

without a suit. But it would be idle to act at all, if it should clearly appear, that the action of the Chancellor could be of no avail; and therefore, it will be proper to consider the nature of the Chancellor's authority in relation to the guardianship of infants; and the principles of international courtesy upon which an appointment of a guardian to an infant made in one nation, may be recognized in all others.

This petition asks for the appointment of a guardian to eight infants, of different ages and sexes; and consequently, it may be well, before we proceed with the principal matter, to make some observations as to the nature of that incapacity, for which it is here proposed to provide by the appointment of a guardian.

There are two kinds of personal incapacity; the one natural, and the other artificial; or first, that which arises from bodily or mental defect; and secondly, that which is declared by positive law. Of the first kind, is that of lunacy. A lunatic is every where held to be incompetent to contract in any way whatever, by reason of his mental defect, *Ex parte Lewis*, 1 Ves. 298; *Ex parte Annandale*, Amb. 80; *Ex parte Gillam*, 2 Ves. Jun. 587; and because of incurable impotence, arising from injury, or malconformation, a person is every where held to be incompetent to contract marriage; which requires a bodily as well as a mental ability so to contract. *Sabell's Case*, *Dyer*, 179; *Bury's Case*, 5 Co. 99; *Guest v. Shipley*, 4 Eccles. Rep. 548. Of the second kind of personal incapacity, is that of a married woman, whose incapacity (regarding the mere bond by which the parties are bound together as husband and wife, as that alone which is recognized by the law \*of nations as being every where alike obligatory,) is in each **491**

self. And it is hereby declared the intent of this decree, to give to the said James Ross, authority to act as guardian in no other respect whatever.

Some doubts have arisen, and objections having been made as to the extent of the authority of the guardian under this order, the matter was again brought before the Court.

HANSON, C., 26th June, 1805.—The Chancellor having heretofore passed an order, authorizing James Ross, the father of Oliver Bond Ross, to superintend and manage certain shares and interest of the said Oliver B. Ross, in the Union Bank of Maryland, and of paying the said bank, or receiving from it money for the said Oliver B. Ross; and of acting in the premises, to all intents and purposes, as the said Oliver, if of full age, might act for himself; and doubts being, as is stated, entertained as to the extent of the authority of the said James Ross; it is hereby adjudged and Ordered, that the said James Ross be, and he is hereby authorized to sell and transfer the said shares, or any of them, in the same manner, as if the said shares belonged to himself; and in all respects, relative to the said shares and interest, to act for the said Oliver Bond Ross, as the said Oliver, if of full age, might act for himself. (Such guardians now required to give security, &c. 1816, ch. 203, s. 1.)