

Statute, passed in the year 1660, and adopted here, fathers have been authorized to appoint guardians to their legitimate infant children, 12 Car. 2, c. 24; *Kilty Rep.* 238; 1798, ch. 101, sub-ch. 12; *Villareal v. Mellish*, 2 Swan. 536, note, 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 testamentary * guardian; or who has no property anywhere; or whose land does not lie within the **501** body of any county of this State; or upon whose personal estate no administration can be granted by any Orphans' Court of this State; and recollecting, moreover, that all guardians are considered as trustees, and as such, responsible in Chancery, whose jurisdiction, in that respect, has been expressly saved, it will be seen, that the Chancellor has a large scope of jurisdiction lying entirely beyond that of the ordinary tribunals, in addition to that wide space of authority, founded on the doctrine of trusts, which may, as in calling guardians to account, and the like, be exercised in concurrence with those tribunals. (e)

(e) *HEPBURN v. HEPBURN*.—This bill was filed by John Hepburn, an infant, by Henrietta Maria Walker, his mother and next friend, against Samuel Chew Hepburn, his guardian, for an account, &c. The defendant answered, and the case was brought before the Court.

HANSON, C., 16th April, 1791.—The Chancellor is of opinion, that this Court hath an undoubted authority to interpose in the affairs of all infants under the care of guardians, on the application of their nearest friends. As it appears, both from the bill and answer, that at least the education of the complainant hath been neglected; and that there does not exist, between him and the defendant, such a confidence and good will as ought to prevail between persons connected by a two-fold endearing relation; as the defendant admits a balance in his hands, belonging to the complainant, under the last will of his father John Hepburn, Jun., to a considerable amount in current money and tobacco; as the complainant, on attaining full age, will be entitled to a considerable estate, both real and personal; as the Chancellor conceives it proper for the complainant to be educated and maintained according to his rank; as it is even most eligible for the defendant to dispose of the said balance under the direction of this Court; and as the defendant has expressed a willingness to be directed in that respect by this Court:

It is Adjudged and Ordered, that the defendant deliver unto Henrietta M. Walker, the complainant's mother, on or before the first day of June next, the sum of £35 current money, and the like sum of £35, quarterly, until the complainant shall attain his full age of twenty-one years; and that the receipt of the said Walker shall be good against the complainant. And it is further Adjudged and Ordered, that the said Henrietta M. Walker, provided she accept the trust in her hereby reposed, shall apply the said money to the maintenance and education of the complainant, and not otherwise. And that, in respect to education, the said trustee, Mrs. Walker, shall act agreeably to the wish and inclination of the complainant; it being the intent and meaning of this order, that the said money shall be paid to the said trustee, whether the complainant be kept at school, or otherwise.