

misconduct of their father as against their legal guardian. *Wellesley v. Beaufort*, 3 *Cond. Cha. Rep.* 1; *Lyons v. Blenkin*, 4 *Cond. Chan. Rep.* 115; *Jones v. Stockett*, ante, 529; *Corrie's Case*, ante, 503. Yet even a Court of common law will not go so far as to hold nature in contempt, and snatch helpless, puling infancy from the bosom of an affectionate mother, and place it in the coarse hands of the father. The mother is the softest and safest nurse of infancy, and with her it will be left in opposition to this general right of the father. *Prather v. Prather*, 4 *Desau.* 33.

The common law vests a right in the wife to be endowed after her husband's death out of all the lands of which he was seized during the coverture, unless she has a jointure legally settled upon her in lieu of dower; and her title to all lands held in her own right remains unimpaired by the marriage. But the incapacity with which she is covered by the marriage leaves her no means, at the common law, of dealing with the title she holds in her own right, or with her vested right to dower or jointure, either for her own, or her husband's benefit, during the coverture; except by the formulary of a suit called a fine, and a private examination by the Court itself. In lieu of this fine our law has directly restored her capacity to contract by means of a simple prescribed form concerning her vested right of dower, or her jointure, as well as respecting her own lands of which her husband is entitled to the rents and profits only during coverture, or which he may have acquired a vested right to hold as tenant by the courtesy. *Hannah K. Chase's Case*, 1 *Bland*, 229. The wife may take and hold property of any description to her sole and separate use, independently of her husband, which she may be empowered to alienate, encumber, give, or devise in any manner at her pleasure. And if she relinquishes her dower, or jointure, or sells, disposes of, or encumbers her lands held in her own right, * or her separate property

564 for the purpose of paying his debts or of otherwise forwarding his views; or she becomes his surety, as she may in respect to her separate property; a Court of equity will order her to be reimbursed out of her husband's property if any shall remain after his creditors have been satisfied. *Huntington v. Huntington*, 2 *Vern.* 437; *Peacock v. Lee*, 2 *Vern.* 604; *Tate v. Austin*, 1 *P. Will.* 264; *Bagot v. Oughton*, 1 *P. Will.* 347; *Quarles v. Lacey*, 4 *Mun.* 258; *Gosden v. Tucker*, 6 *Mun.* 1.

These and other instances which might be cited clearly shew, that a wife, during coverture, is not altogether so destitute of a capacity to contract respecting her property as is indicated by the general terms of the rule of the common law; but, that a husband and wife may, in particular situations, treat together effectually, if they treat upon fair and reasonable terms. *Hobbs v. Hull*, 1 *Cox*, 445; *Arundell v. Phipps*, 10 *Ves.* 140.