

The father is the rightful and legal guardian of all his infant children; and in general, no court can take from him the custody and control of them, thrown upon him by the law, not for his gratification, but on account of his duties, and place them against his will in the hands even of his wife. (*m*) But although the courts of common law can enforce the *rights* of the father, they are not equal to the office of enforcing the *duties* of the father; and therefore, where the children have any property, which can give this court the means of acting in their behalf, it will protect them as well against the misconduct of their father as against their legal guardian. (*n*) 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. (*o*)

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. (*p*) 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,

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(*m*) *St. John v. St. John*, 11 Ves. 531.—(*n*) *Wellesley v. Beaufort*, 3 Cond. Cha. Rep. 1; *Lyons v. Blenkin*, 4 Cond. Chan. Rep. 115; *Jones v. Stockett*, ante 429; *Corrie's Case*, ante 503.—(*o*) *Prather v. Prather*, 4 Desau. 33.—(*p*) *Hannah K. Chase's Case*, 1 Bland, 229.