the death of the father, because by the devise the *modus habendi custodiam* is changed only as to the person, but is left the same it was as to the time; but if the heir be above the age of fourteen at the father's death, then the devise is merely void for the uncertainty; the intention was that he was to be in custody only so long as the father appoints, and if he appoints no time there is no custody. But this is overruled, as it seems, by Mendes v. Mendes *supra*, where the opinion is expressed that a devise of the custody without mentioning time must be taken to be until the infant attains his majority.

Of several guardians appointed under the Statute, each is a complete guardian. And so in Gilbert v. Schwenck, 14 M. & W. 488, where two were appointed joint testamentary guardians, trespass was held to lie by one against the other for forcibly removing the infant *from the lawful service* of the former (who was the mother) against her consent. Guardians under the Statute, said the Court, have no more power than guardians in socage and are but trustees; one of two joint trustees cannot act in the trust in defiance of the will of the other; each has an equal power, and the children being in the custody and lawful service of the plaintiff, the defendant could not remove them against the plaintiff's will. Indeed, the same law would apply generally, where one joint tenant of a chattel forcibly ousts another. On the same principle it is held that, as the appointment of guardian has the condition in law annexed to it of the guardian living so long, and so if there be but one guardian his office expires with him, if there be several such guardians the office belongs to the survivor, though there be no words of survivorship, Eyre v. Shaftesbury, 2 P. Wms. 102.

It is also well settled that such a special guardian, though he may in the first instance decline, cannot transfer the custody, Bedell v. Constable *supra*.

Powers of testamentary guardians.—A testamentary guardianship is considered to take the place of guardianship by nature, and the power of such a guardian to be a continuation of the parental authority, Eyre v. Shaftes-
471 bury, 2 P. Wms. 115;[14] and in a modern case, R. v. Isley, *5 A. & E.

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[14] A testamentary guardian stands *in loco parentis* and is entitled to the custody of both the person and the property of his ward. Ramsay v. Thompson, 71 Md. 318; Strite v. Furst, 112 Md. 106; *In re* Andrews, L. R. 8 Q. B. 153; *In re* Helyar, (1902) 1 Ch. 391.

The Statute has the same force in Maryland as if enacted by the legislature and must be construed in connection with sec. 38 of Art. 16 of the Code of 1911, which provides that in cases where a divorce is decreed "the court shall have power to order and direct who shall have the guardianship and custody of the children." The power of the father to appoint a guardian is not taken away by a decree of divorce which awards him the custody of the children; *contra*, where their custody is given to the mother. Hill v. Hill, 49 Md. 450.

Of course, the right of parents to the custody of their children and of guardians to the custody of their wards is subject to the control of all courts of equity, and also to that of any judge before whom the minor