

OF the several species of guardians, the first are guardians *by nature*: viz. the father and (in some cases) the mother of the child. For, if an estate be left to an infant, the father is by common law the guardian, and must account to his child for the profits<sup>b</sup>. And, with regard to daughters, it seems by construction of the statute 4 & 5 Ph. & Mar. c. 8. that the father might by deed or will assign a guardian to any woman-child under the age of sixteen; and, if none be so assigned, the mother shall in this case be guardian<sup>c</sup>. There are also guardians *for nurture*<sup>d</sup>; which are, of course, the father or mother, till the infant attains the age of fourteen years<sup>e</sup>: and, in default of father or mother, the ordinary usually assigns some discreet person to take care of the infant's personal estate, and to provide for his maintenance and education<sup>f</sup>. Next are guardians *in socage*, (an appellation which will be fully explained in the second book of these commentaries) who are also called guardians *by the common law*. These take place only when the minor is entitled to some estate in lands, and then by the common law the guardianship devolves upon his next of kin, to whom the inheritance cannot possibly descend; as, where the estate descended from his father, in this case his uncle by the mother's side cannot possibly inherit this estate, and therefore shall be the guardian<sup>g</sup>. For the law judges it improper to trust the person of an infant in his hands, who may by possibility become heir to him; that there may be no temptation, nor even suspicion of temptation, for him to abuse his trust<sup>h</sup>. The Roman laws proceed on a quite contrary principle, committing the care of the minor to him who is the next to succeed to the inheritance, presuming that the next heir would take the best care of an estate, to which he has a prospect of succeeding: and this they boast to be "*summa providentia*"<sup>i</sup>. But in the mean time

<sup>b</sup> Co. Litt. 88.

<sup>c</sup> 3 Rep. 39.

<sup>d</sup> Co. Litt. 88.

<sup>e</sup> Moor. 738. 3 Rep. 38.

<sup>f</sup> 2 Jones 90. 2 Lev. 163.

<sup>g</sup> Litt. §. 123.

<sup>h</sup> *Nunquam custodia alicujus de jure alicui remanet, de quo habeatur suspicio, quod possit vel velit aliquod jus in ipsa hereditate clamare.*  
Glanv. l. 7. c. 11.

<sup>i</sup> *Ff. 26. 4. 1.*

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