. Hence it is further there said, that if a man devise the custody of his heir apparent to J. S., and mentions no time, either during his minority or any other time, this is a good devise of the custody of the heir, if he be within the age of fourteen at

[13] Cf. Tillman v. Tillman, (S. C.) 66 S. E. Rep. 1049.