

Howard, 20 Md. 194; and this order must be in writing, *Carlyle v. Carlyle*, approved in *Scott v. Fox*, 14 Md. 388. But the section does not apply to a guardian appointed by last will, with power to sell property without making a return to the Orphans Court, sec. 175.<sup>25a</sup> In *Murray v. Murray*, 24 Md. 310, it was, however, held that, although the ward had in case of such sale a double remedy, both against the assignee of the guardian and upon the guardian's bond, yet the assignee after satisfaction of the ward's claim had no right of action on the bond, nor could an action, brought by the ward upon the bond be prosecuted for the benefit of the assignee, though entered to his use as the consideration for such satisfaction.

**473 Effect of ward's marriage on guardianship.**—\*This testamentary guardianship is not determined by the marriage of a male ward, *Eyre v. Shaftesbury supra*, though it is otherwise, of course, as to females.<sup>26</sup> In England, in case of the insolvency or bankruptcy of such a guardian, a proper person will be appointed to have care of the person of the ward, *Heysham v. Heysham*, 1 Cox, 179; see 2 Dick. 631; but, doubtless, no such rule is held here.

**Removal of guardians.**—But though the appointment of a testamentary guardian is binding, it is not so in case of misbehaviour of the guardian, for every guardian, however appointed, is under the superintendence of the Court of Chancery, *Eyre v. Shaftesbury supra*. The Court will interfere even in case of a father; as where the child had an estate and the father, who was insolvent and of an ill character, would take the profits, a receiver has been appointed, *Duke of Beaufort v. Berty*, 1 P. Wms. 703.<sup>27</sup> It was there objected that the Court would not interpose till the guardian had misbehaved. But the Lord Chancellor answered that *preventing* justice was to be preferred to *punishing* justice, that if any wrong steps had been taken which might not deserve punishment, yet if they were such as induced the least suspicion of the infant's being like to suffer by the conduct of the guardian, or if the guardian chose to make use of methods that might turn to the prejudice of the infant, the Court would interfere and order the contrary, and that this was grounded upon the general power and jurisdiction which it had over all trusts, and a guardianship was most plainly a trust, as he had previously declared with some warmth; see *Wellesley v. Duke of Beaufort*, 2 Russ. 1; S. C. 2 Bligh, N. S. 154. This authority was approved by the Court in *Richards v. Swann*, 7 Gill, 366, the Chancellor, in the Court below, observing that the office of a guardian is that of a trustee, and that the general power of Chancery to superintend trusts was expressly preserved by the Act of 1798, ch. 101, sub-ch. 12, sec. 16.<sup>28</sup> And the doctrine, that a guardian might be held responsible and removed for misbehaviour was affirmed in *Barnes v. Crain*, 8 Gill, 391. However, it is laid down in *Foster v. Denny*, 2 Ch. Ca. 237, that the Court

<sup>25a</sup> Code 1911, Art. 93, sec. 176.

<sup>26</sup> See Code 1911, Art. 93, sec. 193. Cf. Harlan's *Domestic Relations*, 89, 99.

<sup>27</sup> In *F. v. F.*, (1902) 1 Ch. 688, a testamentary guardian was removed on account of her change of religion.

<sup>28</sup> See note 12 *supra*.