

they seem to have forgotten, how much it is the guardian's interest to remove the incumbrance of his pupil's life from that estate, for which he is supposed to have so great a regard^k. And this affords Fortescue^l, and sir Edward Coke^m, an ample opportunity for triumph; they affirming, that to commit the custody of an infant to him that is next in succession, is "*quasi agnum committere lupo, ad devorandum*."ⁿ These guardians in socage, like those for nurture, continue only till the minor is fourteen years of age; for then, in both cases, he is presumed to have discretion, so far as to choose his own guardian. This he may do, unless one be appointed by the father, by virtue of the statute 12 Car. II. c. 24. which, considering the imbecillity of judgment in children of the age of fourteen, and the abolition of guardianship *in chivalry* (which lasted till the age of twenty one, and of which we shall speak hereafter) enacts, that any father, under age or of full age, may by deed or will dispose of the custody of his child, either born or unborn, to any person, except a popish recusant, either in possession or reversion, till such child attains the age of one and twenty years. These are called guardians *by statute*, or *testamentary* guardians. There are also special guardians *by custom* of London, and other places^o; but they are particular exceptions, and do not fall under the general law.

THE power and reciprocal duty of a guardian and ward are the same, *pro tempore*, as that of a father and child; and therefore I shall not repeat them: but shall only add, that the guardian, when the ward comes of age, is bound to give him an account

^k The Roman satyrast was fully aware of this danger, when he put this private prayer into the mouth of a selfish guardian;

— *pupillum outinam, quem proximus haeres Impello, expungam.* Perf. 1. 12.

^l c. 4.

^m 1 Inst. 88.

ⁿ This policy of our English law is warranted by the wise institutions of Solon, who provided that no one should be another's

guardian, who was to enjoy the estate after his death. (Potter's Antiqu. b. 1. c. 26.)

And Charondas, another of the Grecian legislators, directed that the inheritance should go to the father's relations, but the education of the child to the mother's; that the guardianship and right of succession might always be kept distinct. (Petit. Leg. Att. l. 6. t. 7.)

^o Co. Litt. 88.