to the believer in democratic government, and the only safe guarantee against both would seem to be a continuance of the present policy of equal rights under the law and of full liberty to each one to sell and buy labor to and from whom he will.

THE RIGHT OF A GUARDIAN TO CHANGE THE NATIONAL OR QUASI-NATIONAL DOMICIL OF A LUNATIC.—The question of the power of a lunatic's committee to change the national or quasi-national domicil of his ward has never been authoritatively decided by the courts. On principal, there seems to have been two views advanced.[1] One view holds that after adjudication of lunacy and the appointment of a committee, the committee has absolute control of the ward's domicil, similar to the control of the ward's person and property, allowing the committee or guardian full discretion; in fact, substituting the will of the committee for the will of the ward in the selection or retention of the ward's domicil. Adherence to this view, would, of course, give the committee power to change the ward's national or quasi-national domicil. There seems to be no cases on this subject but the objection to this view is the same that applies to infants in that it puts in the hands of the committee the power of changing, by a change of domicil, the succession to the ward's property, a power not fully guarded by the mere requirement of good faith,[2] or by reason of the loss of power by the committee attendant upon a change of jurisdiction.[3] The other view, which is better on reason and principle, is that upon the losing by the lunatic of that degree of mentality necessary to choose a domicil, his national or quasi-national domicil becomes fixed perma-

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[1] MINOR, CONFLICT OF LAWS, 108; DICEY, CONFL. LAWS, 142.

[2] Wheeler *v.* Hollis, 19 Tex. 522, 70 Am. Dec. 363. Authority for denying a guardian the power of changing the domicil of his infant ward for the purposes of changing the succession to the ward's property. This requirement has been attacked (MINOR, CONFLICT OF LAWS, 83), in that it would be against public policy to allow the infant to be separated from its family, by refusing to allow its domicil to change with that of its guardian; but it would seem that this reasoning does not apply to lunatics.

[3] In regard to comity, see In re Curtis, 199 N. Y. 36, 92 N. E. 396, Haight, J.: "And while the committee of an incompetent appointed by the court of a State in which he had his domicil, has no authority over the person or property in another State, except such as is permitted by comity, in this State the conservator appointed by a foreign jurisdiction may, upon application to our courts, have jurisdiction extended to the property of the incompetent in this State; and it a committee of a lunatic appointed in a foreign State should bring his incompetent in this State for medical treatment, education, pleasure or convenience, temporarily, we should not think of interfering with the custody, control or management of the committee of the person under his charge so long as he does not resort to unnecessary or criminal violence." It should be observed that the appointment of guardians is usually governed by the statute law of each State.

nently, or, at least until he recovers his sanity.[4] On denying the guardian the right to change the national or quasi-national domicil, its capacity to be changed must then depend upon the ward's degree of sanity. Very little mental power is required to choose a domicil.[5] But if the lunatic be entirely destitute of reasoning power, he could not have the capacity necessary for a freedom of choice, hence, his domicil prior to his insanity would remain fixed. This would necessarily follow from the rule that a domicil once acquired is retained until a new domicil is acquired.[6]

The mere appointment, however, of a guardian of the person and property of a person *non compos mentis* does not preclude the ward from changing his domicil at will, provided he has the requisite mental capacity for the selection of a new place of abode.[7] This rule applies to a change, even, of the national or quasi-national domicil.[8] On the other hand, there is no doubt that the lunatic's committee, when his welfare requires it, has the power of changing its ward's municipal domicil.[9] And obviously a ward possessing some degree of mentality can change his municipal domicil with the consent of his committee, provided there is sufficient understanding to choose a home.[10] But if the committee be guardian of the person it has been held that, although the committee may consent to, or change the national or quasi-national domicil of an incompetent, it is denied that the incompetent, himself, may establish a domicil other than that which existed at the time his incompetency was adjudged.[11]

In Kentucky, at least, in the recent case of *Sumrall's Committee* v. *Commonwealth* (Ky.), 172 S. W. 1057, the question under discussion has been settled. The appellant, Sumrall's Committee, resisted the taxation of Sumrall's property by the State of Kentucky, situated within Kentucky, on the ground that Sumrall was domiciled in the State of Maryland. The facts showed that Sumrall was forty-five years of age and until 1905 had lived in Boyle County, Kentucky. He then became insane and was sent by his father to an asylum in Maryland. Later his father died and he was formally adjudicated insane and put in the charge of a committee, a Kentucky corporation. The committee had continued to keep Sumrall at the asylum in Maryland and now claimed that Maryland was his domicil, he having been resident there for several years. The court held that Sumrall was domiciled in Kentucky. Settle, J., said: "In view of the foregoing undisputed facts, it is manifest that William L. Sumrall's domicil both of origin and selection, was and continued to be in Boyle County to the time he

[4] MINOR, CONFLICT OF LAWS, 109.
[5] Talbot *v.* Chamberlaine, 149 Mass. 57, 20 N. E. 305, 3 L. R. A. 254.
[6] Desmaire *v.* U. S., 93 U. S. 605.
[7] Mowry *v.* Latham, 17 R. I. 480, 23 Atl. 13.
[8] Ferguson *v.* Ferguson (Tex.), 128 S. W. 632.
[9] Holyoke *v.* Haskins, 5 Pick. (Mass.) 20, 16 Am. Dec. 373.
[10] Culvers Appeal from Probate, 48 Conn. 165.
[11] In re Curtis, 199 N. Y. 36, 92 N. E. 396.

became insane; that he has never recovered from his insanity, and is absent from Kentucky through no choice of his own; from which it would seem to follow that his domicil continued to be and now is in Boyle County. This is certainly true unless appellants, as committee, can, by its mere election, declare him a resident of the State of Maryland for the purpose of defeating the State of Kentucky and Boyle County of its right to assess and tax the ward's property in Boyle County."

This decision follows the close analogy between the rights of a guardian over lunatics and those of a guardian over infants. In the latter case, although the decisions are in conflict, the better view on authority and principle would seem to be that the guardian of an infant, has no right to change the infant's national or quasi-national domicil,[12] except in some cases where the ward, as a matter of fact, is a member of the guardian's family.[13] In the latter case, of course, there is seldom an analogy as lunatics are usually confined away from home.

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[12] Woodward *v.* Woodward, 87 Tenn. 644, 11 S. W. 892.

[13] Wheeler *v.* Hollis, *supra.* But there is conflict on this point, see, Daniel *v.* Hill, 52 Ala. 430.