seems to have been distinctly within the contemplation of the testator. For the trustees are expressly directed to retain the sole possession of the property for the purpose of educating the infant; and there is no provision for his maintenance, except, as an indispensable means of educating him; that is, while he may be at school, and not residing with his father. The distinctly expressed intentions of the testator are that the infant be educated; that so much of the yearly proceeds of the property as may be necessary are to be applied for that purpose; and that all over and above what may be necessary to attain that object shall be put out on interest to the best advantage, and paid to him after his arrival at age; or, in other words, that if, from any cause, he cannot be educated as desired, he shall have the money which might have been spent in that way.

It is clear, that upon mere common law principles, and by means of a writ of *habeas corpus* alone, the Chancellor, the judges, or the courts of common law can do little more than relieve any one from illegal restraint. (*p*) The Chancellor, however, not only has the power, by *habeas corpus*, to discharge any one from illegal confinement, but he has had delegated to him, as representing the state in its capacity of *parens patriæ*, the power to provide, according to law, for the safety and proper treatment of infants who are unable to take care of themselves. (*q*) It was only as to the extent of this large parental authority of the court, that I had entertained some doubts. (*r*) My first impression was, when this case was opened before me, that this court could not, for any purpose however apparently laudable, deprive a father of the care and custody of his infant children; thrown upon him by the law, not for his gratification, but on account of his duties to them, with reference to the public welfare, and place them against his will in the hands of another. (*s*)

But, upon a more careful investigation, I find, that although it is admitted to be always a delicate thing for the court to interfere against the parental authority, yet that it will do so when it becomes necessary for the safety, protection, and obvious benefit of the infant. The court founding its judgment in such cases, as in those between husband and wife, upon an admission that the tie

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(*p*) Lyons *v.* Blenkin, 4 Cond. Cha. Rep. 120; *Ex parte* Skinner, 17 Com. Law Rep. 122.—(*q*) Wellesley *v.* Beaufort, 3 Cond. Cha. Rep. 10; 2 Fonb. 226.—(*r*) 2 Lond. Jurist, 66.—(*s*) St. John *v.* St. John, 11 Ves. 531.